

Fifty-ninth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2366

Introduced by

Senators G. Lee, J. Lee, Nething

Representatives Martinson, Price

1 A BILL for an Act to create and enact chapter 43-26.1 of the North Dakota Century Code,
2 relating to the practice of physical therapy; to amend and reenact subsection 1 of section
3 10-31-04 of the North Dakota Century Code, relating to statutory cross-reference; to repeal
4 chapter 43-26 of the North Dakota Century Code, relating to the practice of physical therapy;
5 and to provide a penalty.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 **SECTION 1. AMENDMENT.** Subsection 1 of section 10-31-04 of the North Dakota
8 Century Code is amended and reenacted as follows:

9 1. A professional organization may be created pursuant to this chapter only for the
10 purpose of rendering one specific type of professional service and services
11 ancillary thereto or for the purpose of rendering two or more kinds of professional
12 services that are specifically authorized to be practiced in combination under the
13 licensing laws of each of the professional services to be practiced by a licensed
14 individual or partnership of licensed individuals and ancillary services. This
15 subsection does not preclude an organization created pursuant to this chapter from
16 rendering more than one specific type of professional service if the services
17 rendered are set forth in chapters 43-03 and 43-19.1 or if the services rendered are
18 set forth in chapters ~~43-26~~ 43-26.1 and 43-40.

19 **SECTION 2.** Chapter 43-26.1 of the North Dakota Century Code is created and
20 enacted as follows:

21 **43-26.1-01. Definitions.** In this chapter, unless the context or subject matter otherwise
22 requires:

23 1. "Board" means the North Dakota board of physical therapy.

- 1 2. "Consultation by means of telecommunication" means that a physical therapist
2 renders professional or expert opinion or advice to another physical therapist or
3 health care provider via telecommunications or computer technology from a distant
4 location.
- 5 3. "Examination" means a national examination approved by the board for the
6 licensure of a physical therapist or the licensure of a physical therapist assistant.
- 7 4. "Jurisdiction of the United States" means any state, the District of Columbia, the
8 Commonwealth of Puerto Rico, or any American territory.
- 9 5. "Onsite supervision" means the supervising physical therapist is continuously
10 onsite and present in the department or facility where services are provided, is
11 immediately available to the person being supervised, and maintains continued
12 involvement in appropriate aspects of each treatment session in which a physical
13 therapist assistant or a physical therapy aide is involved in components of care.
- 14 6. "Physical therapist" means a person licensed under this chapter to practice
15 physical therapy. The term "physiotherapist" is synonymous with "physical
16 therapist" under this chapter.
- 17 7. "Physical therapist assistant" means a person who is licensed under this chapter
18 and who assists the physical therapist in selected components of physical therapy
19 intervention.
- 20 8. "Physical therapy" means the care and services provided by or under the direction
21 and supervision of a physical therapist licensed under this chapter.
- 22 9. "Physical therapy aide" means a person trained under the direction of a physical
23 therapist who performs designated and supervised routine tasks related to physical
24 therapy.
- 25 10. "Practice of physical therapy" means:
 - 26 a. Examining, evaluating, and testing individuals with mechanical, physiological,
27 and developmental impairments, functional limitations, and disabilities or other
28 health and movement-related conditions in order to determine a diagnosis for
29 physical therapy, prognosis, and plan of therapeutic intervention, and to
30 assess the ongoing effects of intervention.

- 1 b. Alleviating impairments, functional limitations, and disabilities by designing,
2 implementing and modifying therapeutic interventions that may include, but
3 are not limited to, therapeutic exercise; neuromuscular education; functional
4 training in self-care and in-home, community, or work integration or
5 reintegration; manual therapy; therapeutic massage; prescription, application
6 and, as appropriate, fabrication of assistive, adaptive, orthotic, prosthetic,
7 protective, and supportive devices and equipment; airway clearance
8 techniques; integumentary protection and repair techniques; debridement and
9 wound care; physiotherapy; physical agents or modalities; mechanical and
10 electrotherapeutic modalities; and patient-related instruction.
- 11 c. Reducing the risk of injury, impairment, functional limitation and disability,
12 including the promotion and maintenance of fitness, health, and wellness in
13 populations of all ages.
- 14 d. Engaging in administration, consultation, education, and research.

15 11. "Restricted license" for a physical therapist or physical therapist assistant means a
16 license on which the board places restrictions or conditions, or both, as to scope of
17 practice, place of practice, supervision of practice, duration of licensed status, or
18 type or condition of patient or client to whom the licensee may provide services.

19 12. "Testing" means standard methods and techniques used to gather data about the
20 patient.

21 **43-26.1-02. Board of physical therapy - Members - Appointments - Vacancies.**

22 The board of physical therapy shall administer this chapter. The board consists of three
23 licensed physical therapists, two licensed physicians, and a citizen who is not a health care
24 professional. The governor shall appoint the board members for a term of five years, staggered
25 so the terms of no more than two members expire each year. A person may not serve more
26 than two full consecutive terms. Terms begin on July first. Appointments to the board to fill a
27 vacancy occurring for other than the expiration of a term may only be made for the remainder of
28 the unexpired term. Each physical therapist appointed must have had at least three years of
29 physical therapy experience in North Dakota immediately prior to appointment and must
30 practice in North Dakota during the term. Each physician appointed must have practiced
31 medicine at least three years in North Dakota immediately prior to appointment and must

1 practice in North Dakota during the term. Each board member shall take and file with the
2 secretary of state the oath of office prescribed for state officials before entering upon the
3 discharge of the member's duties.

4 **43-26.1-03. Powers and duties of the board.** The board shall:

- 5 1. Evaluate the qualifications of applicants for licensure.
- 6 2. Provide for the examination of physical therapists and physical therapist assistants
7 and adopt passing scores for the examinations.
- 8 3. Issue licenses to persons who meet the requirements of this chapter.
- 9 4. Regulate the practice of physical therapy by interpreting and enforcing this chapter.
- 10 5. Adopt and revise rules consistent with this chapter.
- 11 6. Meet at least annually and such other times as deemed necessary. A majority of
12 board members shall constitute a quorum for the transaction of business.
- 13 7. Establish mechanisms for assessing the continuing professional competence of
14 physical therapists to engage in the practice of physical therapy.
- 15 8. Establish and collect fees for sustaining the necessary operation and expenses of
16 the board.
- 17 9. Elect officers from its members necessary for the operations and obligations of the
18 board. Terms of office shall be one year.
- 19 10. Provide for the timely orientation and training of new professional and public
20 appointees to the board regarding board licensing and disciplinary procedures, this
21 chapter, and board rules, policies, and procedures.
- 22 11. Maintain a current list of all persons regulated under this chapter. This information
23 includes the person's name, current business and residential address, telephone
24 numbers, and board license number.
- 25 12. Provide information to the public regarding the complaint process.
- 26 13. Employ necessary personnel to carry out the administrative work of the board.
- 27 14. Enter into contracts for services necessary for enforcement of this chapter.
- 28 15. Report final disciplinary action taken against a licensee to a national disciplinary
29 data base recognized by the board or as required by law.
- 30 16. Publish, at least annually, final disciplinary action taken against a licensee.

17. Provide board rulings, opinions, and interpretations of statutes or rules in order to guide persons regulated pursuant to this chapter.

18. Participate in or conduct performance audits.

43-26.1-04. Qualifications for licensure.

1. An applicant for a license as a physical therapist or physical therapist assistant shall:

a. Be of good moral character.

b. Complete the application process.

c. Be a graduate of a professional physical therapy education program accredited by a national accreditation agency approved by the board.

d. Pass the examination approved by the board.

2. An applicant for a license as a physical therapist who has been educated outside of the United States shall:

a. Be of good moral character.

b. Complete the application process.

c. Provide satisfactory evidence that the applicant's education is substantially equivalent to the requirements of physical therapists 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 have:

(1) Graduated from a physical therapist 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 education is recognized by its own ministry of education.

(3) Undergone a credentials evaluation as directed by the board that determines that 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 the board-approved English proficiency examinations if the applicant's native language is not English.

e. Pass the examination approved by the board.

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 educational program accredited by a national accrediting agency approved by the board, the board may waive the requirements in subdivision c of subsection 2.

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 in this chapter and under applicable rules.

2. The board shall inform an applicant of deficiencies in the application. The board may grant a hearing to an applicant who disagrees with the identified deficiencies.

3. The board shall provide examinations at times and places it determines. The board shall determine the passing score.

4. An applicant for licensure as a physical therapist may take the examination after the application process has been completed. The examination shall test entry-level competence related to physical therapy theory, examination and evaluation, diagnosis, prognosis, treatment intervention, prevention, and consultation.

5. An applicant for licensure as a physical therapist assistant may take the examination after the application process has been completed. The examination shall test for requisite knowledge and skills in the technical application of physical therapy services.

6. 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.

- 1 7. If the board determines that an applicant or examinee has engaged, or has
2 attempted to engage, in conduct that subverts or undermines the integrity of the
3 examination process, the board may disqualify the applicant from taking the
4 examination.

5 **43-26.1-06. Licensure by endorsement.** The board shall issue a license to a physical
6 therapist or physical therapist assistant who has a valid unrestricted license from another
7 jurisdiction of the United States if that person, when granted the license, met all requirements
8 under this chapter and any applicable board rules.

9 **43-26.1-07. Exemptions from licensure.**

- 10 1. This chapter does not restrict a person licensed under any other law of this state
11 from engaging in the profession or practice for which that person is licensed as
12 long as that person does not represent, imply, or claim that that person is a
13 physical therapist, physical therapist assistant, or a provider of physical therapy.

- 14 2. The following persons are exempt from the licensure requirements of this chapter
15 when engaged in the following activities:

- 16 a. A person in a professional education program approved by the board who is
17 satisfying supervised clinical education requirements related to the person's
18 physical therapist or physical therapist assistant education while under on-site
19 supervision of a physical therapist.
- 20 b. A physical therapist who is practicing in the United States armed services,
21 United States public health service, or veterans administration pursuant to
22 federal regulations for state licensure of health care providers.
- 23 c. A physical therapist who is licensed in another jurisdiction of the United States
24 or credentialed to practice physical therapy in another country if that person is
25 teaching, demonstrating, or providing physical therapy in connection with
26 teaching or participating in an educational seminar in the state of no more
27 than sixty days in a calendar year.
- 28 d. A physical therapist who is licensed in another United States jurisdiction if that
29 person is providing consultation by means of telecommunications to a
30 physical therapist licensed under this chapter.

e. A physical therapist who is licensed in another United States jurisdiction or credentialed in another country, if that person by contract or employment is providing physical therapy to individuals affiliated with or employed by established athletic teams, athletic organizations, or performing arts companies temporarily practicing, competing, or performing in the state for no more than sixty days in a calendar year.

f. A physical therapist assistant who is licensed in another United States jurisdiction and is assisting a physical therapist engaged specifically in activities related to subdivisions b, c, and e is exempt from the requirements of licensure under this chapter.

43-26.1-08. License renewal - Changes. A licensee shall renew the license pursuant to board rules. A licensee who fails to renew the license on or before the expiration date shall not practice as a physical therapist or physical therapist assistant in this state. Each licensee is responsible for reporting to the board a name change and changes in business and home address within thirty days of the date of change.

43-26.1-09. Reinstatement of license.

1. The board may reinstate a lapsed license upon payment of a renewal fee and reinstatement fee.
2. If a physical therapist's or physical therapist assistant's license has lapsed for more than three consecutive years, that person shall reapply for licensure and shall demonstrate to the board's satisfaction competence to practice physical therapy, by one or more of the following as determined by the board:
 - a. Practice for a specified time under a restricted license.
 - b. Complete prescribed remedial courses.
 - c. Complete continuing competence requirements for the period of the lapsed license.
 - d. Pass an examination.

43-26.1-10. Fees. The board shall establish and collect fees not to exceed:

1. Two hundred dollars for an application for an original license. This fee is nonrefundable.
2. One hundred dollars for an annual renewal of the license.

3. Two hundred dollars for an application for reinstatement of a license.

4. Fifty dollars for late renewal of a license.

43-26.1-11. Patient care management.

1. A physical therapist is responsible for managing all aspects of each patient's physical therapy. A physical therapist shall provide:

a. Each patient's initial evaluation and documentation.

b. Periodic reevaluation 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 to an appropriate practitioner.

3. A physical therapist shall assure the qualifications of all physical therapist assistants and physical therapy aides 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 onsite supervision of a physical therapist who is continuously onsite and present in the facility. This supervision may extend to offsite supervision of the 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 responsibility for patient care management shall include accurate documentation and billing of the services provided.

43-26.1-12. Consumers' rights.

1. The public shall have access to the following information:
 - a. A list of physical therapists that includes place of practice, license number, date of license, and expiration and status of license.
 - b. A list of physical therapist assistants licensed in the state, including place of employment, license number, date of license, and expiration and status of license.
 - c. A list of final disciplinary actions taken by the board.
 - d. The board's address and telephone number.
2. A patient has freedom of choice in selection of services and products.
3. Information relating to the physical therapist-patient relationship is confidential and shall not be communicated to a third party who is not involved in that patient's care without the written consent of the patient or as required by law.
4. Any person may submit a complaint to the board regarding any licensee, or any other person potentially in violation of this chapter.

43-26.1-13. Grounds for disciplinary actions. The board may refuse to license any physical therapist or physical therapist assistant, may discipline, or may suspend or revoke the license of any physical therapist or physical therapist assistant for any of the following grounds:

1. Violating any provision of this chapter, board rules, or a written order of the board.
2. Practicing or offering to practice beyond the scope of the practice of physical therapy.
3. Failing to refer a patient or client to an appropriate practitioner if the diagnostic process reveals finds that are outside the scope of a physical therapist's knowledge, experience, or expertise.
4. Obtaining or attempting to obtain a license by fraud or misrepresentation.
5. Engaging in the performance of substandard physical therapy care due to a deliberate or negligent act or failure to act, regardless of whether actual injury to the patient is established.
6. Engaging in the performance of substandard care by a physical therapist assistant, including exceeding the authority to perform components of intervention selected

by the supervising physical therapist regardless of whether actual injury to the patient is established.

7. Failing to supervise physical therapist assistants or physical therapy aides in accordance with this chapter and board rules.

8. A determination by the board that a licensee's conviction of an offense has a direct bearing on the licensee's ability to serve the public as a physical therapist or physical therapist assistant or that, following conviction of any offense, the holder is not sufficiently rehabilitated as provided under section 12.1-33-02.1.

9. Practicing as a physical therapist or working as a physical therapist assistant when physical or mental abilities are impaired by the use of controlled substances or other habit-forming drugs, chemicals, alcohol, or by other causes.

10. Having had a license revoked or suspended, other disciplinary action taken, or an application for licensure refused, revoked, or suspended by the proper authorities of another state, territory, or country.

11. Engaging in sexual misconduct. For the purpose of this paragraph sexual misconduct includes:

a. Engaging in or soliciting sexual relationships, whether consensual or nonconsensual, while a physical therapist or physical therapist assistant-patient relationship exists.

b. Making sexual advances, requesting sexual favors, or engaging in other verbal conduct or physical contact of a sexual nature with patients or clients.

c. Intentionally viewing a completely or partially disrobed patient in the course of treatment if the viewing is not related to patient diagnosis or treatment under current practice standards.

12. Failing to adhere to the recognized standards of ethics of the physical therapy profession.

13. Charging unreasonable or fraudulent fees for services performed or not performed.

14. Making misleading, deceptive, untrue, or fraudulent representations in violation of this chapter or in the practice of the profession.

15. Having been adjudged mentally incompetent by a court.

- 1 16. Aiding and abetting a person who is not licensed in this state in the performance of
2 activities requiring a license.
- 3 17. Failing to report to the board, where there is direct knowledge, any unprofessional,
4 incompetent, or illegal acts that appear to be in violation of this chapter or any rules
5 established by the board.
- 6 18. Interfering with an investigation or disciplinary proceeding by failure to cooperate,
7 by willful misrepresentation of facts, or by the use of threats or harassment against
8 any patient or witness to prevent that patient or witness from providing evidence in
9 a disciplinary proceeding or any legal action.
- 10 19. Failing to maintain adequate patient records. For the purposes of this subsection,
11 "adequate patient records" means legible records that contain at a minimum
12 sufficient information to identify the patient, an evaluation of objective findings, a
13 diagnosis, a plan of care, a treatment record, and a discharge plan.
- 14 20. Failing to maintain patient confidentiality without documented consent of the patient
15 or unless otherwise required by law. All records used or resulting from a
16 consultation by means of telecommunications are part of a patient's records and
17 are subject to applicable confidentiality requirements.
- 18 21. Promoting any unnecessary device, treatment intervention, or service resulting in
19 the financial gain of the practitioner or of a third party.
- 20 22. Providing treatment intervention unwarranted by the condition of the patient or
21 continuing treatment beyond the point of reasonable benefit.
- 22 23. Participating in underutilization or overutilization of physical therapy services for
23 personal or institutional financial gain.

24 **43-26.1-14. Lawful practice.**

- 25 1. A physical therapist licensed under this chapter is fully authorized to practice
26 physical therapy as defined herein.
- 27 2. A physical therapist shall adhere to the recognized standards of ethics of the
28 physical therapy profession and as further established by rule.
- 29 3. A physical therapist may purchase, store, and administer topical medications,
30 including aerosol medications as part of the practice of physical therapy as defined
31 herein, but shall 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.

43-26.1-15. Terms and titles.

1. A physical therapist shall use the letters "PT" in connection with the physical therapist's name or place of business to denote licensure under this chapter.
2. A person or business entity, and its employees, agents, or representatives, shall not use in connection with that person's or entity's name or activity the words "physical therapy", "physical therapist", "physiotherapist", "registered physical therapist", the letters "PT", "MPT", "DPT", "LPT", "RPT", or any other words, abbreviation or insignia indicating or implying directly or indirectly that physical therapy is provided or supplied, unless such services are provided by or under the direction of a physical therapist licensed pursuant to this chapter. A person or business entity shall not advertise or otherwise promote another person as being a "physical therapist" or "physiotherapist" unless the individual so advertised or promoted is licensed as a physical therapist under this chapter. A person or business entity that offers, provides, or bills any other person for services shall not characterize those services as "physical therapy" unless the individual performing that service is licensed as a physical therapist under this chapter.
3. A physical therapist assistant shall use the letters "PTA" in connection with that person's name to denote licensure under this chapter.
4. A person shall not use the title "physical therapist assistant", the letters "PTA", or any other words, abbreviations, or insignia in connection with that person's name to indicate or imply, directly or indirectly, that the person is a physical therapist assistant unless that person is licensed under this chapter.

43-26.1-16. Representations and billings without licensure prohibited -

Enforcement - Injunctions. No person, persons, or business entities of any type shall practice physical therapy or hold themselves out, represent themselves, or send out billings as providing physical therapy services, without personal licensure or the use of licensed employees as provided in this chapter. It shall be unlawful to employ an unlicensed physical therapist or physical therapist assistant to provide physical therapy services. The board's executive officer, under the board's direction, shall aid state's attorneys in the enforcement of

- 1 this chapter and the prosecution of any violations thereof. In addition to the criminal penalties
2 provided by this chapter, the civil remedy of injunction shall be available to restrain and enjoin
3 violations of this chapter without proof of actual damages sustained by any person.
4 **43-26.1-17. Penalty.** Any person violating any of the provisions of this chapter is guilty
5 of a class B misdemeanor.
6 **SECTION 3. REPEAL.** Chapter 43-26 of the North Dakota Century Code is repealed.