Sixty-fifth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1256

Introduced by

Representatives Devlin, Holman, Olson, Seibel

Senators Dever, Heckaman, J. Lee, Schaible

A BILL for an Act to create and enact five new sections to chapter 43-20 of the North Dakota Century Code, relating to regulation of dental therapists; to amend and reenact sections 43-20-01.1, 43-20-01.3, 43-20-01.4, 43-20-02.1, 43-20-05, 43-20-06, 43-20-08, 43-20-10, 43-20-11, 43-20-12.2, 43-28-03, 43-28-04, and 43-28-06 and subsection 9 of section 43-28-18 of the North Dakota Century Code, relating to the regulation of dental therapists; to provide for reports; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-20-01.1 of the North Dakota Century Code is amended and reenacted as follows:

43-20-01.1. Definitions.

As used in this chapter and chapter 43-28, unless the context otherwise requires:

1. "Dental assistant" means an individual who provides dental assistance under the supervision of a dentist and within the scope of practice established by rule and section 43-20-13.
2. "Dental hygienist" means an individual licensed to practice dental hygiene.
3. "Dental therapist" means an individual licensed to practice dental therapy.
4. "Qualified dental assistant" means an individual registered as a qualified dental assistant to provide dental assistance as established by rule.

~~4.~~5. "Registered dental assistant" means an individual registered as a registered dental assistant to provide dental assistance as established by rule.

SECTION 2. A new section to chapter 43-20 of the North Dakota Century Code is created and enacted as follows:

Dental therapist licensing.

An individual seeking to practice dental therapy in this state shall apply to the executive director of the board on forms prescribed by the board. The application must be verified under oath to the effect that all of the statements contained in the application are true to the applicant's own knowledge, and must be received by the executive director of the board at least thirty days before the board meeting at which the application is considered. The applicant shall enclose with the application a recent autographed picture of the applicant and an application fee established by the board by rule. The board may grant a license to practice dental therapy to an applicant who has met all of the following requirements:

1. The applicant is a graduate of a dental therapy education program that is accredited by the American dental association's commission on dental accreditation or, for an educational program created before the commission's dental therapy education accreditation standards, the educational program:
   a. Was approved by a board of dental examiners or similar regulatory agency in another state or jurisdiction that licenses or certifies dental therapists with the same or similar scope of practice; or
   b. Provides a certification to the board that the education program met or exceeded the minimum standards established by the commission on dental accreditation.
2. The applicant passed an exam approved by the board to demonstrate competency in dental therapy.
3. The applicant passed, within one year of making application, a written examination on the laws and rules governing the practice of dentistry in this state.
4. The applicant completed five hundred hours of dental therapist clinical practice under the direct or indirect supervision of a dentist which may be completed during or after the applicant's education program or a combination of both. Supervised clinical practice under this subsection for the purpose of qualifying for licensure is not a violation of section 43-20-08.
5. Grounds for denial of the application under section 43-20-05 do not exist.
6. The applicant has met any requirement for licensure established by the board by rule.

SECTION 3. AMENDMENT. Section 43-20-01.3 of the North Dakota Century Code is amended and reenacted as follows:

43-20-01.3. Licensure by credential review.

Applications for licensure to practice dental therapy or dental hygiene by credential review must be made on forms provided by the board and submitted thirty days before the examination administered by the board. The board may issue a license and certificate of registration to practice dental therapy or dental hygiene to an applicant who meets all of the following requirements:

1. The applicant, for at least three years immediately preceding application, has been licensed in good standing and has been actively practicing dental therapy or dental hygiene in another jurisdiction where the requirements are at least substantially equivalent to those of this state.
2. Grounds for denial of the application under section 43-20-05 do not exist.
3. The applicant has paid to the board the fee established by the board by rule.
4. The applicant has delivered to the board a certificate from the examining or licensing board of every jurisdiction in which the individual is licensed to practice, certifying that the individual is a licensed and registered dental therapist or dental hygienist in good standing in that jurisdiction.
5. The applicant has passed a written examination on the laws and rules governing the practice of dentistry in this state administered by the board at a meeting.
6. The applicant has met any requirement for licensure established by the board by rule.

SECTION 4. AMENDMENT. Section 43-20-01.4 of the North Dakota Century Code is amended and reenacted as follows:

43-20-01.4. License renewal - Audit.

1. Dental therapist and dental hygienist licenses expire on December thirty-first of every odd-numbered year.
2. Licenses may be renewed by December thirty-first of the odd-numbered year by submitting a renewal application, a renewal fee established by the board by rule, and proof of completion of the continuing education requirements established by the board by rule, provided the dental therapist's or dental hygienist's license is not revoked or grounds for denial under section 43-20-05 do not exist.
3. If the renewal application, renewal fee, and proof of completion of continuing education are not received by December thirty-first of the odd-numbered year, the

license expires and the dental therapist may not practice dental therapy or the dental hygienist may not practice dental hygiene.

4. Within sixty days after December thirty-first of the odd-numbered year, an expired license may be renewed by submitting the renewal application, renewal fee, proof of completion of continuing education, and a late fee established by the board by rule.
5. If the renewal application, renewal fee, proof of completion of continuing education, and late fee are not received within sixty days after December thirty-first of the odd-numbered year, the license may not be renewed, and the dental therapist or dental hygienist ~~must~~shall apply for and meet the requirements for licensure to be granted a license.
6. The board may extend the renewal deadlines for a dental therapist or dental hygienist providing proof of medical or other hardship rendering the dental therapist or dental hygienist unable to meet the deadline.
7. The board may audit continuing education credits. Each licensee shall maintain certificates or records of continuing education activities for three years. Upon receiving notice of an audit from the board, a licensee shall provide satisfactory documentation of attendance at, or participation in, the continuing education activities listed on the licensee's continuing education form. Failure to comply with the audit is grounds for nonrenewal of or disciplinary action against the ~~license~~licensee.

SECTION 5. AMENDMENT. Section 43-20-02.1 of the North Dakota Century Code is amended and reenacted as follows:

43-20-02.1. Conviction not bar to licensure - Exceptions.

Conviction of an offense does not disqualify ~~a person~~an individual from licensure under this chapter unless the board determines that the offense has a direct bearing upon ~~a person's~~an individual's ability to serve the public as a dental therapist or dental hygienist, or that, following conviction of any offense, the ~~person~~individual is not sufficiently rehabilitated under section 12.1-33-02.1.

SECTION 6. A new section to chapter 43-20 of the North Dakota Century Code is created and enacted as follows:

Dental therapists - Prohibition of independent practice.

A dental therapist may not practice dental therapy independently.

SECTION 7. A new section to chapter 43-20 of the North Dakota Century Code is created and enacted as follows:

Dental therapists - Practice by.

1. Unless restricted or prohibited by the supervising dentist in the written collaborative management agreement, a dental therapist may perform the following services under the direct, indirect, or general supervision of a supervising dentist:
   a. Oral evaluation and assessment of dental disease and the formulation of an individualized treatment plan and comprehensive charting;
   b. Oral health instruction and disease prevention education, including motivational interviewing, nutritional counseling, and dietary analysis;
   c. Taking x-rays;
   d. Teeth cleaning, including below-the-gum scaling and polishing teeth, but not including root planing;
   e. Dispense and administer oral-topical non-narcotic pain relief, anti-inflammatory, and antibiotic medications as prescribed by a licensed health care provider;
   f. Apply topical disease prevention agents, including fluoride varnish, antimicrobial agents, silver diamine fluoride, and sealants;
   g. Preparation and placement of direct restoration for primary and permanent teeth;
   h. Extraction of primary teeth;
   i. Simple, nonsurgical extractions of badly diseased permanent teeth with +3 or grade 3 mobility if the teeth are not impacted, fractured, unerupted, or in need of sectioning for removal;
   j. A pulpotomy;
   k. Preparation and placement of a preformed crown, placement of a temporary crown, recementing of a permanent crown, and placement and removal of space maintainers;
   l. Fabrication of an athletic mouth guard and soft occlusal guard;
   m. Pulp vitality testing and indirect and direct pulp capping on primary and permanent teeth;
   n. Application of desensitizing medication or resin;
   o. Tissue conditioning and soft reline;

p. Tooth reimplantation and stabilization of reimplanted teeth following traumatic avulsion;

q. A brush biopsy;

r. Repair and minor adjustments of a removable prosthetic device;

s. Administration of nitrous oxide analgesia and local anesthetic;

t. Suturing and suture removal;

u. Emergency palliative treatment of dental pain and performing management of dental trauma, including suturing;

v. Performing other related services and functions authorized by the supervising dentist and for which the dental therapist is trained; and

w. Referrals.

2. A person may not be referred to as a dental therapist unless that person is an individual licensed under this chapter as a dental therapist.

3. Additional tasks permitted to be performed by licensed dental therapists may be outlined by the board by appropriate rules.

SECTION 8. AMENDMENT. Section 43-20-05 of the North Dakota Century Code is amended and reenacted as follows:

43-20-05. Licenses and registrations - Denial and discipline.

The board may deny an application for or take disciplinary action against a dental therapist's or dental hygienist's license or a registered or qualified dental assistant's registration, upon any one or more of the following grounds:

1. Gross immorality or unprofessional conduct, which includes knowingly failing to comply with commonly accepted national infection control guidelines and standards.
2. Failure, neglect, or refusal to renew a license biennially.
3. Nonobservance or violation of this chapter, or of any board rule adopted under this chapter.
4. Gross incompetency ~~in the practice of dental hygiene~~.
5. Conviction of an offense determined by the board to have a direct bearing on the individual's ability to serve the public as a dental therapist, dental hygienist, or a registered or qualified dental assistant, or the board determines, following conviction

for any offense, that the individual is not sufficiently rehabilitated under section 12.1-33-02.1.

6. Been adjudged mentally ill and not judicially restored by the regularly constituted authorities.
7. Abused, is dependent on, or addicted to the use of alcohol or drugs.
8. Engaged in fraud or deceit in obtaining a dental therapy or dental hygiene license or dental assisting registration.
9. Disclosed confidential information.
10. Received a fee for the referral of patients to a dentist, dental therapist, or dental hygienist.
11. Used unethical measures to draw dental patronage from the practice of another licensee.
12. Fraudulently prescribed or dispensed drugs or medications.
13. Knowingly submitted misleading, deceptive, untrue, or fraudulent information on a claim form, bill, or statement to a third party.
14. Advised or directed patients to dental laboratories or dental laboratory technicians for a dental service or advised or directed patients to deal directly with laboratories or dental laboratory technicians.
15. Violated the code of ethics adopted by the board by rule.
16. Had a registration or license suspended, revoked, or disciplined in another jurisdiction.
17. Failed to report to the board in writing within sixty days a violation of this chapter or chapter 43-28.
18. Practiced outside the scope of practice established by the board by rules and this chapter.

The procedure to be followed for taking disciplinary action must be the same as the procedure required by section 43-28-18.2.

SECTION 9. AMENDMENT. Section 43-20-06 of the North Dakota Century Code is amended and reenacted as follows:

43-20-06. Inactive status.

Upon payment of a fee determined by the board, a dental therapist or dental hygienist may request to have the dental therapist's or dental hygienist's license placed on inactive status.

While on inactive status, the dental therapist or dental hygienist may not engage in the practice of dental therapy or dental hygiene in the state until the dental therapist or dental hygienist submits a renewal application, pays the renewal fee, and meets any additional requirements established by rule.

SECTION 10. AMENDMENT. Section 43-20-08 of the North Dakota Century Code is amended and reenacted as follows:

43-20-08. Unlawful to practice without license or registration.

A person may not practice dental therapy or dental hygiene or practice as a registered or qualified dental assistant in the state, without first obtaining from the board a license or registration. This section does not prohibit a person from performing procedures or providing services as part of an education program or to satisfy a clinical practice requirement needed to prepare the person to be qualified to be licensed. A person may not practice as a dental assistant outside the scope of practice established by the board by rule and section 43-20-13.

SECTION 11. AMENDMENT. Section 43-20-10 of the North Dakota Century Code is amended and reenacted as follows:

43-20-10. State board of dental examiners - Authority - Duty.

The board has the power and it is its duty to enforce the provisions of this chapter. The board ~~has the power to~~may make such rules and regulations, not inconsistent with this chapter, as may, in its judgment, be necessary for the proper enforcement of this chapter, and the examination of dental therapists, dental hygienists, and registered and qualified dental assistants for their conduct and practice. For purposes of this chapter, the board has the powers set forth in section 43-28-06.

SECTION 12. AMENDMENT. Section 43-20-11 of the North Dakota Century Code is amended and reenacted as follows:

43-20-11. Practice of dental therapy and dental hygiene supplemental to practice of dentistry.

The practice of dental therapy and dental hygiene is hereby declared to be supplemental and auxiliary to the practice of dentistry in North Dakota. All particulars, requirements, regulations, control, and provisions of chapter 43-28 apply with equal force ~~wherein and so far as they may be~~to the extent the provisions are applicable to the practice of dental therapists or dental hygienists, except as otherwise provided for in this chapter.

SECTION 13. AMENDMENT. Section 43-20-12.2 of the North Dakota Century Code is amended and reenacted as follows:

43-20-12.2. Notice to board of change of address.

A licensed dental therapist, dental hygienist, registered dental assistant, or qualified dental assistant shall notify the executive director of the board of dental examiners of any new address within thirty days of the address change. The notice required under this section must be given by certified mail, return receipt requested. A licensed dental therapist, dental hygienist, registered dental assistant, or qualified dental assistant may not practice in this state for more than thirty days after the change of address without complying with this section.

SECTION 14. A new section to chapter 43-20 of the North Dakota Century Code is created and enacted as follows:

Dental therapist - Dentist supervision and written collaborative management agreement.

1. A dental therapist may not practice dental therapy, except under the supervision of a dentist and pursuant to a written collaborative management agreement with a supervising dentist. A supervising dentist shall provide or arrange for another dentist or specialist to provide any services needed by the dental therapist's patient which exceed the authorized scope of practice of the dental therapist.
2. A written collaborative management agreement entered between a dentist and a dental therapist must:
   a. Address any limitation on services established by the supervising dentist, the level of supervision required for various services or treatment settings, practice protocols, recordkeeping, managing medical emergencies, quality assurance, administering and dispensing medications, and supervision of dental assistants and dental hygienists;
   b. Include specific written protocols to govern situations in which the dental therapist encounters a patient requiring treatment that exceeds the authorized scope of practice of the dental therapist.
   c. Be signed and maintained by the supervising dentist and the dental therapist; and
   d. Be submitted to the board upon request of the board.

3. To the extent authorized by the supervising dentist in the written collaborative management agreement and provided the supervising dentist is available for consultation by telephone or other means of electronic communication, a dental therapist may practice dental therapy procedures authorized under this chapter in a practice setting where the supervising dentist is not onsite and has not previously examined the patient.

SECTION 15. A new section to chapter 43-20 of the North Dakota Century Code is created and enacted as follows:

Dental therapist - Drugs.

A dental therapist may not prescribe any drug. Within the parameters of the written collaborative management agreement, within the practice of dental therapy, and with the authorization of the supervising dentist, a dental therapist may provide, dispense, and administer the following drugs: analgesics, anti-inflammatories, and antibiotics. A dental therapist may not provide, dispense, or administer a narcotic drug.

SECTION 16. AMENDMENT. Section 43-28-03 of the North Dakota Century Code is amended and reenacted as follows:

43-28-03. State board of dental examiners - Members - Appointment - Terms of office - Oath - Vacancies.

The state board of dental examiners consists of ~~seven~~nine members appointed by the governor. The membership of the board must include five dentist members, one dental therapist member, one dental hygienist member, one registered dental assistant member, and one consumer member. Appointment to the board is for a term of five years, with terms of office arranged so that ~~one term expires~~two terms expire on March sixteenth of each year, except that each fifth year ~~there must be two new board members appointed, one of whom is a dentist and the other a dental hygienist and two years later two new board members must be appointed, one of whom is a dentist, and one of whom is a consumer member. The first five-year term of the consumer member commences on July 1, 1993, and continues through March 15, 1998~~one term expires. Each member of the board shall hold office until a successor is appointed and qualified. ~~Persons~~An individual appointed to the board shall qualify by taking the oath required of civil officers. ~~No~~A member may not serve more than ten years or two 5-year terms of office. If

a member of the board is absent from two consecutive regular meetings, the board may declare a vacancy to exist. All vacancies on the board must be filled by the governor by appointment.

SECTION 17. AMENDMENT. Section 43-28-04 of the North Dakota Century Code is amended and reenacted as follows:

43-28-04. Qualifications and appointment of members of the board - Limited vote.

1. An individual may not be appointed as a dentist member of the board unless that individual:
   a. Is a dentist licensed and registered under this chapter; and
   b. Is actively engaged in the practice of dentistry and has been so engaged in this state for at least five years immediately preceding the appointment.
2. An individual may not be appointed as the dental hygienist member of the board unless that individual:
   a. Is a licensed and registered dental hygienist in accordance with chapter 43-20; and
   b. Is actively engaged in the practice of dental hygiene and has been so engaged in this state for at least five years immediately preceding the dental hygienist's appointment.
3. An individual may not be appointed as the consumer member of the board unless that individual:
   a. Has been a resident of North Dakota for five years immediately preceding appointment;
   b. Has no personal or family financial relationship with the dental profession; and
   c. Is not a dentist, a dental therapist, a dental hygienist, a dental assistant, a physician, a nurse, or the spouse of an individual engaged in any of those occupations.
4. An individual may not be appointed as the dental therapist member of the board unless that individual:
   a. Is a licensed and registered dental therapist in accordance with chapter 43-20; and
   b. For the first term of the dental therapist, is actively engaged in the practice of dental therapy and has been so engaged in this state for at least one year

immediately preceding the dental therapist's appointment and, for the second term of the dental therapist and terms thereafter, is actively engaged in the practice of dental therapy and has been so engaged in this state for at least five years immediately preceding the dental therapist's appointment.

5. An individual may not be appointed as the registered dental assistant member of the board unless that individual:
   a. Is a registered dental assistant in accordance with chapter 43-20; and
   b. Is actively engaged in the practice of dental assistance and has been so engaged in this state for at least five years immediately preceding the registered dental assistant's appointment.
6. The dental therapist, dental hygienist, dental assistant, and consumer ~~member~~members of the board shall exercise full voting privileges in all areas except that the dental therapist, dental hygienist, and dental assistant may not participate in the clinical examination of dentists for licensure and the consumer member may not participate in the clinical examination of dentists, dental therapists, or dental hygienists for licensure.

SECTION 18. AMENDMENT. Section 43-28-06 of the North Dakota Century Code is amended and reenacted as follows:

43-28-06. Powers of board.

The board may:

1. Adopt and enforce reasonable rules to govern its proceedings and to carry out this chapter.
2. Examine applicants for ~~licenses~~licensure or registration to practice dentistry, dental therapy, dental hygiene, or dental assisting in this state, either by direct examination or by accepting the results of national or regional dental testing services in which the board participates or which the board recognizes.
3. Issue, suspend, revoke, limit, cancel, restrict, and reinstate licenses to practice dentistry, dental therapy, or dental hygiene and the biennial certificates of registration upon any grounds authorized by this chapter or rules adopted by the board.
4. Issue subpoenas to require the attendance of witnesses and the production of documentary evidence and may administer oaths. Any member or executive officer of

the board may administer oaths to witnesses, or issue subpoenas, but all subpoenas so issued must be attested by the secretary who shall affix the seal of the board thereto.

5. Employ and compensate an executive director, attorneys, investigative staff, and clerical assistants and may perform any other duties imposed upon the board by this chapter.

6. Establish minimum continuing professional education requirements for dentists, dental therapists, dental hygienists, and dental assistants.

7. Enter an agreement with the same professional organization with which the North Dakota board of medicine has entered an agreement under subsection 6 of section 43-17-07.1.

SECTION 19. AMENDMENT. Subsection 9 of section 43-28-18 of the North Dakota Century Code is amended and reenacted as follows:

9. Shared any professional fee with anyone or paid anyone for sending or referring patients to the dentist. However, this does not prohibit dentists from practicing in a partnership and sharing one another's professional fees, nor prohibit a dentist from employing any other dentist, dental therapist, or dental hygienist.

SECTION 20. APPLICATION, RULE REQUIREMENTS, AND PERIODIC REPORTS TO LEGISLATIVE MANAGEMENT.

1. Under section 43-28-03, upon receipt of notification from the board of dental examiners that the board has begun issuing dental therapist licenses, the governor shall appoint a dental therapist to the state board of dental examiners. The governor may appoint the two new board members for initial terms of more or less than five years in order to establish the necessary staggering of terms.

2. In accordance with the time requirements in section 28-32-07, the state board of dental examiners shall adopt rules necessary to implement and enforce this Act.

3. During the 2017-18 interim, until this Act is fully implemented, the board shall provide periodic reports to the legislative management on the status of implementation of this Act and the status of the implementation of any administrative rules necessitated under this Act.