

**2021 HOUSE HUMAN SERVICES**

**HB 1151**

# 2021 HOUSE STANDING COMMITTEE MINUTES

## Human Services Committee Pioneer Room, State Capitol

HB 1151  
1/18/2021 236 PM

Relating to telehealth and the practice of dentistry; relating to the definition of telehealth
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**Chairman Weisz** opened the hearing at 2:36 p.m.

Representatives	Roll Call
Representative Robin Weisz	P
Representative Karen M. Rohr	P
Representative Mike Beltz	P
Representative Chuck Damschen	P
Representative Bill Devlin	P
Representative Gretchen Dobervich	P
Representative Clayton Fegley	P
Representative Dwight Kiefert	P
Representative Todd Porter	P
Representative Matthew Ruby	P
Representative Mary Schneider	P
Representative Kathy Skroch	P
Representative Bill Tveit	P
Representative Greg Westlind	P

### Discussion Topics:

- Patient safety
- Virtual care

**Representative Bill Devlin, District 23 (2:36)** introduced the bill.

**Levi Andris, SmileDirectClub (2:40)** introduced Ray Colas.

**Ray Colas, Director of Government Affairs SmileDirectClub (2:40)** testified in favor and submitted testimony #1038.

**Dr. Jeffrey Sulitzer, Chief Clinical Officer SmileDirectClub (2:46)** testified in favor and submitted testimony #979.

**Marc Ackerman, Executive Director American Teledentistry Association (2:57)** testified in favor and submitted testimony #992.

**Additional written testimony: #994**

**Chairman Weisz** adjourned at 3:00 p.m.

*Tamara Krause, Committee Clerk*



## **SmileDirectClub House Bill 1151 Testimony**

Good Afternoon Chairman Weisz and members of the House Human Services Committee,

My name is Ray Colas, and I am the Director of Government Affairs for SmileDirectClub, here to speak in support of House Bill 1151. HB 1151 simply replicates the statutory standard of care on telemedicine and applies it to the practice of dentistry to ensure the safe and effective deployment of telehealth services, where appropriate.

SmileDirectClub is an oral care company that provides its products and services (including telehealth services) to millions of consumers across the country. Our mission is to improve health equity and to expand consumer choice across all 50 states. At its core, SmileDirectClub provides administrative and technological support assisting state-licensed dentists and orthodontists to focus on the treatment of mild to moderate crowding and spacing of teeth utilizing clear aligner therapy.

More specifically, an intraoral 3D image is taken of a person's teeth utilizing a 3D scanner. Then, several intraoral photographs are taken of the individual's teeth. Both the 3D images and photographs are sent to a North Dakota state licensed dentist along with the individual's medical history, dental history and any other pertinent clinical data to determine if the individual is a viable candidate for clear aligner therapy.

It is important to note that SmileDirectClub does not practice dentistry and simply provides HIPAA compliant non-clinical support to state licensed dentists and orthodontists. It is also our belief that despite the use of our revolutionary telehealth platform, the same standard of care as provided in traditional brick and mortar settings shall also apply when utilizing telehealth services. Our affiliated North Dakota state licensed dentist and orthodontists apply the same standards of care when using our telehealth platform as they do in their brick and mortar practices.

House Bill 1151 requires a North Dakota-licensed dentist to:

- Provide the same standard of care through telehealth as would be done in-person.
- Establish a relationship with a patient prior to diagnosis and treatment.
- Perform an examination equivalent to an in-person examination.
- Adhere to current law as it applies to the practice of dentistry.

Ultimately, HB 1151 ensures that dentists are held to the same standard of care regardless of the method used to provide that care and protects patients while allowing for innovative telehealth technologies to increase access and reduce the cost of care.

With that, I would kindly urge a DO PASS recommendation for House Bill 1151 and would be more than happy to take any questions that you may have.

# Support HB1151

## to improve access to oral care through telehealth



### The problem

The North Dakota Century Code §26.1–36.09.15 provides a definition of “telehealth” to support health insurance reimbursement for health care services to North Dakota patients through telehealth technologies. However, the Dental Practices Chapter 43–28 of North Dakota Century Code does not include any similar language to permit North Dakota licensed dentists to evaluate, diagnose and treat North Dakota patients using remote technology.

### The solution

House Bill 1151 codifies “telehealth” within North Dakota Century Code Chapter 43–28 to protect both North Dakota patients and North Dakota licensed dentists through similar statutory language already enacted for North Dakota physicians in North Dakota Century Code §43–17–44.

#### Why supporting HB1151 matters to North Dakotans

HB1151 ensures that dentists and orthodontists are held to the same standard of care regardless of modality used to provide that care. The legislation protects patients while allowing for innovative telehealth technologies to increase access and reduce the cost of care. Many people forgo oral care because of cost or inability to travel long distances. HB1151 will enable unserved and underserved communities across North Dakota use telehealth technologies to get the oral care they need and deserve.

### Details about the legislation

- Holds all dentists to **the same standard of care** with telehealth as for in-person care.
- Imposes the **following responsibilities** on dentists when using telehealth technologies:
  - » “A dentist practicing telehealth **shall establish a bona fide relationship** with a patient before the diagnosis or treatment of the patient.”
  - » “A dentist practicing telehealth shall **verify the identity of the patient** seeking care...”
  - » “[A dentist practicing telehealth] shall ensure the patient **has the ability to verify the identity and licensure** status of a dentist...”
  - » A dentist shall “**practice only in areas in which the dentist has demonstrated** competence, based on the dentist’s training, ability, and experience.”
  - » Requires that dentist “perform an examination or evaluation” that is “**equivalent to an in-person examination.**”
  - » Requires that a dentist examine “**appropriate diagnostic testing** and use of peripherals that would be deemed necessary in a **like in-person** examination or evaluation...”
  - » Clarifies that an “examination or evaluation consisting only of a static online questionnaire of an audio conversation **does not meet** the standard of care.”
  - » Clarifies that any dentist using telehealth is still “**subject to all North Dakota laws**” regarding dental record keeping.
  - » Encourages dentists to “**make appropriate referrals** of patients...”



Marc Bernard Ackerman  
DMD, MBA  
Executive Director

January 14, 2021

The Honorable Bill Devlin  
North Dakota House of Representatives  
State Capitol  
600 East Boulevard  
Bismarck, ND 58505-0360

**RE: ATDA Support of HB1151**

Dear Representative Devlin,

My name is Dr. Marc Ackerman and I am the Executive Director of the American Teledentistry Association (ATDA). I am also a licensed and practicing dentist, work and teach at a major Boston facility, am a recipient of the B.F. and Helen E. Dewel Award, and have a deep passion for helping others and making sure that everyone receives the care that they deserve. That is why I signed on with the American Teledentistry Association's mission to increase access to quality, affordable dental care and that is why I write to you today on the critical legislative matter regarding HB1151. The ATDA strongly supports House Bill 1151 and urges legislature to pass the bill as introduced for the reasons below.

This legislation provides important patient protections, including requiring a dentist using telehealth technologies to:

- Have demonstrated competence to perform the service requested by the patient based on the dentist's training, ability and experience;
- Verify the identity of the patient receiving care;
- Ensure that the patient can verify the dentist's identity and licensure status;
- Perform an appropriate examination that is equivalent to an in-person examination, including using appropriate diagnostic tests to formulate an individualized treatment plan;
- Adhere to all relevant laws for dental records and the provision of those records; and
- Make appropriate referrals for in-person care when needed.

All of these protections will allow patients to be confident that they are receiving care from a North Dakota-licensed dentist or orthodontist who is in good standing with the Board and ensures that a patient can hold their treating dentist accountable with the Board should a complaint arise. Furthermore, it clarifies that a practitioner can use telehealth technologies to establish a bona fide relationship with the patient as long as it meets the standard of care. Allowing the use of telehealth technologies to establish a relationship is vital to expanding access to care for rural, working-class, and underserved communities who too often forgo care because of financial or geographic barriers, or simply because they do not have access to a convenient oral healthcare provider who can fit in to their busy work-life schedule.

In fact, according to the Center for Disease Control, over 30% of North Dakotans forwent a needed dental appointment. According to the American Dental Association's Health Policy Institute, 40% of North Dakota patients who had not visited a dentist in the past year did not do so because there was no convenient dental

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office nearby. This is supported by North Dakota's own data which found that "North Dakota is characterized by a chronic shortage of health professionals in rural areas." Similarly, the UND Center for Rural Health found that "nearly half of ND counties have no dentists or just one" while "over 60% of all practicing dentists are located in the four largest counties" in North Dakota. This is likely why the Center for Health Workforce Studies found that "initiating the use of teledentistry" would "address unmet need for oral health services" in North Dakota – and by allowing a relationship to be established via telehealth technologies, many of these patients will finally be able to get the care they want, need, and deserve.

Furthermore, the ATDA has a long-standing policy of endorsing legislation that holds dentists to the same standard of care regardless of which delivery modality they use. Simply put, the standard of care guides clinical decision making for all providers and indicates the appropriateness of using telehealth to evaluate, diagnose, and treat their patients. House Bill 1151 is a fantastic example of legislation that holds all dentists – both those using traditional in-person tools and those using telehealth tools – to the same standard of care which, in turn, ensures that all appropriate treatment options are available to the dentist and patient without any arbitrary or clinically-unsupported restrictions limiting access to care.

The ATDA also supports the prescription authority granted in this legislation. This will allow practitioners to prescribe medications and medical devices – such as clear aligners – to patients remotely. Without the prescription authority granted in this bill, it would drastically limit the ability for a practitioner to effectively render treatment remotely.

Lastly, this legislation also brings parity to the Dental and Medical Practice Acts as this legislation tracks nearly identical language in the Medical Practice Act. It is common-sense policy to hold all practitioners to the standard of care, regardless of whether they are an MD or a DDS.

By passing this legislation, it will ensure that access to oral healthcare is available for any North Dakotan who wants and needs it. Telehealth technologies make it easier for patients to receive high-quality, affordable, and convenient care where, how, and when the patient wants it – it is truly a "patient-centered" experience.

To this end, the ATDA supports the telehealth standards and patient protections found in HB1151 as it will align the standard of care to a level of parity regardless of the method of care delivery while simultaneously including important patient protections. By allowing for all appropriate communication modalities and equalizing the standards for telehealth and traditional health care, countless people will be able to finally get the care they need and want. Thank you again for your efforts and if you have any questions at all, please do not hesitate to call me at 617-413-2740.

Sincerely,



DMD, MBA

Marc Bernard Ackerman, DMD, MBA, FACD

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INNOVATION ECONOMY

#994

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January 14, 2021

The Honorable Bill Devlin  
P.O. Box 505  
Finley, ND 58230-0505

Dear Representative Delvin,

*TechNet is a national, bipartisan network of innovation economy CEOs and senior executives. Our diverse membership includes dynamic American businesses ranging from revolutionary start-ups to some of the most recognizable companies in the world. TechNet represents over three million employees and countless customers in the fields of information technology, e-commerce, sharing and gig economies, advanced energy, cybersecurity, venture capital, and finance.*

I am writing today in support of HB 1151, a telehealth-friendly bill which would allow for dentists to use a wider range of technologies while providing virtual care. The bill, which creates two new sections of the North Dakota Century Code, treats dentists using technology to provide patient care similar to the way physicians are permitted to practice and allows dentists who are performing preliminary evaluations or examinations to use videoconferencing and store-and-forward technologies to provide care remotely. This proposed legislation will encourage the use of innovative technologies and eliminate artificial barriers to North Dakotans' access to telehealth, all while mandating that the already-codified standards of care are met by teledentistry practitioners.

It is our belief that telehealth should be supported as a tool to practice dental care, ensuring consumers have access to affordable and top-notch dental care options. While we strongly support your efforts to allow for certain technologies to be utilized in the practice of teledentistry, TechNet maintains that the standard of care should govern all North Dakota-licensed practitioners, regardless of which technologies they use. We believe that this notion is especially pertinent considering the ongoing COVID-19 pandemic, during which patients are searching for ways to receive effective, reasonably priced, and safe health care.

We urge you to vote in favor of HB 1151 and codify this useful language which TechNet believes will increase innovation, access, and consumer choice. Thank you for your consideration and for your support of telehealth. I look forward to working with you on this issue should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sams Kersul', with a large, stylized loop at the end.

Samantha Kersul  
Executive Director, Washington and the Northwest  
TechNet.org | *The Voice of the Innovation Economy*  
Cell: 360.791.6407  
Email: [skersul@technet.org](mailto:skersul@technet.org)

# 2021 HOUSE STANDING COMMITTEE MINUTES

## Human Services Committee Pioneer Room, State Capitol

HB 1151  
1/18/2021 331 PM

Relating to telehealth and the practice of dentistry; relating to the definition of telehealth.
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**Chairman Weisz** opened the committee meeting at 3:31 p.m.

Representatives	Roll Call
Representative Robin Weisz	P
Representative Karen M. Rohr	P
Representative Mike Beltz	P
Representative Chuck Damschen	P
Representative Bill Devlin	P
Representative Gretchen Dobervich	P
Representative Clayton Fegley	P
Representative Dwight Kiefert	P
Representative Todd Porter	A
Representative Matthew Ruby	P
Representative Mary Schneider	P
Representative Kathy Skroch	P
Representative Bill Tveit	P
Representative Greg Westlind	P

### Discussion Topics:

- Direct competition
- Licensed North Dakota dentists
- Board Dental Examiners
- Dental therapists
- 2019 telemedicine bill

**William Sherman, North Dakota Dental Association (3:32)** answered questions of the committee.

**Rep. Matthew Ruby** made a motion for a **Do Pass**.

**Rep. Gretchen Dobervich** seconded the motion.

Representatives	Vote
Representative Robin Weisz	Y
Representative Karen M. Rohr	Y
Representative Mike Beltz	Y
Representative Chuck Damschen	Y
Representative Bill Devlin	Y
Representative Gretchen Dobervich	Y
Representative Clayton Fegley	Y

Representative Dwight Kiefert	Y
Representative Todd Porter	A
Representative Matthew Ruby	Y
Representative Mary Schneider	Y
Representative Kathy Skroch	Y
Representative Bill Tveit	Y
Representative Greg Westlind	Y

**Motion Carried Do Pass 13-0-1**

**Bill Carrier:** Rep. Gretchen Dobervich

**Chairman Weisz** adjourned at 3:41 p.m.

*Tamara Krause, Committee Clerk*



**REPORT OF STANDING COMMITTEE**

**HB 1151: Human Services Committee (Rep. Weisz, Chairman)** recommends **DO PASS**  
(13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1151 was placed on the  
Eleventh order on the calendar.

**2021 SENATE HUMAN SERVICES**

**HB 1151**

# 2021 SENATE STANDING COMMITTEE MINUTES

## Human Services Committee Sakakawea Room, State Capitol

HB 1151  
3/3/2021

A BILL for an Act to create and enact two new sections to chapter 43-28 of the North Dakota Century Code, relating to telehealth and the practice of dentistry; and to amend and reenact section 43-28-01 of the North Dakota Century Code, relating to the definition of telehealth.

**Madam Chair Lee** opened the hearing on HB 1151 at 2:29 p.m. Members present: Lee, K. Roers, Hogan, Anderson, Clemens, O. Larsen.

### Discussion Topics:

- Parity of payments
- Tele-dentistry process
- Administrative rule V.S statute
- Dental technology in-office visit
- Public safety
- Telehealth training in dentistry education
- Patient evaluation by certified orthodontics provider

**[2:30] Representative Bill Devlin, District 23.** Introduced HB 1151 and provided testimony #7323 in favor.

**[2:33] Levi Andrist, Lobbyist, On behalf of SmileDirectClub.** Introduced Ray Colas to the committee.

**[2:34] Ray Colas, Director, Government Affairs, SmileDirectClub.** Provided testimony #7166 in favor.

**[2:35] Dr. Jeffrey Sulitzer, Chief Clinical Officer, SmileDirectClub.** Provided testimony #7165 in favor.

**[2:52] Marc Ackerman, Executive Director, American Teledentistry Association.** Provided testimony #7121 in favor.

**[2:55] Michael Keim, ND Board of Dental Examiners.** Provided testimony #7328 in opposition.

**[3:27] Rita Sommers, Executive Director, ND State Board of Dental Examiners.** Provided the committee with clarification on proposed amendments from the board.

**[3:53] Gianna Nawrocki, Government Affairs Associate, American Association of Orthodontics.** Provided testimony #7270 in opposition.

**[4:03] Robert Holden, Align Technology.** Provided testimony #7159 in opposition.

**[4:11] Dr. Dennis Sommers, Minot Resident.** Provided testimony #7344 and #7815 in opposition.

**[4:31] William Sherwin, Executive Director, ND Dental Association.** Provided neutral oral testimony.

**Additional written testimony: (2)**

**Dr. Daniel Keith, Orthodontist/Owner, DK Orthodontics.** Provided written testimony #7089 in opposition.

**Marcus Tanabe, Oral Surgeon, Grand Forks.** Provided written testimony #7346 in opposition.

**Madam Chair Lee** closed the hearing on HB 1151 at 4:41 p.m.

*Justin Velez, Committee Clerk*

Good afternoon Chairman Lee and esteemed members of the Senate Human Service Committee. It is my pleasure to introduce HB 1151 for your consideration. There will be a number of speakers to follow that will provide expert testimony and will answer all your questions. I do want to give you a brief explanation of what we are attempting to do with this bill.

As many of you will recall, in the 2019 session, the North Dakota legislature established statutory “telemedicine” guidelines [through Senate Bill 2094] in the medical practices act for licensed physicians in the state but did not provide those same guidelines to dentists. HB1151 takes those same provisions and applies them to the dental practice act.

The bill **ensures patient safety** while expanding access to quality oral health care.

- Holds dentists providing virtual care to patients to the same high standard of care as for traditional in-person office visits.
- Imposes responsibilities on dentists to ensure that patients are informed and treated appropriately throughout the remote telehealth encounter.

The bill **provides statutory certainty for state licensed dentists** who choose to treat patients using remote technologies as it clearly states the “rules of the road.”

The bill seeks to have **the same rule for telehealth patient care provided by North Dakota dentists and physicians.**

The bill is important for several reasons:

- **Expands access to quality, affordable oral health care for citizens in our state**

We have known for years many citizens of our great state struggle to access quality dental care due to the rural nature of our state.

Given the context of the ongoing COVID-19 pandemic, access to affordable, quality oral care without having to leave one’s home is essential to protecting North Dakotans’ health.

This bill gives licensed dentists in the state the comfort that they aren’t risking their licenses when appropriately treating patient through remote technologies

Finally, recent experience during the COVID-19 pandemic has taught us many lessons, not the least of which is that our health care system needs to be flexible and resilient. HB1151 will help increase its flexibility to the benefit of patients across the state as we

allow the Dental profession the same opportunities, we provided other medical professionals last session.

Chairman Lee and committee members, I appreciate the opportunity to introduce this bill to the Senate Human Service Committee. I would be happy to try answer any questions, but I feel the committee would be much better served by saving any questions for the experts who will follow me. Thank you.

## **SmileDirectClub House Bill 1151 Testimony**

Good Afternoon Chairman Lee and members of the Senate Human Services Committee,

My name is Ray Colas, and I am the Director of Government Affairs for SmileDirectClub, here to speak in support of House Bill 1151. HB 1151 simply replicates the statutory standard of care on telemedicine and applies it to the practice of dentistry to ensure the safe and effective deployment of telehealth services, where appropriate.

SmileDirectClub is an oral care company that provides its products and services (including telehealth services) to millions of consumers across the country. Our mission is to improve health equity and to expand consumer choice across all 50 states. At its core, SmileDirectClub provides administrative and technological support assisting state-licensed dentists and orthodontists to focus on the treatment of mild to moderate crowding and spacing of teeth utilizing clear aligner therapy.

More specifically, an intraoral 3D image is taken of a person's teeth utilizing a 3D scanner. Then, several intraoral photographs are taken of the individual's teeth. Both the 3D images and photographs are sent to a North Dakota state licensed dentist along with the individual's medical history, dental history and any other pertinent clinical data to determine if the individual is a viable candidate for clear aligner therapy.

It is important to note that SmileDirectClub does not practice dentistry and simply provides HIPAA compliant non-clinical support to state licensed dentists and orthodontists. It is also our belief that despite the use of our revolutionary telehealth platform, the same standard of care as provided in traditional brick and mortar settings shall also apply when utilizing telehealth services. Our affiliated North Dakota state licensed dentist and orthodontists apply the same standards of care when using our telehealth platform as they do in their brick and mortar practices.

House Bill 1151 requires a North Dakota-licensed dentist to:

- Provide the same standard of care through telehealth as would be done in-person.
- Establish a relationship with a patient prior to diagnosis and treatment.
- Perform an examination equivalent to an in-person examination.
- Adhere to current law as it applies to the practice of dentistry.

Ultimately, HB 1151 ensures that dentists are held to the same standard of care regardless of the method used to provide that care and protects patients while allowing for innovative telehealth technologies to increase access and reduce the cost of care.

With that, I would kindly urge a DO PASS recommendation for House Bill 1151 and would be more than happy to take any questions that you may have.

# Support HB1151

## to improve access to oral care through telehealth



### The problem

The North Dakota Century Code §26.1–36.09.15 provides a definition of “telehealth” to support health insurance reimbursement for health care services to North Dakota patients through telehealth technologies. However, the Dental Practices Chapter 43–28 of North Dakota Century Code does not include any similar language to permit North Dakota licensed dentists to evaluate, diagnose and treat North Dakota patients using remote technology.

### The solution

House Bill 1151 codifies “telehealth” within North Dakota Century Code Chapter 43–28 to protect both North Dakota patients and North Dakota licensed dentists through similar statutory language already enacted for North Dakota physicians in North Dakota Century Code §43–17–44.

#### Why supporting HB1151 matters to North Dakotans

HB1151 ensures that dentists and orthodontists are held to the same standard of care regardless of modality used to provide that care. The legislation protects patients while allowing for innovative telehealth technologies to increase access and reduce the cost of care. Many people forgo oral care because of cost or inability to travel long distances. HB1151 will enable unserved and underserved communities across North Dakota use telehealth technologies to get the oral care they need and deserve.

### Details about the legislation

- Holds all dentists to **the same standard of care** with telehealth as for in-person care.
- Imposes the **following responsibilities** on dentists when using telehealth technologies:
  - » “A dentist practicing telehealth **shall establish a bona fide relationship** with a patient before the diagnosis or treatment of the patient.”
  - » “A dentist practicing telehealth shall **verify the identity of the patient** seeking care...”
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  - » Clarifies that any dentist using telehealth is still “**subject to all North Dakota laws**” regarding dental record keeping.
  - » Encourages dentists to “**make appropriate referrals** of patients...”





March 2, 2021

The Honorable Judy Lee  
North Dakota Senate  
State Capitol  
600 East Boulevard  
Bismarck, ND 58505-0360

**RE: ATDA Support of HB1151**

Dear Senator Lee,

My name is Dr. Marc Ackerman and I am the Executive Director of the American Teledentistry Association (ATDA), I am also a licensed and practicing dentist, work and teach at a major Boston facility, am a recipient of the B.F. and Helen E. Dewel Award, and have a deep passion for helping others and making sure that everyone receives the care that they deserve. That is why I signed on with the American Teledentistry Association's mission to increase access to quality, affordable dental care and that is why I write to you today on the critical legislative matter regarding HB1151. The ATDA strongly supports House Bill 1151 and urges legislature to pass the bill as introduced for the reasons below.

This legislation provides important patient protections, including requiring a dentist using telehealth technologies to:

- Have demonstrated competence to perform the service requested by the patient based on the dentist's training, ability and experience;
- Verify the identity of the patient receiving care;
- Ensure that the patient can verify the dentist's identity and licensure status;
- Perform an appropriate examination that is equivalent to an in-person examination, including using appropriate diagnostic tests to formulate an individualized treatment plan;
- Adhere to all relevant laws for dental records and the provision of those records; and
- Make appropriate referrals for in-person care when needed.

All of these protections will allow patients to be confident that they are receiving care from a North Dakota-licensed dentist or orthodontist who is in good standing with the Board and ensures that a patient can hold their treating dentist accountable with the Board should a complaint arise. Furthermore, it clarifies that a practitioner can use telehealth technologies to establish a bona fide relationship with the patient as long as it meets the standard of care. Allowing the use of telehealth technologies to establish a relationship is vital to expanding access to care for rural, working-class, and underserved communities who too often forgo care because of financial or geographic barriers, or simply because they do not have access to a convenient oral healthcare provider who can fit in to their busy work-life schedule.

In fact, according to the Center for Disease Control, over 30% of North Dakotans forwent a needed dental appointment. According to the American Dental Association's Health Policy Institute, 40% of North Dakota patients who had not visited a dentist in the past year did not do so because there was no convenient dental

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office nearby. This is supported by North Dakota's own data which found that "North Dakota is characterized by a chronic shortage of health professionals in rural areas." Similarly, the UND Center for Rural Health found that "nearly half of ND counties have no dentists or just one" while "over 60% of all practicing dentists are located in the four largest counties" in North Dakota. This is likely why the Center for Health Workforce Studies found that "initiating the use of teledentistry" would "address unmet need for oral health services" in North Dakota – and by allowing a relationship to be established via telehealth technologies, many of these patients will finally be able to get the care they want, need, and deserve.

Furthermore, the ATDA has a long-standing policy of endorsing legislation that holds dentists to the same standard of care regardless of which delivery modality they use. Simply put, the standard of care guides clinical decision making for all providers and indicates the appropriateness of using telehealth to evaluate, diagnose, and treat their patients. House Bill 1151 is a fantastic example of legislation that holds all dentists – both those using traditional in-person tools and those using telehealth tools – to the same standard of care which, in turn, ensures that all appropriate treatment options are available to the dentist and patient without any arbitrary or clinically-unsupported restrictions limiting access to care.

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Sincerely,



DMD, MBA

Marc Bernard Ackerman, DMD, MBA, FACD

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**SENATE HUMAN SERVICES COMMITTEE**  
**WEDNESDAY, MARCH 3, 2021 2:30 PM**  
**SAKAKAWEA ROOM, STATE CAPITOL**  
**HB 1151 - OPPOSITION**  
**RELATING TO TELEHEALTH AND PRACTICE OF DENTISTRY**

Re: Testimony in **opposition to HB 1151** for the Senate Human Services Committee

Chairman Lee and Members of the Senate Human Services Committee,

Good afternoon. My name is Michael Keim. I live in Fargo and currently serve on the North Dakota's Board of Dental Examiners. I wish to offer support for HB 1151 **with amendments.**

The North Dakota Board of Dental Examiners favors and supports telehealth regulations appropriate for applications within the practice of dentistry and is very interested in advancing telehealth to enhance access to care within the practice of dentistry. The truth is, the Dental Board's discussion about HB 1151 at their January meeting centered on a number of concerns about the bill – most specifically about some ambiguous wording that could handcuff the Board's disciplinary abilities as well as conflicts the bill has with existing laws and Administrative Rules. Although the Board opposes HB 1151 in its current form, I would like to offer a number of friendly amendments for your consideration. The amendments are included with the written testimony handed out. In collaboration with the Senate Human Services committee, I believe the additional clarity needed in several areas of the bill can be addressed such that the conflicts can be ironed out relatively easily. This would enhance the purpose of HB 1151, make it more specific to the practice of dentistry, and provide for better protection of the public.

For example, elements that can be found in similar statute related to medicine are not relevant to dentistry. Dentists do not use information forwarding devices like physicians do for heart, diabetes or other monitoring. Some open-ended phrasing of the bill that omits important elements of which dental team member can do, under what sort of supervision, can also be clarified to better assure patient safety. I hope the committee will consider allowing time to enable the Board, through its Executive Director and legal counsel from the Attorney General's office, to engage in discussions about these or other amendments to find mutually acceptable solutions to concerns I will outline



more specifically in a moment. These friendly amendments can assure optimal patient safety while engaging today's technology to the benefit of all North Dakota citizens.

**Currently, HB 1151 contains a number of potential unintended consequences. Here are some of them.**

- 1. ND Regulations how dentistry may be practiced are presently, and should ideally be, found within Administrative rules, not statute as HB 1151 proposes.**
- 2. Administrative Rules may be amended in a timely and appropriate manner through the process approved by the Legislative Council.**
- 3. "Patient evaluation" is not "equivalent to a patient examination" as the bill implies.**
- 4. All essential, necessary aspects of dental examinations cannot be performed through telehealth under all circumstances.**
- 5. H.B. 1151 risks public safety through conflict with currently established existing statute and rule.**
- 6. The *Principles of Ethics and Code of Professional Conduct* are presently identified within Administrative Rules. HB 1151 conflicts with long established Principles of Ethics and Conduct.**
- 7. Ethical principles guide behavior and are not intended to regulate technology.**

Rules vs. Statute:

- The rapid pace of advancing technology brings frequent new elements for management of medical as well as dental care. The ability to gather input and guidance from knowledgeable sources in a timely fashion to safely modify Administrative Rules for improvement of dental is accomplished more nimbly by amending Administrative Rules of dentistry than through statutory changes. The Administrative Rules process enables input from multiple sources enabling an inclusive process for investigation and research prior to implementing change related to the practice of dentistry. This process maximizes protection of public safety.
- Regulations within Administrative Rules assure requirements for education and training for different levels of licensees are met authorizing duties for specific dental procedures.

Examination vs. Evaluation:

- Examples of evaluation include recording findings for blood pressure, temperature, height, weight, presence or absence of teeth, patient reported complaints or symptoms. An evaluation cannot be framed

as an examination. This bill conflicts with, negates and adds confusion to the Board's laws and rules regarding scopes of practice for dentists found in NDCC 43-28 (includes "examination") and dental hygienists or a dental assistant whose laws do not include the word "examination" but does include "assessment" and "evaluation."

- The NDBDE does not support the notion that a telehealth evaluation is equivalent to a live patient dental examination. The notion is false. Examination involves the understanding of conditions or circumstances that can influence the indications for, or inappropriateness of care (e.g. medications that contraindicate certain procedures). Commonly, hands-on examination by a dentist is also essential during examinations, (e.g., digital palpation and manipulation of tissues including teeth to determine mobility; digital palpation of muscles and/or auscultation of bone structure to diagnose the presence, or assure the absence of, temporomandibular dysfunction that could affect dental treatment; palpation of lymph nodes including their mobility, or lack thereof; probing of periodontal conditions to determine a diagnosis of health or disease; digital compression of soft tissues; visual assessment and metric evaluation of tooth mobility; thermal testing of teeth with interpretation to confirm vitality or diagnose irreversible pulpal abnormality or necrosis requiring endodontic treatment or extraction; perform percussion of teeth to discover and diagnose cracked teeth or recognized traumatic conditions; application of appropriate pressure to mandible during movement; etc. These procedures, their purpose, significance, importance, application and interpretation are not included in all educational programs for all levels of dental licensees - only for those who have gained D.D.S. or D.M.D. degrees from dental schools recognized by the Commission on Dental Accreditation (CODA). As a result, telehealth delivery of care is not universally applicable in all circumstances where a dentist is not physically present during direct examination of the patient.
- An examination is required to reach a diagnosis of disease or health; a diagnosis is required to establish a plan of treatment; a plan of treatment is necessary prior to initiating/providing treatment. An evaluation does not assure the ability to establish a diagnosis. HB 1151 wording conflicts with these requirements and could likely be considered below the standard of care, unethical and/or in violation of the Dental Practice Act.

**Public safety is not protected.**



## Statements That Conflict with Public Safety:

### Section 2, subsection 3(b)

- The statement that, “...subsequent followup care may be provided as deemed appropriate by the dentist or by a provider designated by the dentist to act temporarily in the dentist's absence.” is problematic.

There is no clear indication about who “a provider” should be, what level of education or training he/she must have, if such an individual is licensed to provide the care “as deemed appropriate.” This wording offers significant uncertainties and is open to individual interpretation – making enforcement of patient protection difficult under specific circumstances. Any provider “designated by the dentist” agreeing to specific care must have authority under Administrative Rules in Chapter 20 related to dentistry to administer care.

**Public safety is not protected.**

- The statement that: “In certain types of telehealth utilizing asynchronous store-and-forward technology or electronic monitoring, it is not medically necessary for an independent examination of the patient to be performed.” This statement is also problematic. What “certain types of telehealth” are specifically, is left completely open for interpretation. The statement has no known basis in fact, is open to argument and/or litigation and conflicts with the established norm of an examination leading to diagnosis leading to a treatment plan leading to treatment. If passed in current form into statute, the bill would permit someone to decide for him/herself what “certain type of telehealth” they are providing (since it is not defined) and that “...it is not medically necessary for an independent examination.” In addition, there is no definition for “independent examination.” One might ask.... independent of what?

**Public safety is not protected.**

### Section 2. 1. Line 10

- The existing Code of Ethics and Codes of Professional Conduct is already established and identified within existing Administrative Rules. Section 2. 1. either offers its own *interpretation* of the this code, or attempts to interject an alternative code of ethics for dentistry. The American Dental Association's *Principles of Ethics and Codes of Professional Conduct* document is universally accepted in regard to dental care in every state, but also is written into our Administrative Rules and therefore has the force of law. Adherence

to Principles of Ethics and Codes of Conduct focus on protection of patients through the Principle of Autonomy, (patient self-governance), Benevolence (do good), Nonmaleficence (do no harm), Justice (fairness) and Veracity (truthfulness). There is NO statement found within the ADA's document that affirms Section 2.1. of this bill to be true. Perhaps it is true in medicine. But, the statement is not true for dentistry.

- The ambiguous language in numerous parts of the bill as presented in Section 2; subsection 3, 3a, 3b, and 5 conflict with existing Administrative Rules for dentistry in Title 20.

**Public safety is not protected.**

Section 3, subsection 2:

- Regulations governing dentists and the North Dakota prescription drug monitoring program already exist in Title 20. Language regarding opioids also falls under the jurisdiction of the United States Drug Enforcement Agency. Currently, federal laws exist to direct practitioners in their prescribing of controlled substances during Covid-19. Is there a conflict?

In conclusion, the NDBDE **opposes HB 1151 in its present form.** However, I urge the Senate Human Services Committee's consideration of addition of the amendments offered here today. If aspects of these amendments are in question, I am confident the dental board would welcome and appreciate working together with the Committee to further tailor amendments to be acceptable to the Committee while also addressing the Board of Dental Examiners' concerns. As mentioned, the board recognizes the beneficial influence that telehealth offers to enhance delivery of care in both medicine and in dentistry and increase access to care. Electronic transfer of information is currently utilized in both professions already. How this technology can be appropriately and safely utilized and regulated in each environment is not identical. With added effort, it is my belief that this bill can satisfy the intent of the sponsors as well as the specific charge of the board of dentistry to assure appropriate, efficacious, and safe dental treatment with a focus of protecting the public. Please consider working with the NDBDE to optimize this bill to the benefit of citizens of North Dakota.

I would be happy to answer any questions.

Introduced by

Representatives Devlin, Rohr, M. Ruby, Weisz

Senators Lee, K. Roers

- 1 A BILL for an Act to create and enact two new sections to chapter 43-28 of the North Dakota  
2 Century Code, relating to telehealth and the practice of dentistry; and to amend and reenact  
3 section 43-28-01 of the North Dakota Century Code, relating to the definition of telehealth.

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

5 **SECTION 1. AMENDMENT.** Section 43-28-01 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7 **43-28-01. Definitions.**

8 As used in this chapter and chapter 43-20, unless the context otherwise requires:

- 9 1. "Accredited dental school" means a dental school, college, or university accredited by  
10 the commission on dental accreditation of the American dental association or its  
11 successor.
- 12 2. "Advertising" means to invite the attention of or give notice to the public, by any  
13 means, medium, or manner whatsoever of any fact, information, or data pertaining to  
14 or being conducive of the practice of dentistry in this state.
- 15 3. "Board" means the state board of dental examiners.
- 16 4. "Certificate of registration" means a written statement of the board declaring that a  
17 licensed dentist has paid the biennial registration fee required by this chapter.
- 18 5. "Dentist" means an individual who has a license to practice in this state and who holds  
19 a valid biennial certificate of registration.
- 20 6. "License" means the right, authority, or permission granted by the board to practice  
21 dentistry in this state.
- 22 7. "Practice of dentistry" means examination, diagnosis, treatment, repair, administration  
23 of local or general anesthetics, prescriptions, or surgery of or for any disease, disorder,  
24 deficiency, deformity, discoloration, condition, lesion, injury, or pain of the human oral



1 cavity, teeth, gingivae, and soft tissues, and the diagnosis, surgical, and adjunctive  
2 treatment of the diseases, injuries, and defects of the upper and lower human jaw and  
3 associated structures.

4 8. "Telehealth" has the same meaning as in section 26.1-36-09.15.

5 **SECTION 2.** A new section to chapter 43-28 of the North Dakota Century Code is created  
6 and enacted as follows:

7 **Standard of care and professional ethics - Telehealth.**

8 A dentist is held to the same standard of care and ethical standards, whether practicing  
9 traditional in-person dentistry or telehealth. The following apply in the context of telehealth:

- 10 1. Professional ethical standards require a dentist to practice only in areas in which the  
dentist has demonstrated competence, based on the dentist's training, ability, and  
experience. adopted by the board by rule shall apply equally to a dentist practicing in a  
traditional dental setting or in a telehealth encounter. The telehealth provider shall  
practice in a manner consistent with their scope of practice and the standard of care for  
a dentist providing in-person dental care.
- 11 2. A dentist practicing telehealth shall establish a bona fide relationship with a patient  
before the diagnosis or treatment of the patient. A dentist practicing telehealth shall  
verify the identity of the patient seeking care and shall disclose and ensure the patient  
has the ability to verify, the identity and licensure status of a dentist providing dental  
services to the patient.
- 12 3. Before a dentist initially diagnoses or treats a patient for a specific illness, disease, or  
13 condition, the dentist shall perform an examination or evaluation. A dentist may  
14 perform an examination or evaluation entirely through telehealth if the examination or  
15 evaluation is equivalent to an in-person examination.
- 16 a. An examination utilizing secure videoconferencing or store-and-forward  
17 technology for appropriate diagnostic testing and use of peripherals that would be  
18 deemed necessary in an like in-person examination or evaluation meets this  
19 standard, as does an examination conducted with an appropriately licensed  
20 intervening dental health care provider, practicing within the scope of the provider's  
21 profession, providing necessary physical findings to the dentist. An examination  
22 or evaluation consisting only of a static online questionnaire or an audio  
23 conversation does not meet the standard of care.
- 24 b. Once a dentist conducts an acceptable examination or evaluation, whether

25 in-person or by telehealth, and establishes a patient-dentist relationship,  
1 subsequent followup care may be provided as deemed appropriate by the  
2 dentist, or by a **licensed dental** provider designated by the dentist to act temporarily  
in the dentist's absence. ~~In certain types of telehealth utilizing asynchronous store-~~  
~~and forward technology or electronic monitoring, it is not medically necessary for~~  
~~an independent examination of the patient to be performed.~~

3 4. A dentist practicing telehealth is subject to all North Dakota laws governing the  
4 adequacy of dental records and the provision of dental records to the patient and other  
5 dental providers treating the patient **as established by the board by rule.**

6 5. A dentist may make appropriate referrals of patients not amenable to diagnosis or  
7 complete treatment through a telehealth encounter, including a patient in need of  
8 emergent care or complementary in-person care.

9 **SECTION 3.** A new section to chapter 43-28 of the North Dakota Century Code is created  
10 and enacted as follows:

11 **Prescribing - Controlled substances.**

12 1. A dentist who has performed a telehealth examination or evaluation meeting the  
13 requirements of this chapter may prescribe medications according to the dentist's  
14 professional discretion and judgment, Opioids may be prescribed through telehealth only  
if prescribed to a patient in a hospital or long-term care facility. Opioids may not be  
prescribed through a telehealth encounter for any other purpose.

15 2. Pursuant to this chapter, a dentist who prescribes a controlled substance, as defined  
16 by state law, shall comply with all state and federal laws regarding the prescribing of a  
17 controlled substance, and shall participate in the North Dakota prescription drug  
18 monitoring program.

**denotes new language inserted**

**denotes language removed**



**American  
Association of  
Orthodontists®**

**2021 Annual Session**  
Boston, Massachusetts ■ June 25-27, 2021

March 3, 2021

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Senator Judy Lee  
Chair, Senate Human Services Committee

Senator Oley Larsen  
Vice Chair, Senate Human Services Committee

Dear Chairwoman Lee, Vice Chairman Larsen, and Members of the Committee:

This letter is sent on behalf of the American Association of Orthodontists ("AAO") and its North Dakota members to comment on House Bill 1151 relating to telehealth and dentistry.

As a professional organization, the AAO is dedicated to, among other goals, improving the health of the public by promoting quality orthodontic care, the importance of overall oral healthcare in addition to advocating for the public interest and educating the public about the benefits of orthodontic treatment and the educational qualifications of orthodontic specialists.

The AAO supports legislation that is in the best interest of patient health and safety. We applaud the legislature for taking on an important task of creating telehealth provisions as they relate to dentistry. However, we do not feel that this bill appropriately considers patient health and safety, and we oppose this bill as currently written.

We recommend that this bill be amended to allow the North Dakota Board of Dental Examiners (NDBDE) to complete its ongoing formulation of Administrative Rules to enable effective, appropriate, and safe use of telehealth for North Dakota citizens. However, if the legislature still feels that this bill is in the best interest of patient health and safety, the AAO asks that you consider our feedback.

The AAO believes that this bill, as currently written, will have unintended consequences. First, Section 2, number 1, reads, “Professional ethical standards require a dentist to practice only in areas in which the dentist has demonstrated competence, based on the dentist's training, ability, and experience.” This language should be amended to defer to the requirements of education and licensure as set forth in rules adopted by the NDBDE. The AAO believes these rules should apply equally to a dentist practicing in a traditional dental setting or in a telehealth encounter, and that the language be amended to reflect that. Additionally, the AAO believes provisions should be added to state that the telehealth provider shall practice in a manner consistent with their scope of practice and the standard of care for a dentist providing in-person dental care.

Furthermore, while some routine care may be appropriate for telehealth, complex procedures still require the careful oversight of a licensed professional. Section 2, number 3 reads,

“Before a dentist initially diagnoses or treats a patient for a specific illness, disease, or condition, the dentist shall perform an examination or evaluation. A dentist may perform an examination or evaluation entirely through telehealth if the examination or evaluation is equivalent to an in - person examination.”

The AAO believes this provision is problematic because an in-person examination allows the treating dentist to more fully understand what is going on beneath the gums (impacted teeth, bone loss, periodontal concerns etc.), seek to avoid complications, and in the case of an orthodontist, determine if patients are suitable candidates for orthodontic treatment. The AAO believes there are certain diagnoses and evaluations that can only be performed in-person or are best performed in-person (x-rays, etc.) during an examination, and the AAO believes that dental treatment, especially the movement of teeth via orthodontic treatment, should not be undertaken without sufficient diagnostic information obtained during such an examination. Such evaluation and examination that includes an x-ray, looking for bone loss or periodontal problems, cannot be done via telehealth.

Orthodontists in practice throughout North Dakota embrace new technologies to improve service delivery and access to care. As our reliance on technology has increased during the pandemic, it has also underscored situations where technology is no substitute for in-person experiences. What works for telemedicine does not automatically work for dentistry, and we believe it is important to consider the opinions of dental professionals, including the NDBDE, when creating rules that affect the practice of dentistry. In conclusion, the AAO opposes this bill as written, as it does not include provisions to ensure that telehealth is used in a way that is in the best interest of patient health and safety.



If you have any questions, please reach out to the AAO's Government Affairs Associate, Ms. Gianna Nawrocki, at [ghnawrocki@aaortho.org](mailto:ghnawrocki@aaortho.org). Thank you for your service and dedication to your constituents.

Sincerely,

A handwritten signature in blue ink, appearing to read "Trey Lawrence", with a stylized flourish extending to the right.

Trey Lawrence  
Vice President, Advocacy and General Counsel  
American Association of Orthodontists



House Bill 1151 – In Opposition  
Human Services Committee  
67th Legislative Assembly of North Dakota

March 2, 2021

Chairman Weisz and members of the House Human Services Committee Members:

Align Technology is a global medical device company that designs, manufactures and markets the Invisalign® system, the most advanced clear aligner system in the world; iTero® intra-oral scanners and services for orthodontic, preventative and restorative dentistry; and a comprehensive suite of software designed to link elements of the digital dental ecosystem into a data-driven network of comprehensive oral care. Align employs more than 19,000 employees in four regions and multiple locations around the world.

Align revolutionized orthodontic treatment with the introduction of Invisalign clear aligners over 20 years ago and today continues to drive technology forward to help providers transform the patient experience and improve outcomes while revolutionizing the practice of dentistry. Since 2011, over 100 Invisalign trained dentists have treated **over 7,000 North Dakota patients** with Invisalign® clear aligner therapy.

With recent innovations in medical and dental technology, and particularly in light of the challenges presented by the pandemic, the interest in and use of teledentistry has grown. Align believes that, in certain contexts, **teledentistry is a valuable tool** for dentists but it does not replace the need for a responsible professional. House Bill 1151 should be amended to make sure that all who receive care through teledentistry have access to a licensed, responsible, dentist **who knows them personally as a patient before treatment begins**.

**Clear aligners are *not* “mouth guards” or retainers**

Any clear aligner therapy, like treatment with traditional “brackets and wire” braces, move teeth through bone. Clear aligners are not mouth guards that protect teeth or retainers which seek to hold teeth in position.

**Dental examinations are necessary *prior* to treatment**

Prior to the start of orthodontic treatment, a dentist should conduct an in-person, physical examination of the patient and, if indicated by that examination, review or order radiographs to confirm they are a good candidate for treatment. This should be required by law.

**Teledentistry *enhances* dentistry**

Teledentistry may be used as an adjunct to in-person visits to enhance patient education and increase patient and practice convenience. Not as a replacement

**Clear aligner therapy constitutes the practice of *dentistry***

The Legislature should specifically direct the dental board to regulate orthodontic treatment utilizing clear aligner therapy as the practice of dentistry.

Dr. Dennis Sommers  
1418 Cook Drive  
Minot, ND 58701  
701 720-2646

Testimony opposing HB 1151

Chairman Lee and members of the committee:

I'm here in support of telehealth in dentistry. However, I urge your rejection of this bill for reasons I believe are clear and will be highlighted in this testimony.

Though now retired from practice, I have consistently had, and continue to enjoy, a keen interest in Dental Ethics as well as mechanisms for delivery of optimal care. Probably as a result, – I was able to serve as the primary editor of a significant revision and updating of the Principles of Ethics and Codes of Professional Conduct for a dental specialty group in 2017. More recently, I was also asked to participate in a significant edit of the Clinical Practice Guidelines for orthodontics to be adopted by the group next month. These documents are well known and used throughout the United States and Canada, as well as in many other countries.

With due respect for those involved and despite their good intentions, unfortunately HB1151 contains many errors, ambiguities, omissions and incorrect statements that conflict with current laws and regulations regarding dentistry or provide ambiguity that could open the door to circumvent current laws and regulations applicable to dentistry.

I would point out that the statement made on page 2, lines 10-12 of the bill is not true. The American Dental Association's *Principles of Ethics and Code of Professional Conduct*, the preeminent document regarding ethics related to the practice of dentistry, contain no such requirement. The first sentence is instead an **opinion** of what Ethics say about the practice of dentistry. I don't believe that "opinions" belong in statutes as a means to validate content of the statute. This opinion, falsely based, improperly implies justification for what follows in the bill.

Lines 13 through 17 provide a definition of a "bona fide relationship." Although important to have a doctor-patient relationship, this statement alone does not assure that all types of dental issues can, or

should, be managed through telehealth communications simply based on a “bona fide relationship.” One example, related to a patient with a toothache for example, frequently requires the dentist to apply thermal (hot and cold) tests to suspect teeth to determine the potential need for endodontic (root canal) treatment, rather than relatively simple restorative care. Only a dentist has the educational background and knowledge to perform such diagnostic testing, properly interpret the findings and determine appropriate care. These circumstances are similar to when I have sent high quality digital images to my dermatologist in Bismarck to show skin lesions I suspect are cancerous. His response is nearly always, “I want you to come see me.” When I do, he looks at the spot I’ve noticed; slides his finger over the top to determine it’s texture; presses on it to see if it has any nodular component; uses some sort of magnifier with a light which he looks through like binoculars; then says either “We need to biopsy this one,” or “nothing to worry about there.” His examination to determine if a biopsy should be done to confirm a diagnosis is precisely parallel to the kind of examination required for dental examinations to determine what additional information is needed to diagnose problems.

Another consideration in support that direct, in-person contact is required for proper care can be found in the proposed draft of the Clinical Practice Guidelines document anticipated to be approved by the American Association of Orthodontists in April 2021 that reads: “Prior to the initiation of tooth movement, in order to protect patient health and safety, an in-person comprehensive dental examination of orthodontic patients should occur by a state-licensed dentist. The dentist shall be currently practicing in the same state in which the dentist is licensed and should be easily searchable and/or able to be contacted.” In addition, these Clinical Practice Guidelines further state that, “Dynamic reassessment is fundamental to all forms of orthodontic treatment and requires the direct, professional judgment of a dentist. Referral for adjunctive dental or specialty treatment may at times be part of the process.” Clearly, a “bona fide relationship” as defined in this bill is not sufficient to assure public safety without an in-person dental examination.

It is also significant that missing in this bill is any reference to who may facilitate the transfer of information, in whatever form might be used, from the remote location to a dentist during a telehealth/teledentistry event. There is no mention if it must be a dentist, hygienist, assistant on the distant end. As written, someone with no dental education or licensure at all on the distant end would be allowed to accumulating information of various sorts to transmit to the dentist on the receiving end. The omission of this information implies to any dentist reading the proposed law that this is not important. Yet, it is.



Missing is what type of supervision required for the individual on the distant end. Is it a dentist, a hygienist, a dental assistant? HB1151 offers absolutely no guidance, restrictions or designation as to who gathers and transmits any information anywhere under any circumstances, regardless of dental education, authorization or supervision. The bill leaves all of this to the discretion and interpretation. This is reckless. This is also inconsistent with the practice of dentistry as currently required by ND laws and Administrative Rules. Worse yet, it overlooks required safety measures for patients.

Some may argue that the qualifications, education or supervision of the person on the distant end of a telehealth communication facilitating transfer of information is not important. After all, they are “only making photos, asking questions or perhaps making x-rays or gathering patient information or documenting patient complaints or completing informed consent documents.” This would not be true. Some of such efforts require educational knowledge, licensure and authorization as well as appropriate supervision for procedures provided on the distant end. HB 1151 omits these essential ingredients.

Dental examinations demand a thorough understanding of numerous elements to assure recognition of the difference between normal and abnormal findings. Dentists are the only dental professional with the educational background necessary to do so within the practice dentistry. Essential elements for education as a dentist includes, but is not limited to the study of:

- Dental anatomy including variations influenced by:
  - Ectodermal dysplasia
  - Osteogenesis imperfecta
  - Dentinogenesis imperfect
  - Ethnicity
  - Hormonal abnormalities
- head and neck anatomy
- joint sounds
- oral aromas
- palpated physical conditions
- signs and symptoms
- morphology
- physiology
- oral pathology
- neurology of the head and neck
- Developmental Craniofacial abnormalities
  - Treacher Collins Syndrome
  - Cleft lip

- Cleft palate
- Hemifacial microsomia
- Vascular malformation
- Hemangioma
- And more

Dental assistants, qualified dental assistants, registered dental assistants and dental hygienists do not receive all such elements as part of their dental education. The ability to differentiate between health and abnormal variations of health is required to determine what elements are essential for a proper dental examination. The need for additional, modified, necessary or unnecessary elements to enable a proper examination and correct diagnosis require on-sight and hands-on attention by a dentist. For this reason, HB1151's statement on page 2, lines 19-21 is incorrect. A dental examination CANNOT be routinely equivalent to an in-person examination through telehealth. This is impossible. This sentence further asserts that an "evaluation" is, or can be, equivalent to an "examination." There is no factual basis for this statement. It is not possible to achieve an "evaluation equivalent to an examination."

Because of this, dentists must be physically present, in person, to properly examine a dental patient. Any claim that "... store-and-forward technology for appropriate diagnostic testing and use of peripherals that would be deemed necessary in a like in-person examination or evaluation meets this [examination] standard" [typo error included] cannot be assured. A dentist must be physically present to properly conduct an "examination," exercising clinical skills and utilizing educationally acquired knowledge to recognize and implement the specific needs for a complete and proper examination.

North Dakota dentists have been using telecommunications for a long time – transferring digital records they obtain as required to dental laboratories for construction of crowns and bridges, x-rays for consultation by another dentist and other purposes. Telehealth benefits each profession in its own unique way. But telehealth is not a "one size fits all" proposition. As technology advances, the profession's underlying code of ethical conduct, standards of care and laws pertaining to dentistry need not change. Administrative Rules may require continued modification – much as those currently in process that will soon be reviewed by the Legislative Council. HB 1151 deserves to be set aside based on these facts.

Please vote DO NOT PASS regarding HB 1151.

Thank you,

Dear Senator Lee,

Thank you for your time in committee on Wednesday regarding HB1151. I wish to add a few thoughts unable to be completed when told my time was running out. I am confident the Board of Dental Examiners is willing to meet and work together with you and the Committee to review and discuss reasoning for offered amendments, or other sections, to be helpful in creating the best possible bill for use of telehealth in dentistry for our state. I hope you will incorporate expertise the board can offer about specifics related to dentistry that could be useful.

During my time the AAO's Council involved with ethics, I saw and dealt with complaints about orthodontists - mostly from patients. The overwhelming majority of those complaints related to how they had been harmed in some way. The source of the harm was often a result of the doctor allowing someone who was not authorized to perform the procedure that caused the harm - which I believe was because the individual "didn't know what they were doing." And THAT was because they weren't educated properly.

We had an orthodontist in Minot years ago who had his dental assistants remove cement from his patient's teeth using a high-speed drill when braces were removed. I saw some of the damaged teeth that resulted from this. Assistants are not allowed by rules to use high speed drills because their educational training does not cover this. I heard it said Wednesday that, "the dentist is ultimately responsible for treatment" [so why not let him/her decide who can do what]?. If this were truly the case, there would be no need to put forward rules for dentistry. But, the responsibility to keep people safe also falls on the legislative body - not just a citizen or dentist. It is not left up to the driver of a car to decide how fast they can safely drive. ND laws and rules determine that. The same must be required for dentistry.

Even with laws and rules for public safety in dentistry, there are those who wish to get around or ignore them for personal benefit of some sort - often financial - as was my observation on the Council as well as with the orthodontist in Minot years ago. There must be ways to enforce elements of public safety. Indeed as you said, "we're not talking about nuclear science, here." And I agree, indeed telehealth in dentistry is important, necessary and useful. But, public safety should be a priority for legislators in establishing the rules of the road. Who can do what in dentistry is as important in every dental office as it is for those driving on I-70.

Dr. Dennis Sommers  
Minot

My name is Dr. Daniel Keith and I am the orthodontist/owner of DK Orthodontics located in Bismarck and Dickinson. I am a member of District 30 in Bismarck have met with my Senator Diane Larson both in-person and had online discussions regarding my concern related to HB 1151 which is undergoing Senate testimony on Wednesday, March 3rd. This "telehealth dentistry" bill, in my humble opinion, sets an unbelievably dangerous precedent in the arena of patient care and patient safety. Please know that my commentary below is not meant out of a self-serving nature, but rather out of non-maleficence towards patients.

Although the intent of HB 1151 is good-natured (telehealth is great in certain areas of medicine where symptoms could be described and diagnosed entirely over a technological medium without jeopardizing the diagnostic abilities of the practitioner, but, unfortunately, dentistry is not one of those healthcare disciplines that this applies to as we deal in fractions of a millimeter and the difference between determining health and disease lies in the tactile and visual acuity of the practitioner, neither of which are available safely in a telemedicine platform), the unintended consequences put our patients at an unbelievably high risk that I believe is not fully appreciated by those who are not "in the arena" to steal a phrase from Teddy Roosevelt.

The bill is so vaguely written and leaves a great deal to interpretation as to what qualifies as an evaluation or an examination, who is qualified to conduct these telehealth dental visits, and what outcomes can be rendered because of them. My simplistic summation of the thoughts on the bill is below:

1. ND Regulations how dentistry may be practiced are, and should be, found within Administrative rules, not statute as 1151 proposes.
2. "Patient evaluation" is not "equivalent to a patient examination" as the bill claims.
3. Administrative Rules may be amended in a more timely and appropriate manner through the process approved by the Legislative Council.
4. All essential, necessary aspects of dental examinations cannot be performed through telehealth. Much of what we do is qualitative in nature and telehealth is in direct contrast to that.
5. H.B. 1151 circumvents public safety as currently established through existing statute and rule.
6. The Principles of Ethics and Code of Professional Conduct are presently identified within Administrative Rules. H.B. 1151 conflicts with long established Principles of Ethics and Conduct.
7. Ethical principles guide behavior and are not intended to regulate technology.

I have the privilege of traveling the country on a routine basis

speaking on behalf of the American Association of Orthodontists (AAO) as I serve in national leadership. Sometimes those speaking outings are clinical in nature and sometimes they are advocative in nature and I can share with you that the AAO has spent nearly the entirety of its lobbying dollars and efforts over the past few years fighting for our patients and fighting against treatment methods and modalities that take patient care out of the hands of qualified individuals and put them into the hands of individuals who have not been down the (8 years for dentists, 11 years for orthodontists) proper educational path to properly and safely treat those that we have taken ethical oaths to protect. There are dangerous precedents being set nationally when it comes to patient care and it is because circumvention of state rules and statutes, by way of big business, has become the norm. I ask you not to let this happen in our state of North Dakota where honesty, integrity, and morals still shine brightly.

When I completed both dental school and orthodontic residency, I swore an oath to, first and foremost, protect our patients and that is the purpose of my commentary today and I respectfully ask for your consideration in voting against HB 1151.

Thank you very much for your time and for all that you do for the state of North Dakota!



**Senate Human Services Committee  
Wednesday, March 3, 2021 2:30 pm  
Sakakawea Room, State Capitol  
HB 1151 – Opposition  
Relating to Telehealth and Practice of Dentistry**

Re: Testimony in **opposition to HB 1151** for the Senate Human Services Committee

Chairman Lee and Members of the Senate Human Services Committee,

Good afternoon, my name is Marcus Tanabe. I am an Oral Surgeon who lives and practices in Grand Forks and currently serves on the North Dakota Board of Dental Examiners. I wish to write in opposition of H.B. 1151.

As a member of the Board of Dental Examiners and a practicing oral surgeon, I recognize the value of telehealth as a basic instrument in the diagnostic process. However, much like an ER physician, I would not base my diagnosis and treatment solely off of what I can see through a computer screen. The field of dentistry relies on a multimodal approach to being able to appropriately diagnose any issue. The use of x-rays along with physically palpating an area of concern with both one's own hand as well as instruments are critical to a proper diagnosis. I have had experience with an inappropriate diagnosis when using vision alone.

As a chief resident in Oral Surgery in Detroit, our intern, a licensed dentist, presented a patient who had a left-side midface swelling, his upper teeth were broken off, and he had failing dentition. He reported further that the patient had teeth removed and that swelling had been drained one week prior, yet the swelling persisted. Upon an exam where I was able to use my physical hands to palpate the area, I was able to feel that the "swelling" was not simply a swelling but a mass. The patient went on to have a CT and blood draw and it was determined that this mass was, in fact, Non-Hodgkin's Lymphoma. Had we not been able to physically lay hands on this area in the patient's mouth we would have potentially treated with antibiotics and this lymphoma would have gone undiagnosed and subsequently untreated. This is one of many examples that I can provide that shows that telehealth is very limited in its ability to provide much useful data for a complete dental diagnosis of a patient.

In resolution HB 1151, it states that we must uphold a standard of care, yet in no way can it be stated that a telehealth visit alone would be equivalent to in-person exam. I would consider the

image rendered by one of these devices to best serve providing a preliminary survey warranting further investigation by a trained professional.

In addition, Chairman Lee and members of this committee, I was appalled by the language of this resolution which states that after a diagnosis is provided by this limited modality for dentistry, that the subsequent treatment could be rendered by "someone deemed appropriate." The wording in this resolution must be an oversight as the Dental Practice Act does not allow for anyone to be able to practice dentistry other than someone who has been trained at an accredited institution and licensed to practice dentistry by the Board of Dentistry.

Lastly, the issue of narcotic prescribing based on telehealth is short-sighted. There are a number of issues related to the prescribing of narcotics even in a limited capacity. The DEA clearly outlines the appropriate use of narcotic medications in relation to Telehealth.

Thank you for your time when considering the importance of not approving HB 1151.

Telehealth is a useful tool that needs to be regulated. It is important to understand the inherent limitations of this modality as it specifically relates to the field of dentistry. As much as we would like this technology to help access-to-care issues like it has in the medical field it does not fit as well for dentistry.

If you have any more questions or would like to speak further about this resolution, please do not hesitate to contact me.

Sincerely  
Dr. Marcus B Tanabe DDS  
Member of the North Dakota Board of Examiners



# 2021 SENATE STANDING COMMITTEE MINUTES

## Human Services Committee Sakakawea Room, State Capitol

HB 1151  
3/15/2021

A BILL for an Act to create and enact two new sections to chapter 43-28 of the North Dakota Century Code, relating to telehealth and the practice of dentistry; to amend and reenact sections 43-28-01, 43-28-03, and 43-28-04 of the North Dakota Century Code, relating to the membership of the state board of dental examiners and the definition of telehealth; and to provide for application.

**Madam Chair Lee** opened the discussion on HB 1151 at 4:01 p.m. Members present: Lee, K. Roers, Hogan, Anderson, Clemens, O. Larsen.

### Discussion Topics:

- Proposed amendment
- Patient/provider contracts
- Dental licensing
- Adequate knowledge definition

**[4:02] Senator Judy Lee, District 13.** Provided the committee with an overview of proposed amendment 21.0623.01002 (testimony #9321).

**[4:07] Senator Howard Anderson, District 8.** Provided the committee with a proposed amendment (testimony #9326).

**[4:10] William Sherwin, Executive Director, ND Dental Association.** Provided clarification to the committee on proposed amendment language.

**[4:17] Senator Lee** will hold on HB 1151 pending amendment draft from Legislative Council.

**Additional written testimony:** N/A

**Madam Chair Lee** closed the discussion on HB 1151 at 4:19 p.m.

*Justin Velez, Committee Clerk*

21.0623.01002  
Title.

Prepared by the Legislative Council staff for  
Senator Lee

March 15, 2021

## PROPOSED AMENDMENTS TO HOUSE BILL NO. 1151

Page 1, line 1, replace "two" with "a"

Page 1, line 1, replace "sections" with "section"

Page 1, line 2, remove the second "and"

Page 1, line 3, replace "section" with "sections"

Page 1, line 3, after "43-28-01" insert ", 43-28-03, and 43-28-04, and subsection 5 of section 43-28-06"

Page 1, line 3, after the second "the" insert "membership and duties of the state board of dental examiners and the"

Page 1, line 3, after "telehealth" insert "; to provide for application; and to declare an emergency"

Page 2, after line 4, insert:

**"SECTION 2. 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~~six dentist members, at least one of whom is a board-eligible or board-certified oral and maxillofacial surgeon; ~~one dental hygienist member;~~ one dental assistant member; and one independent consumer member. Appointment to the board is for a term of five years, with terms of office arranged so ~~that one term expires~~no more than 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. Each member of the board shall hold office until a successor is appointed and qualified. Persons~~An individual appointed to the board ~~shall qualify~~qualifies 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 3. 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 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 practicing as a registered dental assistant and has been so practicing in this state for at least five years immediately preceding the dental assistant's appointment.
4. An individual may not be appointed as the independent 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 or financial relationship with the dental profession; and
  - c. Is not a dentist, a dental hygienist, a dental assistant, a physician, a nurse, or the spouse of an individual engaged in any of those occupations.
- 4.5. The dental hygienist, dental assistant, and independent consumer member of the board shall exercise full voting privileges in all areas except that the dental hygienist may not participate in the clinical examination of dentists for licensure and the dental assistant and independent consumer member may not participate in the clinical examination of dentists or hygienists for licensure.

**SECTION 4. AMENDMENT.** Subsection 5 of section 43-28-06 of the North Dakota Century Code is amended and reenacted as follows:

5. Employ and compensate an executive director, who must be an attorney or a dentist, attorneys, investigative staff, and clerical assistants and may perform any other duties imposed upon the board by this chapter."

Page 3, replace lines 12 through 23 with:

**"SECTION 6. APPLICATION.** Notwithstanding section 43-28-03, on the effective date of this Act, the term of every member of the state board of dental examiners expires. In making the new appointments, the governor shall appoint the members of the board for staggered terms so no more than two members' terms expire each year. A member appointed under this section may not serve more than two full five-year terms but may serve more than ten years.

**SECTION 7. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly



**Proposed Revisions to ND HB 1151**  
 (Revisions in red, underlined)

**Page 2, Section 2:**

2. ~~A dentist practicing telehealth shall establish a bona fide relationship with a patient before the diagnosis or treatment of the patient.~~ No dentist shall practice telehealth unless a bona fide dentist-patient relationship is established in person or through telehealth. A bona fide dentist-patient relationship shall exist if the dentist has (i) obtained or caused to be obtained a health and dental history of the patient; (ii) performed or caused to be performed an appropriate examination of the patient, either physically through use of instrumentation and diagnostic equipment through which digital scans, photographs, images, and dental records are able to be transmitted electronically, or through use of face-to-face interactive two-way real-time communications services or store-and-forward technologies; (iii) provided information to the patient about the services to be performed; and (iv) initiated additional diagnostic tests or referrals as needed. The examination required by clause (ii) shall not be required if the patient has been examined in person by a dentist licensed by the Board within the six months prior to the initiation of telehealth and the patient's dental records of such examination have been reviewed by the dentist providing telehealth. A dentist practicing telehealth shall verify the identity of the patient seeking care and shall disclose and ensure the patient has the ability to verify, to the patient the dentist's identity, physical location, contact information and licensure status.

**Page 2-3, Section 3:**

3. Before a dentist initially diagnoses or treats a patient for a specific illness, disease, or condition, the dentist shall perform an examination or evaluation. A dentist may perform an examination or evaluation entirely through telehealth if the examination or evaluation ~~is equivalent to an in-person examination.~~ can be performed in accordance with the standard of care required for an in-person dental examination or evaluation. A dentist may not use telehealth to perform an initial examination or evaluation in circumstances where the standard of care necessitates an in-person dental examination.
  - a. Examples of an appropriate telehealth examination or evaluation may include: (i) an examination utilizing secure videoconferencing or along with store-and-forward technology for or appropriate diagnostic testing and use of peripherals that would be deemed necessary in a like required during an in-person person examination or evaluation; meets this standard ; or (ii) as does an examination conducted with an appropriately licensed intervening dental health care provider, practicing within the scope of the dental health care provider's profession, providing necessary physical findings to the dentist during a live, two-way telehealth encounter. An examination or evaluation consisting only of a static online questionnaire or an audio conversation does not meet the standard of care.
  - b. The use of telehealth does not expand the scope of practice for dental health care providers, and may not be used to circumvent the licensure requirements established for dental health care providers in North Dakota.
  - b. c. A dentist who practices telehealth in North Dakota shall have adequate knowledge of the availability and location of local dentists and dental

health providers to provide to a patient following a dental telehealth encounter, including emergent and acute care facilities, in order to enable patients to receive follow up care. Once a dentist conducts an acceptable appropriate examination or evaluation, whether in-person or by telehealth, and establishes a patient - dentist relationship, subsequent follow up care may be provided as deemed appropriate by the treating dentist, or by a provider another dentist licensed in North Dakota designated by the treating dentist to act temporarily in the treating dentist's absence. ~~In certain types of telehealth utilizing asynchronous store and forward technology or electronic monitoring, it is not medically necessary for an independent examination of the patient to be performed.~~ (\*This entire sentence should be stricken with no replacement language\*)

4. A dentist practicing telehealth is subject to all North Dakota laws governing the adequacy of dental records and the provision of dental records to the patient and other dental providers treating the patient.

5. A dentist ~~may~~ practicing telehealth is required to make immediate, appropriate referrals of patients ~~not amenable to diagnosis or complete treatment through a~~ with documented or suspected oral health conditions that cannot be treated through a telehealth encounter, including a patient in need of emergent care or complementary in-person care.

6. A dentist practicing telehealth is prohibited from requiring a patient to sign any form or statement that waives the patient's right to file a complaint against the dentist with the appropriate state agencies. Further, a dentist practicing telehealth is prohibited from requiring a patient to sign any form or document that shields the dentist from liability for injuries resulting from a dental telehealth encounter.

# 2021 SENATE STANDING COMMITTEE MINUTES

## Human Services Committee Sakakawea Room, State Capitol

HB 1151  
3/22/2021

A BILL for an Act to create and enact two new sections to chapter 43-28 of the North Dakota Century Code, relating to telehealth and the practice of dentistry; and to amend and reenact section 43-28-01 of the North Dakota Century Code, relating to the definition of telehealth.

**Madam Chair Lee** opened the discussion on HB 1151 at 11:14 a.m. Members present: Lee, K. Roers, Hogan, Anderson, Clemens, O. Larsen.

### Discussion Topics:

- Adequate knowledge definition

**[11:14] Levi Andrist, GA Group, Smile Direct Club.** Provided the committee with an analysis of potential amendments 21.0623.01003 (testimony #10323).

**[11:15] Recess** – Due to fire alarm.

**[11:35] Levi Andrist** continued his analysis of potential amendments.

**Additional written testimony:** N/A

**Madam Chair Lee** closed the hearing on HB 1151 at 11:43 a.m.

*Justin Velez, Committee Clerk*

## ANALYSIS OF POTENTIAL AMENDMENTS (21.0623.01003m)

### HB 1151/TELEDENTISTRY

**Overview:** About half of the proposed amendments are enhancements to the bill, about half of the amendments aren't necessary or are otherwise overly prescriptive, and a couple of the proposed amendments should be further amended to provide additional clarity.

**Section 1 of the Bill:** This section incorporates the definition of telehealth from the insurance code into the dental practice act. It should be retained.

**Sections 2, 3, 4, 6, and 7 of the Bill:** These sections seeks to reform the board of dental examiners.

**Section 5 of the Bill:** This is the heart of teledentistry policy, which, as introduced, mirrored almost word for word the standards of care due to patients by physicians. The proposed amendments justifiably do not require an in-person visit in all circumstances, but rather rely on the ND-licensed dentist to exercise competence and judgment for the benefit of the patient.

- The amendments (page 4, lines 12-28) defining a bona-fide dentist-patient relationship in part simply restates what was in the original bill and in part is overly prescriptive and not necessary given the bill's broad requirements to be held to the same standard of care in teledentistry as in-person dentistry as well as the broad requirement for a dentist to practice in areas only in which the dentist has competence, based on the dentist's training, ability, and experience.
- The amendments (page 4, lines 29-30) clarifying the dentist's responsibility to verify patient information and to share the status of the dentist with the patient are good changes and should be retained.
- The amendments (page 5, lines 6-10) regarding initial diagnoses are not necessary as they essentially duplicate language from an earlier section of the bill that require a dentist practicing teledentistry to be held to the same standard of care as a dentist practicing in person.
- The amendments (page 5, lines 11-21) regarding a telehealth examination seem to be more appropriate for regulatory guidance than for a statute.
- The amendments (page 5, lines 22-24) stating that telehealth does not expand a practitioner's scope of practice are good amendments and should be retained.



- The amendments (page 5, lines 25-28) requiring a dentist practicing telehealth to have knowledge of local dentists and medical providers are good amendments and should be retained.
- The amendments (page 5, line 29 to page 6, line 3) regarding follow up care are the functional equivalent of describing “competence” and should be retained.
- The amendments (page 6, lines 9-13) relating to referrals should be rejected. The amendments require any dentist practicing telehealth to refer patients, even those for whom he or she has not accepted as a patient. An example is if a patient approaches a dentist remotely to get a tooth extraction, in which case the dentist informs the patient that remote care is inappropriate for an extraction and cannot accept the patient for such care. In this case, the dentist would now have to make an “immediate” referral and be required to “document” a condition for which he or she has not examined the patient. Additionally, the term “immediate” is not defined.
- The amendments (page 6, lines 14-18) relating to the prohibition of a patient signing a form that limits the filing of a complaint is good policy as long as it is further amended to apply not only to teledentistry but all of dentistry. What should be good for the goose, should be good for the gander.

# 2021 SENATE STANDING COMMITTEE MINUTES

## Human Services Committee Sakakawea Room, State Capitol

HB 1151  
3/23/2021

A BILL for an Act to create and enact two new sections to chapter 43-28 of the North Dakota Century Code, relating to telehealth and the practice of dentistry; and to amend and reenact section 43-28-01 of the North Dakota Century Code, relating to the definition of telehealth.

**Madam Chair Lee** opened the discussion on HB 1151 at 2:50 p.m. Members present: Lee, K. Roers, Hogan, Anderson, Clemens, O. Larsen.

### Discussion Topics:

- Proposed Amendment
- Bill action

**[2:50] Levi Andrist, GA Group, PC, On behalf of Direct Smile Club.** Provided the committee with an overview of proposed amendment 21.0623.01005 (testimony #10568).

**[2:54] William Sherwin, Executive Director, ND Dental Association.** Advised the committee on stance with proposed amendment 21.0623.01005.

**Senator Hogan** moves to **ADOPT AMENDMENT** 21.0623.01005  
**Senator Clemens** seconded.

Voice Vote – Motion passed.

**Senator Hogan** moves **DO PASS, AS AMENDED.**  
**Senator K. Roers** seconded.

Senators	Vote
Senator Judy Lee	Y
Senator Kristin Roers	Y
Senator Howard C. Anderson, Jr.	Y
Senator David A. Clemens	Y
Senator Kathy Hogan	Y
Senator Oley Larsen	Y

The motion passed 6-0-0

**Senator Anderson** will carry HB 1151.

**Additional written testimony:** N/A

**Madam Chair Lee** closed the discussion on HB 1151 at 3:00 p.m.

*Justin Velez, Committee Clerk*

March 23, 2021

X  
194  
OK

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1151

Page 1, line 2, remove the second "and"

Page 1, line 3, replace "section" with "sections"

Page 1, line 3, after "43-28-01" insert ", 43-28-03, and 43-28-04, and subsection 5 of section 43-28-06"

Page 1, line 3, after the second "the" insert "membership and duties of the state board of dental examiners and the"

Page 1, line 3, after "telehealth" insert "; to provide for application; and to declare an emergency"

Page 2, after line 4, insert:

**"SECTION 2. 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 ~~seventy-nine~~ members appointed by the governor. The membership of the board must include ~~fivesix~~ dentist members, at least one of whom is a board-eligible or board-certified oral and maxillofacial surgeon; one dental hygienist member; one dental assistant member; and one independent consumer member. Appointment to the board is for a term of five years, with terms of office arranged so ~~that one term expiresno more than 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. Each member of the board shall hold office until a successor is appointed and qualified. Persons~~ An individual appointed to the board shall ~~qualify~~ qualifies 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 3. 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 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 practicing as a registered dental assistant and has been so practicing in this state for at least five years immediately preceding the dental assistant's appointment.
- 4. An individual may not be appointed as the independent 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 or financial relationship with the dental profession; and
  - c. Is not a dentist, a dental hygienist, a dental assistant, a physician, a nurse, or the spouse of an individual engaged in any of those occupations.
- 4.5. The dental hygienist, dental assistant, and independent consumer member of the board shall exercise full voting privileges in all areas except that the dental hygienist may not participate in the clinical examination of dentists for licensure and the dental assistant and independent consumer member may not participate in the clinical examination of dentists or hygienists for licensure.

**SECTION 4. AMENDMENT.** Subsection 5 of section 43-28-06 of the North Dakota Century Code is amended and reenacted as follows:

- 5. Employ and compensate an executive director, who must be an attorney or a dentist, attorneys, investigative staff, and clerical assistants and may perform any other duties imposed upon the board by this chapter."

Page 2, line 13, remove "practicing telehealth shall establish a bona fide relationship with a patient"

Page 2, line 14, replace "before the diagnosis or treatment of the patient." with "may not practice telehealth unless a bona fide dentist-patient relationship is established in person or through telehealth."



Page 2, line 15, replace "and ensure" with "to"

Page 2, line 16, remove "has the ability to verify."

Page 2, line 16, after the second "the" insert "dentist's"

Page 2, line 16, after "identity" insert ", physical location, contact information,"

Page 2, line 16, remove "of a dentist providing dental"

Page 2, line 17, remove "services to the patient"

Page 2, line 21, replace "is equivalent to an in-person examination" with "may be performed in accordance with the standard of care required for an in-person dental examination or evaluation. A dentist may not use telehealth to perform an initial examination or evaluation in circumstances in which the standard of care necessitates an in-person dental examination"

Page 2, line 22, after "An" insert "appropriate telehealth examination or evaluation may include an"

Page 2, line 22, replace "or" with "in conjunction with"

Page 2, line 23, replace "for" with "or"

Page 2, line 23, remove "and use of peripherals"

Page 2, line 24, replace "deemed necessary in a like" with "required during an"

Page 2, line 24, remove "meets this"

Page 2, line 25, replace "standard, as does" with "or"

Page 2, line 26, after "intervening" insert "dental"

Page 2, line 26, after the second "the" insert "dental health care"

Page 2, line 27, after "dentist" insert "during a live, two-way telehealth encounter"

Page 2, line 30, after "b." insert "The use of telehealth does not expand the scope of practice for a dental health care provider, and may not be used to circumvent the licensure requirements established for dental health care providers in this state."

- c. A dentist who practices telehealth in this state must have adequate knowledge of the availability and location of local dentists and dental health care providers to provide followup care to a patient following a dental telehealth encounter, including emergent and acute care facilities, in order to enable a patient to receive followup care.

Page 2, line 30, replace "acceptable" with "appropriate"

Page 3, line 1, after "the" insert "treating"

Page 3, line 2, replace "a provider" with "another dentist licensed by the board"

Page 3, line 2, after the first "the" insert "treating"

Page 3, line 2, after the second "the" insert "treating"

Page 3, line 3, remove "In certain types of telehealth utilizing asynchronous"

Page 3, remove lines 4 and 5

Page 3, line 8, after "dental" insert "health care"

Page 3, line 9, remove "may make appropriate referrals of patients not amenable to diagnosis or"

Page 3, remove line 10

Page 3, line 11, replace "emergent care or complementary in-person care" with "practicing telehealth must have procedures for providing in-person services or for the referral of a patient requiring dental services that cannot be provided by telehealth to another dentist who practices in the area of the state and the patient can readily access"

Page 3, replace lines 12 through 23 with:

"**SECTION 6.** A new section to chapter 43-28 of the North Dakota Century Code is created and enacted as follows:

**Prohibition - Waivers.**

A dentist practicing dentistry may not require a patient to sign a form or statement waiving the patient's right to file a complaint against the dentist with an appropriate state entity or shielding the dentist from liability for injury resulting from a dental encounter.

**SECTION 7. APPLICATION.** Notwithstanding section 43-28-03, on the effective date of this Act, the term of every member of the state board of dental examiners expires. In making the new appointments, the governor shall appoint the members of the board for staggered terms so no more than two members' terms expire each year. A member appointed under this section may not serve more than two full five-year terms but may serve more than ten years.

**SECTION 8. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly



**REPORT OF STANDING COMMITTEE**

**HB 1151: Human Services Committee (Sen. Lee, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1151 was placed on the Sixth order on the calendar.

Page 1, line 2, remove the second "and"

Page 1, line 3, replace "section" with "sections"

Page 1, line 3, after "43-28-01" insert ", 43-28-03, and 43-28-04, and subsection 5 of section 43-28-06"

Page 1, line 3, after the second "the" insert "membership and duties of the state board of dental examiners and the"

Page 1, line 3, after "telehealth" insert "; to provide for application; and to declare an emergency"

Page 2, after line 4, insert:

**"SECTION 2. 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~~six dentist members, at least one of whom is a board-eligible or board-certified oral and maxillofacial surgeon; one dental hygienist member; ~~one dental assistant member;~~ and one independent consumer member. Appointment to the board is for a term of five years, with terms of office arranged so ~~that one term expires~~no more than 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.~~ Each member of the board shall hold office until a successor is appointed and qualified. ~~Persons~~An individual appointed to the board ~~shall qualify~~qualifies 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 3. 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 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 practicing as a registered dental assistant and has been so practicing in this state for at least five years immediately preceding the dental assistant's appointment.
4. An individual may not be appointed as the independent 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 or financial relationship with the dental profession; and
  - c. Is not a dentist, a dental hygienist, a dental assistant, a physician, a nurse, or the spouse of an individual engaged in any of those occupations.
- 4-5. The dental hygienist, dental assistant, and independent consumer member of the board shall exercise full voting privileges in all areas except that the dental hygienist may not participate in the clinical examination of dentists for licensure and the dental assistant and independent consumer member may not participate in the clinical examination of dentists or hygienists for licensure.

**SECTION 4. AMENDMENT.** Subsection 5 of section 43-28-06 of the North Dakota Century Code is amended and reenacted as follows:

5. Employ and compensate an executive director, who must be an attorney or a dentist, attorneys, investigative staff, and clerical assistants and may perform any other duties imposed upon the board by this chapter."

Page 2, line 13, remove "practicing telehealth shall establish a bona fide relationship with a patient"

Page 2, line 14, replace "before the diagnosis or treatment of the patient." with "may not practice telehealth unless a bona fide dentist-patient relationship is established in person or through telehealth."

Page 2, line 15, replace "and ensure" with "to"

Page 2, line 16, remove "has the ability to verify."

Page 2, line 16, after the second "the" insert "dentist's"

Page 2, line 16, after "identity" insert ", physical location, contact information."

Page 2, line 16, remove "of a dentist providing dental"

Page 2, line 17, remove "services to the patient"

Page 2, line 21, replace "is equivalent to an in-person examination" with "may be performed in accordance with the standard of care required for an in-person dental examination or evaluation. A dentist may not use telehealth to perform an initial examination or evaluation in circumstances in which the standard of care necessitates an in-person dental examination"

Page 2, line 22, after "An" insert "appropriate telehealth examination or evaluation may include an"

Page 2, line 22, replace "or" with "in conjunction with"

Page 2, line 23, replace "for" with "or"

Page 2, line 23, remove "and use of peripherals"

Page 2, line 24, replace "deemed necessary in a like" with "required during an"

Page 2, line 24, remove "meets this"

Page 2, line 25, replace "standard, as does" with "or"

Page 2, line 26, after "intervening" insert "dental"

Page 2, line 26, after the second "the" insert "dental health care"

Page 2, line 27, after "dentist" insert "during a live, two-way telehealth encounter"

Page 2, line 30, after "b." insert "The use of telehealth does not expand the scope of practice for a dental health care provider, and may not be used to circumvent the licensure requirements established for dental health care providers in this state."

- c. A dentist who practices telehealth in this state must have adequate knowledge of the availability and location of local dentists and dental health care providers to provide followup care to a patient following a dental telehealth encounter, including emergent and acute care facilities, in order to enable a patient to receive followup care.

Page 2, line 30, replace "acceptable" with "appropriate"

Page 3, line 1, after "the" insert "treating"

Page 3, line 2, replace "a provider" with "another dentist licensed by the board"

Page 3, line 2, after the first "the" insert "treating"

Page 3, line 2, after the second "the" insert "treating"

Page 3, line 3, remove "In certain types of telehealth utilizing asynchronous"

Page 3, remove lines 4 and 5

Page 3, line 8, after "dental" insert "health care"

Page 3, line 9, remove "may make appropriate referrals of patients not amenable to diagnosis or"

Page 3, remove line 10

Page 3, line 11, replace "emergent care or complementary in-person care" with "practicing telehealth must have procedures for providing in-person services or for the referral of a patient requiring dental services that cannot be provided by telehealth to another dentist who practices in the area of the state and the patient can readily access"

Page 3, replace lines 12 through 23 with:

**"SECTION 6.** A new section to chapter 43-28 of the North Dakota Century Code is created and enacted as follows:

**Prohibition - Waivers.**

A dentist practicing dentistry may not require a patient to sign a form or statement waiving the patient's right to file a complaint against the dentist with an appropriate state entity or shielding the dentist from liability for injury resulting from a dental encounter.

**SECTION 7. APPLICATION.** Notwithstanding section 43-28-03, on the effective date of this Act, the term of every member of the state board of dental examiners expires. In making the new appointments, the governor shall appoint the members of the board for staggered terms so no more than two members' terms expire each year. A member appointed under this section may not serve more than two full five-year terms but may serve more than ten years.

**SECTION 8. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly

21.0623.01005

Sixty-seventh  
Legislative Assembly  
of North Dakota

## HOUSE BILL NO. 1151

C.W.  
4/3/23/21

Introduced by

Representatives Devlin, Rohr, M. Ruby, Weisz

Senators Lee, K. Roers

1 A BILL for an Act to create and enact two new sections to chapter 43-28 of the North Dakota  
2 Century Code, relating to telehealth and the practice of dentistry; ~~and~~ to amend and reenact  
3 ~~section~~sections 43-28-01, 43-28-03, and 43-28-04, and subsection 5 of section 43-28-06 of the  
4 North Dakota Century Code, relating to the membership and duties of the state board of dental  
5 examiners and the definition of telehealth; to provide for application; and to declare an  
6 emergency.

## 7 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

8 **SECTION 1. AMENDMENT.** Section 43-28-01 of the North Dakota Century Code is  
9 amended and reenacted as follows:

10 **43-28-01. Definitions.**

11 As used in this chapter and chapter 43-20, unless the context otherwise requires:

- 12 1. "Accredited dental school" means a dental school, college, or university accredited by  
13 the commission on dental accreditation of the American dental association or its  
14 successor.
- 15 2. "Advertising" means to invite the attention of or give notice to the public, by any  
16 means, medium, or manner whatsoever of any fact, information, or data pertaining to  
17 or being conducive of the practice of dentistry in this state.
- 18 3. "Board" means the state board of dental examiners.
- 19 4. "Certificate of registration" means a written statement of the board declaring that a  
20 licensed dentist has paid the biennial registration fee required by this chapter.
- 21 5. "Dentist" means an individual who has a license to practice in this state and who holds  
22 a valid biennial certificate of registration.
- 23 6. "License" means the right, authority, or permission granted by the board to practice  
24 dentistry in this state.



7. "Practice of dentistry" means examination, diagnosis, treatment, repair, administration of local or general anesthetics, prescriptions, or surgery of or for any disease, disorder, deficiency, deformity, discoloration, condition, lesion, injury, or pain of the human oral cavity, teeth, gingivae, and soft tissues, and the diagnosis, surgical, and adjunctive treatment of the diseases, injuries, and defects of the upper and lower human jaw and associated structures.

8. "Telehealth" has the same meaning as in section 26.1-36-09.15.

**SECTION 2. 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~~six dentist members, at least one of whom is a board-eligible or board-certified oral and maxillofacial surgeon; ~~one dental assistant member~~; and one independent consumer member. Appointment to the board is for a term of five years, with terms of office arranged so ~~that one term expires~~no more than 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.~~ Each member of the board shall hold office until a successor is appointed and qualified. ~~Persons~~An individual appointed to the board ~~shall qualify~~qualifies 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 3. 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:



- 1 a. Is a dentist licensed and registered under this chapter; and
- 2 b. Is actively engaged in the practice of dentistry and has been so engaged in this
- 3 state for at least five years immediately preceding the appointment.
- 4 2. An individual may not be appointed as the dental hygienist member of the board
- 5 unless that individual:
- 6 a. Is a licensed and registered dental hygienist in accordance with chapter 43-20;
- 7 and
- 8 b. Is actively engaged in the practice of dental hygiene and has been so engaged in
- 9 this state for at least five years immediately preceding the dental hygienist's
- 10 appointment.
- 11 3. An individual may not be appointed as the dental assistant member of the board
- 12 unless that individual:
- 13 a. Is a registered dental assistant in accordance with chapter 43-20; and
- 14 b. Is actively practicing as a registered dental assistant and has been so practicing
- 15 in this state for at least five years immediately preceding the dental assistant's
- 16 appointment.
- 17 4. An individual may not be appointed as the independent consumer member of the
- 18 board unless that individual:
- 19 a. Has been a resident of North Dakota for five years immediately preceding
- 20 appointment;
- 21 b. Has no personal ~~or~~ family or financial relationship with the dental profession;
- 22 and
- 23 c. Is not a dentist, a dental hygienist, a dental assistant, a physician, a nurse, or the
- 24 spouse of an individual engaged in any of those occupations.
- 25 ~~4-5.~~ The dental hygienist, dental assistant, and independent consumer member of the
- 26 board shall exercise full voting privileges in all areas except that the dental hygienist
- 27 may not participate in the clinical examination of dentists for licensure and the dental
- 28 assistant and independent consumer member may not participate in the clinical
- 29 examination of dentists or hygienists for licensure.

30 **SECTION 4. AMENDMENT.** Subsection 5 of section 43-28-06 of the North Dakota Century  
31 Code is amended and reenacted as follows:



- 1       5.   Employ and compensate an executive director, who must be an attorney or a dentist,  
2           attorneys, investigative staff, and clerical assistants and may perform any other duties  
3           imposed upon the board by this chapter.

4       **SECTION 5.** A new section to chapter 43-28 of the North Dakota Century Code is created  
5   and enacted as follows:

6       **Standard of care and professional ethics - Telehealth.**

7       A dentist is held to the same standard of care and ethical standards, whether practicing  
8   traditional in-person dentistry or telehealth. The following apply in the context of telehealth:

- 9       1.   Professional ethical standards require a dentist to practice only in areas in which the  
10       dentist has demonstrated competence, based on the dentist's training, ability, and  
11       experience.
- 12       2.   A dentist ~~practicing telehealth shall establish a bona fide relationship with a patient~~  
13       ~~before the diagnosis or treatment of the patient.~~ may not practice telehealth unless a  
14       bona fide dentist-patient relationship is established in person or through telehealth. A  
15       dentist practicing telehealth shall verify the identity of the patient seeking care and  
16       shall disclose ~~and ensure~~ to the patient ~~has the ability to verify~~ the dentist's identity,  
17       physical location, contact information, and licensure status ~~of a dentist providing dental~~  
18       ~~services to the patient.~~
- 19       3.   Before a dentist initially diagnoses or treats a patient for a specific illness, disease, or  
20       condition, the dentist shall perform an examination or evaluation. A dentist may  
21       perform an examination or evaluation entirely through telehealth if the examination or  
22       evaluation ~~is equivalent to an in-person examination~~ may be performed in accordance  
23       with the standard of care required for an in-person dental examination or evaluation. A  
24       dentist may not use telehealth to perform an initial examination or evaluation in  
25       circumstances in which the standard of care necessitates an in-person dental  
26       examination.
- 27       a.   An appropriate telehealth examination or evaluation may include an examination  
28       utilizing secure videoconferencing ~~or~~ in conjunction with store-and-forward  
29       technology ~~for~~ or appropriate diagnostic testing ~~and use of peripherals~~ that would  
30       be ~~deemed necessary in a like~~ required during an in-person examination or  
31       evaluation ~~meets this standard, as does~~ or an examination conducted with an

1 appropriately licensed intervening dental health care provider, practicing within  
2 the scope of the dental health care provider's profession, providing necessary  
3 physical findings to the dentist during a live, two-way telehealth encounter. An  
4 examination or evaluation consisting only of a static online questionnaire or an  
5 audio conversation does not meet the standard of care.

6 b. The use of telehealth does not expand the scope of practice for a dental health  
7 care provider, and may not be used to circumvent the licensure requirements  
8 established for dental health care providers in this state.

9 c. A dentist who practices telehealth in this state must have adequate knowledge of  
10 the availability and location of local dentists and dental health care providers to  
11 provide followup care to a patient following a dental telehealth encounter,  
12 including emergent and acute care facilities, in order to enable a patient to  
13 receive followup care. Once a dentist conducts an acceptableappropriate  
14 examination or evaluation, whether in-person or by telehealth, and establishes a  
15 patient-dentist relationship, subsequent followup care may be provided as  
16 deemed appropriate by the treating dentist, or by a-provideranother dentist  
17 licensed by the board designated by the treating dentist to act temporarily in the  
18 treating dentist's absence. In certain types of telehealth utilizing asynchronous-  
19 store-and-forward technology or electronic monitoring, it is not medically-  
20 necessary for an independent examination of the patient to be performed.

21 4. A dentist practicing telehealth is subject to all North Dakota laws governing the  
22 adequacy of dental records and the provision of dental records to the patient and other  
23 dental health care providers treating the patient.

24 5. A dentist may make appropriate referrals of patients not amenable to diagnosis or-  
25 complete treatment through a telehealth encounter, including a patient in need of-  
26 emergent care or complementary in-person carepracticing telehealth must have  
27 procedures for providing in-person services or for the referral of a patient requiring  
28 dental services that cannot be provided by telehealth to another dentist who practices  
29 in the area of the state and the patient can readily access.

30 ~~SECTION 3. A new section to chapter 43-28 of the North Dakota Century Code is created~~  
31 ~~and enacted as follows:~~



~~**Prescribing -- Controlled substances.**~~

- ~~1. A dentist who has performed a telehealth examination or evaluation meeting the requirements of this chapter may prescribe medications according to the dentist's professional discretion and judgment. Opioids may be prescribed through telehealth only if prescribed to a patient in a hospital or long-term care facility. Opioids may not be prescribed through a telehealth encounter for any other purpose.~~
- ~~2. Pursuant to this chapter, a dentist who prescribes a controlled substance, as defined by state law, shall comply with all state and federal laws regarding the prescribing of a controlled substance, and shall participate in the North Dakota prescription drug monitoring program.~~

**SECTION 6.** A new section to chapter 43-28 of the North Dakota Century Code is created and enacted as follows:

**Prohibition - Waivers.**

A dentist practicing dentistry may not require a patient to sign a form or statement waiving the patient's right to file a complaint against the dentist with an appropriate state entity or shielding the dentist from liability for injury resulting from a dental encounter.

**SECTION 7. APPLICATION.** Notwithstanding section 43-28-03, on the effective date of this Act, the term of every member of the state board of dental examiners expires. In making the new appointments, the governor shall appoint the members of the board for staggered terms so no more than two members' terms expire each year. A member appointed under this section may not serve more than two full five-year terms but may serve more than ten years.

**SECTION 8. EMERGENCY.** This Act is declared to be an emergency measure.

March 23, 2021

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1151

Page 1, line 2, remove the second "and"

Page 1, line 3, replace "section" with "sections"

Page 1, line 3, after "43-28-01" insert ", 43-28-03, and 43-28-04, and subsection 5 of section 43-28-06"

Page 1, line 3, after the second "the" insert "membership and duties of the state board of dental examiners and the"

Page 1, line 3, after "telehealth" insert "; to provide for application; and to declare an emergency"

Page 2, after line 4, insert:

**"SECTION 2. AMENDMENT.** Section 43-28-03 of the North Dakota Century Code is amended and reenacted as follows:

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The state board of dental examiners consists of ~~seven~~nine members appointed by the governor. The membership of the board must include ~~five~~six dentist members, at least one of whom is a board-eligible or board-certified oral and maxillofacial surgeon; ~~one dental hygienist member;~~ one dental assistant member; and one independent consumer member. Appointment to the board is for a term of five years, with terms of office arranged so that ~~one term expires no more than 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.~~ Each member of the board shall hold office until a successor is appointed and qualified. ~~Persons~~An individual appointed to the board ~~shall qualify~~qualifies 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 3. 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 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 practicing as a registered dental assistant and has been so practicing in this state for at least five years immediately preceding the dental assistant's appointment.
- 4. An individual may not be appointed as the independent 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 or financial relationship with the dental profession; and
  - c. Is not a dentist, a dental hygienist, a dental assistant, a physician, a nurse, or the spouse of an individual engaged in any of those occupations.
- 4.5. The dental hygienist, dental assistant, and independent consumer member of the board shall exercise full voting privileges in all areas except that the dental hygienist may not participate in the clinical examination of dentists for licensure and the dental assistant and independent consumer member may not participate in the clinical examination of dentists or hygienists for licensure.

**SECTION 4. AMENDMENT.** Subsection 5 of section 43-28-06 of the North Dakota Century Code is amended and reenacted as follows:

- 5. Employ and compensate an executive director, who must be an attorney or a dentist, attorneys, investigative staff, and clerical assistants and may perform any other duties imposed upon the board by this chapter."

Page 2, line 13, remove "practicing telehealth shall establish a bona fide relationship with a patient"

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Page 2, line 17, remove "services to the patient"

Page 2, line 21, replace "is equivalent to an in-person examination" with "may be performed in accordance with the standard of care required for an in-person dental examination or evaluation. A dentist may not use telehealth to perform an initial examination or evaluation in circumstances in which the standard of care necessitates an in-person dental examination"

Page 2, line 22, after "An" insert "appropriate telehealth examination or evaluation may include an"

Page 2, line 22, replace "or" with "in conjunction with"

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Page 2, line 26, after the second "the" insert "dental health care"

Page 2, line 27, after "dentist" insert "during a live, two-way telehealth encounter"

Page 2, line 30, after "b." insert "The use of telehealth does not expand the scope of practice for a dental health care provider, and may not be used to circumvent the licensure requirements established for dental health care providers in this state."

- c. A dentist who practices telehealth in this state must have adequate knowledge of the availability and location of local dentists and dental health care providers to provide followup care to a patient following a dental telehealth encounter, including emergent and acute care facilities, in order to enable a patient to receive followup care.

Page 2, line 30, replace "acceptable" with "appropriate"

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Page 3, line 2, replace "a provider" with "another dentist licensed by the board"

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Page 3, replace lines 12 through 23 with:

**"SECTION 6.** A new section to chapter 43-28 of the North Dakota Century Code is created and enacted as follows:

**Prohibition - Waivers.**

A dentist practicing dentistry may not require a patient to sign a form or statement waiving the patient's right to file a complaint against the dentist with an appropriate state entity or shielding the dentist from liability for injury resulting from a dental encounter.

**SECTION 7. APPLICATION.** Notwithstanding section 43-28-03, on the effective date of this Act, the term of every member of the state board of dental examiners expires. In making the new appointments, the governor shall appoint the members of the board for staggered terms so no more than two members' terms expire each year. A member appointed under this section may not serve more than two full five-year terms but may serve more than ten years.

**SECTION 8. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly

# 2021 SENATE STANDING COMMITTEE MINUTES

## Human Services Committee Sakakawea Room, State Capitol

HB 1151  
3/30/2021 AM

A BILL for an Act to create and enact two new sections to chapter 43-28 of the North Dakota Century Code, relating to telehealth and the practice of dentistry; and to amend and reenact section 43-28-01 of the North Dakota Century Code, relating to the definition of telehealth.

**Madam Chair Lee** opened the hearing on HB 1151 at 11:06 a.m. Members present: Lee, K. Roers, Hogan, Anderson, Clemens O. Larsen.

### Discussion Topics:

- 21.0623.01005 amendment
- Administrative rules of the ND Dental Board of Examiners
- Organization of licensing boards
- Registered dental assistant's educational requirements
- ND Dental Board of Examiners member diversity
- Emergency clause
- ND Dental Board of Examiners

**Senator Anderson** moves to **RECONSIDER COMMITTEE ACTION**.  
**Senator Hogan** seconded.

Senators	Vote
Senator Judy Lee	N
Senator Kristin Roers	Y
Senator Howard C. Anderson, Jr.	Y
Senator David A. Clemens	Y
Senator Kathy Hogan	Y
Senator Oley Larsen	Y

The motion passed 5-1-0

**[11:11] Senator Judy Lee, District 13.** Provided the committee with an overview of Section 5 of HB 1151 with Senate Amendments 21.0623.02000 (testimony #11059).

**[11:16] Senator Howard Anderson, District 8.** Provided the committee with clarification on Section 5 of HB 1151 with Senate Amendments 21.0623.02000.

**[11:22] Levi Andrist, GA Group PC, Smile Direct Club.** Provided the committee with an in favor position on Section 5 of HB 1151 with Senate Amendments 21.0623.02000.

**[11:24] William Sherwin, Executive Director, ND Dental Association.** Provided the committee with an in favor position on Section 2 of HB 1151 with Senate Amendments 21.0623.02000.

**[11:27] Senator Judy Lee, District 13.** Provided the committee with an overview of Section 6 of HB 1151 with Senate Amendments 21.0623.02000.

**[11:29] Dr. Dennis Sommers, Retired Dentist.** Provided the committee with an in favor position on Section 6 of HB 1151 with Senate Amendments 21.0623.02000.

**[11:30] Levi Andrist, GA Group, Smile Direct Club.** Provided the committee with an in favor position on Section 6 of HB 1151 with Senate Amendments 21.0623.02000.

**[11:30] William Sherwin, Executive Director, ND Dental Association.** Provided the committee with an in favor position on Section 6 of HB 1151 with Senate Amendments 21.0623.02000.

**[11:32] Senator Howard Anderson, District 8.** Provided the committee with an overview of Section 2 of HB 1151 with Senate Amendments 21.0623.02000.

**[11:40] Representative Bill Devlin, District 23.** Provided the committee with an in favor position on Section 2 of HB 1151 with Senate Amendments 21.0623.02000.

**[11:41] William Sherwin, Executive Director, ND Dental Association.** Provided the committee with an in favor position on Section 2 of HB 1151 with Senate Amendments 21.0623.02000.

**[11:44] Rita Sommers, Executive Director, ND Board of Dental Examiners.** Provided the committee with an overview on the credentialing/licensing process of dental assistants and scope.

**[12:05] Senator Howard Anderson, District 8.** Provided the committee with an overview of Section 2 of HB 1151 with Senate Amendments 21.0623.02000 and the ND Dental Board of Examiners administrative rule making process.

**[12:08] Senator Howard Anderson, District 8.** Provided the committee with an overview on Section 7 of HB 1151 with Senate Amendments 21.0623.02000.

**[12:09] Representative Bill Devlin, District 23.** Provided the committee with an overview of administrative rules proposed by the ND Dental Board of Examiners.

**[12:20] Senator Judy Lee, District 13.** Provided the committee with an e-mail correspondence with Rob St. Aubyn letter in regards to the ND Dental Board of Examiners Open Records/Meetings violations (testimony #10970).

**[12:21] Dennis Sommers, Retired Dentist.** Provided the committee with an overview of dental ethics and provided the committee with testimony #11060 in opposition.

**[12:31] Rita Sommers, Executive Director, ND Dental Board of Examiners.** Provided clarification to the committee on the ND Dental Board of Examiners process of addressing dental associations/practitioners concerns and testimony #11053 in opposition.

**Additional written testimony: (6)**

**Chanel Malone, BS, RDA, LDA, CDA, ND Dental Assistant Association Member.** Written testimony #10957 in favor.

**Senator Judy Lee, District 13.** Written neutral testimony provided from Dental Practitioners, Dental Assistants, Oral and Maxillofacial Surgeons, Dental Hygienists, and the ND Dental Association (testimony #11025, #11024, #11023, #11022, #11021, #10968, #10967, #10964, #10963, and #10961).

**Dr. Alison Fallgatter, President, ND Board of Dental Examiners.** Written testimony #11008 in opposition.

**Dr. Gregory Evanoff, Member, ND Board of Dental Examiners.** Written testimony #11001 in opposition.

**Bev Marsh, RDH BS, Dental Hygienist.** Written testimony #10997 in opposition.

**Madam Chair Lee** closed the hearing on HB 1151 at 12:39 p.m.

*Justin Velez, Committee Clerk*



21.0623.02000

Sixty-seventh  
Legislative Assembly  
of North Dakota

**HOUSE BILL NO. 1151**  
**with Senate Amendments**  
**HOUSE BILL NO. 1151**

Introduced by

Representatives Devlin, Rohr, M. Ruby, Weisz

Senators Lee, K. Roers

1 A BILL for an Act to create and enact two new sections to chapter 43-28 of the North Dakota  
2 Century Code, relating to telehealth and the practice of dentistry; to amend and reenact  
3 sections 43-28-01, 43-28-03, and 43-28-04, and subsection 5 of section 43-28-06 of the North  
4 Dakota Century Code, relating to the membership and duties of the state board of dental  
5 examiners and the definition of telehealth; to provide for application; and to declare an  
6 emergency.

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

8 **SECTION 1. AMENDMENT.** Section 43-28-01 of the North Dakota Century Code is  
9 amended and reenacted as follows:

10 **43-28-01. Definitions.**

11 As used in this chapter and chapter 43-20, unless the context otherwise requires:

- 12 1. "Accredited dental school" means a dental school, college, or university accredited by  
13 the commission on dental accreditation of the American dental association or its  
14 successor.
- 15 2. "Advertising" means to invite the attention of or give notice to the public, by any  
16 means, medium, or manner whatsoever of any fact, information, or data pertaining to  
17 or being conducive of the practice of dentistry in this state.
- 18 3. "Board" means the state board of dental examiners.
- 19 4. "Certificate of registration" means a written statement of the board declaring that a  
20 licensed dentist has paid the biennial registration fee required by this chapter.
- 21 5. "Dentist" means an individual who has a license to practice in this state and who holds  
22 a valid biennial certificate of registration.
- 23 6. "License" means the right, authority, or permission granted by the board to practice  
24 dentistry in this state.

7. "Practice of dentistry" means examination, diagnosis, treatment, repair, administration of local or general anesthetics, prescriptions, or surgery of or for any disease, disorder, deficiency, deformity, discoloration, condition, lesion, injury, or pain of the human oral cavity, teeth, gingivae, and soft tissues, and the diagnosis, surgical, and adjunctive treatment of the diseases, injuries, and defects of the upper and lower human jaw and associated structures.

8. "Telehealth" has the same meaning as in section 26.1-36-09.15.

**SECTION 2. 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~~six dentist members, at least one of whom is a board-eligible or board-certified oral and maxillofacial surgeon; one dental hygienist member; one dental assistant member; and one independent consumer member. Appointment to the board is for a term of five years, with terms of office arranged so ~~that one term expires no more than 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. Each member of the board shall hold office until a successor is appointed and qualified. Persons~~An individual appointed to the board ~~shall qualify~~qualifies 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 3. 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:

- 1           a.    Is a dentist licensed and registered under this chapter; and
- 2           b.    Is actively engaged in the practice of dentistry and has been so engaged in this
- 3                state for at least five years immediately preceding the appointment.
- 4        2.    An individual may not be appointed as the dental hygienist member of the board
- 5                unless that individual:
- 6           a.    Is a licensed and registered dental hygienist in accordance with chapter 43-20;
- 7                and
- 8           b.    Is actively engaged in the practice of dental hygiene and has been so engaged in
- 9                this state for at least five years immediately preceding the dental hygienist's
- 10              appointment.
- 11        3.    An individual may not be appointed as the dental assistant member of the board
- 12                unless that individual:
- 13           a.    Is a registered dental assistant in accordance with chapter 43-20; and
- 14           b.    Is actively practicing as a registered dental assistant and has been so practicing
- 15                in this state for at least five years immediately preceding the dental assistant's
- 16                appointment.
- 17        4.    An individual may not be appointed as the independent consumer member of the
- 18                board unless that individual:
- 19           a.    Has been a resident of North Dakota for five years immediately preceding
- 20                appointment;
- 21           b.    Has no personal or, family, or financial relationship with the dental profession;
- 22                and
- 23           c.    Is not a dentist, a dental hygienist, a dental assistant, a physician, a nurse, or the
- 24                spouse of an individual engaged in any of those occupations.
- 25        ~~4.5.~~   The dental hygienist, dental assistant, and independent consumer member of the
- 26                board shall exercise full voting privileges in all areas except that the dental hygienist
- 27                may not participate in the clinical examination of dentists for licensure and the dental
- 28                assistant and independent consumer member may not participate in the clinical
- 29                examination of dentists or hygienists for licensure.

30        **SECTION 4. AMENDMENT.** Subsection 5 of section 43-28-06 of the North Dakota Century  
31        Code is amended and reenacted as follows:

- 1        5.    Employ and compensate an executive director, who must be an attorney or a dentist,  
2            attorneys, investigative staff, and clerical assistants and may perform any other duties  
3            imposed upon the board by this chapter.

4        **SECTION 5.** A new section to chapter 43-28 of the North Dakota Century Code is created  
5 and enacted as follows:

6        **Standard of care and professional ethics - Telehealth.**

7        A dentist is held to the same standard of care and ethical standards, whether practicing  
8 traditional in-person dentistry or telehealth. The following apply in the context of telehealth:

- 9        1.    Professional ethical standards require a dentist to practice only in areas in which the  
10           dentist has demonstrated competence, based on the dentist's training, ability, and  
11           experience.
- 12        2.    A dentist may not practice telehealth unless a bona fide dentist-patient relationship is  
13           established in person or through telehealth. A dentist practicing telehealth shall verify  
14           the identity of the patient seeking care and shall disclose to the patient the dentist's  
15           identity, physical location, contact information, and licensure status.
- 16        3.    Before a dentist initially diagnoses or treats a patient for a specific illness, disease, or  
17           condition, the dentist shall perform an examination or evaluation. A dentist may  
18           perform an examination or evaluation entirely through telehealth if the examination or  
19           evaluation may be performed in accordance with the standard of care required for an  
20           in-person dental examination or evaluation. A dentist may not use telehealth to  
21           perform an initial examination or evaluation in circumstances in which the standard of  
22           care necessitates an in-person dental examination.
- 23        a.    An appropriate telehealth examination or evaluation may include an examination  
24           utilizing secure videoconferencing in conjunction with store-and-forward  
25           technology or appropriate diagnostic testing that would be required during an  
26           in-person examination or evaluation or an examination conducted with an  
27           appropriately licensed intervening dental health care provider, practicing within  
28           the scope of the dental health care provider's profession, providing necessary  
29           physical findings to the dentist during a live, two-way telehealth encounter. An  
30           examination or evaluation consisting only of a static online questionnaire or an  
31           audio conversation does not meet the standard of care.

b. The use of telehealth does not expand the scope of practice for a dental health care provider, and may not be used to circumvent the licensure requirements established for dental health care providers in this state.

c. A dentist who practices telehealth in this state must have adequate knowledge of the availability and location of local dentists and dental health care providers to provide followup care to a patient following a dental telehealth encounter, including emergent and acute care facilities, in order to enable a patient to receive followup care. Once a dentist conducts an appropriate examination or evaluation, whether in-person or by telehealth, and establishes a patient-dentist relationship, subsequent followup care may be provided as deemed appropriate by the treating dentist, or by another dentist licensed by the board designated by the treating dentist to act temporarily in the treating dentist's absence.

4. A dentist practicing telehealth is subject to all North Dakota laws governing the adequacy of dental records and the provision of dental records to the patient and other dental health care providers treating the patient.

5. A dentist practicing telehealth must have procedures for providing in-person services or for the referral of a patient requiring dental services that cannot be provided by telehealth to another dentist who practices in the area of the state and the patient can readily access.

**SECTION 6.** A new section to chapter 43-28 of the North Dakota Century Code is created and enacted as follows:

**Prohibition - Waivers.**

A dentist practicing dentistry may not require a patient to sign a form or statement waiving the patient's right to file a complaint against the dentist with an appropriate state entity or shielding the dentist from liability for injury resulting from a dental encounter.

**SECTION 7. APPLICATION.** Notwithstanding section 43-28-03, on the effective date of this Act, the term of every member of the state board of dental examiners expires. In making the new appointments, the governor shall appoint the members of the board for staggered terms so no more than two members' terms expire each year. A member appointed under this section may not serve more than two full five-year terms but may serve more than ten years.

**SECTION 8. EMERGENCY.** This Act is declared to be an emergency measure.



I recently became aware of the problems that providers have been having with the ND Board of Dental Examiners (NDBODE). I have recorded issues with that board since early 2014, and these issues seem to be continuing.

The following is a brief summary of some of the issues with that Board:

### **Many Open Records/Meeting Violations**

While I was a registered lobbyist one of my clients was the ND Dental Hygienists Association. This occurred in 2014. They encountered numerous problems with the NDBODE and its executive director regarding meetings, proposed rules, secret meetings, and getting certain documents. After encountering numerous administrative roadblocks, the Association was forced to submit several formal open records requests. After finally getting some records, it was very apparent that the NDBODE was operating in violation of the ND Century Code. Records proved that the Board had at least one secret meeting via private email exchanges. Problems regarding open records and meetings continued to be discovered in 2015. Discussions were had with the Attorney General's Office regarding the numerous Open Records/Meeting Violations. One problem with those existing laws regarding Open Records/Meetings pertained to the "look back" period which prevented action being taken with past issues. Finally an open records request on 2/3/15 to the NDBODE Executive Director resulted in another "stall tactic", where the Association was told that the Executive Director would be address the open record request issue after the Executive Director returned from a 2 week vacation. A complaint was submitted to the AG's Office on 3/15/15. A list of the complaints were submitted to that office on 3/22/15. On 3/23/15, a formal AG Opinion request was submitted by Senate Majority Leader Rich Wardner. After the AG's Office researched the issues, they issued a response on 8/14/15 (Open Record and Meeting Opinion 2015-O-14) saying that the board did violate the Century Code requirements by:

1. The NDSBDE violated the open records law when it failed to produce a signed copy of a contract in the possession of it agent.
2. The NDSBDE violated the open meetings law when it discussed public business by email.

Numerous other violations could not be formally addressed because of existing limitations of the "look back" period before filing a complaint. Records show that the board hired a lobbyist via board action via email versus a public meeting.

Later on, a complaint by Senate Majority Leader Rich Wardner was considered whether this board could hire a lobbyist as a public entity. On 10/29/15, the Attorney General issued an opinion that:

*In conclusion, it is my opinion that a state agency or political subdivision generally may not use public funds to hire a lobbyist unless such authority is specifically provided for by statute. However, it might be possible to hire a lobbyist if the state agency or political subdivision has authority to promote or advocate in specific subject areas. Also, certain home rule counties and cities may hire a lobbyist if authorized by their home rule charter and implemented by ordinance.*

Once again it was determined that the NDBODE exceeded its authority by hiring a lobbyist.

I cannot find my records at this time, but the Association that I represented had to complain to the Administrative Rules Committee that the NDBODE had made an "Arbitrary and Capricious" decision regarding their proposed rules and the Committee agreed to revoke the proposed rules. One Board member was overheard saying that they were appalled by the Committee's actions and wanted to get back at the Administrative Rules Committee members. There was an "arrogant" attitude with the board that failed to realize that this regulatory board was a creature of the state by the state legislature. They felt that they were above the law and could operate as they chose to do.

Of all of the Occupational Regulating Boards that I have observed during my long career as a legislator and as a lobbyist, the NDBODE has been the worst in regards to following the law and performing their ascribed authority.

I have many, many past emails verifying the issues that I have encountered with this regulatory board that I could share if you desire.

March 30, 2021  
Senate Human Services Committee  
HB 1151  
Testimony in opposition.

Chairman Lee and members of the Committee:

I just have a few comments for you this morning.

I have spent a good deal of time trying to figure out the genesis of the statement, "The Dental Board is one of the two most difficult to deal with." I would seem likely that I might have one of the best vantage points from which to see it; but I can't. Whenever I hear this statement, I have asked, "What is the genesis of that? Where does it come from?" No one has an answer with any substance. I would contend it originates from those who are unhappy with Board decisions made at one time or another. We all know of actions taken in Washington D.C. to remove or eliminate those who disagree with what others believe to be right, even when those "others" accomplish assigned tasks appropriately. This bill now appears to have been shaped in Washington's example of not approving of something done right.

I've been told by the North Dakota Dental Association that for ethical reasons, they are neutral on 1151. However, that clearly doesn't appear to be the case. It is **never** ethically wrong to do the best thing for dental patients. Some entities have objected how the Board of dentistry has developed proposed rules. They wrongly accusing the board of shutting them out of the process, every aspect of the process was been done in accordance with procedure established by the Rules Committee. Everyone wishing to have equal opportunity to participate, have had equal opportunity. Because the NDDA failed to heed the opportunity, one person now cries "foul." They claim they deserved an exception to the prescribed process all others have navigated and adhered to because they were wronged by the Board. When you don't don't show up in time to board the plane, don't blame the airline for leaving you for a later flight. There will be another rules opportunity for the Dental Association. I would urge them to be engaged in it next time – as it happens – not after.

It is not unusual for D.C. politicians tack unrelated elements onto well intended legislation for the purpose of implementing unpopular projects or ideas. This bill was intended to be about teledentistry, and it no doubt began with good intentions. Early Senate amendments offered from several sources made it far better then the original. It began to look like something good for the citizens of North Dakota. What happened? My understanding that a definition of a "mule" includes: a good person who carries elicited drugs that can hurt someone. With the last minute amendment totally unrelated to the stated purpose of teledentistry that eviscerates the Board of Dental examiners, HB1151 has also become something good carrying something quite bad for the state of North Dakota. It's a mule.

HB 1151 one deserves a DO NOT PASS recommendation from this Committee.

Thank you,

Dr. Dennis Sommers  
Minot  
Past President North Dakota Dental Association

**Senate Human Services Committee**  
**Wednesday, March 30, 2021 10:30 PM**  
**Sakakawea Room, State Capitol**  
**HB 1151 - Opposition**  
Relating to telehealth and practice of dentistry

Good morning Chairman Lee and members of the Committee. I am Rita Sommers, and I have served as the Executive Director of the North Dakota Board of Dental Examiners (Board) since 2003 and am here to urge you, DO NOT PASS HB 1151.

**43-28-03 related to Members – Appointment and Terms of office.**

The first issue I would like to address is 43-28-03 related to Members – Appointment and Terms of office. The Board has made their opinion known several times that adding a dental assistant would be a welcome addition to the Board. The Board has also specifically avoided amending any element of law with a requirement to name any specific dental specialist to the Board. In addition, given the 2015 decision regarding the North Carolina State Board of Dental Examiners v. Federal Trade Commission, it may be wiser to have two consumer members rather than another dentist market-participant.

Secondly, the ND Century Code does not authorize the Board to license specialists. (Several states do). The Board licenses competent dentists, hygienists and registers dental assistants. Therefore, the Board determined it would be inappropriate to select language singling out one specialty. Dr. Tanabe, an Oral & Maxillofacial Surgeon from Grand Forks, was recently appointed to the Board for a five-year term. It is our hope that Dr. Tanabe, whose valuable contribution was instrumental in the review and recommendations for administrative rules regarding anesthesia and sedation, will have the opportunity to continue to serve on the Board as well.

**Letters submitted to the Senate Committee by the NDDA**

**1. January 7, 2021 – Regarding COVID-19 and dentists administering vaccines:** The Board does not have the legal authority to authorize dentists to administer the vaccine. Doing so would violate state law and could be considered unpromulgated rule making. It would require either a legislative change or an Executive Order from the Governor. I would also note that dentists do not administer any other vaccinations. The Board's legal council advised the Board accordingly. The letter posted as testimony related to HB 1151 on the legislative assembly's web site was addressed at the Board's January 15, 2021 meeting. During the Board's discussion of the matter, Ms. Brunelle, NDDoH nurse, stated there is currently not a distribution problem or shortage of personnel capable of providing the vaccines. This information is reflected in the meeting minutes.

**2. July 2, 2020 – Regarding dentist's scope of practice and COVID-19 testing:** The AAG's opinion regarding COVID testing was that testing is outside the scope of the practice of dentistry and therefore could not be completed by dentists. The dental board COULD NOT authorize COVID testing without conflicting with state law. The practice of dentistry as defined by NDCC 43-28-03, states:



"Practice of dentistry" means examination, diagnosis, treatment, repair, administration of local or general anesthetics, prescriptions, or surgery of or for any disease, disorder, deficiency, deformity, discoloration, condition, lesion, injury, or pain of the human oral cavity, teeth, gingivae, and soft tissues, and the diagnosis, surgical, and adjunctive treatment of the diseases, injuries, and defects of the upper and lower human jaw and associated structures. The issue of whether or not dentists could be permitted to administer COVID vaccinations was addressed at the Board's 9/18/2020 meeting.

**3. May 6, 2020 – Regarding guidelines for dental offices who were/are reopening during the COVID pandemic.**

The Board does not have the statutory authority to simply adopt guidelines without going through the Administrative Rules process. Had the Board adopted guidelines as requested by the North Dakota Dental Association, this would be considered unpromulgated rule making and not prescribed by our legislative authority. Regarding the statement:

*"Practitioners are responsible for the safety of their patients and staff and must operate in a manner consistent with protecting their safety... The Board has the authority to discipline practitioners for willful or negligent disregard for safety."*

The part of this statement, *The Board has the authority to discipline practitioners for willful or negligent disregard for safety* is true. However, if someone were to not follow the safety protocols of the ADA, the Board does not currently have language in law to support anything more than a letter of reprimand, possibly. But, if a licensee did not use PPE or follow the appropriate standards recognized by the CDC or other infection control measures required by the industry, the Board could take action with regard to willful or negligent disregard for safety. The Board's AAG, also the attorney for the Department of Health, recognized that guidelines were continually changing. The concern was that the Board did not have the authority to adopt ADA or CDC guidelines. In addition, what would happen if guidelines would change? Guidelines were constantly changing early during the pandemic. Therefore, it was determined that responsibility lies with practitioners to follow the appropriate guidance from the appropriate entities, which is the CDC and ND Department of Health. The dental board does not have the flexibility in its statute to say "you must x,y,z". Ms Brandner repeated frequently that if dentists were to open their practices, they needed to be aware that what the CDC was saying only provide necessary or emergent care should be provided, which at that time contradicted the ADA statement. None of the members of the Board are infection control experts regarding global pandemics. Those more knowledgeable should provide guidance regarding what the "duration of the COVID-19 pandemic" may require. The Board's website has been continually updated with the latest CDC information for licensees.

**4. June 5, 2020 – The letter addressing dissatisfaction with the E.D. and the Board's legal counsel.**



The letter was sent to Board members only. The Executive Director, the Board's AAG and the Board's hygiene member were excluded from receiving the emailed letter. The letter and how communications are addressed by the Board was discussed at their 6/12/2020 meeting.

There is an inherent conflict between the NDDA and the Board. The Board represents the public; the NDDA represents their membership. In order for the AAG or the Executive Director to act, they must be authorized by the Board. Some matters are authorized. Decisions are not made unilaterally without bringing them to the full Board. The board does not engage in exparte communications. The next meeting of the Board is scheduled to occur in person in Fargo, June 18, 2021.

**As a side note, regarding Administrative Rules: The Board followed all required and legal processes. Everyone had the opportunity to comment as required by law. The NDDA provided the Board with an attachment of changes. The changes were 4 specific provisions. The amendments requested were addressed in an open meeting and the Board accepted three of the four changes. The Board addressed every comment received, including those of the North Dakota Dental Association.**

For these reasons, the NDBDE recommends a DO NOT PASS on HB1151.

I would be happy to answer any questions.

Rita Sommers

Executive Director, North Dakota Board of Dental Examiners.

March 29, 2021

Dear Madam Chair Lee and members of the Senate Human Services Committee,

I am writing to express my support for a dental assistant member on the North Dakota Board of Dental Examiners. Dental Assistants are a very important part of the dental team and should be represented as the dental hygiene profession is.

I am a registered dental assistant in North Dakota and have been in the profession for 13 years. I am also a licensed dental assistant in Minnesota and certified by the Dental Assisting National Board. I serve on the board of the North Dakota Dental Assistants Association and fill the education role as I have been in dental assisting education for the past 7 years.

The profession is progressing, and more duties are being delegated to dental assistants. Representation on the North Dakota Board of Dental Examiners would be fitting to keep members of the professional educated properly on rules and legislation. It is important for dental assistants to have input on the North Dakota Board of Dental Examiners. The North Dakota Dental Assistants Association has been asking for this for years and we are very exciting to get this opportunity. I greatly appreciate your time and consideration on ND House Bill 1151.

Respectfully,

A handwritten signature in black ink, appearing to read 'Chanel Malone' followed by a stylized monogram or initials.

Chanel Malone, BS, RDA, LDA, CDA  
North Dakota Dental Assistant Association Member

2426 Parkview Drive South  
Fargo, ND 58103  
(701)866-3151  
chanelmmalone@gmail.com

**This is NOT an official statement from the NDDA – This is a compilation of comments from Dental Practitioners, Dental Assistants and Dental Hygienists from across the State regarding the proposed regulation changes to the Dental Practice Act**

- General note – it is poorly written/phrased, includes unnecessary cross references and at points is contradictory. Would recommend looking at simpler language – like that adopted by Oregon in 2019.
- Pg. 1, paragraph 5 – Rather than listing out the specific specialties, the definition should read “‘Bona fide specialties’ means those specialties meeting the qualifications set forth in section 20-02-01-01.” This eliminates the need for laundry list specialties, which are already out of date and inconsistent with the requirements of 20-02-01-01.
- Pg. 6, paragraph 2a and 2b – No need for the split subparagraphs. Rephrase to “It shall be false or misleading for a dentist to hold themselves out to the public as a specialist, or any variation of that term, in a practice area unless the dentist meets the criteria of section 3 of this rule.”
- Pg. 6, paragraph 3 should be amended as follows The language currently provided is weak and essentially if a national board of teeth whitening was established and recognized by any other organization, it could be deemed a dental specialty. The following language is based on language adopted in Oregon, which has support of the dental specialty community and has been deemed to be flexible enough to allow for legal protections.

3. A dentist engaged in general practice who wishes to announce the services available in the dentist's practice is permitted to announce the availability of those services as long as the dentist avoids using language that expresses or implies that the dentist is a specialist. If a dentist, other than a specialist, wishes to advertise a limitation of practice, such advertisement must state that the limited practice is being conducted by a general dentist. A dentist who is a specialist may announce the dentist's bona fide specialty provided that the dentist has successfully completed ~~an~~ a qualifying postdoctoral educational program advanced dental education program of at least two years in length accredited by an agency recognized by the U.S. department of education, a post-doctoral residency program of at least two years in length accredited by the Commission on Dental Accreditation or its successor organization, ~~the commission on accreditation of dental and dental auxiliary educational programs,~~ or is a specialist as defined by the National Commission on Recognition of Dental Specialties and Certifying Boards, or its successor organization. ~~of full time study two or more years in length, as specified by the commission on dental accreditation of the American dental association resulting in a master of science degree or certificate from an accredited program or be a diplomate of a nationally recognized certifying board.~~ Such a dentist may announce that the dentist's practice is limited to the special area of dental practice in which the dentist has or wishes to announce. ~~In determining whether an organization is a qualifying specialty board or organization, the Board shall consider the following standards:~~

~~a. Whether the organization requires completion of an educational program with didactic, clinical, and experiential requirements appropriate for the specialty or subspecialty field of dentistry in which the dentist seeks certification, and the collective didactic, clinical and experiential requirements are similar in scope and complexity to a qualifying postdoctoral educational program. Programs that require solely experiential training, continuing education classes, on the job training, or payment to the specialty board shall not constitute a qualifying specialty board or organization;~~

~~b. Whether the organization requires all dentists seeking certification to pass a written or oral examination, or both, that tests the applicant's knowledge and skill in the specialty or subspecialty area of dentistry and includes a psychometric evaluation for validation;~~  
~~c. Whether the organization has written rules on maintenance of certification and requires periodic recertification;~~  
~~d. Whether the organization has written by-laws and a code of ethics to guide the practice of its members;~~  
~~e. Whether the organization has staff to respond to consumer and regulatory inquiries; and~~  
~~f. Whether the organization is recognized by another entity whose primary purpose is to evaluate and assess dental specialty boards and organizations.~~

### **Anesthesia**

- Support elimination of enteral/parenteral sedation terminology and use of “conscious sedation” terminology.
- Pg. 13, paragraph 1a – no other state currently included the Aldrete Score in state statutes or regulations, rather they utilize the ADA or ASA definitions of varying levels of anesthesia. Would propose only using the ASA/ADA definitions rather than this chart. Also, later in the regulation (pg. 26) ASA classification levels are used but not defined in the regulation.
- Pg. 13, paragraphs 1e(1) and 1e(2) – confused by the inclusion of these subparagraphs with the definition of “direct supervision of moderate sedation.” These would appear better served to be included under the definitions of moderate sedation and general anesthesia or under their own section entirely. Note – deep sedation is not included/accounted for in this section, creating a hole in the law.
- Pg. 16, paragraph 1m – would prefer pediatric patient to be defined as 8 years of age or younger.
- Pgs. 15 and 16 – unclear why the need for both definition of “incremental dosing” and “titration.” Believe only one should be used and favor titration. Same with “topical anesthesia” and “transdermal/transmucosal.”
- Pg. 19 – while the 60 hour/20 patient educational threshold is relatively standard for moderate sedation – and included in the ADA’s standard – Please check AAOMS standards as I believe they typically advocate for a higher threshold.
- Pg. 19, paragraph 4c – typo and certification should be patient-specific. Should be corrected to:

c. A dentist utilizing moderate sedation must be maintain ~~currently~~ **current** certification in advanced cardiac life support **if treating adult patients** or pediatric advanced life support **if treating pediatric patients** and **must maintain** cardiopulmonary resuscitation for health professionals.

- Pg. 21, paragraph 5f is repetitive and does not include 4c’s requirement for CPR. Would call to eliminate paragraph 5f and maintain 4c with the above amendment.
- Pg. 19. the grandfathering clause paragraph 4e is common.
- Pg. 20, paragraph 5b – would include language to ensure properly sized equipment, especially when treating pediatric patients.

- Pg. 21, paragraph 6 – numbering/style for b-d is very awkward. Would create new structure as follows:

b. Meet one of the following requirements:

1) Within the three years before submitting the permit application, provide evidence the applicant has successfully completed an advanced education program accredited by the commission on dental accreditation that provides training in deep sedation and general anesthesia and formal training in airway management, and completed a minimum of one year of advanced training in anesthesiology and related academic subjects beyond the undergraduate dental school level in a training program approved by the board; or

2) Be, within the three years before submitting the permit application, a diplomate of the American board of oral and maxillofacial surgeons or eligible for examination by the American board of oral and maxillofacial surgeons, a fellow of the American association of oral and maxillofacial surgeons, a fellow of the American dental society of anesthesiology, a diplomate of the national dental board of anesthesiology, or a diplomate of the American dental board of anesthesiology; or

3) For an applicant who completed the requirements of subsections ~~(2)(a) or (2)(b)~~ b(1) or b(2) more than three years before submitting the permit application, provide ~~the On~~ on a form provided by the Board, a written affidavit affirming that the applicant has administered general anesthesia or deep sedation to a minimum of 25 patients within the year before submitting the permit application or 75 patients within the last five years before submitting the permit application and the following documentation;

(A) A copy of the general anesthesia or deep sedation permit in effect in another jurisdiction or certification of military training in general anesthesia and deep sedation from the applicant's commanding officer; and

(B) On a form provided by the Board, a written affidavit affirming the completion of 32 hours of continuing education pertaining to oral and maxillofacial surgery or general anesthesia and deep sedation taken within three years prior to application.

- Pg. 23, paragraph 7a – Amend as follows and would also include specification about properly sized equipment for pediatric patients. Would also remain consistent in use of “end-tidal carbon dioxide monitor” (in deep sedation/ general anesthesia section) vs. capnography (in moderate sedation section):

a. The dentist's facility must meet the requirements of this chapter and maintain the following ~~properly operating~~ functioning equipment and supplies during the provision or sedation by the permit holder, a physician anesthesiologist, certified registered nurse anesthetist or other qualified sedation provider:

- Pg. 23, paragraph 7e – would again specify the need for ACLS vs. PALS based on patient population. Combine with requirement in paragraph 7g. Note – this section does not specify the number of auxiliary personnel required to be present for deep sedation/general anesthesia.
- Pg. 23, paragraph 8 – would prefer the dentist be required to hold a sedation/anesthesia permit. Could be an access to care issue in a rural state, so the need to at least register with the dental board, run mock codes and have a site evaluation is a reasonable compromise.





- Pg. 24, paragraphs 9a(4)–9a(8) are important but I do not believe should be included under the “site evaluation” section, at least not in the current context.
- Pg. 24, paragraph 9c – this section on qualified dental auxiliaries needs to be updated to reflect revised citations (appears to just be copy/paste of current language). It also only specifies BLS for assistants, yet previous provisions mentioned ACLS and PALS. Given this is an escalation in requirements, the Board should establish a phased in process for ACLS or PALS for assistants.
- Pg. 27, paragraph 9d(1)(iii) specifies that ASA IV and V patients cannot be sedated in the dental office. Believe this is appropriate but wanted to highlight.

#### **Other**

- Pg. 4, paragraph 36 – the Health Insurance Portability and Accountability Act’s abbreviation should be HIPAA not HIPPA.

29 October 2020

TO: Cindy Cullen, North Dakota Board of Dental Examiners

FROM: North Dakota Society of Oral and Maxillofacial Surgeons

To the North Dakota Board of Dental Examiners:

This communication is from the NDSOMS in regards to the Public Hearing scheduled for 30 October 2020 during which proposed changes to the Dental Practice Act will be addressed. Our Society supports the previous communication from the North Dakota Dental Association (attached). While we are certainly appreciative of efforts to update the Dental Practice Act with regards to multiple issues, we feel that the current changes would be better addressed by a task force that includes all interested parties. To that end, we would recommend that the current changes be tabled and such a task force be assembled. There have been many changes nationwide regarding anesthesia and anesthesia assistants, and we believe this presents the Board with a golden opportunity to craft changes that would place North Dakota at the forefront regarding these issues.

Thank you for all of your efforts and your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jonathan R. Gray', with a stylized flourish at the end.

Jonathan R. Gray, D.D.S.  
North Dakota Society of Oral and Maxillofacial Surgeons, Secretary

CC:mvc

Enclosure



Dental Assisting National Board, Inc.  
Measuring Dental Assisting Excellence®



The DALE Foundation®  
Interactive E-Learning for  
Oral Healthcare Professionals

June 10, 2020

Rita Sommers, RDH, MBA, Executive Director  
North Dakota Board of Dental Examiners  
P.O. Box 7246  
Bismarck, ND 58507-7246

Dear Rita:

I hope you and your staff are all well! I am writing on behalf of Dental Assisting National Board (DANB) and the Dental Advancement through Learning and Education Foundation (the DALE Foundation) in support of the collaborative work performed by representatives of North Dakota Dental Assistants Association (NDDAA), North Dakota State College of Science's (NDSCS) dental assisting program (as you know, the only such program in the state that is accredited by the Commission on Dental Accreditation [CODA]), North Dakota Dental Association (NDDA) and North Dakota Dental Foundation (NDDF).

Representatives from NDDAA, NDSCS, NDDA, NDDF, DANB and the DALE Foundation met by conference call a number of times over the past two weeks to discuss the requirements for registration as a Qualified Dental Assistant (QDA) in North Dakota. DANB and the DALE Foundation appreciate the support that the North Dakota Board of Dental Examiners (NDBDE) has demonstrated over many years, recognizing the quality of DANB examinations and DALE Foundation online interactive education. Most recently (in January), the NDBDE passed a rule change to QDA registration requirements, substituting passing DANB's National Entry Level Dental Assistant™ (NELDA®) certification exam in lieu of prior QDA requirements.

In discussions with representatives from the above-named groups, I became aware of concerns that this substitution has the potential of "watering down" the current QDA requirements (*that is, some QDAs would have fewer than the current requirement of 650 hours of clinical instruction*) and potentially making access to QDA registration more restrictive (*e.g., all NELDA pathways require a high school diploma or equivalent and three require formal education*).

There are four eligibility pathways to earning DANB's NELDA certification. In addition to requiring that all NELDA certificants have passed DANB's Radiation Health and Safety (RHS®), Infection Control (ICE®) and Anatomy, Morphology and Physiology (AMP) exams and hold a current DANB-accepted CPR/BLS/ACLS certificate, only one (Pathway IV) requires work experience (*a minimum of 300 and up to 3,000 hours maximum dental assisting work experience, verified by a licensed dentist and accrued over a period of at least two months and no more than three years*). The other three NELDA certification eligibility pathways require completion of different types of formal dental assisting education programs (none of which are CODA-accredited). **Please see the attached NELDA Certification Eligibility document.** Therefore, a NELDA certificant could apply for QDA registration with as few as 0 to between 300 and 3,000 hours of clinical instruction supervised by a licensed dentist.

Representatives of each of these North Dakota organizations and NDSCS support maintaining the current QDA requirement of 650 hours of clinical dental assisting instruction, supervised by

Rita Sommers, RDH, MBA, Executive Director  
North Dakota Board of Dental Examiners  
June 10, 2020  
Page 2

a licensed dentist, as they all believe this level of supervised instruction is of the utmost importance to safe and efficient dental assisting practice.

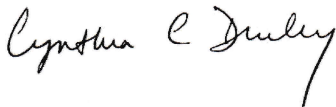
For the reasons outlined above, the NDDAA, NDSCS, NDDA, NDDF, DANB and the DALE Foundation respectfully request that the NDBDE consider the attached QDA requirements proposal, with current requirements in black and recommended edits in red in track changes. This proposal maintains the current requirements of passing DANB's RHS and ICE exams and completing 650 hours of clinical instruction under the supervision of a licensed dentist, while expanding the state's flexibility to attract qualified dental assistants into the state (those who pass DANB's RHS and ICE exams and/or hold NELDA certification) and prepare a greater number of incoming and currently employed dental assistants to qualify for QDA registration.

In addition, because DANB will be able to provide documentation to NDBDE staff (on a monthly or more frequent basis) regarding which eligibility pathway a NELDA certificant came through (and the number of clinical hours individuals who applied via NELDA eligibility pathway IV had earned), adopting this proposal will further streamline the QDA registration process for board staff.

Carla Schneider, NDDAA member, former Chair of DANB's Board of Directors and former President of the DALE Foundation's Board of Trustees will be present at the NDBDE meeting on June 12 to answer any questions on behalf of the groups in support of this QDA proposal.

Rita, you may also reach me at 708-431-9010 with any questions. In addition, should this proposal be adopted by the NDBDE members, I would be happy to assist in drafting language to update the current QDA registration form regarding document requirement.

Sincerely,



Cynthia C. Durley, M.Ed., MBA  
Executive Director

Cc: Sasha Dusek, RDA, NDDAA President  
Marsha Krumm, RDA, CDA, LDA, CDHC, NDDAA Treasurer  
Susan Peters, CDA, RDA, LDA, NDDAA Secretary  
Carla Schneider, CDA, RDA, NDDAA member  
Chanel Malone, B.S., RDA, LDA, CDA, NDDAA Board member, NDSCS Dental Assisting Program Director  
Brent Holman, DDS, Pediatric Dentist, NDDA Clinical Consultant  
Mr. William Sherwin, Executive Director, NDDA  
Mr. Michael Little, Executive Director, NDDF  
Carolyn Breen, Ed.D., CDA, RDA, RDH, Education Consultant to DANB and the DALE Foundation and Chair, Entry Level Dental Assisting Curriculum Task Force

Enclosures:

- DANB NELDA Certification Eligibility Pathways
- Proposed edits to QDA registration requirements





## *North Dakota Dental Assistants Association*

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February 20, 2020

Dear ND Board of Dental Examiners,

The North Dakota Dental Assistants Association, representing the 731 registered and qualified dental assistants in ND, is writing this letter to express our concerns about changes being proposed to the requirements to become a qualified dental assistant in ND. In the future, we would appreciate the opportunity to provide input and discuss any concerns prior to any proposed changes that directly affect dental assistants.

The regulations in ND currently state that in order to apply to be registered as a Qualified Dental Assistant in ND, a person must complete at least 650 hours of dental assistance instruction including on-the-job training, and have successfully completed the DANB Radiation Health and Safety Exam & Infection Control Exam. The NDDAA has become aware that the NDBODE is in favor of dropping the 650 hours of dental assisting training (including on-the-job) and adopting the language of DANB's NELDA pathways. The NDDAA does not support dropping the 650 hours of dental assisting instruction and on-the-job training.

The NELDA (National Entry Level Dental Assistant) pathway through DANB is designed as an entry level pathway to get people interested and involved in dental assisting. NELDA certification through DANB has a renewal limitation of 4 years with the ultimate goal of becoming DANB certified within that 4 year period. Will North Dakota's rules language mirror that renewal limitation and goal of becoming DANB certified?

NELDA pathway #III (high school program) only requires a one semester class in dental assisting. It does not specify the curriculum of that class. They then must pass the RHS exam and the ICE exam. We are very concerned that there will be no hands-on learning. How can you learn to safely take xrays through an online class? How can you learn to be safe and avoid needle sticks, accidentally dropping instruments or syringes on a patient without first learning and practicing in a safe environment? We are in favor of keeping the 650 hours of dental assisting instruction including on-the-job training.



## Concerns:

-No hands-on training before being able to take xrays, pass instruments/syringes & sterilize instruments = risk to the patient and dental team members.

-No in-office training for infection control = risk to patients and dental team members.

-Lowering the bar of qualification does not produce qualified dental assistants. It produces unqualified assistants that will put patients at risk. What will encourage people to attend college & become a professional dental assistant? How will they be encouraged to stay in the profession of dental assisting? Our state has a shortage of dental assistants, shouldn't we try to retain quality dental assistants by promoting dental assisting as a career?

-The quality and skills of the dental assistant will be lower. The duties that a NELDA QDA will be able to perform will be limited. The role of a registered dental assistant is to assist the dentist by taking xrays, performing office infection control, applying sealants, placing temporary crowns and many other duties, so that the dentist can focus on their work. If they never have the opportunity to learn their skills hands-on, we can't rely on them to competently and safely perform their job.

As stated on the North Dakota Board of Dental Examiners home page:

“The function of ND Board of Dental Examiners is to protect the public's dental health and safety by establishing qualifications for **minimal clinical competency**, to grant or deny license and registration for dentists, hygienists and dental assistants.”

**Learning** is defined as “the acquisition of knowledge or skills through experience, study or by being taught”. There are no shortcuts to becoming a skilled & competent professional dental assistant.

The NDDAA is **against** removing the clinical hours requirement to become a QDA in ND.

Sincerely,

Sasha Dusek RDA, EFDA  
President of the North Dakota Dental Assistants Association

October 26, 2020

North Dakota State Board of Dental Examiners  
PO Box 7246  
Bismarck, ND 58507

Dear North Dakota State Board of Dental Examiners,

I am writing to express my personal views and frustration about the proposed regulatory changes in Title 20 of the ND Administrative Code.

I would urge the Board to delay the scheduled public hearing on October 30, in the interest of providing adequate time for considered input by all interested and groups and individuals. I have the following questions and concerns:

1. Was adequate notice given of the October 30 meeting according to N.D.C.C. 44-04-20?
2. Given the extensive changes proposed with anesthesia and sedation requirements, what were the evidenced-based sources for the initial draft of the language?
3. Were there adequate attempts to reach out to state sources with professional expertise, such as the ND State Society of Oral and Maxillofacial Surgeons, NDDA, NDDAA, NDDHA, or other organizations in the drafting of the proposed changes?
4. Were Board members adequately engaged early and often in the active discussion of changes after being provided with necessary credible background information?

I would urge the Board to evaluate their process for making changes in administrative rules by improving communication and providing transparency in that process. Thank for your service to the citizens of North Dakota.

Respectfully,

Brent L Holman DDS  
75 Prairiewood Drive  
Fargo, ND 58103

Greetings,

I have reviewed the proposed changes to the dental practice act and would like to suggest the following changes:

Section 20-02-01-01 paragraph 2 top of page 6

In it is the wording referring to specialists "or any variation of that term". I suggest dropping the "or any variation of that term" wording. It is too nebulous and subject to an individual interpretation. I have been through a lawsuit, in which we prevailed, with the Board over an advertising misunderstanding. It cost the Board over \$10,000 in legal fees and our practice an equivalent amount, I have seen how these misunderstandings can happen.

At the top of page 17 in paragraph d it says the dentist must provide "and document" training to the hygienists or registered assistant who are monitoring N2O. The documentation is unnecessary paperwork. There is nothing that says what the documentation entails. With all the HIPPA and OSHA training we must document it just adds to the regulatory burden.

Also on page 17 section f - it talks about a 12 hour class to take to be able to administer N2O. Where is this 12 hour class taken? Is it even available? We shouldn't set up a requirement without it being attainable. In addition, under this section every hygienist and registered assistant who didn't graduate in the last 13 months will need to take the course to administer N2O even though they have already been trained in it. There should be a grandfather-in clause. In addition shouldn't a qualified assistant be able to monitor a patient on N2O if they take the class?

In section 20-02-01-09, on page 32 there are very specific rules on how you are supposed to chart and lay out dental records. This is very much regulatory over reach into how we are supposed to practice. Especially in section 2 c and g. We may see someone only once on an emergency or only for emergencies and how detailed does a dental history need to be? Do we really need to detail each option we offer with prognosis, benefits, and risks of each option? This is a disincentive for giving patients options. The amount of paperwork is onerous and does nothing to improve patient care. Please drop this section as a whole.



Since this is a large rewrite of the dental practice act there are two things I could add;

There is no good entry system for assistants from other states that move to North Dakota who may have worked multiple years in good standing for another practice. If they have say 5 years experience taking radiographs legally at their previous employment they should at least be allowed to be qualified assistants without retaking an examination.

In addition, licensed radiology techs should be allowed to take radiographs while acting as a basic assistant. I have been told by the Board that they can not.

Lastly I would like to see additional outreach from the Board while there are changes being considered to the dental practice act. I really don't think just putting something in the minutes or on the website is enough. This is the largest rewrite of the practice act I have seen in 39 years. I and most of my colleagues did not know of this. In the end it is very important that those governed by the board and pay for its functioning are able to know what is happening in laws that govern them.

Thank you,  
Dr. Bradley King DDS



March 5, 2021

Administrative Rules Committee  
North Dakota State Capitol  
600 E Boulevard Ave  
Bismarck, ND 58505

Re: Request to Void North Dakota Board of Dental Examiners Proposed Rules

Dear Administrative Rules Committee Members:

On behalf of the North Dakota Dental Association(NDDA), North Dakota Dental Hygiene Association(NDDHA) and North Dakota Dental Assistants Association(NDDAA) we would like to thank you and your committee for our ability to provide comment today. We are the three dental professional associations representing the three dental providers, all clinical dental providers, within the state of North Dakota(The Oral Health Community). We are asking the North Dakota Administrative Rules Committee to void the "Proposed Rules" of the North Dakota Board of Dental Examiners(NDBODE) under NDCC § 28-32-18(1)(e. and f.) due to the current rules being "arbitrary and capricious," but further and more importantly for "failure to make a written record of its consideration of written and oral submissions respecting the rule under NDCC § 28-32-11."

The NDDA, NDDHA and NDDAA recognized in our review of the "Proposed Rules" and communicated, along with the input of many of our members prior to and at the October 30, 2020 special meeting for comment, several concerns with the "Proposed Rules." While there were many concerns with the substantive content of the rules, we would also like to address issues with the process, clarification/origination of the proposals and communication with the dental community at large. With regards to the substantive content of the "Proposed Rules," the document has many issues of concern. In some areas, there is a lack of clarity as well as some sections which seem to contradict each other. A number of grammatical errors were also noted.

For rules that will become part of the Dental Practice Act, by which we are regulated, we feel it would be extremely beneficial to address these issues and ensure absolute clarity. Specifically, for those rules resulting in significant changes to the delivery of dental care in our state, the NDDA, NDDHA and NDDAA feel it would be beneficial to have input from the dental professionals who would be most impacted by them.(See Attached Coalition Letter) An example would be regarding rules pertaining to sedation. This is an important issue to many general dentists, and of course to all of the oral surgeons who were not consulted nor allowed comment on this matter.(See Attached OMS Letter) The NDDA submitted, in timely fashion and prior to the meeting, four pages of substantive written content to NDBODE for their review and consideration at their October 30, 2020 special meeting for comment. This submission of a "Compilation of Comments and Complaints from Dental Practitioners, Dental Assistants and Dental Hygienists from across the State regarding proposed regulation changes to the Dental Practice Act"(See Attached Comment Letter) was not reviewed nor discussed at the meeting nor provided written record of in violation of NDCC § 28-32-18(1)(f) "failure to make a written record of its consideration of written and oral submissions respecting the rule under NDCC § 28-32-11."



Further, as part of the rule making process, it would also be helpful (and probably required) to know how these proposed rules came about and what authorities were consulted about them as required under NDCC § 28-32-18(1)(e) requiring the rules to not be “arbitrary and capricious.” The NDDA along with other dental professionals submitted multiple requests (See Attached Coalition Letter and others submitted by NDDA Members) surrounding the origination and intent of the proposed rules changes with no response from NDBODE. Last, since the Dental Practice Act regulates dentists, dental hygienists and dental assistants, we feel it is very important that we know in a timely manner when changes are being considered. Throughout the rule making process there have been multiple issues with meeting notification, publication and timely communication from NDBODE. (See Attached Coalition Letter)

These comments are not intended in any way to be a criticism of the NDBODE, but given the immense importance of the proposed rules, the current lack of clarity, and the fact that this will become a permanent part of the laws governing the practice of dentistry, the NDDA, NDDHA and NDDAA are asking the North Dakota Administrative Rules Committee to void the “Proposed Rules” of the North Dakota Board of Dental Examiners (NDBODE) under NDCC § 28-32-18(1)(e. and f.) due to the current rules being “arbitrary and capricious,” but further and more importantly for “failure to make a written record of its consideration of written and oral submissions respecting the rule under NDCC § 28-32-11.” Due to these statutory violations, these rules should be voided.

Throughout this rule making process the NDDA, NDDHA and NDDAA have recommended and requested that the current amendments be tabled and that a task force be created to draft each of the sections. (See Attached Coalition Letter) Several states, outside entities and the ADA have addressed many of these issues and likely have language that could be shared which would provide the desired clarity. These suggestions and model rules/drafts could be modified to address any specific differences pertaining to practice in North Dakota and reviewed by the legal counsel of the NDBODE. These requests and suggestions were appropriately raised with NDBODE prior, during and throughout the rulemaking public comment period and were unfortunately ignored. (See Attached Coalition Letter)

For these reasons, the NDDA, NDDHA and NDDAA respectfully request the North Dakota Administrative Rules Committee void the “Proposed Rules” and direct NDBODE to compose a task force of qualified, affected and specialized professionals to draft new “Proposed Rules” for a new Administrative Hearing, for approval and adoption by the North Dakota Administrative Rules Committee into North Dakota Administrative Code. Thank you for this opportunity to comment on the proposed rule changes.

Respectfully,

The North Dakota Dental Association  
The North Dakota Dental Hygienists’ Association  
The North Dakota Dental Assistants Association



October 29, 2020

North Dakota Board of Dental Examiners  
PO Box 7246  
Bismarck, ND 58507

North Dakota Board of Dental Examiners,

On behalf of the NDDA, NDDHA and NDDAA we would like to thank you for all the work that you have done to evaluate the Dental Practice Act and to prepare these amendments for consideration. We recognize this is a very intense process and that you are striving to improve the practice of dentistry and the receipt of dental care in the state. We also appreciate the tremendous amount of time that you give in service in your positions on the board. The NDDA, NDDHA and NDDAA board of trustees recognizes that it is generally not our responsibility to take a position on the specific amendments that have been proposed and this is not our intent. However, in our review of the proposals, along with the input of many of our members, a number of concerns have arisen. Generally speaking, the concerns we would like to address pertain more to process and clarity rather than specific content.

Since the Dental Practice Act regulates dentists, dental hygienists and dental assistants, we feel it is very important that we know in a timely manner when changes are being considered. In a day and age when local newspapers and media outlets are used less and less, we strongly believe that simply publishing notice of an Administrative Hearing of such importance in these forums, while technically meeting legal requirements, is inadequate to properly inform stakeholders throughout the state. Our responsibility at the NDDA, NDDAA and NDDHA is to help inform and educate our members and we can be of tremendous assistance to you in providing this communication. If the NDDA, NDDHA and NDDAA receives timely notification of these meetings, we can quickly share this information with all of our membership in a far more reliable manner. Not only is this a benefit to dental professionals, but we believe it is a great benefit to the NDBODE as it can dramatically reduce frustration felt toward the board due to a lack of communication. We want to help them in working with you.

While we are not addressing specific amendments, the document has many issues of concern. In some areas, there is a lack of clarity as well as some sections which seem to contradict each other. A number of grammatical errors are also noted. For amendments that will become part of the Dental Practice Act, by which we are regulated, we feel it would be extremely beneficial to address these issues and ensure absolute clarity. As part of the amendment proposal process, it would also be helpful to know how these proposed amendments came about and what authorities were consulted about them. For those items resulting in significant changes, it would be beneficial to have input from the dental professionals who would be most impacted by them. An example would be regarding rules pertaining to sedation. This is an important issue to many general dentists, and of course to all of the oral surgeons.

We greatly applaud your efforts in updating the Dental Practice Act and these comments are not intended in any way to be a criticism of the board. Given the immense importance of the proposed amendments, the current lack of clarity, and the fact that this will become a permanent part of the laws governing the practice of dentistry, the NDDA, NDDHA and NDDAA recommends that the current

amendments be tabled and that a task force be created to draft each of the sections. Several states and the ADA have addressed many of these issues and

likely have language that could be shared which would provide the desired clarity. These could be modified to address any specific differences pertaining to practice in North Dakota and reviewed by the legal counsel of the NDBODE. Once the draft of proposed amendments has been revised and a new Administrative Hearing has been scheduled, we would request that the NDDA, NDDHA and NDDAA be quickly notified and provided a copy of the proposed amendments. We will in turn communicate this information to our membership so they can evaluate the proposals and provide feedback according to the process that you have already clearly outlined in the notice of this Administrative Hearing.

Respectfully,

The North Dakota Dental Association  
The North Dakota Dental Hygienists' Association  
The North Dakota Dental Assistants Association

June 5, 2020

North Dakota Board of Dental Examiners  
PO Box 7246  
Bismarck, ND 58507

North Dakota Board of Dental Examiners,

As you are all aware, we are practicing in the new “COVID era,” and are now one month into slowly “re-opening” our dental offices. No one could have expected the pandemic our ND citizens, patients, and practitioners have gone through (and continue to go through) as a nation, and in our state. As the ND Dental Association Board of Trustees, we represent over 400 member dentists in our state. We want your NDBODE Board members to know that we respect and stand by your decisions. And we know your seven-member Board is made up of intelligent, respected professionals that have been appointed by our Governor and have been charged with the duties of carrying out board processes, deciding the issues before them, and most importantly protecting the health and safety of the public. As a board, you also have the duty to respond, act or acknowledge any communication or request provided to your board from dentists, dental hygienists, dental assistants or any public member from the state of North Dakota.

Although difficult, in this letter, we hope to bring to your Board’s attention some serious concerns. Our main concern stems from the non-voting members of your Board, specifically the Board staff and legal counsel. While they are important advisors and supportive administrators of the process, there is serious concern about the limitation and subjective distribution of public comment by the NDBODE staff to your board members. Specifically, there have been calls and letters to your Board, that have gone “unnoticed,” “dismissed,” or “misplaced.” These “accidents” or “dismissals” bring concerns with the integrity of your process. It could be thought of as censorship, a lack of transparency or poor communication when these communications are not shared with your full Board.

Members of the public have the right to convey to board staff with the good faith belief that these communications are fairly and honestly distributed to board members for their review and potential comment in a public forum. Board members are not obligated to review or respond to these communications, but it certainly is within the public’s right and expectation to have these distributed to board members.

These issues with the board process have not been just during the ‘COVID crisis’, but they were highlighted during this time. Specifically, due to a lack of transparency, communication and possible ‘censorship’ through the COVID crisis by your Board’s staff, our NDDA leadership and central office staff have received hundreds of calls, emails and texts regarding your meetings, processes, statements, and other board actions. So as not to create any confusion, we have repeatedly navigated these questions and concerns to your NDBODE staff and legal counsel. The NDDA has not, will not, and cannot represent any positions taken by NDBODE. We do however respect your decisions regarding the regulation of the practice of dentistry in our state.



For further examples, at the onset of this crisis, NDDA leadership connected with NDBODE staff and legal counsel to communicate their concern surrounding COVID-19. While NDBODE staff and legal counsel were reluctant to address this unprecedented crisis, we applaud you as a board for your initial leadership and comment at the onset of this crisis. As dentists, dental hygienists, dental assistants, and the public navigated your meeting process, it became clear that board members were not properly informed by board staff and legal counsel on the issues or updated on the developments neither locally nor nationally. This lack of preparedness and organization by board staff and legal counsel lead to cumbersome meetings, disjointed conversations, uninformed decision making, inadequate timelines/responsiveness, rushed/inappropriate statements and most seriously a lack of confidence from the dental community and public.

It would be our hope that you as board members take your appointments and duties seriously when reviewing these communications, while also respecting the autonomy as board appointees in deciding how to address, acknowledge and act on these communications. It is clear though, these decisions to address, acknowledge and act on public communications, is a duty and obligation of all board members and cannot and should not be circumvented and abused by board staff. Our only request is that all communications to your board, whether that be from a dental professional or member of the public, be afforded due process with the seven members as appointed by our Governor.

As a quasi-governmental agency subject to open record and open meeting laws, it should be the spirit and intention of this body to create transparency and clarity in your process. As the regulatory body charged with the protection of public health and safety regarding the practice of dentistry in North Dakota, it should be the spirit and intention of this body to have a process of abiding by clear rules and definitive direction which results in confidence for both dental providers providing dental care and for the public members receiving this dental care. As dental doctors, we take our charge and duty seriously to provide dental care to the citizens of our great state. It is of the utmost importance that these citizens, our patients, not only have confidence in us as providers, but also confidence in our regulatory body charged with protecting their health and safety.

The NDDA and our leadership respects and thanks you for engaging in this process and your guidance not only for our members, but all licensed dental professionals within our state. You as a board have the confidence and support of our leadership and the dental community to properly, clearly and professionally regulate our profession in this state for the well-being of our staff and patients. For all dental providers and most importantly the public of our state, we would respectfully request you address our concerns with your process for the benefit of North Dakota.

Respectfully,

*NDDA Board of Trustees*

Dr. Brad Anderson – NDDA President  
Dr. Jackie Nord – NDDA President-elect  
Dr. Dustin Hollevoet – NDDA Vice President  
Dr. Carrie Orn – NDDA Secretary  
Dr. David Olson – NDDA Immediate Past President  
Dr. Jerry Cook – NDDA Eastern At-Large Trustee  
Dr. Maria Meyer – NDDA Western At-Large Trustee

May 6, 2020

North Dakota Board of Dental Examiners  
Ms. Rita Sommers  
PO Box 7246  
Bismarck, ND 58507

Ms. Sommers,

I am writing to you as Executive Director of the NDDA representing over 400 dentists in the state of North Dakota. I have a few serious questions regarding your most recent 4/28/2020 COVID-19 Statement. I have sincere concerns surrounding the legal interpretations, clinical implications, legality of the statement and enforcement power of NDBODE regarding the statement. I would respectfully request you distribute this communication with my questions to your board members as well as your legal counsel for their interpretation and response at a special meeting.

*"The North Dakota Dental Board ("Board") has received numerous requests for guidelines for the reopening of dental offices. At this time, the Board is unable to provide such guidelines. However, in order to limit the spread of COVID-19 the Board recommends practitioners review information provided by the Centers for Disease Control and Prevention and American Dental Association for the duration of the COVID-19 pandemic. Practitioners are responsible for the safety of their patients and staff and must operate in a manner consistent with protecting their safety. Practitioners with specific questions regarding liability should consult their legal counsel and insurance providers. The Board has the authority to discipline practitioners for willful or negligent disregard for safety."*

My first question pertains to the duration of this statement. In your statement you reference that "practitioners review information... for the duration of the COVID-19 pandemic." What does "duration of the COVID-19 pandemic" mean? Will NDBODE be issuing a statement when the COVID-19 pandemic is over? What metric or guideline will be used, or should we follow to know when the COVID-19 pandemic is over? Some studies have stated that COVID-19 will persist perpetually so should dental practitioners assume that this statement is adopted by NDBODE permanently?

My second set of questions revolve around the phrasing:

**"Practitioners are responsible for the safety of their patients and staff and must operate in a manner consistent with protecting their safety... The Board has the authority to discipline practitioners for willful or negligent disregard for safety."**

Yes, dental practitioners can and will communicate with the NDDA, consultants and legal counsel regarding legal and insurance questions, but this phrasing raises many implications from NDBODE. Does this phrasing imply that dentists "must" follow CDC and ADA recommendations? Other outside recommendations? What if they conflict? And since they do conflict, can dentists be penalized by NDBODE for following one over the other? More importantly, does NDBODE have the power/authority to "enforce" heightened health and safety standards? Can NDBODE take punitive action against dentists not following a set of "recommendations?" Could punitive action taken by NDBODE enforcing other standards create other liabilities and legal circumstances?

To make such a statement could potentially give standing/grounds to any dental professional to assert it is NDBODE's position that these "recommendations" "must" be followed. Most standards/requirements set a floor that all practitioners/sites need to reach with the intention of going above and beyond, but I do not believe NDBODE has the authority to enforce any heightened standards/requirements. At least not without going through the formal rulemaking process. The implications of this phrasing could create liability not only for providers, but also NDBODE for "changing" the standard/requirement of care in the state of North Dakota without any scientific evidence or formal rulemaking process. Should situations arise where there are allegations of offices/clinics not following CDC/ADA or any other set of "recommendations" would NDBODE be weighing in on the matter (enforcing/taking punitive action) as the regulatory body with "the authority to discipline practitioners for willful or negligent disregard for safety." There are many uncertainties during this COVID-19 pandemic, and I would ask that this statement, and the ramifications of NDBODE adopting it not add to the crisis being navigated by our dental providers. The current statement is vague, threatening and extremely problematic. We would ask that the statement be addressed and clarified for the providers in our state.

I would respectfully request that these concerns be distributed to your board members and legal counsel for their public comment to all dental providers. Clarification is needed on this statement for the entire dental community as this statement seems to create more confusion than clarification.

Respectfully,



William Sherwin  
Executive Director

July 2, 2020

North Dakota Board of Dental Examiners  
PO Box 7246  
Bismarck, ND 58507

North Dakota Board of Dental Examiners,

On behalf of the North Dakota Dental Association members, we respectfully ask the North Dakota Board of Dental Examiners to publicly affirm that it is within the dentist's current scope of practice to conduct Food and Drug Administration (FDA) authorized point-of-care testing for the novel coronavirus (COVID-19). Point-of-care testing, with appropriate medical referrals when indicated, would greatly enhance dentists' ability to reduce the potential for exposure to COVID-19 of other patients and members of the dental team.

Currently, North Dakota dentists are following American Dental Association (ADA) and Centers for Disease Control (CDC) guidelines to prevent infection as dental offices reopen following our state's mandated shutdown of non-urgent dental care. During the acceleration phase of the pandemic, they performed only essential dental procedures for patients who would otherwise have sought care in hospital emergency departments. In this re-opening phase, dentists are now screening patients for signs and symptoms of COVID-19, and referring patients for appropriate medical follow-up. Unfortunately, such screening alone will not identify individuals who are infected but not displaying symptoms.

Dental personnel have a very high risk of exposure to COVID-19 because of their close proximity to patients' mouths and also because dental treatment commonly generates aerosolized particles.<sup>i</sup> Given that patients receiving dental treatment may be presymptomatic (i.e. infected but will develop symptoms in the next 14 days) or asymptomatic (i.e. infected but will never exhibit signs or symptoms of disease), it is critical to identify those individuals carrying the virus so that it is possible to minimize their contacting and potentially infecting others. Identifying presymptomatic and asymptomatic patients is key to being able to protect dental personnel and other patients from exposure. The CDC recommends that dental facilities consider implementing pre-procedure testing for COVID-19 especially in our current situation of PPE shortages in their interim guidance published June 17, 2020.

We urge you to publicly affirm that administering FDA-authorized point-of-care tests with FDA- emergency use authorization to screen for infection status is within the current scope of dental practice, with dentists appropriately referring patients for definitive diagnosis and treatment to a physician or medical facility. Doing so will better enable dentists to be valuable partners in potentially decreasing COVID-19 transmission in our state; will conserve the use of N95 masks for health care workers taking care of infected patients; and will provide greater assurance to the public that dental treatment is safe during the pandemic.

Thank you for considering our request. If you have any questions, contact William Sherwin or Dr. Brad Anderson, please see contact details below.

Sincerely,

William R. Sherwin  
Executive Director  
Office: 701-223-8870  
Cell: 701-202-7360  
[wsherwin@smilenorthdakota.org](mailto:wsherwin@smilenorthdakota.org)

Dr. Brad Anderson  
NDDA President  
Office: 701-232-1368  
Cell: 701-306-1742  
[brad.andersondds@gmail.com](mailto:brad.andersondds@gmail.com)

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<sup>i</sup> U.S. Department of Labor, Occupational Safety and Health Administration, [COVID-19 Control and Prevention/ Dental Workers and Employees](#) (2020).



January 7, 2021

North Dakota Board of Dental Examiners  
PO Box 7246  
Bismarck, ND 58507

North Dakota Board of Dental Examiners,

On behalf of our 400 members in the state, we respectfully ask that you authorize dentists to administer the COVID-19 vaccine. We ask that you take this action now, even though we are in the early stages of vaccine rollout, to ensure that dentists can stand “at the ready” to deliver the vaccine along with other providers to the population at-large.

As demonstrated in their training and during every day practice, dentists are highly skilled in handling routine injections such as those required for administering the COVID-19 vaccine. Additionally, dentists work in a variety of settings including federally qualified health centers, where storage of the vaccine is available. Broadly authorizing dentists to provide the vaccine will maximize the available providers to take part in the effort. In anticipation of being able to administer the vaccine, many dentists are already accessing the online trainings available from the vaccine manufacturers, e.g. Pfizer.

We urge you to authorize dentists to administer the COVID-19 vaccine. The North Dakota Dental Association stands ready to assist you in any way necessary to achieve this goal.

Thank you for considering our request. If you have any questions, please contact William Sherwin at 701-223-8870 or [wsherwin@smilenorthdakota.org](mailto:wsherwin@smilenorthdakota.org).

Sincerely,



Jackie Nord  
NDDA President



William Sherwin  
Executive Director

February 25, 2021

The Honorable Bill Devlin  
Chairman, Assembly Administrative Rules Committee  
North Dakota State Capitol  
600 E Boulevard Ave  
Bismarck, ND 58505



*Re: Public Comment and Request to Void on Board of Dental Examiners Proposed Rules*

Dear Chairman Devlin:

This letter serves as formal public comment from SmileDirectClub ("SDC") on the North Dakota State Board of Dental Examiners ("Board") proposed rule changes to *NDAC 20-01-02-01 through 20-05-01-01 non-seq.* SDC is an oral care company and creator of the first medtech platform for teeth straightening, now also offered directly via dentist and orthodontists' offices. SDC contracts with North Dakota-licensed dentists and orthodontists who use the SDC platform to treat North Dakota patients. Hence, SDC's interest in this rule.

While the SDC medtech platform is largely virtual, SDC also operates through retail locations across the country. This platform, and our business model, could be profoundly affected by the proposed rule. We believe that this proposed rule violates NDCC § 28-32-18(1) due to its lack of statutory authority, its arbitrary nature, and the Board's failure to comply with express legislative intent. Due to these statutory violations, these rules should be voided.

SDC strongly opposes the Board's definition of "final impression for digital capture" in *NDAC 20-01-02-01(18)* and believes that there is no statutory authority for the Board to promulgate these specific regulations. This language creates – without any statutory basis – a new dental fiction "final impression for digital capture." The plain language meaning of a "dental impression" is a negative imprint of hard and soft tissues in the mouth from which a positive reproduction (cast or model) can be formed. The new proposed definition turns this traditional, plain language definition on its head in a nonsensical and capricious manner. Simply put, the Board seeks to regulate the taking of photographs of the mouth as a negative "impression." There is no language in the ND Dental Practice Act which would give the Board reason to believe that this regulation is statutorily appropriate. In fact, the term "impression" cannot be found in the Dental Practice Act and only appears in the rules for Dental Assistants and Hygienists – rules which clearly intend to regulate the plain-language meaning of an impression.

While the Board has authority to promulgate regulations to protect the health, safety, and welfare of North Dakota patients, it does not have the authority to arbitrarily promulgate anti-competitive and clinically-unsound regulations which pose zero-risk to North Dakotans. For clinical context, traditional impressions consist of a putty that the patient must have placed and held in their mouth which could create a potential choking hazard and requires some clinical training to safely apply to a patient; meanwhile, digital scans/photographs pose no risk to the patient and there is no clinical knowledge nor training required to take a digital photograph. The digital scanning technologies used today are light emitting cameras usually on the tip of a plastic "wand" that are safe and simple to use. Moreover, the taking of a digital photograph is neither a dental therapeutic nor a procedure – it is more similar to a portraiture than a dental procedure. Accordingly, any requirement for licensure to accomplish this simple task is regulatory overreach absent a public safety protection imperative – of which there is

none. Plainly said, the proposed rules would require an individual doing these activities to hold a license, which is arbitrary and beyond the scope of authority provided by the state's dental practice act.

Furthermore, the proposed rules allow an unlicensed dental assistant to take an intraoral photograph – a task that poses zero risk to a patient and is more akin to the taking of a portraiture than a dental procedure but now would require the “direct supervision” of a dentist. What was once, correctly, an unregulated activity now requires that a dentist must actually be physically present at the location the photos are taken. On its face, this requirement creates an anti-competitive barrier for dentists using telehealth technology, is without any clinical justification as there is no clinical basis for having a dentist on-site for the taking of simple digital photographs, lacks any public safety imperative to regulate as it poses no risk whatsoever to the patient nor operator, and would only decrease access to oral healthcare to the detriment of North Dakotans. Neighboring South Dakota allows an unregistered dental assistant to take these photos under general supervision.

Lastly, while we acknowledge that pending legislation isn't binding on the Board, the Administrative Rules Committee should be aware that House Bill 1151, sponsored by you and dealing specifically with teledentistry standards, has unanimously passed the North Dakota House of Representatives. The bill simply seeks to codify modern, science-based teledentistry standards of care that mirror the standards adopted by the legislature for modern, science-based telemedicine—something entirely at odds with the board's proposed rules. We respectfully request the committee consider this pending legislative action as informative and persuasive in its own deliberation regarding the overreach of the proposed rules.

Thank you for this opportunity to comment on the proposed rule changes. It is our hope that the Administrative Rules Committee will void these rules as they lack statutory authority, are clinically unsupported and arbitrary, and do not reflect the legislative intent of the current dental practice act nor pending legislation. These same issues were appropriately raised with the Board during the rulemaking public comment period and summarily ignored. If you have any questions or would like to talk further on this issue or on teledentistry more broadly, please do not hesitate to contact me at 615-647-8656 or [Peter.Horkan@smiledirectclub.com](mailto:Peter.Horkan@smiledirectclub.com).

Respectfully,

A handwritten signature in dark ink, appearing to read 'Peter Horkan', followed by a long horizontal flourish line.

Peter Horkan  
Vice President, Government Affairs  
SmileDirectClub

March 22, 2021  
House Bill 1151  
In opposition

Madam Chair and Committee Members:

My name is Dr. Alison Fallgatter and I provide this written testimony in opposition to HB 1151.

I have previously served as the President of the North Dakota Dental Association and currently act as President of the North Dakota Board of Dental Examiners. Having served in both positions, I understand the distinct differences between these boards. The purpose of the Board of Dental Examiners is to protect the public by regulating dental practice to maintain the best safety possible for the public. The Dental Board also assures that those who seek a license to practice dentistry, dental hygiene or perform as a dental assistant are properly educated to do so and are clear about what procedures are permitted considering their education. There is also an element of supervision required for assistants and hygienists required by the Board. Our duty is not to protect the profession of dentistry or to protect dentists, hygienists, assistants or other team members. In contrast, the focus of the North Dakota Dental Association is to promote the success of its members in various ways. However, the Board of Dentistry's focus is not necessarily what dentists want, but what is best for the public.

The Board of Dentistry held 16 meetings in 2020. This was somewhat more than normal as a result of the COVID-19 Pandemic. We worked hard and were diligent in our duties. Each member commits hours to research and study to enable providing the best information that ensures the best safety of the public. During the pandemic, countless hours were poured into researching COVID-19 in order to provide the best information to assure the safety of dental patients. Although the Dental Association asked the Board to draw up guidelines for safety of patients and staff, it was determined that the Centers for Disease Control and ND Department of Health were more knowledgeable and should provide this guidance. Although this was not what the Association thought should happen, the Board deliberated and determined this was best for public safety. This is but one example how what the Dental Association wants is not always what the Board should provide.

The Board recently spent approximately 18 months to develop an updated version of administrative rules for dentistry. We accepted input and recommendations from multiple sources from inside and outside North Dakota. The Board worked hard to assure the process was properly notified as required by law so that everyone who wished to participate could do so. The Dental Association provided comments, all of which were discussed and considered along with others from different individuals and entities. Although the NDDA now indicates they were not able to participate in the rules process, they had the same opportunity to do so as was afforded to all others. That is how the process is laid out.

The HB 1151 amendment to remove and replace all board members would be counterproductive to the protection of North Dakota Citizens. Considerable time and exposure to many responsibilities the board has is required to provide the understanding necessary for the work of the Board. My expectation is that the loss of all institutional knowledge of the processes involved with activities of the Board of Dental Examiners as a result of HB 1151, the Board's ability to function as it should will be severely compromised for quite some time. This would be a disservice, both the dentistry and to the people of North Dakota.

Despite my personal enthusiasm toward the intended purpose of the original bill (teledentistry), it is now shaped in a way that would provide more harm than good.

Please vote Do Not Pass on HB1151,

Thank you,

Dr. Alison Fallgatter  
Steele, ND  
President, ND Board of Dental Examiners  
North Dakota Dental Association Past President.



Senate Human Services Committee

March 29, 2021

Committee Members,

Testimony in opposition to bill,

My name is Dr Gregory Evanoff. I have been a dentist in Minot for 37 years and a Board of Dental Examiners member for nine years. I have been the Complaint Committee Chair for seven years. My testimony is obviously against removing the current Board of Dental Examiners. There are two areas I want to concentrate on.

The first is the process involved in making such a serious change. It seems to me that the committee is trying to make this change without proper notice and normal procedures to get relevant information both to and from the parties this will affect. If these changes are warranted there must be information the committee has that should be made public. The Board Members you are removing and the public they are serving deserve to know your reasoning. I would like to see the underlying information so that I could respond. Our Board does all of our work at open meetings. Our meetings are all noticed and open to the public. Any legislators that have concerns can attend the meetings and participate. They could express their concerns and try to effect change. Obviously, that is not the way your committee works. Trying to smear us by inuendo is not fair or honorable. I think our Board has operated openly and fairly on all matters brought before us. We are focused on one thing, the safety of the citizens of North Dakota.

The second is the results that will result if you pass this bill. It takes a new member at least a year to get an understanding of how the board operates and feel confident in taking more leadership on the board. We depend on the executive director to make it work. There is not a dentist in the state who has not been on the board, that can step into a member position and have any idea what to do. This will make it a nightmare for the citizens with complaints or concerns that need to be addressed. Who will update the website, balance the budget and all the necessary things the executive director does to make the system work. I do not know how the committee could want these results for the dental providers or the patients of North Dakota.

I urge the members of the committee to vote do not pass.

Sincerely,

Dr Gregory Evanoff

Past President and current member of Board of Dental Examiners

March 29, 2021

HB1151 – Committee Hearing 3-30-2021

Senate Human Services Committee

Honorable members of the Senate Human Services Committee,

My name is Bev Marsh. I live in the Fargo area, and work as a dental hygienist in a general dental practice in Fargo, ND. I also serve as the dental hygiene member on the ND Board of Dental Examiners. I am representing myself and submitting written testimony in opposition to amendments of HB1151 43-28-03, State Board of dental examiners-Members-Appointment-Term of office-Oath-Vacancies.

I am opposed to Section 2 amendment of a board member ‘must include at least one of whom is ....oral and maxillofacial surgeon’. Why should that specialty be given preference over any other specialty or general dentist? The board was/is fortunate enough to have oral surgeons serve past and present but this could be extremely limiting in the future. There is not a guarantee that an oral surgeon would be willing to serve in future years, thus forcing the current oral surgeon to serve until a successor is appointed or having a vacancy which can’t be filled. It’s neither practical nor realistic to put this in our Century Code. I urge you to strike/oppose this requirement.

I am opposed to Section 4 amendment ‘Employ and compensate an executive director, who must be an attorney or a dentist’. The board already has an appointed attorney who provides excellent guidance to the members. Employing an attorney could increase costs due to a high probable salary which would increase the licensure dues of all dental professionals. It’s just not necessary and will not benefit the board. The board’s executive director should have knowledge in the dental profession. In regards to the dentist, again why should a dentist be given preference? There are extremely competent dental hygienists or dental assistants who could do the job and by listing ‘dentist’ only, it limits the pool of potential candidates. It could also be construed as professional discrimination. I urge you to strike/oppose this requirement.

Thank you for considering my testimony and for your time and efforts.

Sincerely,

Bev Marsh RDH BS  
11505 5<sup>th</sup> St S  
Horace, ND 58047

# 2021 SENATE STANDING COMMITTEE MINUTES

## Human Services Committee Sakakawea Room, State Capitol

HB 1151  
3/30/2021 PM

A BILL for an Act to create and enact two new sections to chapter 43-28 of the North Dakota Century Code, relating to telehealth and the practice of dentistry; to amend and reenact sections 43-28-01, 43-28-03, and 43-28-04, and subsection 5 of section 43-28-06 of the North Dakota Century Code, relating to the membership and duties of the state board of dental examiners and the definition of telehealth; to provide for application; and to declare an emergency.

**Madam Chair Lee** opened the discussion on HB 1151 at 3:06 p.m. Members present: Lee, K. Roers, Hogan, Anderson, Clemens, O. Larsen.

### Discussion Topics:

- Proposed amendment
- Independent consumer dental board member
- ND Board of Dental Examiners Executive Director requirements
- Board member term limits
- Oral surgeon specialist membership
- Administrative rules on sedation
- Board appointee's

**[3:05] Senator Howard Anderson, District 8.** Provided the committee with proposed amendment 21.0623.01006 (testimony #11074) and 21.0623.01007 (testimony #11075).

**[3:23] William Sherwin, Executive Director, ND Dental Association.** Provided clarification to the committee on specialty oral surgeons.

**Senator Anderson** moves to **RECONSIDER COMMITTEE ACTION OF ADOPTED AMENDMENT 21.0623.01005.**

**Senator O. Larsen** seconded.

Voice Vote – Motion passed.

**[3:50] Levi Andrist, GA Group, Smile Direct Club.** Provided position on proposed amendment 21.0623.01006 and the Section 7 emergency clause.

**Senator Anderson** moves to **ADOPT AMENDMENT 21.0623.01007** without Section 7 emergency clause.

**Senator Hogan** seconded.

Senators	Vote
Senator Judy Lee	Y
Senator Kristin Roers	N
Senator Howard C. Anderson, Jr.	Y
Senator David A. Clemens	Y

Senator Kathy Hogan	Y
Senator Oley Larsen	N

The motion passed 4-2-0

**Senator K. Roers** moves **DO PASS, AS AMENDED.**

**Senator Hogan** seconded.

<b>Senators</b>	<b>Vote</b>
Senator Judy Lee	Y
Senator Kristin Roers	Y
Senator Howard C. Anderson, Jr.	Y
Senator David A. Clemens	Y
Senator Kathy Hogan	Y
Senator Oley Larsen	n

The motion passed 5-1-0

**Senator Anderson** will carry HB 1151.

**Additional written testimony:** N/A

**Madam Chair Lee** closed the discussion on HB 1151 at 4:03 p.m.

*Justin Velez, Committee Clerk*

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2173  
18

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1151

In lieu of the amendments as printed on pages 979-982 of the Senate Journal, House Bill No. 1151 is amended as follows:

Page 1, line 2, remove the second "and"

Page 1, line 3, replace "section" with "sections"

Page 1, line 3, after "43-28-01" insert ", 43-28-03, and 43-28-04"

Page 1, line 3, after the second "the" insert "membership of the state board of dental examiners and the"

Page 1, line 3, after "telehealth" insert "; and to provide for application"

Page 2, after line 4, insert:

**"SECTION 2. 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~~six dentist members, at least one of whom is a board-eligible or board-certified oral and maxillofacial surgeon; ~~one dental hygienist member;~~ one dental assistant member; and one independent consumer member. Appointment to the board is for a term of five years, with terms of office arranged so that ~~one term expires~~no more than 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. Each member of the board shall hold office until a successor is appointed and qualified. Persons~~An individual appointed to the board ~~shall qualify~~qualifies 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 3. 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 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 practicing as a registered dental assistant and has been so practicing in this state for at least five years immediately preceding the dental assistant's appointment.
- 4. An individual may not be appointed as the independent 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, or financial relationship with the dental profession; and
  - c. Is not a dentist, a dental hygienist, a dental assistant, a physician, a nurse, or the spouse of an individual engaged in any of those occupations.
- 4.5. The dental hygienist, dental assistant, and independent consumer member of the board shall exercise full voting privileges in all areas except that the dental hygienist may not participate in the clinical examination of dentists for licensure and the dental assistant and independent consumer member may not participate in the clinical examination of dentists or hygienists for licensure."

Page 2, line 13, remove "practicing telehealth shall establish a bona fide relationship with a patient"

Page 2, line 14, replace "before the diagnosis or treatment of the patient" with "may not practice telehealth unless a bona fide dentist-patient relationship is established in person or through telehealth"

Page 2, line 15, replace "and ensure" with "to"

Page 2, line 16, remove "has the ability to verify."

Page 2, line 16, after the second "the" insert "dentist's"

Page 2, line 16, after "identity" insert ", physical location, contact information."

Page 2, line 16, remove "of a dentist providing dental"

Page 2, line 17, remove "services to the patient"

Page 2, line 21, replace "is equivalent to an in-person examination" with "may be performed in accordance with the standard of care required for an in-person dental examination or evaluation. A dentist may not use telehealth to perform an initial examination or evaluation in circumstances in which the standard of care necessitates an in-person dental examination"

Page 2, line 22, after "An" insert "appropriate telehealth examination or evaluation may include an"

Page 2, line 22, replace "or" with "in conjunction with"

Page 2, line 23, replace "for" with "or"

Page 2, line 23, remove "and use of peripherals"

Page 2, line 24, replace "deemed necessary in a like" with "required during an"

Page 2, line 24, remove "meets this"

Page 2, line 25, replace "standard, as does" with "or"

Page 2, line 26, after "intervening" insert "dental"

Page 2, line 26, after the second "the" insert "dental health care"

Page 2, line 27, after "dentist" insert "during a live, two-way telehealth encounter"

Page 2, line 30, after "b." insert "The use of telehealth does not expand the scope of practice for a dental health care provider, and may not be used to circumvent the licensure requirements established for dental health care providers in this state."

- c. A dentist who practices telehealth in this state must have adequate knowledge of the availability and location of local dentists and dental health care providers to provide followup care to a patient following a dental telehealth encounter, including emergent and acute care facilities, in order to enable a patient to receive followup care."

Page 2, line 30, replace "acceptable" with "appropriate"

Page 3, line 1, after "the" insert "treating"

Page 3, line 2, replace "a provider" with "another dentist licensed by the board"

Page 3, line 2, after the first "the" insert "treating"

Page 3, line 2, after the second "the" insert "treating"

Page 3, line 3, remove "In certain types of telehealth utilizing asynchronous"

Page 3, remove lines 4 and 5

Page 3, line 8, after "dental" insert "health care"

Page 3, line 9, remove "may make appropriate referrals of patients not amenable to diagnosis or"

Page 3, remove line 10

Page 3, line 11, replace "emergent care or complementary in-person care" with "practicing telehealth must have procedures for providing in-person services or for the referral of a patient requiring dental services that cannot be provided by telehealth to another dentist who practices in the area of the state and the patient can readily access"

Page 3, replace lines 12 through 23 with:

"**SECTION 5.** A new section to chapter 43-28 of the North Dakota Century Code is created and enacted as follows:

**Prohibition - Waivers.**

A dentist practicing dentistry may not require a patient to sign a form or statement waiving the patient's right to file a complaint against the dentist with an appropriate state entity or shielding the dentist from liability for injury resulting from a dental encounter.

**SECTION 6. APPLICATION.** The governor shall appoint the members of the board for staggered terms so no more than two members' terms expire each year. Notwithstanding section 43-28-03, a member appointed under this section may not serve more than two full five-year terms but may serve more than ten years."

Renumber accordingly

**REPORT OF STANDING COMMITTEE**

**HB 1151: Human Services Committee (Sen. Lee, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1151 was placed on the Sixth order on the calendar.

In lieu of the amendments as printed on pages 979-982 of the Senate Journal, House Bill No. 1151 is amended as follows:

Page 1, line 2, remove the second "and"

Page 1, line 3, replace "section" with "sections"

Page 1, line 3, after "43-28-01" insert ", 43-28-03, and 43-28-04"

Page 1, line 3, after the second "the" insert "membership of the state board of dental examiners and the"

Page 1, line 3, after "telehealth" insert "; and to provide for application"

Page 2, after line 4, insert:

**"SECTION 2. 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~~six dentist members, at least one of whom is a board-eligible or board-certified oral and maxillofacial surgeon; one dental hygienist member; one dental assistant member; and one independent consumer member. Appointment to the board is for a term of five years, with terms of office arranged so that ~~one term expires~~no more than 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.~~ Each member of the board shall hold office until a successor is appointed and qualified. ~~Persons~~An individual appointed to the board ~~shall qualify~~qualifies 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 3. 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 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 practicing as a registered dental assistant and has been so practicing in this state for at least five years immediately preceding the dental assistant's appointment.
4. An individual may not be appointed as the independent 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 or financial relationship with the dental profession; and
  - c. Is not a dentist, a dental hygienist, a dental assistant, a physician, a nurse, or the spouse of an individual engaged in any of those occupations.
- 4-5. The dental hygienist, dental assistant, and independent consumer member of the board shall exercise full voting privileges in all areas except that the dental hygienist may not participate in the clinical examination of dentists for licensure and the dental assistant and independent consumer member may not participate in the clinical examination of dentists or hygienists for licensure."

Page 2, line 13, remove "practicing telehealth shall establish a bona fide relationship with a patient"

Page 2, line 14, replace "before the diagnosis or treatment of the patient" with "may not practice telehealth unless a bona fide dentist-patient relationship is established in person or through telehealth"

Page 2, line 15, replace "and ensure" with "to"

Page 2, line 16, remove "has the ability to verify."

Page 2, line 16, after the second "the" insert "dentist's"

Page 2, line 16, after "identity" insert ", physical location, contact information."

Page 2, line 16, remove "of a dentist providing dental"

Page 2, line 17, remove "services to the patient"

Page 2, line 21, replace "is equivalent to an in-person examination" with "may be performed in accordance with the standard of care required for an in-person dental examination"



or evaluation. A dentist may not use telehealth to perform an initial examination or evaluation in circumstances in which the standard of care necessitates an in-person dental examination"

Page 2, line 22, after "An" insert "appropriate telehealth examination or evaluation may include an"

Page 2, line 22, replace "or" with "in conjunction with"

Page 2, line 23, replace "for" with "or"

Page 2, line 23, remove "and use of peripherals"

Page 2, line 24, replace "deemed necessary in a like" with "required during an"

Page 2, line 24, remove "meets this"

Page 2, line 25, replace "standard, as does" with "or"

Page 2, line 26, after "intervening" insert "dental"

Page 2, line 26, after the second "the" insert "dental health care"

Page 2, line 27, after "dentist" insert "during a live, two-way telehealth encounter"

Page 2, line 30, after "b." insert "The use of telehealth does not expand the scope of practice for a dental health care provider, and may not be used to circumvent the licensure requirements established for dental health care providers in this state."

- c. A dentist who practices telehealth in this state must have adequate knowledge of the availability and location of local dentists and dental health care providers to provide followup care to a patient following a dental telehealth encounter, including emergent and acute care facilities, in order to enable a patient to receive followup care."

Page 2, line 30, replace "acceptable" with "appropriate"

Page 3, line 1, after "the" insert "treating"

Page 3, line 2, replace "a provider" with "another dentist licensed by the board"

Page 3, line 2, after the first "the" insert "treating"

Page 3, line 2, after the second "the" insert "treating"

Page 3, line 3, remove "In certain types of telehealth utilizing asynchronous"

Page 3, remove lines 4 and 5

Page 3, line 8, after "dental" insert "health care"

Page 3, line 9, remove "may make appropriate referrals of patients not amenable to diagnosis or"

Page 3, remove line 10

Page 3, line 11, replace "emergent care or complementary in-person care" with "practicing telehealth must have procedures for providing in-person services or for the referral of a patient requiring dental services that cannot be provided by telehealth to another dentist who practices in the area of the state and the patient can readily access"

Page 3, replace lines 12 through 23 with:

"**SECTION 5.** A new section to chapter 43-28 of the North Dakota Century Code is created and enacted as follows:

**Prohibition - Waivers.**

A dentist practicing dentistry may not require a patient to sign a form or statement waiving the patient's right to file a complaint against the dentist with an appropriate state entity or shielding the dentist from liability for injury resulting from a dental encounter.

**SECTION 6. APPLICATION.** The governor shall appoint the members of the board for staggered terms so no more than two members' terms expire each year. Notwithstanding section 43-28-03, a member appointed under this section may not serve more than two full five-year terms but may serve more than ten years."

Renumber accordingly

Sixty-seventh  
Legislative Assembly  
of North Dakota

## HOUSE BILL NO. 1151

#11074

Introduced by

Representatives Devlin, Rohr, M. Ruby, Weisz

Senators Lee, K. Roers

1 A BILL for an Act to create and enact two new sections to chapter 43-28 of the North Dakota  
2 Century Code, relating to telehealth and the practice of dentistry; ~~and to amend and reenact~~  
3 ~~section~~sections 43-28-01, 43-28-03, and 43-28-04 of the North Dakota Century Code, relating  
4 to the membership of the state board of dental examiners and the definition of telehealth; to  
5 provide for application; and to declare an emergency.

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

7 **SECTION 1. AMENDMENT.** Section 43-28-01 of the North Dakota Century Code is  
8 amended and reenacted as follows:

9 **43-28-01. Definitions.**

10 As used in this chapter and chapter 43-20, unless the context otherwise requires:

- 11 1. "Accredited dental school" means a dental school, college, or university accredited by  
12 the commission on dental accreditation of the American dental association or its  
13 successor.
- 14 2. "Advertising" means to invite the attention of or give notice to the public, by any  
15 means, medium, or manner whatsoever of any fact, information, or data pertaining to  
16 or being conducive of the practice of dentistry in this state.
- 17 3. "Board" means the state board of dental examiners.
- 18 4. "Certificate of registration" means a written statement of the board declaring that a  
19 licensed dentist has paid the biennial registration fee required by this chapter.
- 20 5. "Dentist" means an individual who has a license to practice in this state and who holds  
21 a valid biennial certificate of registration.
- 22 6. "License" means the right, authority, or permission granted by the board to practice  
23 dentistry in this state.



1       7. "Practice of dentistry" means examination, diagnosis, treatment, repair, administration  
2       of local or general anesthetics, prescriptions, or surgery of or for any disease, disorder,  
3       deficiency, deformity, discoloration, condition, lesion, injury, or pain of the human oral  
4       cavity, teeth, gingivae, and soft tissues, and the diagnosis, surgical, and adjunctive  
5       treatment of the diseases, injuries, and defects of the upper and lower human jaw and  
6       associated structures.

7       8. "Telehealth" has the same meaning as in section 26.1-36-09.15.

8       **SECTION 2. AMENDMENT.** Section 43-28-03 of the North Dakota Century Code is  
9       amended and reenacted as follows:

10       **43-28-03. State board of dental examiners - Members - Appointment - Terms of office -**  
11       **Oath - Vacancies.**

12       The state board of dental examiners consists of ~~seven~~nine members appointed by the  
13       governor. The membership of the board must include ~~five~~six dentist members, at least one of  
14       whom is a board-eligible or board-certified oral and maxillofacial surgeon; one dental hygienist  
15       member; one dental assistant member; and one independent consumer member. Appointment  
16       to the board is for a term of five years, with terms of office arranged so ~~that one term expires~~no  
17       more than two terms expire on March sixteenth of each year, ~~except that each fifth year there~~  
18       ~~must be two new board members appointed, one of whom is a dentist and the other a dental~~  
19       ~~hygienist and two years later two new board members must be appointed, one of whom is a~~  
20       ~~dentist, and one of whom is a consumer member. The first five-year term of the consumer~~  
21       ~~member commences on July 1, 1993, and continues through March 15, 1998.~~ Each member of  
22       the board shall hold office until a successor is appointed and qualified. ~~Persons~~An individual  
23       appointed to the board shall ~~qualify~~qualifies by taking the oath required of civil officers. ~~No~~A  
24       member may not serve more than ten years or two 5-year terms of office. If a member of the  
25       board is absent from two consecutive regular meetings, the board may declare a vacancy to  
26       exist. All vacancies on the board must be filled by the governor by appointment.

27       **SECTION 3. AMENDMENT.** Section 43-28-04 of the North Dakota Century Code is  
28       amended and reenacted as follows:

29       **43-28-04. Qualifications and appointment of members of the board - Limited vote.**

30       1. An individual may not be appointed as a dentist member of the board unless that  
31       individual:



- 1 a. Is a dentist licensed and registered under this chapter; and
- 2 b. Is actively engaged in the practice of dentistry and has been so engaged in this
- 3 state for at least five years immediately preceding the appointment.
- 4 2. An individual may not be appointed as the dental hygienist member of the board
- 5 unless that individual:
- 6 a. Is a licensed and registered dental hygienist in accordance with chapter 43-20;
- 7 and
- 8 b. Is actively engaged in the practice of dental hygiene and has been so engaged in
- 9 this state for at least five years immediately preceding the dental hygienist's
- 10 appointment.
- 11 3. An individual may not be appointed as the dental assistant member of the board
- 12 unless that individual:
- 13 a. Is a registered dental assistant in accordance with chapter 43-20; and
- 14 b. Is actively practicing as a registered dental assistant and has been so practicing
- 15 in this state for at least five years immediately preceding the dental assistant's
- 16 appointment.
- 17 4. An individual may not be appointed as the independent consumer member of the
- 18 board unless that individual:
- 19 a. Has been a resident of North Dakota for five years immediately preceding
- 20 appointment;
- 21 b. Has no personal-~~or~~, family, or financial relationship with the dental profession;
- 22 and
- 23 c. Is not a dentist, a dental hygienist, a dental assistant, a physician, a nurse, or the
- 24 spouse of an individual engaged in any of those occupations.
- 25 ~~4.5.~~ The dental hygienist, dental assistant, and independent consumer member of the
- 26 board shall exercise full voting privileges in all areas except that the dental hygienist
- 27 may not participate in the clinical examination of dentists for licensure and the dental
- 28 assistant and independent consumer member may not participate in the clinical
- 29 examination of dentists or hygienists for licensure.

30 **SECTION 4.** A new section to chapter 43-28 of the North Dakota Century Code is created  
31 and enacted as follows:



1       **Standard of care and professional ethics - Telehealth.**

2       A dentist is held to the same standard of care and ethical standards, whether practicing  
3       traditional in-person dentistry or telehealth. The following apply in the context of telehealth:

4       1.   Professional ethical standards require a dentist to practice only in areas in which the  
5       dentist has demonstrated competence, based on the dentist's training, ability, and  
6       experience.

7       2.   ~~A dentist practicing telehealth shall establish a bona fide relationship with a patient~~  
8       ~~before the diagnosis or treatment of the patient~~ may not practice telehealth unless a  
9       bona fide dentist-patient relationship is established in person or through telehealth. A  
10      dentist practicing telehealth shall verify the identity of the patient seeking care and  
11      shall disclose ~~and ensure~~ to the patient ~~has the ability to verify, the dentist's identity,~~  
12      physical location, contact information, and licensure status of a dentist providing dental  
13      ~~services to the patient.~~

14      3.   Before a dentist initially diagnoses or treats a patient for a specific illness, disease, or  
15      condition, the dentist shall perform an examination or evaluation. A dentist may  
16      perform an examination or evaluation entirely through telehealth if the examination or  
17      evaluation ~~is equivalent to an in-person examination~~ may be performed in accordance  
18      with the standard of care required for an in-person dental examination or evaluation. A  
19      dentist ~~may not use telehealth to perform an initial examination or evaluation in~~  
20      circumstances in which the standard of care necessitates an in-person dental  
21      examination.

22      a.   An appropriate telehealth examination or evaluation may include an examination  
23      utilizing secure videoconferencing or in conjunction with store-and-forward  
24      technology for or appropriate diagnostic testing and use of peripherals that would  
25      ~~be deemed necessary in a like~~ required during an in-person examination or  
26      ~~evaluation meets this standard, as does~~ or an examination conducted with an  
27      appropriately licensed intervening dental health care provider, practicing within  
28      the scope of the dental health care provider's profession, providing necessary  
29      physical findings to the dentist during a live, two-way telehealth encounter. An  
30      examination or evaluation consisting only of a static online questionnaire or an  
31      audio conversation does not meet the standard of care.

b. The use of telehealth does not expand the scope of practice for a dental health care provider, and may not be used to circumvent the licensure requirements established for dental health care providers in this state.

c. A dentist who practices telehealth in this state must have adequate knowledge of the availability and location of local dentists and dental health care providers to provide followup care to a patient following a dental telehealth encounter, including emergent and acute care facilities, in order to enable a patient to receive followup care. Once a dentist conducts an ~~acceptable~~ appropriate examination or evaluation, whether in-person or by telehealth, and establishes a patient-dentist relationship, subsequent followup care may be provided as deemed appropriate by the treating dentist, or by a ~~provider~~ another dentist licensed by the board designated by the treating dentist to act temporarily in the treating dentist's absence. ~~In certain types of telehealth utilizing asynchronous store-and-forward technology or electronic monitoring, it is not medically necessary for an independent examination of the patient to be performed.~~

4. A dentist practicing telehealth is subject to all North Dakota laws governing the adequacy of dental records and the provision of dental records to the patient and other dental health care providers treating the patient.

5. ~~A dentist may make appropriate referrals of patients not amenable to diagnosis or complete treatment through a telehealth encounter, including a patient in need of emergent care or complementary in-person care.~~ practicing telehealth must have procedures for providing in-person services or for the referral of a patient requiring dental services that cannot be provided by telehealth to another dentist who practices in the area of the state and the patient can readily access.

~~SECTION 3. A new section to chapter 43-28 of the North Dakota Century Code is created and enacted as follows:~~

~~**Prescribing - Controlled substances.**~~

~~1. A dentist who has performed a telehealth examination or evaluation meeting the requirements of this chapter may prescribe medications according to the dentist's professional discretion and judgment. Opioids may be prescribed through telehealth.~~



~~only if prescribed to a patient in a hospital or long-term care facility. Opioids may not  
be prescribed through a telehealth encounter for any other purpose.~~

~~2. Pursuant to this chapter, a dentist who prescribes a controlled substance, as defined  
by state law, shall comply with all state and federal laws regarding the prescribing of a  
controlled substance, and shall participate in the North Dakota prescription drug  
monitoring program.~~

**SECTION 5.** A new section to chapter 43-28 of the North Dakota Century Code is created  
and enacted as follows:

**Prohibition - Waivers.**

A dentist practicing dentistry may not require a patient to sign a form or statement waiving  
the patient's right to file a complaint against the dentist with an appropriate state entity or  
shielding the dentist from liability for injury resulting from a dental encounter.

**SECTION 6. APPLICATION.** Notwithstanding section 43-28-03, on the effective date of this  
Act, the term of every member of the state board of dental examiners expires. In making the  
new appointments, the governor shall appoint the members of the board for staggered terms so  
no more than two members' terms expire each year. A member appointed under this section  
may not serve more than two full five-year terms but may serve more than ten years.

**SECTION 7. EMERGENCY.** This Act is declared to be an emergency measure.

Sixty-seventh  
Legislative Assembly  
of North Dakota

## HOUSE BILL NO. 1151

Introduced by

Representatives Devlin, Rohr, M. Ruby, Weisz

Senators Lee, K. Roers

1 A BILL for an Act to create and enact two new sections to chapter 43-28 of the North Dakota  
2 Century Code, relating to telehealth and the practice of dentistry; ~~and~~ to amend and reenact  
3 ~~section~~sections 43-28-01, 43-28-03, and 43-28-04 of the North Dakota Century Code, relating  
4 to the membership of the state board of dental examiners and the definition of telehealth; to  
5 provide for application; and to declare an emergency.

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

7 **SECTION 1. AMENDMENT.** Section 43-28-01 of the North Dakota Century Code is  
8 amended and reenacted as follows:

9 **43-28-01. Definitions.**

10 As used in this chapter and chapter 43-20, unless the context otherwise requires:

- 11 1. "Accredited dental school" means a dental school, college, or university accredited by  
12 the commission on dental accreditation of the American dental association or its  
13 successor.
- 14 2. "Advertising" means to invite the attention of or give notice to the public, by any  
15 means, medium, or manner whatsoever of any fact, information, or data pertaining to  
16 or being conducive of the practice of dentistry in this state.
- 17 3. "Board" means the state board of dental examiners.
- 18 4. "Certificate of registration" means a written statement of the board declaring that a  
19 licensed dentist has paid the biennial registration fee required by this chapter.
- 20 5. "Dentist" means an individual who has a license to practice in this state and who holds  
21 a valid biennial certificate of registration.
- 22 6. "License" means the right, authority, or permission granted by the board to practice  
23 dentistry in this state.



7. "Practice of dentistry" means examination, diagnosis, treatment, repair, administration of local or general anesthetics, prescriptions, or surgery of or for any disease, disorder, deficiency, deformity, discoloration, condition, lesion, injury, or pain of the human oral cavity, teeth, gingivae, and soft tissues, and the diagnosis, surgical, and adjunctive treatment of the diseases, injuries, and defects of the upper and lower human jaw and associated structures.

8. "Telehealth" has the same meaning as in section 26.1-36-09.15.

**SECTION 2. 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~~six dentist members, at least one of whom is a board-eligible or board-certified oral and maxillofacial surgeon; one dental hygienist member; one dental assistant member; and one independent consumer member. Appointment to the board is for a term of five years, with terms of office arranged so ~~that one term expires no more than 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.~~ Each member of the board shall hold office until a successor is appointed and qualified. ~~Persons~~An individual appointed to the board ~~shall qualify~~qualifies 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 3. 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:



- 1 a. Is a dentist licensed and registered under this chapter; and
- 2 b. Is actively engaged in the practice of dentistry and has been so engaged in this
- 3 state for at least five years immediately preceding the appointment.
- 4 2. An individual may not be appointed as the dental hygienist member of the board
- 5 unless that individual:
- 6 a. Is a licensed and registered dental hygienist in accordance with chapter 43-20;
- 7 and
- 8 b. Is actively engaged in the practice of dental hygiene and has been so engaged in
- 9 this state for at least five years immediately preceding the dental hygienist's
- 10 appointment.
- 11 3. An individual may not be appointed as the dental assistant member of the board
- 12 unless that individual:
- 13 a. Is a registered dental assistant in accordance with chapter 43-20; and
- 14 b. Is actively practicing as a registered dental assistant and has been so practicing
- 15 in this state for at least five years immediately preceding the dental assistant's
- 16 appointment.
- 17 4. An individual may not be appointed as the independent consumer member of the
- 18 board unless that individual:
- 19 a. Has been a resident of North Dakota for five years immediately preceding
- 20 appointment;
- 21 b. Has no personal-~~or~~, family, or financial relationship with the dental profession;
- 22 and
- 23 c. Is not a dentist, a dental hygienist, a dental assistant, a physician, a nurse, or the
- 24 spouse of an individual engaged in any of those occupations.
- 25 ~~4.5.~~ The dental hygienist, dental assistant, and independent consumer member of the
- 26 board shall exercise full voting privileges in all areas except that the dental hygienist
- 27 may not participate in the clinical examination of dentists for licensure and the dental
- 28 assistant and independent consumer member may not participate in the clinical
- 29 examination of dentists or hygienists for licensure.

30 **SECTION 4.** A new section to chapter 43-28 of the North Dakota Century Code is created  
31 and enacted as follows:



1       **Standard of care and professional ethics - Telehealth.**

2       A dentist is held to the same standard of care and ethical standards, whether practicing  
3       traditional in-person dentistry or telehealth. The following apply in the context of telehealth:

- 4       1. Professional ethical standards require a dentist to practice only in areas in which the  
5       dentist has demonstrated competence, based on the dentist's training, ability, and  
6       experience.
- 7       2. A dentist ~~practicing telehealth shall establish a bona fide relationship with a patient~~  
8       ~~before the diagnosis or treatment of the patient~~ may not practice telehealth unless a  
9       bona fide dentist-patient relationship is established in person or through telehealth. A  
10      dentist practicing telehealth shall verify the identity of the patient seeking care and  
11      shall disclose ~~and ensure to~~ the patient ~~has the ability to verify~~ the dentist's identity,  
12      physical location, contact information, and licensure status ~~of a dentist providing dental~~  
13      ~~services to the patient.~~
- 14      3. Before a dentist initially diagnoses or treats a patient for a specific illness, disease, or  
15      condition, the dentist shall perform an examination or evaluation. A dentist may  
16      perform an examination or evaluation entirely through telehealth if the examination or  
17      evaluation ~~is equivalent to an in-person examination~~ may be performed in accordance  
18      with the standard of care required for an in-person dental examination or evaluation. A  
19      dentist may not use telehealth to perform an initial examination or evaluation in  
20      circumstances in which the standard of care necessitates an in-person dental  
21      examination.
- 22      a. An appropriate telehealth examination or evaluation may include an examination  
23      utilizing secure videoconferencing ~~or in conjunction with~~ store-and-forward  
24      technology ~~for or~~ appropriate diagnostic testing ~~and use of peripherals~~ that would  
25      ~~be deemed necessary in a like~~ required during an in-person examination or  
26      evaluation ~~meets this standard, as does~~ or an examination conducted with an  
27      appropriately licensed intervening dental health care provider, practicing within  
28      the scope of the dental health care provider's profession, providing necessary  
29      physical findings to the dentist during a live, two-way telehealth encounter. An  
30      examination or evaluation consisting only of a static online questionnaire or an  
31      audio conversation does not meet the standard of care.

1           b. The use of telehealth does not expand the scope of practice for a dental health  
2           care provider, and may not be used to circumvent the licensure requirements  
3           established for dental health care providers in this state.

4           c. A dentist who practices telehealth in this state must have adequate knowledge of  
5           the availability and location of local dentists and dental health care providers to  
6           provide followup care to a patient following a dental telehealth encounter.  
7           including emergent and acute care facilities, in order to enable a patient to  
8           receive followup care. Once a dentist conducts an ~~acceptable~~appropriate  
9           examination or evaluation, whether in-person or by telehealth, and establishes a  
10          patient-dentist relationship, subsequent followup care may be provided as  
11          deemed appropriate by the ~~treating~~ dentist, or by ~~a provider~~another dentist  
12          licensed by the board designated by the ~~treating~~ dentist to act temporarily in the  
13          ~~treating~~ dentist's absence. ~~In certain types of telehealth utilizing asynchronous-~~  
14          ~~store-and-forward technology or electronic monitoring, it is not medically-~~  
15          ~~necessary for an independent examination of the patient to be performed.~~

16          4. A dentist practicing telehealth is subject to all North Dakota laws governing the  
17          adequacy of dental records and the provision of dental records to the patient and other  
18          dental ~~health care~~ providers treating the patient.

19          5. A dentist ~~may make appropriate referrals of patients not amenable to diagnosis or~~  
20          ~~complete treatment through a telehealth encounter, including a patient in need of~~  
21          ~~emergent care or complementary in-person care~~practicing telehealth must have  
22          procedures for providing in-person services or for the referral of a patient requiring  
23          dental services that cannot be provided by telehealth to another dentist who practices  
24          in the area of the state and the patient can readily access.

25          ~~SECTION 3. A new section to chapter 43-28 of the North Dakota Century Code is created~~  
26          ~~and enacted as follows:~~

27          ~~Prescribing – Controlled substances.~~

28          ~~1. A dentist who has performed a telehealth examination or evaluation meeting the~~  
29          ~~requirements of this chapter may prescribe medications according to the dentist's~~  
30          ~~professional discretion and judgment. Opioids may be prescribed through telehealth.~~



~~only if prescribed to a patient in a hospital or long-term care facility. Opioids may not  
be prescribed through a telehealth encounter for any other purpose.~~

~~2. Pursuant to this chapter, a dentist who prescribes a controlled substance, as defined  
by state law, shall comply with all state and federal laws regarding the prescribing of a  
controlled substance, and shall participate in the North Dakota prescription drug  
monitoring program.~~

**SECTION 5.** A new section to chapter 43-28 of the North Dakota Century Code is created  
and enacted as follows:

**Prohibition - Waivers.**

A dentist practicing dentistry may not require a patient to sign a form or statement waiving  
the patient's right to file a complaint against the dentist with an appropriate state entity or  
shielding the dentist from liability for injury resulting from a dental encounter.

**SECTION 6. APPLICATION.** The governor shall appoint the members of the board for  
staggered terms so no more than two members' terms expire each year. Notwithstanding  
section 43-28-03, a member appointed under this section may not serve more than two full five-  
year terms but may serve more than ten years.

**SECTION 7. EMERGENCY.** This Act is declared to be an emergency measure.