

**Fifty-ninth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2005**

SENATE BILL NO. 2366
(Senators G. Lee, J. Lee, Nething)
(Representatives Martinson, Price)

AN ACT to create and enact chapter 43-26.1 of the North Dakota Century Code, relating to the practice of physical therapy; to amend and reenact subsection 1 of section 10-31-04 of the North Dakota Century Code, relating to statutory cross-reference; to repeal chapter 43-26 of the North Dakota Century Code, relating to the practice of physical therapy; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

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

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

1. "Board" means the North Dakota board of physical therapy.
2. "Examination" means a national examination approved by the board for the licensure of a physical therapist or the licensure of a physical therapist assistant.
3. "Manual therapy" means the use of techniques such as mobilization or manipulation, manual lymphatic drainage, and manual traction on one or more regions of the body.
4. "Onsite supervision" means the supervising physical therapist is onsite and present in the department or facility where services are provided, is immediately available to the person being supervised, and maintains continued involvement in appropriate aspects of each treatment session in which a physical therapist assistant or a physical therapy aide is involved in components of care.
5. "Physical therapist" means a person licensed under this chapter to practice physical therapy. The term "physiotherapist" is synonymous with "physical therapist" under this chapter.
6. "Physical therapist assistant" means a person who is licensed under this chapter and who assists the physical therapist in selected components of physical therapy intervention.
7. "Physical therapy" means the care and services provided by or under the direction and supervision of a physical therapist licensed under this chapter.

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

43-26.1-02. Board of physical therapy - Members - Appointments - Vacancies. The board of physical therapy shall administer this chapter. The board consists of three licensed physical therapists, two licensed physicians, and a citizen who is not a health care professional. The governor shall appoint the board members for a term of five years, staggered so the terms of no more than two members expire each year. A person may not serve more than two full consecutive terms. Terms begin on July first. Appointments to the board to fill a vacancy occurring for other than the expiration of a term may only be made for the remainder of the unexpired term. Each physical therapist appointed must have had at least three years of physical therapy experience in North Dakota immediately prior to appointment and must practice in North Dakota during the term. Each physician appointed must have practiced medicine at least three years in North Dakota immediately prior to appointment and must practice in North Dakota during the term. Each board member shall take and file with the secretary of state the oath of office prescribed for state officials before entering upon the discharge of the member's duties.

43-26.1-03. Powers of the board. The board may:

1. Evaluate the qualifications of applicants for licensure.
2. Provide for the examination of physical therapists and physical therapist assistants and adopt passing scores for the examinations.

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

43-26.1-04. Qualifications for licensure.

1. An applicant for a license as a physical therapist or physical therapist assistant shall:
 - a. Be of good moral character.
 - b. Complete the application process.
 - c. Be a graduate of a professional physical therapy education program accredited by a national accreditation agency approved by the board.
 - d. Pass the examination approved by the board.
2. An applicant for a license as a physical therapist who has been educated outside of the United States shall:
 - a. Be of good moral character.
 - b. Complete the application process.
 - c. Provide satisfactory evidence that the applicant's education is substantially equivalent to the requirements of physical therapists educated in an accredited education program as determined by the board. For the purpose of this section, "substantially equivalent" means that an applicant for licensure educated outside of the United States shall have:

- (1) Graduated from a physical therapist education program that prepares the applicant to engage in the practice of physical therapy without restriction.
 - (2) Provided written proof that the applicant's school of physical therapy education is recognized by its own ministry of education.
 - (3) Undergone a credentials evaluation as directed by the board that determines that the candidate has met uniform criteria for educational requirements as further established by rule.
 - (4) Completed any additional education or clinical experience as required by the board.
- d. Pass the board-approved English proficiency examinations if the applicant's native language is not English.
- e. Pass the examination approved by the board.
3. Notwithstanding the provisions of subsection 2, if the applicant is educated outside of the United States and is a graduate of a professional physical therapy educational program accredited by a national accrediting agency approved by the board, the board may waive the requirements in subdivision c of subsection 2.

43-26.1-05. Application and examination.

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

43-26.1-06. Licensure by endorsement. The board shall issue a license to a physical therapist or physical therapist assistant who has a license in good standing from another jurisdiction that imposes requirements for obtaining and maintaining a license which are at least as stringent as the requirements imposed in this state.

43-26.1-07. Exemptions from licensure.

1. This chapter does not restrict a person licensed under any other law of this state from engaging in the profession or practice for which that person is licensed as long as that person does not represent, imply, or claim that that person is a physical therapist, physical therapist assistant, or a provider of physical therapy.
2. The following persons are exempt from the licensure requirements of this chapter when engaged in the following activities:
 - a. A person in a professional education program approved by the board who is satisfying supervised clinical education requirements related to the person's physical therapist or physical therapist assistant education while under on-site supervision of a physical therapist.
 - b. A physical therapist who is practicing in the United States armed services, United States public health service, or veterans administration pursuant to federal regulations for state licensure of health care providers.
 - c. A physical therapist who is licensed in another jurisdiction of the United States or credentialed to practice physical therapy in another country if that person is teaching, demonstrating, or providing physical therapy in connection with teaching or participating in an educational seminar in the state of no more than sixty days in a calendar year.
 - d. A physical therapist who is licensed in another United States jurisdiction if that person is providing services in accordance with section 43-51-03.
 - e. A physical therapist who is licensed in another United States jurisdiction or credentialed in another country, if that person by contract or employment is providing physical therapy to individuals affiliated with or employed by established athletic teams, athletic organizations, or performing arts companies temporarily practicing, competing, or performing in the state for no more than sixty days in a calendar year.
 - f. A physical therapist assistant who is licensed in another United States jurisdiction and is assisting a physical therapist engaged specifically in activities related to subdivisions b, c, and e is exempt from the requirements of licensure under this chapter.

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

43-26.1-09. Reinstatement of license.

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

- d. Pass an examination.

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

- 1. Two hundred dollars for an application for an original license. This fee is nonrefundable.
- 2. One hundred dollars for an annual renewal of the license.
- 3. Two hundred dollars for an application for reinstatement of a license.
- 4. Fifty dollars for late renewal of a license.

43-26.1-11. Patient care management.

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

43-26.1-12. Consumers' rights.

- 1. The public shall have access to the following information:
 - a. A list of physical therapists that includes place of practice, license number, date of license, and expiration and status of license.
 - b. A list of physical therapist assistants licensed in the state, including place of employment, license number, date of license, and expiration and status of license.

- c. The board's address and telephone number.
- 2. A patient has freedom of choice in selection of services and products.
- 3. Information relating to the physical therapist-patient relationship is confidential and may not be communicated to a third party who is not involved in that patient's care without the written authorization of the patient or as permitted by law.
- 4. Any person may submit a complaint to the board regarding any licensee, or any other person potentially in violation of this chapter.

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

- 1. Violating any provision of this chapter, board rules, or a written order of the board.
- 2. Practicing or offering to practice beyond the scope of the practice of physical therapy.
- 3. Failing to refer a patient or client to an appropriate practitioner if the diagnostic process reveals findings that are outside the scope of a physical therapist's knowledge, experience, or expertise.
- 4. Obtaining or attempting to obtain a license by fraud or misrepresentation.
- 5. Engaging in the performance of substandard physical therapy care due to a deliberate or negligent act or failure to act, regardless of whether actual injury to the patient is established.
- 6. Engaging in the performance of substandard care by a physical therapist assistant, including exceeding the authority to perform components of intervention selected by the supervising physical therapist regardless of whether actual injury to the patient is established.
- 7. Failing to supervise physical therapist assistants or physical therapy aides in accordance with this chapter and board rules.
- 8. A determination by the board that a licensee's conviction of an offense has a direct bearing on the licensee's ability to serve the public as a physical therapist or physical therapist assistant or that, following conviction of any offense, the holder is not sufficiently rehabilitated as provided under section 12.1-33-02.1.
- 9. Practicing as a physical therapist or working as a physical therapist assistant when physical or mental abilities are impaired by the use of controlled substances or other habit-forming drugs, chemicals, alcohol, or by other causes.
- 10. Having had a license revoked or suspended, other disciplinary action taken, or an application for licensure refused, revoked, or suspended by the proper authorities of another state, territory, or country.
- 11. Engaging in sexual misconduct. For the purpose of this paragraph sexual misconduct includes:
 - a. Engaging in or soliciting sexual relationships, whether consensual or nonconsensual, while a physical therapist or physical therapist assistant-patient relationship exists, except with a spouse.
 - b. Making sexual advances, requesting sexual favors, or engaging in other verbal conduct or physical contact of a sexual nature with patients or clients.

- c. Intentionally viewing a completely or partially disrobed patient in the course of treatment if the viewing is not related to patient diagnosis or treatment under current practice standards.
- 12. Failing to adhere to the standards of ethics of the physical therapy profession adopted by rule by the board.
- 13. Charging unreasonable or fraudulent fees for services performed or not performed.
- 14. Making misleading, deceptive, untrue, or fraudulent representations in violation of this chapter or in the practice of the profession.
- 15. Having been adjudged mentally incompetent by a court.
- 16. Aiding and abetting a person who is not licensed in this state in the performance of activities requiring a license.
- 17. Failing to report to the board, where there is direct knowledge, any unprofessional, incompetent, or illegal acts that appear to be in violation of this chapter or any rules established by the board.
- 18. Interfering with an investigation or disciplinary proceeding by failure to cooperate, by willful misrepresentation of facts, or by the use of threats or harassment against any patient or witness to prevent that patient or witness from providing evidence in a disciplinary proceeding or any legal action.
- 19. Failing to maintain adequate patient records. For the purposes of this subsection, "adequate patient records" means legible records that contain at a minimum sufficient information to identify the patient, an evaluation of objective findings, a diagnosis, a plan of care, a treatment record, and a discharge plan.
- 20. Failing to maintain patient confidentiality without the written authorization of the patient or unless otherwise permitted by law. All records used or resulting from a consultation under section 43-51-03 are part of a patient's records and are subject to applicable confidentiality requirements.
- 21. Promoting any unnecessary device, treatment intervention, or service resulting in the financial gain of the practitioner or of a third party.
- 22. Providing treatment intervention unwarranted by the condition of the patient or continuing treatment beyond the point of reasonable benefit.
- 23. Participating in underutilization or overutilization of physical therapy services for personal or institutional financial gain.

43-26.1-14. Lawful practice.

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

with any regulation adopted by the United States pharmacopoeia specifying protocols for storage of medications.

43-26.1-15. Terms and titles.

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

43-26.1-16. Representations and billings without licensure prohibited - Enforcement - Injunctions. No person or business entities of any type shall practice physical therapy or hold themselves out, represent themselves, or send out billings as providing physical therapy services, without personal licensure or the use of licensed employees as provided in this chapter. It shall be unlawful to employ an unlicensed physical therapist or physical therapist assistant to provide physical therapy services. The board's executive officer, under the board's direction, shall aid state's attorneys in the enforcement of this chapter and the prosecution of any violations thereof. In addition to the criminal penalties provided by this chapter, the civil remedy of injunction shall be available to restrain and enjoin violations of this chapter without proof of actual damages sustained by any person.

43-26.1-17. Penalty. Any person violating any of the provisions of this chapter is guilty of a class B misdemeanor.

SECTION 3. REPEAL. Chapter 43-26 of the North Dakota Century Code is repealed.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-ninth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2366.

Senate Vote: Yeas 25 Nays 20 Absent 2

House Vote: Yeas 50 Nays 44 Absent 0

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2005.

Approved at _____ M. on _____, 2005.

Governor

Filed in this office this _____ day of _____, 2005,
at _____ o'clock _____ M.

Secretary of State