

HOUSE BILL NO. 1256

Introduced by

Representatives Devlin, Holman, Olson, Seibel

Senators Dever, Heckaman, J. Lee, Schaible

1 A BILL for an Act to create and enact five new sections to chapter 43-20 of the North Dakota
2 Century Code, relating to regulation of dental therapists; to amend and reenact sections
3 43-20-01.1, 43-20-01.3, 43-20-01.4, 43-20-02.1, 43-20-05, 43-20-06, 43-20-08, 43-20-10,
4 43-20-11, 43-20-12.2, 43-28-03, 43-28-04, and 43-28-06 and subsection 9 of section 43-28-18
5 of the North Dakota Century Code, relating to the regulation of dental therapists; to provide for
6 reports; and to provide for application.

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

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

10 **43-20-01.1. Definitions.**

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

- 12 1. "Dental assistant" means an individual who provides dental assistance under the
13 supervision of a dentist and within the scope of practice established by rule and
14 section 43-20-13.
- 15 2. "Dental hygienist" means an individual licensed to practice dental hygiene.
- 16 3. "Dental therapist" means an individual licensed to practice dental therapy.
- 17 4. "Qualified dental assistant" means an individual registered as a qualified dental
18 assistant to provide dental assistance as established by rule.
- 19 4.5. "Registered dental assistant" means an individual registered as a registered dental
20 assistant to provide dental assistance as established by rule.

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

1 **Dental therapist licensing.**

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

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

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

1 **43-20-01.3. Licensure by credential review.**

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

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

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

22 **43-20-01.4. License renewal - Audit.**

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

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

3 4. Within sixty days after December thirty-first of the odd-numbered year, an expired
4 license may be renewed by submitting the renewal application, renewal fee, proof of
5 completion of continuing education, and a late fee established by the board by rule.

6 5. If the renewal application, renewal fee, proof of completion of continuing education,
7 and late fee are not received within sixty days after December thirty-first of the
8 odd-numbered year, the license may not be renewed, and the dental therapist or
9 dental hygienist ~~must~~shall apply for and meet the requirements for licensure to be
10 granted a license.

11 6. The board may extend the renewal deadlines for a dental therapist or dental hygienist
12 providing proof of medical or other hardship rendering the dental therapist or dental
13 hygienist unable to meet the deadline.

14 7. The board may audit continuing education credits. Each licensee shall maintain
15 certificates or records of continuing education activities for three years. Upon receiving
16 notice of an audit from the board, a licensee shall provide satisfactory documentation
17 of attendance at, or participation in, the continuing education activities listed on the
18 licensee's continuing education form. Failure to comply with the audit is grounds for
19 nonrenewal of or disciplinary action against the ~~licensee~~licensee.

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

22 **43-20-02.1. Conviction not bar to licensure - Exceptions.**

23 Conviction of an offense does not disqualify a ~~person~~an individual from licensure under this
24 chapter unless the board determines that the offense has a direct bearing upon a ~~person's~~an
25 individual's ability to serve the public as a dental therapist or dental hygienist, or that, following
26 conviction of any offense, the ~~person~~individual is not sufficiently rehabilitated under section
27 12.1-33-02.1.

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

30 **Dental therapists - Prohibition of independent practice.**

31 A dental therapist may not practice dental therapy independently.

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

3 **Dental therapists - Practice by.**

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

- 1 p. Tooth reimplantation and stabilization of reimplanted teeth following traumatic
2 avulsion;
3 q. A brush biopsy;
4 r. Repair and minor adjustments of a removable prosthetic device;
5 s. Administration of nitrous oxide analgesia and local anesthetic;
6 t. Suturing and suture removal;
7 u. Emergency palliative treatment of dental pain and performing management of
8 dental trauma, including suturing;
9 v. Performing other related services and functions authorized by the supervising
10 dentist and for which the dental therapist is trained; and
11 w. Referrals.
12 2. A person may not be referred to as a dental therapist unless that person is an
13 individual licensed under this chapter as a dental therapist.
14 3. Additional tasks permitted to be performed by licensed dental therapists may be
15 outlined by the board by appropriate rules.

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

18 **43-20-05. Licenses and registrations - Denial and discipline.**

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

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

- 1 for any offense, that the individual is not sufficiently rehabilitated under section
2 12.1-33-02.1.
- 3 6. Been adjudged mentally ill and not judicially restored by the regularly constituted
4 authorities.
- 5 7. Abused, is dependent on, or addicted to the use of alcohol or drugs.
- 6 8. Engaged in fraud or deceit in obtaining a dental therapy or dental hygiene license or
7 dental assisting registration.
- 8 9. Disclosed confidential information.
- 9 10. Received a fee for the referral of patients to a dentist, dental therapist, or dental
10 hygienist.
- 11 11. Used unethical measures to draw dental patronage from the practice of another
12 licensee.
- 13 12. Fraudulently prescribed or dispensed drugs or medications.
- 14 13. Knowingly submitted misleading, deceptive, untrue, or fraudulent information on a
15 claim form, bill, or statement to a third party.
- 16 14. Advised or directed patients to dental laboratories or dental laboratory technicians for
17 a dental service or advised or directed patients to deal directly with laboratories or
18 dental laboratory technicians.
- 19 15. Violated the code of ethics adopted by the board by rule.
- 20 16. Had a registration or license suspended, revoked, or disciplined in another jurisdiction.
- 21 17. Failed to report to the board in writing within sixty days a violation of this chapter or
22 chapter 43-28.
- 23 18. Practiced outside the scope of practice established by the board by rules and this
24 chapter.

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

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

29 **43-20-06. Inactive status.**

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

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

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

7 **43-20-08. Unlawful to practice without license or registration.**

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

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

16 **43-20-10. State board of dental examiners - Authority - Duty.**

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

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

25 **43-20-11. Practice of dental therapy and dental hygiene supplemental to practice of**
26 **dentistry.**

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

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

3 **43-20-12.2. Notice to board of change of address.**

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

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

12 **Dental therapist - Dentist supervision and written collaborative management**
13 **agreement.**

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

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

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

9 **Dental therapist - Drugs.**

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

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

17 **43-28-03. State board of dental examiners - Members - Appointment - Terms of office -**
18 **Oath - Vacancies.**

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

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

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

5 **43-28-04. Qualifications and appointment of members of the board - Limited vote.**

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

8 a. Is a dentist licensed and registered under this chapter; and

9 b. Is actively engaged in the practice of dentistry and has been so engaged in this
10 state for at least five years immediately preceding the appointment.

11 2. An individual may not be appointed as the dental hygienist member of the board
12 unless that individual:

13 a. Is a licensed and registered dental hygienist in accordance with chapter 43-20;
14 and

15 b. Is actively engaged in the practice of dental hygiene and has been so engaged in
16 this state for at least five years immediately preceding the dental hygienist's
17 appointment.

18 3. An individual may not be appointed as the consumer member of the board unless that
19 individual:

20 a. Has been a resident of North Dakota for five years immediately preceding
21 appointment;

22 b. Has no personal or family financial relationship with the dental profession; and

23 c. Is not a dentist, a dental therapist, a dental hygienist, a dental assistant, a
24 physician, a nurse, or the spouse of an individual engaged in any of those
25 occupations.

26 4. An individual may not be appointed as the dental therapist member of the board
27 unless that individual:

28 a. Is a licensed and registered dental therapist in accordance with chapter 43-20;
29 and

30 b. For the first term of the dental therapist, is actively engaged in the practice of
31 dental therapy and has been so engaged in this state for at least one year

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

5 5. An individual may not be appointed as the registered dental assistant member of the
6 board unless that individual:

7 a. Is a registered dental assistant in accordance with chapter 43-20; and

8 b. Is actively engaged in the practice of dental assistance and has been so engaged
9 in this state for at least five years immediately preceding the registered dental
10 assistant's appointment.

11 6. The dental therapist, dental hygienist, dental assistant, and consumer
12 membermembers of the board shall exercise full voting privileges in all areas except
13 that the dental therapist, dental hygienist, and dental assistant may not participate in
14 the clinical examination of dentists for licensure and the consumer member may not
15 participate in the clinical examination of dentists, dental therapists, or dental hygienists
16 for licensure.

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

19 **43-28-06. Powers of board.**

20 The board may:

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

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

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

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

9 7. Enter an agreement with the same professional organization with which the North
10 Dakota board of medicine has entered an agreement under subsection 6 of section
11 43-17-07.1.

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

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

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

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

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

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