

**SENATE BILL NO. 2125**

Introduced by

Senators Burckhard, Anderson, Oban

Representatives D. Anderson, Dobervich, Karls

1 A BILL for an Act to create and enact a new subsection to section 43-26.1-10, a new subsection  
2 to section 43-26.1-13, and a new subsection to section 43-26.1-15 of the North Dakota Century  
3 Code, relating to the regulation of the practice of physical therapy; and to amend and reenact  
4 sections 43-26.1-01, 43-26.1-02, 43-26.1-03, 43-26.1-04, 43-26.1-05, 43-26.1-08, 43-26.1-11,  
5 and 43-26.1-14 of the North Dakota Century Code, relating to the board of physical therapy and  
6 physical therapy licensure; and to provide for application.

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

8 **SECTION 1. AMENDMENT.** Section 43-26.1-01 of the North Dakota Century Code is  
9 amended and reenacted as follows:

10 **43-26.1-01. Definitions.**

11 In this chapter, unless the context or ~~subject matter~~ otherwise requires:

- 12 1. "Board" means the North Dakota board of physical therapy.
- 13 2. "Competence" is the application of knowledge, skills, and behaviors required to  
14 function effectively, safely, ethically, and legally within the context of the patient's or  
15 client's environment.
- 16 3. "Continuing competence" is the lifelong process of maintaining and documenting  
17 competence through ongoing self-assessment, development, and implementation of a  
18 personal learning plan along with subsequent reassessment.
- 19 4. "Direct supervision" means the supervising physical therapist is physically present on  
20 the premises and immediately available for direction and supervision, has direct  
21 contact with the patient during each visit, and completes all components of care  
22 requiring skilled therapy services. Telehealth does not meet the requirement for direct  
23 supervision.

- 1       5.   "Electronic communications" means the science and technology of communication  
2       over a distance by electronic transmission of impulses, including activities involving or  
3       using electronic communications to store, organize, send, retrieve, and convey  
4       information.
- 5       6.   "Examination" means a national examination approved by the board for the licensure  
6       of a physical therapist or the licensure of a physical therapist assistant.
- 7       ~~3-7.~~ "General supervision" means the supervising physical therapist is onsite and present  
8       where services are provided or is immediately available to the physical therapist  
9       assistant being supervised by means of electronic communications, maintains  
10      continual involvement in the appropriate aspects of patient care, and has primary  
11      responsibility for all patient care services rendered by a physical therapist assistant.
- 12      8.   "Manual therapy" means the use of techniques such as mobilization or manipulation,  
13      manual lymphatic drainage, and manual traction on one or more regions of the body.
- 14      ~~4-9.~~ "Onsite supervision" means the supervising physical therapist is onsite and present in  
15      the department or facility where services are provided, is immediately available to the  
16      ~~person~~individual being supervised, and maintains continued involvement in  
17      appropriate aspects of each treatment session in which a student physical therapist or  
18      a student physical therapist assistant ~~or a physical therapy aide~~ is involved in  
19      components of care.
- 20      ~~5-10.~~ "Physical therapist" means a ~~person~~an individual licensed under this chapter to  
21      practice physical therapy. The term "physiotherapist" is synonymous with "physical  
22      therapist" under this chapter.
- 23      ~~6-11.~~ "Physical therapist assistant" means a ~~person who is~~an individual licensed under this  
24      chapter and who assists the physical therapist in selected components of physical  
25      therapy intervention.
- 26      ~~7-12.~~ "Physical therapy" means the care and services provided by or under the direction and  
27      supervision of a physical therapist licensed under this chapter.
- 28      ~~8-13.~~ "Physical therapy aide" means a ~~person~~an individual trained under the direction of a  
29      physical therapist who performs designated and supervised routine tasks related to  
30      physical therapy.
- 31      ~~9-14.~~ "Practice of physical therapy" means:

- 1           a.   Examining, evaluating, and testing individuals with mechanical, physiological,  
2                    and developmental impairments, functional limitations in movement and mobility,  
3                    and disabilities or other health and movement-related conditions ~~in order~~ to  
4                    determine a diagnosis for physical therapy, prognosis, and plan of therapeutic  
5                    intervention, and to assess the ongoing effects of intervention.
- 6           b.   Alleviating impairments, functional limitations in movement and mobility, and  
7                    disabilities by designing, implementing and modifying therapeutic interventions  
8                    that may include, ~~but are not limited to,~~ therapeutic exercise; neuromuscular  
9                    education; functional training related to positioning, movement, and mobility in  
10                  self-care and in-home, community, or work integration or reintegration; manual  
11                  therapy; therapeutic massage; prescription, application and, as appropriate,  
12                  fabrication of assistive, adaptive, orthotic, prosthetic, protective, and supportive  
13                  devices and equipment related to positioning, movement, and mobility; airway  
14                  clearance techniques; integumentary protection and repair techniques;  
15                  debridement and wound care; physiotherapy; physical agents or modalities;  
16                  mechanical and electrotherapeutic modalities; and patient-related instruction.
- 17          c.   Engaging as a physical therapist in reducing the risk of injury, impairment,  
18                  functional limitation and disability, including the promotion and maintenance of  
19                  fitness, health, and wellness in populations of all ages.
- 20          d.   Engaging as a physical therapist in administration, consultation, education, and  
21                  research.
- 22 ~~40-15.~~ "Restricted license" for a physical therapist or physical therapist assistant means a  
23                  license on which the board places restrictions or conditions, or both, as to scope of  
24                  practice, place of practice, supervision of practice, duration of licensed status, or type  
25                  or condition of patient or client to whom the licensee may provide services.
- 26 ~~44-16.~~ "Telehealth" is the use of electronic communications to provide and deliver  
27                  health-related information and health care services, including physical therapy related  
28                  information and services, over any distance. Telehealth encompasses health care and  
29                  health promotion activities, including education, advice, reminders, interventions, and  
30                  the monitoring of interventions.

1        17. "Testing" means standard methods and techniques used to gather data about the  
2            patient.

3        **SECTION 2. AMENDMENT.** Section 43-26.1-02 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5        **43-26.1-02. Board of physical therapy - Members - Appointments - Vacancies.**

- 6        1. The board of physical therapy shall administer this chapter. The board consists of  
7 three licensed physical therapists, ~~two~~one licensed ~~physicians~~physician, ~~one licensed~~  
8 ~~physical therapist assistant~~, and ~~a citizen who is not a health care professional~~two  
9 public members. The governor shall appoint ~~the~~ board members for a term of five  
10 years, staggered so the terms of no more than two members expire each year. ~~A~~  
11 ~~person~~An individual may not serve more than two full consecutive terms. Terms begin  
12 on July first. Appointments to the board to fill a vacancy occurring for other than the  
13 expiration of a term may only be made for the remainder of the unexpired term.
- 14        2. Each physical therapist ~~and physical therapist assistant~~ appointed must have had at  
15 least three years of physical therapy experience in North Dakota immediately ~~prior~~  
16 ~~to~~before appointment and must practice in North Dakota during the term. ~~Each~~The  
17 physician appointed must have practiced medicine at least three years in North  
18 Dakota immediately ~~prior~~tobefore appointment and must practice in North Dakota  
19 during the term. Each board member shall take and file with the secretary of state the  
20 oath of office prescribed for state officials before entering upon the discharge of the  
21 member's duties.
- 22        3. Each board member is entitled to mileage reimbursement as provided in section  
23 54-06-09 and reimbursement for actual and necessary expenses in the amounts  
24 provided by law for state officers in section 44-08-04.

25        **SECTION 3. AMENDMENT.** Section 43-26.1-03 of the North Dakota Century Code is  
26 amended and reenacted as follows:

27        **43-26.1-03. Powers of the board.**

28        The board may:

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

- 1        3. Issue licenses to persons who meet the requirements of this chapter.
- 2        4. Regulate the practice of physical therapy by interpreting and enforcing this chapter.
- 3        5. Adopt and revise rules consistent with this chapter.
- 4        6. Meet at least annually and ~~such~~ other times as deemed necessary. A majority of board
- 5        members ~~shall constitute~~constitutes a quorum for the transaction of business.
- 6        7. Establish mechanisms for assessing the continuing professional competence of
- 7        physical therapists and physical therapist assistants to engage in the practice of
- 8        physical therapy.
- 9        8. Establish and collect fees for sustaining the necessary operation and expenses of the
- 10       board.
- 11       9. Elect officers from its members necessary for the operations and obligations of the
- 12       board. Terms of office ~~shall be~~are one year.
- 13       10. Provide for the timely orientation and training of new professional and public
- 14       appointees to the board regarding board licensing and disciplinary procedures, this
- 15       chapter, and board rules, policies, and procedures.
- 16       11. Maintain a current list of all ~~persons~~individuals regulated under this chapter. This
- 17       contact information includes the ~~person's~~individual's name, current business address,
- 18       business telephone number, electronic mail address, and board license number.
- 19       12. Provide information to the public regarding the complaint process.
- 20       13. Employ necessary personnel to carry out the administrative work of the board.
- 21       14. Enter ~~into~~ contracts for services necessary for enforcement of this chapter.
- 22       15. Report final disciplinary action taken against a licensee to a national disciplinary
- 23       database recognized by the board or as required by law.
- 24       16. Review and investigate all complaints the board receives against licensees concerning
- 25       violations of this chapter. The board shall keep all information relating to the receipt
- 26       and investigation of the complaint confidential until the information is disclosed in the
- 27       course of the investigation or any subsequent proceeding or until disclosure is
- 28       required by law. However, patient records, including clinical records, files, any report or
- 29       oral statement relating to diagnostic findings of a patient or treatment of a patient, any
- 30       information from which a patient or the patient's family might be identified, or

1 information received and records or reports kept by the board as a result of its  
2 investigation, are confidential.

3 **SECTION 4. AMENDMENT.** Section 43-26.1-04 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5 **43-26.1-04. Qualifications for licensure.**

6 1. Before being approved for a license as a physical therapist or physical therapist  
7 assistant, an applicant shall:

8 a. ~~Be~~Must be of good moral character.

9 b. ~~Complete~~Shall complete the application process.

10 c. ~~Be~~Must be a graduate of a professional physical therapy~~therapist or physical~~  
11 therapist assistant education program accredited by a national accreditation  
12 agency approved by the board.

13 d. ~~Pass~~Shall pass the examination approved by the board.

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

16 a. ~~Be~~Must be of good moral character.

17 b. ~~Complete~~Shall complete the application process.

18 c. ~~Provide~~Shall provide satisfactory evidence that the applicant's education is  
19 substantially equivalent to the requirements of a physical therapist~~therapist or~~  
20 physical therapist assistant educated in an accredited education program as  
21 determined by the board. For the purpose of this section, "substantially  
22 equivalent" means ~~that~~ an applicant for licensure educated outside of the United  
23 States ~~shall~~must have:

24 (1) Graduated from a physical therapist or physical therapist assistant  
25 education program that prepares the applicant to engage in the practice of  
26 physical therapy without restriction.

27 (2) Provided written proof ~~that~~ the applicant's school of physical therapy or  
28 physical therapy assistant education is recognized by its ~~own~~ ministry of  
29 education or other appropriate education agency.

- 1                   (3) Undergone a credentials evaluation as directed by the board that  
2                   ~~determines that~~determining the candidate has met uniform criteria for  
3                   educational requirements as further established by rule.
- 4                   (4) Completed any additional education or clinical experience as required by  
5                   the board.
- 6                   d. ~~Pass~~Shall pass the board-approved English proficiency examinations if the  
7                   applicant's native language is not English.
- 8                   e. ~~Pass~~Shall pass the examination approved by the board.
- 9                   f. Shall obtain a criminal background check as referenced in section 43-26.1-05.1  
10                  and required under article III of chapter 43-26.2.
- 11                  3. Notwithstanding the provisions of subsection 2, if the applicant is educated outside of  
12                  the United States and is a graduate of a professional physical ~~therapy~~therapist or  
13                  physical therapist assistant educational program accredited by a national accrediting  
14                  agency approved by the board, the board may waive the requirements in subdivision c  
15                  of subsection 2.

16                  **SECTION 5. AMENDMENT.** Section 43-26.1-05 of the North Dakota Century Code is  
17                  amended and reenacted as follows:

18                  **43-26.1-05. Application and examination.**

- 19                  1. An applicant for licensure shall file a complete application as required by the board.  
20                  The applicant shall include application fees as ~~prescribed~~provided in this chapter and  
21                  under applicable rules.
- 22                  2. The board shall provide examinations at times and places ~~it~~the board determines. The  
23                  board shall determine the passing score.
- 24                  3. An applicant for licensure as a physical therapist may take the examination after the  
25                  application process has been completed. The examination ~~shall~~must test entry-level  
26                  competence related to physical therapy theory, examination and evaluation, diagnosis,  
27                  prognosis, treatment intervention, prevention, and consultation.
- 28                  4. An applicant for licensure as a physical therapist assistant may take the examination  
29                  after the application process has been completed. The examination ~~shall~~must test for  
30                  requisite knowledge and skills in the technical application of physical therapy services.

1           5.    An applicant for licensure who does not pass the examination on the first attempt may  
2           retake the examination ~~one additional time without reapplication for licensure within six~~  
3           ~~months of the first failure. Before the board may approve an applicant for subsequent~~  
4           ~~testing beyond two attempts, an applicant shall reapply for licensure and shall submit~~  
5           ~~evidence satisfactory to the board of having successfully completed additional clinical~~  
6           ~~training or coursework, or both, as the board determines, not to exceed six attempts.~~  
7           There is a limit of two attempts for scores below four hundred.

8           6.    If the board determines that an applicant or examinee has engaged, or has attempted  
9           to engage, in conduct that subverts or undermines the integrity of the examination  
10          process, the board may disqualify the applicant or examinee from taking the  
11          examination.

12          **SECTION 6. AMENDMENT.** Section 43-26.1-08 of the North Dakota Century Code is  
13          amended and reenacted as follows:

14          **43-26.1-08. License renewal - Changes.**

15          A licensee shall renew the license annually pursuant to board rules. A licensee who fails to  
16          renew the license on or before the expiration date ~~shall~~may not practice as a physical therapist  
17          or physical therapist assistant in this state, and may be subject to a late renewal fee. ~~Each~~A  
18          licensee ~~is responsible for reporting~~shall report to the board a name change and other changes  
19          in ~~business and home address~~contact information within thirty days of the date of change.

20          **SECTION 7.** A new subsection to section 43-26.1-10 of the North Dakota Century Code is  
21          created and enacted as follows:

22                  Forty dollars for the compact privilege.

23          **SECTION 8. AMENDMENT.** Section 43-26.1-11 of the North Dakota Century Code is  
24          amended and reenacted as follows:

25          **43-26.1-11. Patient care management.**

26          1.    A physical therapist ~~is responsible for managing~~shall manage all aspects of each  
27          patient's physical therapy. A physical therapist shall provide:  
28                  a.    Each patient's initial evaluation and documentation.  
29                  b.    Periodic re-evaluation and documentation of each patient.  
30                  c.    The documented discharge of the patient, including the response to therapeutic  
31                  intervention at the time of discharge.



- 1           2. If the diagnostic process reveals findings ~~that are~~ outside the scope of a physical  
2           therapist's knowledge, experience, or expertise, a physical therapist shall ~~so~~ inform  
3           the patient or client and refer the patient or client to an appropriate practitioner.
- 4           3. A physical therapist shall assure the qualifications of ~~all a~~ physical therapist  
5           ~~assistants~~assistant and physical therapy ~~aides~~aide under the physical therapist's  
6           direction and supervision.
- 7           4. For each patient on each date of service, a physical therapist shall provide all of the  
8           therapeutic intervention that requires the expertise of a physical therapist and shall  
9           determine the use of physical therapist assistants ~~or physical therapy aides~~ that  
10          provide for the delivery of care that is safe, effective, and efficient.
- 11          a. A physical therapist assistant shall work under the supervision of a physical  
12          therapist. A physical therapist assistant may document care provided without the  
13          cosignature of the supervising physical therapist.
- 14          b. A physical therapist may use physical therapy aides for designated routine tasks.  
15          A physical therapy aide shall work under the direct supervision of a physical  
16          therapist. This supervision may extend to ~~offsite~~general supervision of the  
17          physical therapy aide only when the physical therapy aide is accompanying and  
18          working directly with a physical therapist assistant with a specific patient or when  
19          performing non-patient-related tasks.
- 20          5. A physical therapist's ~~or physical therapist assistant's~~ responsibility for patient care  
21          management ~~shall include~~includes accurate documentation and billing of the services  
22          provided.
- 23          6. The physical therapist shall communicate the overall plan of care with the patient or  
24          the patient's legally authorized representative.

25          **SECTION 9.** A new subsection to section 43-26.1-13 of the North Dakota Century Code is  
26          created and enacted as follows:

27                 Attempting to engage in conduct that subverts or undermines the integrity of the  
28                 examination or the examination process, including a violation of security and copyright  
29                 provisions related to the national licensure examination; utilizing recalled or  
30                 memorized examination questions from or with any person; communicating or

1           attempting to communicate with other examinees during the examination; or copying  
2           or sharing examination questions or portions of questions.

3           **SECTION 10. AMENDMENT.** Section 43-26.1-14 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5           **43-26.1-14. Lawful practice.**

- 6           1. A physical therapist or physical therapist assistant licensed under this chapter is fully  
7 authorized to practice physical therapy ~~as defined herein~~. The board shall require each  
8 licensee to provide the board with evidence of competence regarding the various  
9 elements of manual therapy the licensee practices so ~~that~~ the board may determine  
10 satisfactory competency levels and requirements as provided under section  
11 43-26.1-03.
- 12          2. A physical therapist or physical therapist assistant shall adhere to the standards of  
13 ethics of the physical therapy profession as established by rule.
- 14          3. A physical therapist may purchase, store, and administer topical medications,  
15 including aerosol medications as part of the practice of physical therapy ~~as defined~~  
16 ~~herein~~, but ~~shall~~may not dispense or sell any of the medications to patients. A physical  
17 therapist shall comply with any regulation adopted by the United States  
18 pharmacopoeia specifying protocols for storage of medications.

19           **SECTION 11.** A new subsection to section 43-26.1-15 of the North Dakota Century Code is  
20 created and enacted as follows:

21           A physical therapist who graduated from a doctor of physical therapy program may  
22           use the title "doctor of physical therapy". A physical therapist holding a doctor of  
23           physical therapy or other doctoral degree may not use the title "doctor" without clearly  
24           informing the public of the physical therapist's licensure as a physical therapist.

25           **SECTION 12. APPLICATION.** Notwithstanding section 2 of this Act, any member of the  
26 North Dakota board of physical therapy serving a term on the board when this Act becomes  
27 effective whose term does not expire on June 30, 2019, may serve the remainder of that  
28 member's term. For a board position expiring on June 30, 2019, and for the new positions to the  
29 board created by section 2 of this Act, the governor shall appoint individuals to fill those  
30 positions in accordance with section 2 of this Act, and the terms of those appointees may be

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- 1 staggered. To accomplish the staggering, the initial term of those appointees may be less than
- 2 five years.