

**Sixty-seventh Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 5, 2021**

HOUSE BILL NO. 1151
(Representatives Devlin, Rohr, M. Ruby, Weisz)
(Senators Lee, K. Roers)

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.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

43-28-01. Definitions.

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

1. "Accredited dental school" means a dental school, college, or university accredited by the commission on dental accreditation of the American dental association or its successor.
2. "Advertising" means to invite the attention of or give notice to the public, by any means, medium, or manner whatsoever of any fact, information, or data pertaining to or being conducive of the practice of dentistry in this state.
3. "Board" means the state board of dental examiners.
4. "Certificate of registration" means a written statement of the board declaring that a licensed dentist has paid the biennial registration fee required by this chapter.
5. "Dentist" means an individual who has a license to practice in this state and who holds a valid biennial certificate of registration.
6. "License" means the right, authority, or permission granted by the board to practice 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:
 - 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. A new section to chapter 43-28 of the North Dakota Century Code is created and enacted as follows:

Standard of care and professional ethics - Telehealth.

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

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.
2. A dentist may not practice telehealth unless a bona fide dentist-patient relationship is established in person or through telehealth. A dentist practicing telehealth shall verify the identity of the patient seeking care and shall disclose to the patient the dentist's identity, physical location, contact information, and licensure status.
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 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.
 - a. An appropriate telehealth examination or evaluation may include an examination utilizing secure videoconferencing in conjunction with store-and-forward technology or appropriate diagnostic testing that would be required during an in-person examination or evaluation or 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 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 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.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-seventh Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1151.

House Vote: Yeas 93 Nays 0 Absent 1

Senate Vote: Yeas 46 Nays 1 Absent 0

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2021.

Approved at _____ M. on _____, 2021.

Governor

Filed in this office this _____ day of _____, 2021,

at _____ o'clock _____ M.

Secretary of State