

## AN ACT

ENTITLED, An Act to revise certain provisions regarding the regulation of physician assistants.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 36-4A-1 be amended to read as follows:

36-4A-1. Terms as used in this chapter mean:

- (1) "Board," the State Board of Medical and Osteopathic Examiners;
- (2) "Physician assistant," a health professional who meets the qualifications defined in this chapter and is licensed by the board;
- (3) "Supervising physician," a doctor of medicine or doctor of osteopathy licensed by the board who supervises a physician assistant;
- (4) "Supervision," the act of overseeing the activities of, and accepting responsibility for, the medical services rendered by a physician assistant.

Section 2. That § 36-4A-3.1 be amended to read as follows:

36-4A-3.1. The board shall appoint a physician assistant advisory committee composed of three physician assistants. Each committee member shall serve a term of three years. However, the terms of initial appointees shall be staggered so that no more than one member's term expires in any one year. No committee member may be appointed to more than three consecutive full terms. If a vacancy occurs, the board shall appoint a person to fill the unexpired term. The appointment of a member to an unexpired term is not considered a full term. The committee shall meet at least annually or as deemed necessary to conduct business. The advisory committee shall assist the board in the regulation of physician assistants pursuant to this chapter. The committee shall also make recommendations to the board regarding rules promulgated pursuant to this chapter.

Section 3. That § 36-4A-4 be amended to read as follows:

36-4A-4. Except as provided in §§ 36-4A-5 and 36-4A-6, any person who practices as a

physician assistant in this state without a license issued by the board and a practice agreement approved by the board is guilty of a Class 1 misdemeanor. Each violation shall be considered a separate offense.

Section 4. That § 36-4A-5 be amended to read as follows:

36-4A-5. Nothing in this chapter limits the activities and services of a physician assistant in pursuing an approved course of study at an accredited physician assistant program.

Section 5. That § 36-4A-6 be amended to read as follows:

36-4A-6. Nothing in this chapter limits the activities of a physician assistant employed by the federal government in the performance of their duties, nor to the Christian Scientists as such who do not practice medicine, surgery, or obstetrics by the use of any material remedies or agencies. Any physician assistant who is employed by the federal government and practices outside of the federal system shall be licensed and abide by the terms of this chapter.

Section 6. That § 36-4A-8 be amended to read as follows:

36-4A-8. The board may grant a license to an applicant who:

- (1) Is of good moral character;
- (2) Has successfully completed an educational program for physician assistants accredited by the Accreditation Review Commission on Education for the Physician Assistant or its successor agency, or, prior to 2001, either by the Committee on Allied Health Education and Accreditation or the Commission on Accreditation of Allied Health Education Program;
- (3) Has passed the Physician Assistant National Certification Examination administered by the National Committee on Education for Physician Assistants; and
- (4) Has submitted verification that the physician assistant applicant is not subject to any disciplinary proceeding or pending complaint before any medical or other licensing board

unless the board considers such proceedings or complaint and agrees to licensure.

Section 7. That § 36-4A-8.1 be amended to read as follows:

36-4A-8.1. The board may issue a temporary license to an applicant who has successfully completed an approved program and has submitted evidence to the board that the applicant is a candidate accepted to write the examination required by § 36-4A-8 or is awaiting the results of the first examination for which the applicant is eligible after graduation from an approved physician assistant program. A temporary license may be issued only once and is effective for a term of not more than one hundred twenty days. A temporary license expires on the occurrence of the following:

- (1) Issuance of a regular license;
- (2) Failure to pass the licensing examination; or
- (3) Expiration of the term for which the temporary license was issued.

Section 8. That § 36-4A-10 be amended to read as follows:

36-4A-10. The board may license, as a physician assistant in this state, those physician assistants practicing in this state on July 1, 1973. However, such physician assistants are subject to the provisions of this chapter in so far as the chapter provides for a revocation of licenses and the causes thereof.

Section 9. That chapter 36-4A be amended by adding thereto a NEW SECTION to read as follows:

The term, practice agreement, as used in this chapter, means a written agreement authored and signed by the physician assistant and the supervising physician. The practice agreement shall prescribe the delegated activities which the physician assistant may perform, consistent with section 10 of this Act and contain such other information as required by the board to describe the physician assistant's level of competence and the supervision provided by the physician. A signed copy of the practice agreement shall be kept on file at the physician assistant's primary practice site and be filed

with and approved by the board prior to beginning practice. No physician assistant may practice without an approved practice agreement.

Section 10. That chapter 36-4A be amended by adding thereto a NEW SECTION to read as follows:

A physician assistant shall be considered an agent of the supervising physician in the performance of all practice-related activities. A physician assistant may provide those medical services that are delegated by the supervising physician pursuant to section 9 of this Act if the service is within the physician assistant's skills, forms a component of the physician's scope of practice, and is provided with supervision including:

- (1) Initial medical diagnosis and institution of a plan of therapy or referral;
- (2) Prescribing and provision of drug samples or a limited supply of labeled medications, including controlled substances listed on Schedule II in chapter 34-20B for one period of not more than thirty days, for treatment of causative factors and symptoms. Medications or sample drugs provided to patients shall be accompanied with written administration instructions and appropriate documentation shall be entered in the patient's record. Physician assistants may request, receive, and sign for professional samples of drugs provided by the manufacturer;
- (3) Responding to emergencies and the institution of emergency treatment measures including the writing of a chemical or physical restraint order when the patient may do personal harm or harm others;
- (4) Completing and signing of official documents such as birth and death certificates and similar documents required by law;
- (5) Taking X rays and performing radiologic procedures; and
- (6) Performing physical examinations for participation in athletics and certifying that the

patient is healthy and able to participate in athletics.

Section 11. That chapter 36-4A be amended by adding thereto a NEW SECTION to read as follows:

A physician assistant licensed in this state or licensed or authorized to practice in any other United States jurisdiction or who is credentialed as a physician assistant by a federal employer who is responding to a need for medical care created by an emergency or a state or local disaster (not to be defined as an emergency situation which occurs in the place of one's employment) may render such care that he or she is able to provide without supervision as it is defined in this chapter, or with such supervision as is available.

No physician who supervises a physician assistant providing medical care in response to such an emergency or state or local disaster is required to meet the requirements set forth in this chapter for a supervising physician.

Section 12. That chapter 36-4A be amended by adding thereto a NEW SECTION to read as follows:

No physician assistant licensed in this state or licensed or authorized to practice in other states of the United States who voluntarily and gratuitously, and other than in the ordinary course of employment or practice, renders emergency medical assistance is liable for civil damages for any personal injuries which result from acts or omissions by those persons in rendering emergency care which constitute ordinary negligence. The immunity granted by this section does not apply to acts or omissions constituting willful, or wanton negligence or if the medical assistance is rendered at any hospital, physician's office, or other health care delivery entity where those services are normally rendered. No physician who supervises a physician assistant voluntarily and gratuitously providing emergency care as described in this section is liable for civil damages for any personal injuries which result from acts or omissions by the physician assistant rendering emergency care.

Section 13. That § 36-4A-27 be amended to read as follows:

36-4A-27. Nothing in this chapter authorizes any physician assistant to perform those specific functions and duties delegated by law to those persons licensed as chiropractors under chapter 36-5, dentists and dental hygienists under chapter 36-6A, optometrists under chapter 36-7, podiatrists under chapter 36-8 or pharmacists under chapter 36-11.

Section 14. That § 36-4A-28 be amended to read as follows:

36-4A-28. If any physician assistant renders services in a hospital and related institutions as licensed pursuant to the provisions of chapter 34-12, the physician assistant is subject to the rules and regulations of that hospital and related institutions.

Section 15. That § 36-4A-29 be amended to read as follows:

36-4A-29. The physician, by supervision, continuous monitoring, and evaluation accepts initial and continuing responsibility for the physician assistant or assistants responsible to the physician until such relationship is terminated. Supervision may be by direct personal contact, or by a combination of direct personal contact and contact via telecommunication, as may be required by the board. If the office of a physician assistant is separate from the main office of the supervising physician, the supervision shall include on-site personal supervision by a supervising physician as required by the board. A physician assistant who is issued a temporary license pursuant to § 36-4A-8.1 shall initially receive thirty days of on-site, direct supervision by a supervising physician. Thereafter, and until expiration of the temporary license, the supervision shall include at least two one-half business days per week of on-site personal supervision by a supervising physician.

Section 16. That § 36-4A-29.1 be amended to read as follows:

36-4A-29.1. The board may authorize modifications in the method and frequency of supervision of a physician assistant required by § 36-4A-29 that it considers appropriate based upon its finding of adequate supervision, training, and proficiency.

A supervising physician may apply to the board for permission to supervise more than one physician assistant. The board shall establish the number of physician assistants, up to four FTE, to be supervised by a supervising physician based upon its finding that adequate supervision will exist under the arrangement proposed by the supervising physician.

The board may consider a joint application for both modification of supervision and the number of physician assistants supervised as provided in this section.

Section 17. That chapter 36-4A be amended by adding thereto a NEW SECTION to read as follows:

In order to supervise a physician assistant, a physician shall:

- (1) Be licensed as a physician by the board pursuant to chapter 36-4;
- (2) Be free from any restriction on his or her ability to supervise a physician assistant that has been imposed by board disciplinary action; and
- (3) Maintain a written practice agreement with the physician assistant as described in section 8 of this Act.

Section 18. That § 36-4A-30 be amended to read as follows:

36-4A-30. Nothing in this chapter relieves the physician of the professional or legal responsibility for the care and treatment of patients cared for by the physician assistant.

Section 19. That chapter 36-4A be amended by adding thereto a NEW SECTION to read as follows:

Nothing in this chapter limits the employment arrangement of a physician and a physician assistant licensed under this Act.

Section 20. That § 36-4A-31 be amended to read as follows:

36-4A-31. The license of every person licensed under the provisions of this chapter shall be renewed annually on a date set by the board. The request for renewal shall be made on a form

furnished by the board and shall include such proof, as may be required by the board, of continuance of the qualifications for original licensure including the information set forth in subdivision 36-4A-8(2) and payment of the renewal fee.

Section 21. That § 36-4A-32 be amended to read as follows:

36-4A-32. A renewal request shall be accompanied by the prescribed fee together with evidence satisfactory to the board of the completion during the preceding twelve months of at least thirty hours of post-graduate studies approved by the board. Any physician assistant who maintains current certification by the National Commission on Certification of Physician Assistants (NCCPA) may document compliance with this requirement by providing proof of current certification by the NCCPA.

Section 22. That § 36-4A-33 be amended to read as follows:

36-4A-33. Any license not renewed pursuant to § 36-4A-31 is suspended. A license so suspended may be reinstated during the following twelve months by application to the board and payment of the renewal fee and a reinstatement fee as fixed by the board pursuant to § 36-4A-34. Thereafter, a license so suspended may be reinstated only upon payment of all delinquent renewal fees and a reinstatement fee fixed by the board pursuant to § 36-4A-34, following specific approval by the board.

Section 23. That § 36-4A-34 be amended to read as follows:

36-4A-34. The board shall collect in advance the following nonrefundable fees from applicants:

- (1) For an initial license, not more than seventy-five dollars;
- (2) For renewal of a license, not more than one hundred dollars;
- (3) For reinstatement of a lapsed license, the current renewal fee plus not more than twenty-five dollars;
- (4) For a temporary license, not more than fifty dollars.



Section 24. That § 36-4A-36 be amended to read as follows:

36-4A-36. All fees received by the board and moneys collected under the provisions of this chapter shall be deposited in a bank as authorized by the board. No fee may be refunded. The funds are subject to withdrawal as authorized by the board. A report of all receipts and expenditures shall be made at the close of each fiscal year and filed with the state auditor.

Section 25. That § 36-4A-37 be amended to read as follows:

36-4A-37. The board may deny the issuance or renewal of a license. The board may suspend, revoke, or impose other disciplinary actions upon the license of any physician assistant issued under this chapter upon satisfactory proof, in compliance with chapter 1-26, of the licensee's:

- (1) Professional incompetence or unprofessional or dishonorable conduct as defined in §§ 36-4-29 and 36-4-30;
- (2) Violation of this chapter in any respect;
- (3) Failure to maintain on file with the board a copy of each practice agreement containing the current information regarding the licensee's practice status as required by the board;
- (4) Rendering medical services beyond those delegated to the physician assistant in the practice agreement; or
- (5) Rendering medical services without supervision of a physician as required by law and the rules of the board.

Section 26. That § 36-4A-41 be amended to read as follows:

36-4A-41. Upon application, the board may reissue a license to practice to any person whose licensure has been canceled, suspended, or revoked.

Section 27. That § 36-4A-42 be amended to read as follows:

36-4A-42. The board shall promulgate rules pursuant to chapter 1-26 pertaining to fees, licensure of physician assistants, supervision requirements, and disciplinary proceedings.

Section 28. That § 36-4A-2 be repealed.

Section 29. That § 36-4A-3 be repealed.

Section 30. That § 36-4A-7 be repealed.

Section 31. That § 36-4A-9 be repealed.

Section 32. That § 36-4A-11 be repealed.

Section 33. That § 36-4A-12 be repealed.

Section 34. That § 36-4A-13 be repealed.

Section 35. That § 36-4A-14 be repealed.

Section 36. That § 36-4A-15 be repealed.

Section 37. That § 36-4A-16 be repealed.

Section 38. That § 36-4A-16.1 be repealed.

Section 39. That § 36-4A-17 be repealed.

Section 40. That § 36-4A-18 be repealed.

Section 41. That § 36-4A-19 be repealed.

Section 42. That § 36-4A-20 be repealed.

Section 43. That § 36-4A-21 be repealed.

Section 44. That § 36-4A-22 be repealed.

Section 45. That § 36-4A-23 be repealed.

Section 46. That § 36-4A-24 be repealed.

Section 47. That § 36-4A-25 be repealed.

Section 48. That § 36-4A-26 be repealed.

Section 49. That § 36-4A-35 be repealed.

Section 50. That § 36-4A-43 be repealed.

Section 51. That § 36-4A-44 be repealed.

Section 52. That § 36-4A-45 be repealed.

Section 53. That § 36-4A-46 be repealed.

Section 54. That § 36-4A-47 be repealed.

Section 55. That § 36-4A-48 be repealed.

Section 56. That § 36-4A-49 be repealed.

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I certify that the attached Act  
originated in the

HOUSE as Bill No. 1028

\_\_\_\_\_  
Chief Clerk  
\_\_\_\_\_

\_\_\_\_\_  
Speaker of the House

Attest:

\_\_\_\_\_  
Chief Clerk

\_\_\_\_\_  
President of the Senate

Attest:

\_\_\_\_\_  
Secretary of the Senate

House Bill No. 1028

File No. \_\_\_\_\_

Chapter No. \_\_\_\_\_

\_\_\_\_\_  
Received at this Executive Office  
this \_\_\_\_\_ day of \_\_\_\_\_ ,

20\_\_\_\_ at \_\_\_\_\_ M.

By \_\_\_\_\_  
for the Governor  
\_\_\_\_\_

The attached Act is hereby  
approved this \_\_\_\_\_ day of  
\_\_\_\_\_, A.D., 20\_\_\_\_

\_\_\_\_\_  
Governor

\_\_\_\_\_  
STATE OF SOUTH DAKOTA,  
ss.  
Office of the Secretary of State

Filed \_\_\_\_\_, 20\_\_\_\_  
at \_\_\_\_\_ o'clock \_\_\_\_ M.

\_\_\_\_\_  
Secretary of State

By \_\_\_\_\_  
Asst. Secretary of State