



2023 South Dakota Legislature

Senate Bill 78

Introduced by: **Senator Davis**

1 **An Act to create the South Dakota Board of Physical Therapy and make an**
 2 **appropriation therefor.**

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

4 **Section 1. That § 36-10-18 be AMENDED:**

5 **36-10-18.** Terms used in §§ ~~36-10-18~~ 36-10-18.1 through 36-10-52 mean:

6 (1) ~~"Board of Examiners," or "board," the South Dakota State Board of Medical and~~
 7 ~~Osteopathic Examiners;~~

8 ~~(2) "Physical therapist," a person who is licensed, or who has obtained a compact~~
 9 ~~privilege, to practice physical therapy under this chapter;~~

10 ~~(3) "Physical therapy," the practice of physical therapy as defined in § 36-10-18.1;~~

11 ~~(4)(2) "Physical therapist assistant," a person who is licensed, or who has obtained a~~
 12 ~~compact privilege, to assist in providing physical therapy services under the~~
 13 ~~supervision of a physical therapist under this chapter;~~

14 ~~(5) "Committee," the physical therapy advisory committee established in § 36-10-19;~~
 15 and

16 ~~(3) "Supervision," the responsibility of a physical therapist to observe, direct, and~~
 17 ~~review the work, records, and practice of a physical therapist assistant permitted~~
 18 ~~by § 36-10-35.7, to ensure that the physical therapist assistant renders good and~~
 19 ~~safe treatment to the patient.~~

20 **Section 2. That § 36-10-18.1 be AMENDED:**

21 **36-10-18.1.** For the purposes of §§ ~~36-10-18~~ through ~~36-10-52~~, the ~~The~~ practice
 22 of physical therapy is the examination and evaluation of patients ~~a patient~~ with a
 23 mechanical, physiological, and/or developmental impairment, a functional
 24 limitation, and a disability, or other similar conditions in order to determine condition to:

- 1 (1) Determine a diagnosis, prognosis, and therapeutic intervention;~~alleviation of~~
 2 ~~impairments and functional limitations~~
- 3 (2) Alleviate any impairment or functional limitation by designing, implementing, and
 4 modifying therapeutic interventions that include therapeutic exercise, functional
 5 training in community or work reintegration, manual therapy techniques including
 6 soft tissue and joint mobilization, assistive and adaptive devices and equipment,
 7 bronchopulmonary hygiene, debridement and wound care, physical agents and
 8 mechanical modalities, therapeutic massage, electrotherapeutic modalities, and
 9 patient-related instruction;~~prevention of~~
- 10 (3) Prevent injury, ~~impairments~~impairment, functional ~~limitations~~limitation, and
 11 disability ~~including through~~ the promotion and maintenance of fitness, health, and
 12 quality of life, in all age populations; and
- 13 (4) Provide consultation, education, and research.

14 **Section 3. That chapter 36-10 be amended with a NEW SECTION:**

15 The State Board of Physical Therapy is created within the Department of Health.

16 The board shall:

- 17 (1) Exercise all statutorily prescribed functions and administrative functions; and
 18 (2) Provide records, information, and reports to the secretary of the department, at
 19 the time and in the manner requested by the secretary.

20 **Section 4. That chapter 36-10 be amended with a NEW SECTION:**

21 The State Board of Physical Therapy consists of:

- 22 (1) Four persons who are licensed to practice physical therapy in this state and have
 23 practiced physical therapy in this state for a period of five years immediately
 24 preceding the appointment;
 25 (2) One person who is licensed as a physical therapist assistant in this state; and
 26 (3) Two persons who are representatives of the public and have no association with or
 27 financial interest in the provision of health care.

28 The Governor shall appoint each member of the board.

29 **Section 5. That chapter 36-10 be amended with a NEW SECTION:**

1 The term of office for each member of the State Board of Physical Therapy is four
2 years and begins on July first. The Governor shall stagger the initial terms so that no more
3 than two terms expire each year.

4 If a member's office is vacant, the Governor shall appoint a new member to
5 complete the unexpired term.

6 A member may not serve for more than two consecutive full terms. A member who
7 is appointed to fill an unexpired term is not considered to have served a full term, unless
8 the duration of that service exceeds two years.

9 **Section 6. That chapter 36-10 be amended with a NEW SECTION:**

10 The Governor may remove a member of the State Board of Physical Therapy for
11 misconduct, incompetence, or neglect of duty.

12 The Governor shall remove a member who ceases to possess the qualifications
13 required by section 4 of this Act.

14 **Section 7. That chapter 36-10 be amended with a NEW SECTION:**

15 Annually, the State Board of Physical Therapy shall elect one member to serve as
16 the chair and one member to serve as the vice-chair. The annual meeting and any other
17 meetings of the board must be at a time and place designated by the chair or by a majority
18 of the members.

19 **Section 8. That chapter 36-10 be amended with a NEW SECTION:**

20 Each member of the State Board of Physical Therapy is entitled to receive per diem
21 compensation and reimbursement for expenses, as provided for in § 4-7-10.4, if the
22 member is performing duties as directed by the board.

23 **Section 9. That chapter 36-10 be amended with a NEW SECTION:**

24 Each member of the State Board of Physical Therapy is immune from personal
25 liability for any act or omission in the discharge of the member's responsibilities. The state
26 shall hold the board, its members, and its agents harmless from all costs, damages, and
27 attorney fees arising out of claims and suits against them, with respect to the discharge
28 of their responsibilities.

29 **Section 10. That § 36-10-25 be AMENDED:**

1 **36-10-25.** Persons licensed under ~~the provisions of~~ this title, while practicing
 2 within the limits of their licensure, ~~shall~~ are not be prohibited ~~therefrom~~ from doing so by
 3 ~~the provisions of~~ this chapter.

4 **Section 11. That § 36-10-27 be AMENDED:**

5 **36-10-27.** A person ~~desiring~~ seeking licensure to practice physical therapy in
 6 ~~South Dakota~~ this state shall file:

7 (1) File a written application with the State Board of Examiners ~~on forms provided by~~
 8 ~~the board,~~ together with Physical Therapy;

9 (2) Submit an application fee, ~~set by~~ in an amount established by the board, in rule
 10 pursuant to chapter 1-26, but not to exceed sixty exceeding three hundred dollars.
 11 ~~The applicant shall present;~~

12 (3) Present evidence satisfactory to the board that the applicant is of good moral
 13 character; and

14 (4) Present evidence satisfactory to the board that the applicant has graduated from
 15 a physical therapy ~~curriculum~~ program accredited by an accrediting body
 16 recognized by the United States Department of Education or by the Commission
 17 on Recognition of Postsecondary Accreditation. ~~If the applicant has graduated from~~
 18 ~~a physical therapy curriculum that is not accredited by an accrediting body, the~~
 19 ~~applicant shall~~ or present evidence satisfactory to the board that:

20 (1)(a) The applicant ~~has~~ completed a course of professional instruction equivalent
 21 to an approved program accredited by an accrediting body recognized by
 22 the United States Department of Education or the Commission on
 23 Recognition of Postsecondary Accreditation; and

24 (2)(b) The applicant has ~~achieved a score of~~ scored at least five hundred fifty on
 25 the ~~Test of English as a Foreign Language (TOEFL) examination, or,~~
 26 obtained a passing score on a comparative nationally recognized
 27 examination approved by the board, or ~~has~~ completed two years of
 28 secondary or postsecondary education in any educational institution in
 29 which the instruction is conducted in English.

30 **Section 12. That § 36-10-27.1 be AMENDED:**

31 **36-10-27.1.** In addition to the requirements in § § 36-10-27 and 36-10-35.1, an
 32 applicant for licensure shall submit to the ~~board~~ State Board of Physical Therapy a full set
 33 of the applicant's fingerprints in a form and manner prescribed by the board. The board

1 shall deliver the fingerprints to the Division of Criminal Investigation to conduct a state
2 and federal criminal ~~history record~~ background check by the division and the Federal
3 Bureau of Investigation. The applicant shall sign a release of information to the board and
4 pay any fees for the background check, including fingerprinting.

5 Upon completion of the background check, the division shall deliver to the board
6 ~~all criminal history record~~ the applicant's criminal background information ~~regarding the~~
7 ~~applicant, and the.~~ The board shall consider this information in determining whether to
8 issue a license to the applicant. The board may not issue a license to the applicant before
9 receiving this information.

10 The board may not disseminate an applicant's criminal ~~history record~~ background
11 information to any person outside the board.

12 The board may require any licensee who is the subject of a disciplinary
13 investigation by the board to submit to a state and federal criminal ~~history record~~
14 background check.

15 The board may deny the issuance of a license or suspend or revoke a license for
16 failure to submit to or cooperate with a criminal background check.

17 **Section 13. That § 36-10-29 be AMENDED:**

18 **36-10-29.** The ~~board~~ State Board of Physical Therapy shall issue a license to each
19 applicant who ~~has~~ :

- 20 (1) Has passed a national examination, recognized by the board, with a grade
21 acceptable to the board; ~~and who otherwise meets~~
22 (2) Meets the qualifications requirements for licensure under this chapter and ~~the rules~~
23 promulgated by the board.

24 **Section 14. That § 36-10-30 be AMENDED:**

25 **36-10-30.** The State Board of ~~Examiners~~ Physical Therapy may in its discretion,
26 without examination, issue a license to any applicant who:

- 27 (1) Is registered by the Federation of State Boards of Physical Therapy; or
28 (2) Has passed a national examination recognized by the board, with a grade
29 acceptable to the board, and meets the qualifications requirements for licensure
30 under this chapter and ~~the rules~~ promulgated by the board.

31 **Section 15. That § 36-10-31 be AMENDED:**

1 **36-10-31.** The State Board of Examiners-Physical Therapy may in its discretion,
 2 without examination, issue a license to any applicant ~~holding who holds~~ a license or
 3 certificate issued ~~to the applicant~~ by a board empowered by law to issue licenses a license
 4 to practice physical therapy in the District of Columbia or any state or territory in the
 5 United States, if the requirements for licensure of physical therapists in ~~the that~~ state or
 6 territory ~~in which the applicant was licensed~~ were, at the date of his licensing issuance,
 7 substantially equal to the requirements set forth in this chapter.

8 **Section 16. That § 36-10-32 be AMENDED:**

9 **36-10-32.** ~~Applications for~~ A person seeking licensure by reciprocity shall be on
 10 forms:

- 11 (1) Apply to the State Board of Physical Therapy, using a form provided by the board,
 12 ~~and such applicant shall provide;~~
- 13 (2) Provide the evidence required by this chapter and the rules of the board. ~~The; and~~
- 14 (3) Submit an application fee which shall accompany the application, shall be a sum,
 15 ~~set by, in an amount established by the board, in rule, not to exceed sixty pursuant~~
 16 to chapter 1-26, but not exceeding three hundred dollars.

17 **Section 17. That § 36-10-33 be AMENDED:**

18 **36-10-33.** ~~Any~~ A license issued by the ~~board~~ State Board of Physical Therapy,
 19 pursuant to the ~~provisions of this chapter~~, expires on ~~the first day of January~~ first of the
 20 second year next succeeding the following its issuance thereof. A license may be renewed
 21 upon the payment of ~~an annual~~ a fee set, in an amount established by the board, by in
 22 rule ~~promulgated pursuant to chapter 1-26, but not exceeding the sum of fifty~~ three
 23 hundred dollars.

24 Failure of a licensee to renew the license on or before ~~the first day of July of each~~
 25 first of the second year following issuance constitutes a forfeiture of the license.

26 **Section 18. That § 36-10-35.1 be AMENDED:**

27 **36-10-35.1.** A person ~~desiring~~ seeking licensure as a physical therapist assistant
 28 shall ~~file written application with:~~

- 29 (1) Apply to the State Board of Examiners, together with Physical Therapy;

1 ~~(2) Submit an application fee of not more than sixty dollars, to be an amount~~
 2 established by the board, in rule promulgated pursuant to chapter 1-26. ~~The~~
 3 applicant shall present, but not exceeding three hundred dollars; and

4 ~~(3) Present~~ evidence satisfactory to the board

5 that:

6 ~~(1) The applicant is a graduate of:~~

7 (a) Graduation from an accredited physical therapist assistant's education
 8 program recognized by the board; and

9 ~~(2)(b) The applicant has passed~~ Passage of a written examination, approved by the
 10 board, which tests the applicant's knowledge on subjects relating to physical
 11 therapy.

12 **Section 19. That § 36-10-35.2 be AMENDED:**

13 **36-10-35.2.** The State Board of Examiners-Physical Therapy shall issue a license
 14 ~~to an applicant for licensure as a physical therapist assistant~~ license to a person who fulfills
 15 meets the requirements set forth in § 36-10-35.1.

16 The license shall expire and may be renewed at the same time and in the same
 17 manner as provided ~~in for physical therapy licenses under § 36-10-33 for the expiration~~
 18 ~~and annual renewal of a license to practice physical therapy.~~

19 **Section 20. That § 36-10-35.8 be AMENDED:**

20 **36-10-35.8.** A physical therapist may not ~~supervise,~~ at any one time, supervise
 21 more than the equivalent of two full-time physical therapist assistants. The supervising
 22 physical therapist shall register, with the State Board of Examiners-Physical Therapy, the
 23 name and address of each physical therapist assistant ~~who~~ whom the physical therapist
 24 is ~~responsible for~~ supervising. The registration shall ~~must~~ be submitted on a form provided
 25 by the board, and submitted at least fifteen days prior to the date ~~when on which~~
 26 supervision is to commence.

27 The supervising physical therapist shall ~~notify, within ten days of termination,~~
 28 provide written notification to the board ~~in writing of the termination of,~~ if the supervision
 29 of a physical therapist assistant ~~within ten days after the termination is terminated.~~ The
 30 supervising physical therapist may delegate responsibility for the supervision of a physical
 31 therapist assistant to another physical therapist, for a period not ~~to exceed~~ exceeding thirty
 32 days.

1 **Section 21. That § 36-10-36 be AMENDED:**

2 **36-10-36.** The State Board of ~~Examiners~~Physical Therapy shall promulgate
3 rules, pursuant to chapter 1-26, pertaining to licensure, fees, discipline, supervision, and
4 the continuing education ~~which promote the health and safety of persons utilizing the~~
5 ~~services~~ of physical therapists and physical therapist assistants ~~licensed under this~~
6 chapter.

7 **Section 22. That § 36-10-38 be AMENDED:**

8 **36-10-38.** The State Board of ~~Examiners~~Physical Therapy may, in compliance
9 with chapter 1-26, refuse to grant a license under this chapter for unprofessional, immoral,
10 or dishonorable conduct on the part of the applicant.

11 **Section 23. That § 36-10-39 be AMENDED:**

12 **36-10-39.** The State Board of ~~Examiners~~Physical Therapy may cancel, revoke, or
13 suspend the license of any physical therapist or physical therapist assistant, issued under
14 this chapter, upon satisfactory ~~proof of such a~~ evidence of the licensee's incompetence,
15 ~~or unprofessional or dishonorable conduct, or proof of a violation of this chapter in any~~
16 respect.

17 **Section 24. That § 36-10-40 be AMENDED:**

18 **36-10-40.** The ~~phrase " term, unprofessional or dishonorable conduct" as used in~~
19 ~~this chapter shall be construed to include,~~ includes:

- 20 (1) Employing what is known as cappers or steerers;
- 21 (2) Willfully betraying a professional confidence;
- 22 (3) All advertising of physical therapy business, in which untruthful or improbable
23 statements are made, or which are calculated ~~or to~~ mislead or deceive the public;
- 24 (4) Conviction of any ~~criminal offense of the grade of felony, or any conviction of a~~
25 criminal offense arising out of the practice of physical therapy, ~~or one in connection~~
26 with any conviction of a criminal offense involving moral turpitude;
- 27 (5) Habits of intemperance, or drug addiction, ~~calculated which~~ in the opinion of the
28 ~~board to~~ State Board of Physical Therapy, affect the licensee's practice ~~of his~~
29 profession;
- 30 (6) Sustaining any physical or mental disability ~~which that~~ renders the further practice
31 of a licensee's profession dangerous;

1 (7) ~~Presenting Presentation~~ to the board of any license, certificate, or diploma, which
 2 was obtained by fraud, ~~or by~~ deception practiced in passing a required
 3 examination, or ~~which was obtained by~~ the giving of false statements or
 4 information on applying for ~~said license~~licensure; and

5 (8) Illegally ~~or~~, fraudulently, or wrongfully obtaining a license required by this chapter,
 6 by the:

7 (a) The use of any means, devices, ~~or deceptions~~, or ~~helps help~~ in passing any
 8 examination, ~~or by making~~

9 (b) Making false statements or misrepresentations in any ~~applications for~~
 10 ~~information presented~~application.

11 Unprofessional or dishonorable conduct, as defined in this section, ~~shall may not~~
 12 be the basis for criminal prosecution unless the conduct is otherwise declared unlawful.

13 **Section 25. That § 36-10-41 be AMENDED:**

14 **36-10-41.** The State Board of Physical Therapy may initiate proceedings for the
 15 cancellation, revocation, or suspension of a license ~~may be initiated when the Board of~~
 16 ~~Examiners~~if the board has information that ~~any a person, persons, firms, or corporation~~
 17 may ~~have been guilty of any misconduct as provided in § 36-10-40 or is be~~ guilty of
 18 incompetence, or unprofessional or dishonorable conduct as provided in § 36-10-40.

19 **Section 26. That § 36-10-43 be AMENDED:**

20 **36-10-43.** All proceedings relative to the cancellation, revocation, or suspension
 21 of a license, or relative to reissuing a license ~~which that~~ has been revoked or suspended
 22 ~~shall only may~~ be held only when a majority of the ~~members of the State Board of~~
 23 ~~Examiners are Physical Therapy is present at such hearings~~.

24 **Section 27. That § 36-10-45 be AMENDED:**

25 **36-10-45.** ~~The A~~ decision of the State Board of Examiners-Physical Therapy to
 26 suspend, revoke, or cancel a license requires a majority vote of the board members.

27 **Section 28. That § 36-10-46 be AMENDED:**

28 **36-10-46.** Any party feeling aggrieved by any acts, rulings, or decisions of the
 29 State Board of Examiners-Physical Therapy, relating to the refusal to grant a license or to

1 ~~the~~ cancellation, revocation, or suspension of a license ~~shall have the right to~~ may appeal
 2 the decision, pursuant to chapter 1-26.

3 **Section 29. That § 36-10-47 be AMENDED:**

4 **36-10-47.** Upon written application establishing compliance with ~~existing~~ licensing
 5 requirements and for reasons the ~~board~~ State Board of Physical Therapy deems sufficient,
 6 the board, ~~for good cause shown, by majority vote,~~ may, under such conditions as it may
 7 impose, reinstate or reissue a license to any person, ~~persons, firm, or corporation~~ whose
 8 license has been suspended or revoked, ~~provided, however, that upon~~.

9 Upon suspension of a license, the board ~~in such order~~ may provide for an automatic
 10 reinstatement thereof after a fixed period of time ~~as provided in the order~~.

11 **Section 30. That § 36-10-48 be AMENDED:**

12 **36-10-48.** Any person violating ~~the provisions of~~ this chapter may be enjoined
 13 from further violations at the suit of the state's attorney of the county ~~wherein~~ in which
 14 the violations occurred, or suit may be brought by any ~~citizen~~ resident of this state.

15 An action for injunction ~~shall be~~ is an ~~alternate~~ alternative to criminal proceedings,
 16 and the commencement of one proceeding by the ~~board~~ State Board of Physical Therapy
 17 constitutes an election.

18 **Section 31. That § 36-10-49 be AMENDED:**

19 **36-10-49.** The State Board of Examiners ~~or the physical therapy committee, or~~
 20 ~~both,~~ Physical Therapy shall investigate every alleged violation of this chapter, pursuant to
 21 the procedures set forth in chapter 36-1C. If the alleged violation is committed by a
 22 nonlicensee, the board shall report the violation to the proper law enforcement officials
 23 ~~wherein the act is committed~~. The board may employ special counsel, subject to the
 24 supervision, control and direction of the attorney general, assist in the prosecution of
 25 violations of this chapter, and expend the necessary funds for ~~such purpose~~ those
 26 purposes.

27 **Section 32. That § 36-10-51 be AMENDED:**

28 **36-10-51.** ~~An applicant for license renewal~~ In order to renew a license, a person
 29 shall submit evidence, satisfactory to the State Board of Examiners ~~that the applicant has~~
 30 ~~complied~~ Physical Therapy, indicating compliance with the continuing education

1 requirements established by the board. The board may waive the continuing education
2 ~~requirement requirements~~ if the applicant submits evidence satisfactory to the board that
3 the applicant was unable to comply ~~with the continuing education requirements~~ because
4 of illness, disability, military service, or financial hardship.

5 **Section 33. That § 36-10-52 be AMENDED:**

6 **36-10-52.** A physical therapist may perform dry needling, if the physical therapist
7 has acquired the knowledge and skills required for the competent performance of dry
8 needling by successfully completing a course of study in dry needling approved by the
9 ~~board~~ State Board of Physical Therapy, pursuant to rules promulgated ~~pursuant to~~ in
10 accordance with chapter 1-26. The board may require a physical therapist who performs
11 dry needling to provide proof of ~~completion of~~ having completed an approved course of
12 study in dry needling.

13 For purposes of this chapter, dry needling is a skilled technique, performed by a
14 physical therapist, using filiform needles to penetrate the skin and underlying tissues, to
15 affect change in body structures and physical function capability, for the evaluation and
16 management of neuromusculoskeletal conditions, pain, movement impairments, and
17 disability.

18 **Section 34. That chapter 36-10 be amended with a NEW SECTION:**

19 The State Board of Physical Therapy licensure fund is created in the state treasury.
20 Any money received by the board under this chapter must be deposited in the fund. Money
21 in the fund is continuously appropriated to the State Board of Physical Therapy for use in
22 administering sections 1 through 34, inclusive of this Act. Any interest earned on money
23 in the fund must be deposited in the fund.

24 **Section 35. That § 36-10-18.2 be REPEALED:**

25 ~~Supervision is the responsibility of the physical therapist to observe, direct, and~~
26 ~~review the work, records, and practice permitted by § 36-10-35.7 to ensure the patient,~~
27 ~~the physical therapist, and the physical therapist assistant that good and safe treatment~~
28 ~~is rendered.~~

29 **Section 36. That § 36-10-19 be REPEALED:**

1 ~~The Board of Examiners shall appoint a physical therapy advisory committee,~~
2 ~~composed of three physical therapists to assist the board on all matters pertaining to the~~
3 ~~licensure, practice, and discipline of each person licensed to practice physical therapy in~~
4 ~~the state. The committee shall also make recommendations to the board on the~~
5 ~~promulgation of rules pertaining to physical therapy. Each committee member shall serve~~
6 ~~a term of three years. No member may serve more than three consecutive full terms. If a~~
7 ~~vacancy occurs, the board shall appoint a person to fill the unexpired term. The~~
8 ~~appointment of a person to an unexpired term is not considered a full term. The committee~~
9 ~~shall meet at least annually or as necessary to conduct business. The committee shall~~
10 ~~meet the requirements of chapter 1-25 regarding open meetings.~~

11 **Section 37. That § 36-10-21 be REPEALED:**

12 ~~Persons nominated to serve on such committee shall have the following~~
13 ~~qualifications:~~

14 ~~(1) They must be residents of the State of South Dakota;~~

15 ~~(2) They must be licensed to practice physical therapy in the State of South Dakota.~~