

State of South Dakota

EIGHTY-SEVENTH SESSION LEGISLATIVE ASSEMBLY, 2012

940T0120

SENATE BILL NO. 72

Introduced by: Senators Hunhoff (Jean), Adelstein, Begalka, Fryslie, Hansen (Tom), Heineman, Kraus, Krebs, Nelson (Tom), Rhoden, Schlekeway, Tidemann, Tieszen, and Vehle and Representatives Romkema, Blake, Bolin, Boomgarden, Gibson, Hunhoff (Bernie), Kirkeby, Moser, Munsterman, Street, Verchio, and Wick

1 FOR AN ACT ENTITLED, An Act to regulate persons offering speech-language pathology to
2 the public.

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

4 Section 1. Terms used in this Act mean:

5 (1) "Board," the Board of Examiners for Speech-Language Pathology;

6 (2) "Department," the Department of Health;

7 (3) "Endoscopy," an imaging procedure included within the scope of practice for
8 speech-language pathologists in which a speech-language pathologist uses a
9 flexible/nasal endoscopy, rigid/oral endoscopy, or stroboscopy for the purpose of
10 evaluating and treating disorders of speech, voice, resonance, and swallowing
11 function;

12 (4) "Mentorship," the direct on-site supervision and monitoring of a speech-language
13 pathologist with a provisional license by a licensed speech-language pathologist;



1 (5) "Provisional license," the license issued to an applicant who is practicing
2 speech-language pathology while completing the supervised postgraduate
3 professional experience following completion of master's degree in speech-language
4 pathology;

5 (6) "Speech-language pathologist," any person who engages in the practice of
6 speech-language pathology and who meets the qualifications set forth in this Act;

7 (7) "Speech-language pathology assistant," any person who assists in the practice of
8 speech-language pathology and who meets the qualifications set forth in this Act; and

9 (8) "Telepractice," "telespeech," "telespeech-language pathology," or "telehealth,"
10 whether used separately or together. Telepractice service means the application of
11 telecommunication technology to deliver speech-language pathology at a distance for
12 assessment, intervention, or consultation.

13 Section 2. For the purposes of this Act, the practice of speech-language pathology is the
14 application of principles, methods, and procedures related to the development, disorders, and
15 effectiveness of human communication and related functions including providing prevention,
16 screening, consultation, assessment/evaluation, diagnosis, treatment/intervention/ management,
17 counseling, collaboration, and referral services for disorders of speech, language, feeding, and
18 swallowing, and for cognitive aspects of communication. The practice of speech-language
19 pathology also includes establishing augmentative and alternative communication techniques
20 and strategies, including developing, selecting, and prescribing of such systems and devices,
21 providing services to individuals with hearing loss and their families, screening persons for
22 hearing loss or middle ear pathology using conventional pure-tone air conduction methods,
23 otoacoustic emissions screening, or screening tympanometry, using instrumentation to observe,
24 collect data, and measure parameters of communication and swallowing, selecting, fitting, and

1 establishing effective use of prosthetic or adaptive devices for communication, swallowing, or
2 other upper aerodigestive functions, and providing services to modify or enhance
3 communication performance.

4 Section 3. No person may practice speech-language pathology or represent himself or herself
5 as a speech-language pathologist or speech-language pathology assistant in this state, unless
6 such person is licensed in accordance with this Act. A person represents oneself to be a
7 speech-language pathologist or speech-language pathology assistant if the person holds himself
8 or herself out to the public by any means, or by any service or function performed, directly or
9 indirectly, or by using the terms, speech pathologist, speech therapist, speech teacher, speech
10 correctionist, speech clinician, language therapist, language pathologist, language specialist,
11 voice therapist, voice pathologist, logopedist, communicologist, aphasiologist, phoniatrist,
12 speech-language pathologist assistant, or any variation, synonym, coinage, or other word that
13 expresses, employs, or implies these terms, names, or functions. A violation of this section is
14 a Class 2 misdemeanor.

15 Section 4. Any person who holds any speech-language pathologist certificate from the South
16 Dakota Department of Education as of July 1, 2012, and does not otherwise meet the
17 qualifications set forth in this Act may apply for and shall be granted a limited license to
18 practice as a speech-language pathologist as long as:

19 (1) The application is made no later than July 1, 2014; and

20 (2) The applicant complies with the provisions of subdivisions (1), (2), and (7) of section
21 14 of this Act.

22 The limits of the license shall be determined by the board in rules promulgated pursuant to
23 chapter 1-26.

24 Section 5. Nothing in this Act may be construed as preventing or restricting:

- 1 (1) Any person licensed, certified, registered, or otherwise credentialed by this state in
2 professions other than speech-language pathology from practicing that profession;
- 3 (2) Any person certified as a teacher of the deaf;
- 4 (3) The activities and services of any person pursuing a course of study leading to a
5 degree in speech-language pathology or as a speech-language pathology assistant at
6 a college or university if:
 - 7 (a) The activities and services constitute a part of a planned course of study at that
8 institution;
 - 9 (b) The person is designated by a title such as intern, trainee, student, or by other
10 such title clearly indicating the status appropriate to their level of education;
11 and
 - 12 (c) The person works under the supervision of a person licensed by this state to
13 practice speech-language pathology;
- 14 (4) The activities of any person who is not licensed in this state from engaging in the
15 practice of speech-language pathology for the purpose of providing training or
16 continuous education as long as they hold an active license in another state, agree to
17 abide by the standards of professional conduct and do not engage in such activities
18 exceeding five days in any calendar year.

19 Section 6. Any person who is licensed as a speech-language pathologist in South Dakota
20 may perform assessment, treatment, and procedures related to speech, voice, resonance, and
21 swallowing function using nonmedical endoscopy as long as the person has received training
22 and is competent to perform these procedures. A licensed speech-language pathologist shall
23 have protocols in place for emergency medical backup when performing procedures using an
24 endoscope.

1 Section 7. Any person who is licensed as a speech-language pathologist in South Dakota
2 may provide speech-language pathology services via telepractice. Services delivered via
3 telespeech shall be equivalent to the quality of services delivered face-to-face.

4 Section 8. There is hereby created a Board of Examiners for Speech-Language Pathology
5 under the supervision of the Department of Health. The board shall consist of five members
6 appointed by the Governor who are residents of this state. Four of the members shall be
7 speech-language pathologists who are currently practicing speech-language pathology, who have
8 five years experience practicing speech-language pathology, and who hold a license to practice
9 speech-language pathology in this state, except for the first speech-language pathologists
10 appointed who need only meet the eligibility requirements for licensure. At least one of the
11 members who is a speech-language pathologist shall be employed in a school setting and one
12 of the members who is a speech-language pathologist shall be employed in a health care setting.
13 One of the members shall be a representative of the public who is not associated with or
14 financially interested in the practice or business of speech-language pathology.

15 Section 9. Each appointment to the board shall be for a period of three years except for the
16 initial appointments which shall be for staggered terms. Each member shall serve until the
17 expiration of the term for which the member has been appointed or until the member's successor
18 is appointed and qualified to serve on the board. If a vacancy occurs other than by expiration of
19 a term, the Governor shall appoint a qualified person to fill the vacancy for the unexpired term.
20 No member may serve more than three consecutive three-year terms.

21 The Governor may remove any member of the board for unprofessional conduct,
22 incompetence, or neglect of duty.

23 Section 10. The board shall meet during the first quarter of each calendar year to select a
24 chair and vice chair and to conduct other business. At least one additional meeting shall be held

1 before the end of each calendar year. Additional meetings may be convened at the call of the
2 chair or at the request of two or more board members.

3 Four members of the board constitutes a quorum to do business if the majority of the
4 members present are speech-language pathologists.

5 Section 11. Members of the board shall receive a per diem established pursuant to § 4-7-10.4
6 and expenses at the same rate as other state employees while actually engaged in official duties.

7 Section 12. The board has the following powers and duties:

8 (1) Administer, coordinate, and enforce the provisions of this Act, evaluate the
9 qualifications of applicants, supervise the examination of applicants, and issue and
10 renew licenses;

11 (2) Issue subpoenas, examine witnesses, administer oaths, conduct hearings, and, at its
12 discretion, investigate allegations of violations of this Act and impose penalties for
13 any violations;

14 (3) Promulgate rules pursuant to chapter 1-26 to delineate qualifications for licensure,
15 specify requirements for the renewal of licensure, regulate the delivery of services via
16 telepractice, establish standards of professional conduct, specify procedures for
17 suspension and revocation of licensure, establish a schedule of disciplinary actions
18 for violations of professional conduct, permit inactive licensures, establish
19 procedures for collection and management of fees and payments, establish
20 application, biennial licensure, biennial renewal, and late fees not to exceed one
21 hundred fifty dollars each delineate activities that may or may not be delegated to an
22 assistant, and specify requirements for supervision of speech-language pathology
23 assistants based on national guidelines;

24 (4) Have available the names and addresses of persons currently licensed pursuant to the

1 provision of this Act;

2 (5) Employ personnel in accordance with its needs and budget;

3 (6) Request legal advice and assistance, as needed, from the Office of the Attorney
4 General;

5 (7) Enter into such contracts as necessary to carry out its responsibilities under this Act;

6 (8) Hire legal counsel;

7 (9) Establish a budget;

8 (10) Submit reports of its operations and finances as required by § 4-7-7.2;

9 (11) Adopt an official seal by which it shall authenticate its proceedings, copies, records,
10 acts of the board, and licenses;

11 (12) Develop procedures for:

12 (a) Monitoring a license holder's compliance with the requirements of this Act;

13 (b) Monitoring a license holder who is ordered by the board to perform certain
14 acts;

15 (c) Identifying a license holder who presents a risk to the public; and

16 (d) Initiating appropriate actions regarding a license holder who presents a risk to
17 the public;

18 (13) Develop a system for monitoring complaints filed with the board, procedures for
19 providing assistance to a person who wishes to file a complaint, and a schedule for
20 disposing of complaints in a timely manner;

21 (14) Communicate disciplinary actions to relevant state and federal authorities including
22 the National Practitioners Database and the American Speech-Language-Hearing
23 Association Board of Ethics and to other state speech-language pathology licensing
24 authorities; and

(15) Perform any other duties directly related to the administration of the provisions of this Act.

No member of the board is liable for civil action for any act performed in good faith in the performance of the member's duties as prescribed by law.

Section 13. All moneys coming into the custody of the board, including any fees and any other payments, shall be paid by the board to the state treasurer on or before the tenth day of each month and shall consist of all moneys received by the board during the preceding calendar month. The state treasurer shall credit the moneys to the Board of Examiners for Speech-Language Pathology account, which account is hereby created. The moneys in the account are hereby continuously appropriated to the board for the purpose of paying the expense of administering and enforcing the provisions of this Act. The total expenses incurred by the board may not exceed the total moneys collected.

Section 14. To be eligible for licensure by the board as a speech-language pathologist, the applicant shall:

- (1) Submit an application, upon a form prescribed by the board;
- (2) Pay the application fee;
- (3) Possess a master's or doctoral degree from an educational institution accredited by the accrediting agency of the American Speech-Language-Hearing Association and from an educational institution approved by the United States Department of Education;
- (4) Complete supervised clinical practicum experiences from an educational institution or its cooperating programs;
- (5) Complete a supervised postgraduate professional experience;
- (6) Pass a written national examination in speech-language pathology; and

(7) Have committed no act for which disciplinary action may be justified.

Section 15. The board shall waive the qualifications in subdivisions (3), (4), (5), and (6) of section 14 of this Act for any applicant who has filed an application with the board, has paid the application fee, has not committed any act for which disciplinary action may be justified and:

(1) Presents proof of current licensure in a state that has standards that are equivalent to or greater than those of this state; or

(2) Holds a current Certificate of Clinical Competence in Speech Language Pathology from the American Speech-Language-Hearing Association.

Section 16. The board may waive the qualifications in subdivisions (3), (4), and (5) of section 14 of this Act for any applicant who:

(1) Received a professional education in another country if the board is satisfied that equivalent education and practicum requirements have been met; and

(2) Met the examination requirements in subdivision (6) of section 14 of this Act.

Section 17. The board shall issue a provisional license in speech-language pathology to an applicant who:

(1) Except for the postgraduate professional experience, meets the academic, practicum, and examination requirements of this Act;

(2) Submits an application, upon a form prescribed by the board, including a plan for the content of the postgraduate professional experience;

(3) Pays the application fee for a provisional license; and

(4) Has not committed any act for which disciplinary action may be justified.

A person holding a provisional license may practice speech-language pathology only while working under the mentorship of a licensed speech-language pathologist who meets the qualifications of sections 14, 15, or 16 of this Act. The term for a provisional license and the

conditions for its renewal shall be determined by the board in rules promulgated pursuant to chapter 1-26.

Section 18. The board shall issue a speech-language pathology assistant license to an applicant who:

- (1) Submits an application, upon a form prescribed by the board;
- (2) Pays the application fee;
- (3) Holds an associate's degree in speech-language pathology assisting or a bachelor's degree with major emphasis in speech-language pathology or communication disorders from an accredited academic institution;
- (4) Submits an official transcript verifying necessary academic preparation and clinical experiences;
- (5) Completes a supervised clinical practicum of a minimum of one hundred clock hours as a speech-language pathology assistant while either on the job or during academic preparation; and
- (6) Has committed no act for which disciplinary action is justified.

Section 19. Any person who is employed as a paraprofessional providing speech-language pathology services under the direct supervision of a speech-language pathologist who holds a speech-language pathologist certificate from the South Dakota Department of Education as of July 1, 2012, and does not otherwise meet the qualifications set forth in this Act may apply for and shall be granted a speech-language pathology assistant license and may continue to practice as a speech-language pathology assistant. This exception expires July 1, 2020, at which time all speech-language pathology assistants shall meet the requirements of this Act.

Section 20. An assistant shall be supervised by a licensed speech-language pathologist who has at least three years of experience as a speech-language pathologist. The supervising speech-

1 language pathologist:

2 (1) Is responsible for the extent, kind, and quality of service provided by the assistant,
3 consistent with the board's designated standards and requirements;

4 (2) Shall ensure that persons receiving services from an assistant receive prior written
5 notification that services are to be provided, in whole or in part, by a speech-language
6 pathology assistant;

7 (3) May not supervise more than three speech-language pathology assistants at one time.

8 An assistant may have more than one supervisor if the board is notified.

9 Section 21. The board may impose separately, or in combination, any of the following
10 disciplinary actions on a licensee after formal or informal disciplinary action:

11 (1) Refuse to issue or renew a license;

12 (2) Issue a letter of reprimand or concern;

13 (3) Require restitution of fees;

14 (4) Impose probationary conditions;

15 (5) Require the licensee to reimburse the board for costs of the investigation and
16 proceeding;

17 (6) Suspend or revoke a license;

18 (7) Impose practice or supervision requirements, or both; or

19 (8) Require licensees to attend continuing education programs specified by the board as
20 to content and hours.

21 Section 22. If the board imposes suspension or revocation of license, application may be
22 made to the board for reinstatement. If a licensee is placed on probation, the board may require
23 the license holder to:

24 (1) Report regularly to the board on matters that are the basis of probation;

(2) Limit practice to the areas prescribed by the board; or

(3) Continue or review continuing education until the license holder attains and degree of skill satisfactory to the board in those areas that are the basis of the probation.

Section 23. The board may take disciplinary actions for the following conduct:

(1) Fraudulently or deceptively obtaining or attempting to obtain a license or a provisional license;

(2) Fraudulently or deceptively using a license or provisional license;

(3) Altering a license or provisional license;

(4) Aiding or abetting unlicensed practice;

(5) Selling, bartering, or offering to sell or barter a license or provisional license;

(6) Committing fraud or deceit in the practice of speech-language pathology, including:

(a) Willfully making or filing a false report or record in the practice of speech-language pathology;

(b) Submitting a false statement to collect a fee;

(c) Obtaining a fee through fraud or misrepresentation;

(7) Using or promoting or causing the use of any misleading, deceiving, improbable, or untruthful advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand insignia, or any other representation;

(8) Falsely representing the use or availability of services or advise of a physician;

(9) Misrepresenting the applicant, licensee, or holder by using the term, doctor, or any similar word, abbreviation, or symbol if the use is not accurate or if the degree was not obtained from a regionally accredited institution;

(10) Committing any act of dishonesty, immorality, or unprofessional conduct while engaging in the practice of speech-language pathology;

- 1 (11) Engaging in illegal, incompetent, or negligent practice;
- 2 (12) Providing professional services while:
 - 3 (a) Mentally incompetent;
 - 4 (b) Under the influence of alcohol;
 - 5 (c) Using any narcotic or controlled dangerous substance or other drug that is in
6 excess of therapeutic amounts or without valid medical indication;
- 7 (13) Providing services or promoting the sale of devices, appliances, or products to a
8 person who cannot reasonably be expected to benefit from such services, devices,
9 appliances, or products;
- 10 (14) Violating any provision of this Act, or any lawful order given, or rule adopted, by the
11 board;
- 12 (15) Being convicted or pleading guilty or nolo contendere to a felony or to a crime
13 involving moral turpitude, whether or not any appeal or other proceeding is pending
14 to have the conviction or plea set aside;
- 15 (16) Being disciplined by a licensing or disciplinary authority of any state or country, or
16 any nationally recognized professional organization, or convicted or disciplined by
17 a court of any state or country for an act that would be grounds for disciplinary action
18 under this section;
- 19 (17) Exploiting a patient for financial gain or sexual favors;
- 20 (18) Failing to report suspected cases of child abuse or vulnerable adult abuse;
- 21 (19) Diagnosing or treating a person for speech disorders by mail or telephone unless the
22 person has been previously examined by the licensee and the diagnosis or treatment
23 is related to such examination; or
- 24 (20) Violating federal, state, or local laws relating to the profession.

1 The board shall adopt, by rules promulgated pursuant to chapter 1-26, a schedule of
2 sanctions to be imposed as the result of formal or informal disciplinary activities conducted by
3 the board.

4 Section 24. The board may take disciplinary action or suspend, revoke, or reissue a license
5 or certification only after a hearing conducted by a hearing examiner appointed by the board or
6 by a majority of the members of the board.

7 Any disciplinary proceeding or proceeding relative to the revocation or suspension of a
8 license or certification shall otherwise conform to the procedure set forth in chapter 1-26.

9 Any decision of the board to discipline, suspend, revoke, or reissue a license or certification
10 requires a majority vote of the board membership.

11 Any party feeling aggrieved by any acts, rulings, or decisions of the board acting pursuant
12 to sections 21, 22, or 23 of this Act, has the right to appeal under the provisions of chapter 1-26.

13 Section 25. Any person violating the provisions of this Act may be enjoined from further
14 violations at the suit of the state's attorney of the county where the violations occurred or suit
15 may be brought by any citizen of this state. An action for injunction is an alternate to criminal
16 proceedings, and the commencement of one proceeding by the board constitutes an election.