

Sixty-fourth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2354

Introduced by

Senators Dever, Schaible, Warner

Representatives Fehr, M. Nelson, Thoreson

1 A BILL for an Act to create and enact sections 43-20-14, 43-20-15, and 43-28-02.1 of the North
2 Dakota Century Code, relating to advanced practice dental hygienists and practice on Indian
3 reservations; to amend and reenact sections 43-20-01.1, 43-20-01.2, 43-20-01.4, 43-20-02.1,
4 43-20-03, 43-20-05, 43-20-08, 43-20-10, 43-20-11, 43-20-12.2, 43-20-12.3, and 43-28-06 and
5 subsection 9 of section 43-28-18 of the North Dakota Century Code, relating to advanced
6 practice dental hygienists and the practice of dental-related fields on Indian reservations; to
7 provide a penalty; to provide for a report to the legislative management and the administrative
8 rules committee; and to provide for application.

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

10 **SECTION 1. AMENDMENT.** Section 43-20-01.1 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **43-20-01.1. Definitions.**

13 As used in this chapter and chapter 43-28, unless the context otherwise requires:

14 1. "Advanced practice dental hygiene" means the performance of one or more of the
15 following procedures:

16 a. Oral evaluation and assessment of dental disease and the formulation of an
17 individualized treatment plan and charting;

18 b. Cavity preparation and restoration for primary and permanent teeth;

19 c. Extraction of primary teeth;

20 d. Simple, nonsurgical extractions of periodontally diseased permanent teeth with
21 tooth mobility of +3 to +4 as long as the teeth are not impacted, fractured,
22 unerupted, or in need of sectioning for removal;

23 e. Pulpotomy on primary teeth;

- 1 f. Preparation and placement of a preformed crown, placement of a temporary
2 crown, recementing of a permanent crown, and placement and removal of space
3 maintainers;
- 4 g. Fabrication of an athletic mouth guard and soft occlusal guard;
- 5 h. Pulp vitality testing and indirect and direct pulp capping on primary and
6 permanent teeth;
- 7 i. Application of desensitizing medication or resin;
- 8 j. Tissue conditioning and soft reline;
- 9 k. Tooth reimplantation and stabilization of reimplanted teeth;
- 10 l. A brush biopsy;
- 11 m. Repair of a defective prosthetic device;
- 12 n. Administration of nitrous oxide analgesia;
- 13 o. Emergency palliative treatment of dental pain and performing management of
14 dental trauma, including a minor surgical care extraction and suturing; and
- 15 p. Referrals.
- 16 2. "Advanced practice dental hygienist" means an individual certified by the board to
17 practice advanced practice dental hygiene under the general supervision of a dentist
18 and in accordance with a collaborative management agreement.
- 19 3. "Dental assistant" means an individual who provides dental assistance under the
20 supervision of a dentist and within the scope of practice established by rule and
21 section 43-20-13.
- 22 2-4. "Dental hygiene" means the removal of accumulated matter from the natural and
23 restored surfaces of teeth and from restorations in the human mouth; the polishing of
24 such surfaces; and the topical application of drugs to the surface tissues of the mouth
25 and to the surface of teeth, if such acts are performed under the direct, indirect, or
26 general supervision of a dentist.
- 27 5. "Dental hygienist" means an individual licensed by the board to practice dental
28 hygiene.
- 29 3-6. "Qualified dental assistant" means an individual registered as a qualified dental
30 assistant to provide dental assistance as established by rule.

1 4.7. "Registered dental assistant" means an individual registered as a registered dental
2 assistant to provide dental assistance as established by rule.

3 **SECTION 2. AMENDMENT.** Section 43-20-01.2 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **43-20-01.2. Dental hygienist licensing- Advanced practice dental hygienist**
6 **certification.**

7 1. An individual seeking to practice dental hygiene or advanced practice dental hygiene
8 in this state shall apply to the executive director of the board on forms prescribed by
9 the board. The application must be verified under oath to the effect that all of the
10 statements contained in the application are true to the applicant's own knowledge, and
11 must be received by the executive director of the board at least thirty days before the
12 board meeting at which the application is considered. The applicant shall enclose with
13 the application a recent autographed picture of the applicant and an application fee
14 established by the board by rule.

15 2. The board may grant a license to practice dental hygiene to an applicant who has met
16 all of the following requirements:

17 4. a. The applicant is a graduate of a dental hygiene school accredited by the
18 American dental association's commission on dental accreditation.

19 2. b. The applicant has passed an examination administered by the joint commission
20 on national dental examinations.

21 3. c. The applicant has passed a clinical competency examination administered by a
22 regional dental testing service or a licensing jurisdiction approved by the board by
23 rule.

24 4. d. The applicant has passed, within one year of making application, a written
25 examination on the laws and rules governing the practice of dentistry in this state.

26 5. e. Grounds for denial of the application under section 43-20-05 do not exist.

27 6. f. The applicant has met any requirement for licensure established by the board by
28 rule.

29 3. The board may issue a certificate to practice advanced practice dental hygiene to an
30 applicant who has met all of the following requirements:

31 a. The applicant is a dental hygienist, in good standing.

- 1 b. The applicant is a graduate of a board-approved education program. If the
2 education program trains students for the competencies to practice advanced
3 practice dental hygiene or a similar scope of practice, as determined by the
4 board, the board shall approve the education program if:
- 5 (1) The education program is accredited by a board-recognized national
6 accreditation organization such as the commission on dental accreditation
7 or other national accrediting body for educating oral health practitioners to
8 practice advanced practice dental hygiene; or
- 9 (2) The board determines the education program meets or exceeds the
10 minimum education standards for nondentist practitioners providing the
11 same or similar procedures as advanced practice dental hygiene as
12 recommended by an academic panel on education standards for dental
13 therapy education convened by the American association of public health
14 dentistry.
- 15 c. The applicant has paid for and passed an examination to demonstrate
16 competency in advanced practice dental hygiene.
- 17 d. The applicant has completed five hundred hours of advanced practice dental
18 hygienist clinical practice under the direct or indirect supervision of a dentist.
- 19 e. Grounds for denial of the application under section 43-20-05 do not exist.

20 **SECTION 3. AMENDMENT.** Section 43-20-01.4 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **43-20-01.4. License and certificate renewal - Audit.**

- 23 1. ~~Dental~~A dental hygienist licenseslicense and an advanced practice dental hygienist
24 certificate expire on December thirty-first of every odd-numbered year.
- 25 2. ~~Licenses~~A license or certificate may be renewed by December thirty-first of the
26 odd-numbered year by submitting a renewal application, a renewal fee established by
27 the board by rule, and proof of completion of the continuing education requirements
28 established by the board by rule, provided the dental hygienist's license or advanced
29 practice dental hygienist's certificate is not revoked or grounds for denial under section
30 43-20-05 do not exist.

- 1 3. If the renewal application, renewal fee, and proof of completion of continuing
2 education are not received by December thirty-first of the odd-numbered year, the
3 license or certificate expires and the dental hygienist may not practice dental hygiene
4 or the advanced practice dental hygienist may not practice advanced practice dental
5 hygiene.
- 6 4. Within sixty days after December thirty-first of the odd-numbered year, an expired
7 license or certificate may be renewed by submitting the renewal application, renewal
8 fee, proof of completion of continuing education, and a late fee established by the
9 board by rule.
- 10 5. If the renewal application, renewal fee, proof of completion of continuing education,
11 and late fee are not received within sixty days after December thirty-first of the
12 odd-numbered year, the license or certificate may not be renewed, and the dental
13 hygienist ~~must~~ advanced practice dental hygienist shall apply for and meet the
14 requirements for licensure in order to be granted a license or certificate.
- 15 6. The board may extend the renewal deadlines for a dental hygienist or advanced
16 practice dental hygienist providing proof of medical or other hardship rendering the
17 dental hygienist or advanced practice dental hygienist unable to meet the deadline.
- 18 7. The board may audit continuing education credits. Each licensee and certificate holder
19 shall maintain certificates or records of continuing education activities for three years.
20 Upon receiving notice of an audit from the board, a licensee or certificate holder shall
21 provide satisfactory documentation of attendance at, or participation in, the continuing
22 education activities listed on the licensee's or certificate holder's continuing education
23 form. Failure to comply with the audit is grounds for nonrenewal of or disciplinary
24 action against the ~~licensee~~ licensee or certificate holder.

25 **SECTION 4. AMENDMENT.** Section 43-20-02.1 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **43-20-02.1. Conviction not bar to licensure or certification - Exceptions.**

28 Conviction of an offense does not disqualify ~~a person~~ an individual from licensure or
29 certification under this chapter unless the board determines that the offense has a direct
30 bearing upon ~~a person's~~ an individual's ability to serve the public as a dental hygienist or

1 advanced practice dental hygienist, or that, following conviction of any offense, the
2 ~~person~~individual is not sufficiently rehabilitated under section 12.1-33-02.1.

3 **SECTION 5. AMENDMENT.** Section 43-20-03 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **43-20-03. Dental hygienists and advanced practice dental hygienists - Practice by.**

6 ~~As used in this chapter, "dental hygiene" and the practice thereof means the removal of~~
7 ~~accumulated matter from the natural and restored surfaces of teeth and from restorations in the~~
8 ~~human mouth, the polishing of such surfaces, and the topical application of drugs to the surface~~
9 ~~tissues of the mouth and to the surface of teeth if such acts~~

10 1. A dental hygienist may practice dental hygiene if the procedures are performed under
11 the direct, indirect, or general supervision of a licensed dentist. General supervision
12 may be used if the procedures are authorized in advance by the supervising dentist,
13 except procedures which~~that~~ may only be used under direct supervision as
14 established by the board by rule.

15 Only a person licensed as a dental hygienist may be referred to as a dental hygienist.
16 Additional tasks permitted to be performed by licensed dental hygienists may be outlined by the
17 board of dental examiners by appropriate rules.

18 2. In addition to practicing dental hygiene, an advanced practice dental hygienist may
19 practice advanced practice dental hygiene if the advanced practice dental hygiene
20 procedures are practiced under the general supervision of a dentist and are in
21 accordance with a collaborative management agreement entered with the supervising
22 dentist.

23 a. An advanced practice dental hygienist may not practice advanced practice dental
24 hygiene independently.

25 b. Only a person certified as an advanced practice dental hygienist may be referred
26 to as an advanced practice dental hygienist.

27 c. Additional tasks permitted to be performed by an advanced practice dental
28 hygienist may be established by rules adopted by the board.

29 **SECTION 6. AMENDMENT.** Section 43-20-05 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **43-20-05. Licenses and registrations - Denial and discipline.**

2 The board may deny an application for or take disciplinary action against a dental
3 hygienist's license, an advanced practice dental hygienist's certificate, or a registered or
4 qualified dental assistant's registration, upon any one or more of the following grounds:

- 5 1. Gross immorality or unprofessional conduct, which includes knowingly failing to
6 comply with commonly accepted national infection control guidelines and standards.
- 7 2. Failure, neglect, or refusal to renew a license biennially.
- 8 3. Nonobservance or violation of this chapter, or of any board rule adopted under this
9 chapter.
- 10 4. Gross incompetency in the practice of dental hygiene or advanced practice dental
11 hygiene.
- 12 5. Conviction of an offense determined by the board to have a direct bearing on the
13 individual's ability to serve the public as a dental hygienist or advanced practice dental
14 hygienist, or a registered or qualified dental assistant, or the board determines,
15 following conviction for any offense, that the individual is not sufficiently rehabilitated
16 under section 12.1-33-02.1.
- 17 6. Been adjudged mentally ill and not judicially restored by the regularly constituted
18 authorities.
- 19 7. Abused, is dependent on, or addicted to the use of alcohol or drugs.
- 20 8. Engaged in fraud or deceit in obtaining a dental hygiene license, advanced practice
21 dental hygienist, or dental assisting registration.
- 22 9. Disclosed confidential information.
- 23 10. Received a fee for the referral of patients to a dentist or dental hygienist.
- 24 11. Used unethical measures to draw dental patronage from the practice of another
25 licensee.
- 26 12. Fraudulently prescribed or dispensed drugs or medications.
- 27 13. Knowingly submitted misleading, deceptive, untrue, or fraudulent information on a
28 claim form, bill, or statement to a third party.
- 29 14. Advised or directed patients to dental laboratories or dental laboratory technicians for
30 a dental service or advised or directed patients to deal directly with laboratories or
31 dental laboratory technicians.

1 15. Violated the code of ethics adopted by the board by rule.

2 16. Had a registration, certificate, or license suspended, revoked, or disciplined in another
3 jurisdiction.

4 17. Failed to report to the board in writing within sixty days a violation of this chapter or
5 chapter 43-28.

6 18. Practiced outside the scope of practice established by the board by rules and this
7 chapter.

8 The procedure to be followed for taking disciplinary action must be the same as the procedure
9 required by section 43-28-18.2.

10 **SECTION 7. AMENDMENT.** Section 43-20-08 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **43-20-08. Unlawful to practice without license or registration.**

13 A person may not practice dental hygiene or advanced practice dental hygiene or practice
14 as a registered or qualified dental assistant in the state, without first obtaining from the board a
15 license, certificate, or registration. A person may not practice as a dental assistant outside the
16 scope of practice established by the board by rule and section 43-20-13.

17 **SECTION 8. AMENDMENT.** Section 43-20-10 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **43-20-10. State board of dental examiners - Authority - Duty.**

20 The board has the power and it is its duty to enforce the provisions of this chapter. The
21 board ~~has the power to~~ may make such rules and regulations, not inconsistent with this chapter,
22 as may, in its judgment, be necessary for the proper enforcement of this chapter, and the
23 examination of dental hygienists, advanced practice dental hygienists, and registered and
24 qualified dental assistants for their conduct and practice. For purposes of this chapter, the board
25 has the powers set forth in section 43-28-06.

26 **SECTION 9. AMENDMENT.** Section 43-20-11 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **43-20-11. Practice of dental hygiene supplemental to practice of dentistry.**

29 The practice of dental hygiene is ~~hereby declared to be~~ and advance practice dental hygiene
30 are supplemental and auxiliary to the practice of dentistry in North Dakota. All particulars,
31 requirements, regulations, control, and provisions of chapter 43-28 apply with equal force

1 ~~wherein and so far as they may be to the extent the provisions are~~ applicable to the practice of
2 dental hygienists ~~and advanced practice dental hygienists~~, except as otherwise provided for in
3 this chapter.

4 **SECTION 10. AMENDMENT.** Section 43-20-12.2 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **43-20-12.2. Notice to board of change of address.**

7 A licensed dental hygienist, ~~certified advanced practice dental hygienist~~, registered dental
8 assistant, or qualified dental assistant shall notify the executive director of the board of dental
9 examiners of any new address within thirty days of the address change. The notice required
10 under this section must be given by certified mail, return receipt requested. A licensed dental
11 hygienist, ~~advanced practice dental hygienist~~, registered dental assistant, or qualified dental
12 assistant may not practice in this state for more than thirty days after the change of address
13 without complying with this section.

14 **SECTION 11. AMENDMENT.** Section 43-20-12.3 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **43-20-12.3. Supervised administration of anesthesia - Board rules.**

17 A licensed dentist may delegate to a dental hygienist ~~licensed by the board~~ the
18 administration of block and infiltration anesthesia to a patient who is at least eighteen years old.
19 The dental hygienist must be under the direct supervision of a dentist and the dental hygienist
20 must complete the educational requirements as required by the commission on dental
21 accreditation and approved by the board. ~~An advanced practice dental hygienist may administer~~
22 ~~block and infiltration anesthesia under the general supervision of a dentist and the procedure~~
23 ~~must be in accordance with the collaborative management agreement.~~ The board shall adopt
24 rules to implement this section.

25 **SECTION 12.** Section 43-20-14 of the North Dakota Century Code is created and enacted
26 as follows:

27 **43-20-14. Advanced practice dental hygienist - Collaborative management agreement.**

28 1. An advanced practice dental hygienist may not practice advanced practice dental
29 hygiene unless the advanced practice dental hygienist is participating within a
30 collaborative management agreement with a supervising dentist. A supervising dentist
31 shall provide or arrange for another dentist or specialist to provide any services

- 1 needed by the advanced practice dental hygienist's patient which exceed the
2 authorized scope of practice of the advanced practice dental hygienist.
- 3 2. A collaborative management agreement entered between a dentist and an advanced
4 practice dental hygienist must:
- 5 a. Address any limitation on services established by the supervising dentist, the
6 level of supervision required for various services or treatment settings, practice
7 protocols, recordkeeping, managing medical emergencies, quality assurance,
8 administering and dispensing medications, and supervision of dental assistants
9 and dental hygienists;
- 10 b. Include specific written protocols to govern situations in which the advanced
11 practice dental hygienist encounters a patient requiring treatment that exceeds
12 the authorized scope of practice of the advanced practice dental hygienist.
- 13 c. Be signed and maintained by the supervising dentist and the advanced practice
14 dental hygienist; and
- 15 d. Be submitted to the board upon request of the board.
- 16 3. To the extent authorized by the supervising dentist in the collaborative management
17 agreement and provided the supervising dentist is available for consultation by
18 telephone or other means of electronic communication, an advanced practice dental
19 hygienist may practice advanced practice dental hygiene procedures authorized under
20 this chapter in a practice setting where the supervising dentist is not onsite and has
21 not previously examined the patient.

22 **SECTION 13.** Section 43-20-15 of the North Dakota Century Code is created and enacted
23 as follows:

24 **43-20-15. Advanced practice dental hygienist - Drugs.**

25 An advanced practice dental hygienist may not prescribe any drug. Within the parameters
26 of the collaborative management agreement, within the practice of advanced practice dental
27 hygiene, and with the authorization of the supervising dentist, an advanced practice dental
28 hygienist may provide, dispense, and administer the following drugs: analgesics,
29 antiinflammatories, and antibiotics. An advanced practice dental hygienist may not provide,
30 dispense, or administer a narcotic drug.

1 **SECTION 14.** Section 43-28-02.1 of the North Dakota Century Code is created and enacted
2 as follows:

3 **43-28-02.1. Tribal sovereignty.**

4 This section reaffirms the sovereignty of native American tribes in the state. The legislative
5 assembly recognizes that in accordance with federal law, a native American tribe in this state
6 may authorize a dental provider, who is licensed, certified, or otherwise sanctioned by another
7 jurisdiction to provide dental services, to provide dental services on that Indian reservation.

8 **SECTION 15. AMENDMENT.** Section 43-28-06 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **43-28-06. Powers of board.**

11 The board may:

- 12 1. Adopt and enforce reasonable rules to govern its proceedings and to carry out this
13 chapter.
- 14 2. Examine applicants for ~~licenses~~licensure, certification, or registration to practice
15 dentistry, dental hygiene, advanced practice dental hygiene, or dental assisting in this
16 state, either by direct examination or by accepting the results of national or regional
17 dental testing services in which the board participates or which the board recognizes.
- 18 3. Issue, suspend, revoke, limit, cancel, restrict, and reinstate licenses and certificates to
19 practice dentistry, advanced practice dental hygiene, or dental hygiene and the
20 biennial certificates of registration upon any grounds authorized by this chapter or
21 rules adopted by the board.
- 22 4. Issue subpoenas to require the attendance of witnesses and the production of
23 documentary evidence and may administer oaths. Any member or executive officer of
24 the board may administer oaths to witnesses, or issue subpoenas, but all subpoenas
25 so issued must be attested by the secretary who shall affix the seal of the board
26 thereto.
- 27 5. Employ and compensate an executive director, attorneys, investigative staff, and
28 clerical assistants and may perform any other duties imposed upon the board by this
29 chapter.
- 30 6. Establish minimum continuing professional education requirements for dentists, dental
31 hygienists, advance practice dental hygienists, and dental assistants.

1 7. Enter an agreement with the same professional organization with which the state
2 board of medical examiners has entered an agreement under subsection 6 of section
3 43-17-07.1.

4 8. Limit the number of advanced practice dental hygienists a dentist may supervise, but
5 may not limit a dentist from supervising up to three advanced practice dental
6 hygienists.

7 **SECTION 16. AMENDMENT.** Subsection 9 of section 43-28-18 of the North Dakota
8 Century Code is amended and reenacted as follows:

9 9. Shared any professional fee with anyone or paid anyone for sending or referring
10 patients to the dentist. However, this does not prohibit dentists from practicing in a
11 partnership and sharing one another's professional fees, nor prohibit a dentist from
12 employing any other dentist, advanced practice dental hygienist, or dental hygienist.

13 **SECTION 17. STATE BOARD OF DENTAL EXAMINERS STUDY - REPORT TO**
14 **LEGISLATIVE MANAGEMENT.**

15 1. During the 2017-18 interim, the state board of dental examiners shall use the
16 evaluation process designed under subsection 2 to evaluate the impact of the use of
17 advanced practice dental hygienists on the delivery of and access to dental services.
18 Before August 1, 2018, the board, in consultation with the department of human
19 services, shall report to the legislative management:

- 20 a. The number of advanced practice dental hygienists licensed annually by the
21 board;
- 22 b. The settings at which licensed advanced practice dental hygienists are practicing
23 and the populations being served;
- 24 c. The number of complaints filed against advanced practice dental hygienists, the
25 basis for each complaint, and the outcome of the complaint;
- 26 d. The number of disciplinary actions taken against advanced practice dental
27 hygienists and the infractions for which disciplinary action was taken; and
- 28 e. The number and type of dental services performed by advanced practice dental
29 hygienists and reimbursed by the state under any state health care program.

30 2. The board shall develop an evaluation process that focuses on assessing the impact
31 of advanced practice dental hygienists in terms of patient safety, cost-effectiveness,

1 and access to dental services. The process must focus on the following outcome
2 measures:

- 3 a. The number of new patients served, their insurance status, and whether they are
4 located in a dentist shortage area;
- 5 b. The reduction in waiting times for needed dental services;
- 6 c. The decreased travel time for patients;
- 7 d. The impact on emergency room usage for dental care; and
- 8 e. The costs and savings to the public health care system.

9 3. During the 2015-16 interim, the board shall report to the administrative rules
10 committee on the status of implementation of this Act and the status of any
11 administrative rules necessitated under this Act. Until this Act is fully implemented and
12 the board has adopted rules necessitated under this Act, at each meeting of the
13 administrative rules committee held during the 2015-16 interim, the administrative
14 rules committee shall receive a report from the board on the status of implementation
15 of this Act.

16 **SECTION 18. APPLICATION.** The board may wait to develop rules necessary to implement
17 and enforce this Act until August 1, 2016, if the board by majority vote determines that additional
18 information necessary to protect the public interest will become available before the date.
19 However, the board shall work diligently to adopt rules to implement this Act.