



2023 South Dakota Legislature  
**Senate Bill 78**  
**ENROLLED**

AN ACT

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

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

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

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

- (1) "Physical therapist," a person who is licensed or has obtained a compact privilege to practice physical therapy;
- (2) "Physical therapist assistant," a person who is licensed or has obtained a compact privilege to assist in providing physical therapy under the supervision of a physical therapist; and
- (3) "Supervision," the responsibility of a physical therapist to observe, direct, and review the work, records, and practice of a physical therapist assistant permitted by § 36-10-35.7, to ensure that the physical therapist assistant renders good and safe treatment to the patient.

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

**36-10-18.1.** The practice of physical therapy is the examination and evaluation of a patient with a mechanical, physiological, or developmental impairment, a functional limitation, a disability, or other similar condition to:

- (1) Determine a diagnosis, prognosis, and therapeutic intervention;
- (2) Alleviate any impairment or functional limitation by designing, implementing, and modifying therapeutic interventions that include therapeutic exercise, functional training in community or work reintegration, manual therapy techniques including soft tissue and joint mobilization, assistive and adaptive devices and equipment, bronchopulmonary hygiene, debridement and wound care, physical agents and

mechanical modalities, therapeutic massage, electrotherapeutic modalities, and patient-related instruction;

- (3) Prevent injury, impairment, functional limitation, and disability through the promotion and maintenance of fitness, health, and quality of life, in all age populations; and
- (4) Provide consultation, education, and research.

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

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

The board shall:

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

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

The State Board of Physical Therapy consists of:

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

The Governor shall appoint each member of the board.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**36-10-25.** Persons licensed under this title, while practicing within the limits of their licensure, are not prohibited from doing so by this chapter.

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

**36-10-27.** A person seeking licensure to practice physical therapy in this state shall:

- (1) File a written application with the State Board of Physical Therapy;
- (2) Submit an application fee in an amount established by the board, in rule pursuant to chapter 1-26, but not exceeding three hundred dollars;

- (3) Present evidence satisfactory to the board that the applicant is of good moral character; and
- (4) Present evidence satisfactory to the board that the applicant has graduated from a physical therapy program accredited by an accrediting body recognized by the United States Department of Education or by the Commission on Recognition of Postsecondary Accreditation or present evidence satisfactory to the board that:
  - (a) The applicant completed a course of professional instruction equivalent to an approved program accredited by an accrediting body recognized by the United States Department of Education or the Commission on Recognition of Postsecondary Accreditation; and
  - (b) The applicant has scored at least five hundred fifty on the TOEFL, obtained a passing score on a comparative nationally recognized examination approved by the board, or completed two years of secondary or postsecondary education in any educational institution in which the instruction is conducted in English.

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

**36-10-27.1.** In addition to the requirements in §§ 36-10-27 and 36-10-35.1, an applicant for licensure shall submit to the State Board of Physical Therapy a full set of the applicant's fingerprints in a form and manner prescribed by the board. The board shall deliver the fingerprints to the Division of Criminal Investigation to conduct a state and federal criminal background check by the division and the Federal Bureau of Investigation. The applicant shall sign a release of information to the board and pay any fees for the background check, including fingerprinting.

Upon completion of the background check, the division shall deliver to the board the applicant's criminal background information. The board shall consider this information in determining whether to issue a license to the applicant. The board may not issue a license to the applicant before receiving this information.

The board may not disseminate an applicant's criminal background information to any person outside the board.

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

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

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

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

- (1) Has passed a national examination, recognized by the board, with a grade acceptable to the board; and
- (2) Meets the requirements for licensure under this chapter and rules promulgated by the board.

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

**36-10-30.** The State Board of Physical Therapy may, without examination, issue a license to any applicant who:

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

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

**36-10-31.** The State Board of Physical Therapy may, without examination, issue a license to any applicant who holds a license or certificate issued by a board empowered by law to issue a license to practice physical therapy in the District of Columbia or any state or territory in the United States, if the requirements for licensure of physical therapists in that state or territory were, at the date of issuance, substantially equal to the requirements set forth in this chapter.

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

**36-10-32.** A person seeking licensure by reciprocity shall:

- (1) Apply to the State Board of Physical Therapy, using a form provided by the board;
- (2) Provide the evidence required by this chapter and rules of the board; and
- (3) Submit an application fee , in an amount established by the board, in rule pursuant to chapter 1-26, but not exceeding three hundred dollars.

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

**36-10-33.** A license issued by the State Board of Physical Therapy, pursuant to this chapter, expires on January first of the second year following its issuance. A license may be renewed upon payment of a fee, in an amount established by the board, in rule pursuant to chapter 1-26, but not exceeding three hundred dollars.

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

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

**36-10-35.1.** A person seeking licensure as a physical therapist assistant shall:

- (1) Apply to the State Board of Physical Therapy;
- (2) Submit an application fee in an amount established by the board, in rule pursuant to chapter 1-26, but not exceeding three hundred dollars; and
- (3) Present evidence satisfactory to the board of:
  - (a) Graduation from an accredited physical therapist assistant's education program recognized by the board; and
  - (b) Passage of a written examination, approved by the board, which tests the applicant's knowledge on subjects relating to physical therapy.

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

**36-10-35.2.** The State Board of Physical Therapy shall issue a physical therapist assistant license to a person who meets the requirements set forth in § 36-10-35.1.

The license shall expire and may be renewed at the same time and in the same manner as provided for physical therapy licenses under § 36-10-33.

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

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

The supervising physical therapist shall, within ten days of termination, provide written notification to the board, if the supervision of a physical therapist assistant is terminated. The supervising physical therapist may delegate responsibility for the

supervision of a physical therapist assistant to another physical therapist, for a period not exceeding thirty days.

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

**36-10-36.** The State Board of Physical Therapy shall promulgate rules, pursuant to chapter 1-26, pertaining to licensure, fees, discipline, supervision, and the continuing education of physical therapists and physical therapist assistants.

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

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

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

**36-10-39.** The State Board of Physical Therapy may cancel, revoke, or suspend the license of any physical therapist or physical therapist assistant, issued under this chapter, upon satisfactory evidence of the licensee's incompetence, unprofessional or dishonorable conduct, or violation of this chapter.

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

**36-10-40.** The term, unprofessional or dishonorable conduct, includes:

- (1) Employing what is known as cappers or steerers;
- (2) Willfully betraying a professional confidence;
- (3) All advertising of physical therapy business, in which untruthful or improbable statements are made, or which are calculated to mislead or deceive the public;
- (4) Conviction of any felony, conviction of a criminal offense arising out of the practice of physical therapy, or conviction of a criminal offense involving moral turpitude;
- (5) Habits of intemperance, or drug addiction, which in the opinion of the State Board of Physical Therapy, affect the licensee's practice;
- (6) Sustaining any physical or mental disability that renders the further practice of a licensee's profession dangerous;
- (7) Presentation to the board of any license, certificate, or diploma, which was obtained by fraud, by deception practiced in passing a required examination, or by the giving of false statements or information on applying for licensure; and

- (8) Illegally, fraudulently, or wrongfully obtaining a license required by this chapter, by:
- (a) The use of any means, devices, deceptions, or help in passing any examination; or
  - (b) Making false statements or misrepresentations in any application.
- Unprofessional or dishonorable conduct, as defined in this section, may not be the basis for criminal prosecution unless the conduct is otherwise unlawful.

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

**36-10-41.** The State Board of Physical Therapy may initiate proceedings for the cancellation, revocation, or suspension of a license if the board has information that a person may be guilty of incompetence, or unprofessional or dishonorable conduct as provided in § 36-10-40.

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

**36-10-43.** All proceedings relative to the cancellation, revocation, or suspension of a license, or relative to reissuing a license that has been revoked or suspended may be held only when a majority of the State Board of Physical Therapy is present.

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

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

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

**36-10-46.** Any party feeling aggrieved by any acts, rulings, or decisions of the State Board of Physical Therapy, relating to the refusal to grant a license or to the cancellation, revocation, or suspension of a license may appeal the decision, pursuant to chapter 1-26.

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

**36-10-47.** Upon written application establishing compliance with licensing requirements and for reasons the State Board of Physical Therapy deems sufficient, the board may, under such conditions as it may impose, reinstate or reissue a license to any person whose license has been suspended or revoked.



Upon suspension of a license, the board may provide for an automatic reinstatement after a fixed period of time.

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

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

An action for injunction is an alternative to criminal proceedings, and the commencement of one proceeding by the State Board of Physical Therapy constitutes an election.

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

**36-10-49.** The State Board of Physical Therapy shall investigate every alleged violation of this chapter, pursuant to the procedures set forth in chapter 36-1C. If the alleged violation is committed by a nonlicensee, the board shall report the violation to the proper law enforcement officials. The board may employ special counsel, subject to the supervision, control and direction of the attorney general, assist in the prosecution of violations of this chapter, and expend the necessary funds for those purposes.

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

**36-10-51.** In order to renew a license, a person shall submit evidence, satisfactory to the State Board of Physical Therapy, indicating compliance with the continuing education requirements established by the board. The board may waive the continuing education requirements if the applicant submits evidence satisfactory to the board that the applicant was unable to comply because of illness, disability, military service, or financial hardship.

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

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

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

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

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

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

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

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

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

\_\_\_\_\_  
I certify that the attached Act originated in  
the:  
Senate as Bill No. 78

\_\_\_\_\_  
Received at this Executive Office  
this \_\_\_\_ day of \_\_\_\_\_,  
2023 at \_\_\_\_\_ M.

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

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

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

The attached Act is hereby  
approved this \_\_\_\_\_ day of  
\_\_\_\_\_, A.D., 2023

Attest:

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

\_\_\_\_\_  
Governor

**STATE OF SOUTH DAKOTA,**

ss.

Office of the Secretary of State

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

Attest:

Filed \_\_\_\_\_, 2023  
at \_\_\_\_\_ o'clock \_\_ M.

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

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

Senate Bill No. 78  
File No. \_\_\_\_\_  
Chapter No. \_\_\_\_\_

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