

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

400C0807

HOUSE BILL NO. 1299

Introduced by: The Committee on State Affairs at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the practices of
2 physician assistants, certified registered nurse anesthetists, nurse practitioners, and nurse
3 midwives.

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

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

6 36-4A-1. Terms as used in this chapter, ~~unless the context otherwise requires,~~ mean:

7 (1) "Assistant to the primary care physician," a person who is a graduate of an approved
8 program of instruction in primary health care, who has passed a certification
9 examination administered by the board, and is approved by the board to perform
10 direct patient care services under the supervision of a primary care physician or
11 physicians approved by the board to supervise such an assistant;

12 (2) "Assistant to the specialist physician," a person who is a graduate of an approved
13 program for instruction in a recognized clinical specialty, who has passed a
14 certification examination administered by the board and is approved by the board to
15 perform direct patient care services in said specialty under the supervision of a
16 specialist physician or physicians approved by the board to supervise such assistant;

17 (3) "Board," the State Board of Medical and Osteopathic Examiners;

- 1 (4) "~~Employer~~ Supervising physician," the physician, either primary care or specialist,
2 with whom a physician's physician assistant has ~~an employment contract~~ a practice
3 agreement;
- 4 (5) "~~Physician's~~ Physician assistant," a person who is either an assistant to the primary
5 care physician or an assistant to the specialist physician;
- 6 (6) "Primary care physician," a physician, approved by the board, who supervises a
7 particular assistant to the primary care physician;
- 8 (7) "Specialist physician," a physician in a given specialty of medicine, approved by the
9 board, who supervises a particular assistant to a specialist physician.

10 Section 2. That § 36-4A-8 be amended to read as follows:

11 36-4A-8. The ~~Board of Medical and Osteopathic Examiners~~ board shall certify license as a
12 physician's physician assistant and issue an appropriate ~~certificate~~ license to any person who files
13 a verified application with the board signed by both the proposed ~~employer~~ supervising physician
14 and the physician's physician assistant to be ~~certified~~ licensed, upon a form prescribed by the
15 board, renders payment of the required fee, and furnishes evidence to the board that the
16 physician's physician assistant applying for ~~certification~~ licensure:

- 17 (1) Is at least eighteen years of age;
- 18 (2) Is of good moral character;
- 19 (3) Is a resident of South Dakota;
- 20 (4) Has completed a course of study approved by the board at an accredited university,
21 college, or school which includes the subjects of anatomy, physiology, biochemistry,
22 pathology, pharmacology, microbiology, medicine, surgery, pediatrics, psychiatry, and
23 obstetrics, and possesses a certificate of completion of the physician's physician
24 assistant courses of study from ~~said~~ the institution;
- 25 (5) Has had at least two years' experience with patients in a clinical setting in an

1 associated field such as military medicine, nursing, dentistry, pharmacy, etc. The
2 board shall decide in each individual case as to what experience would be recognized
3 as fulfillment of the requirement;

4 (6) Has passed an impartially administered examination given and graded by the board or
5 one of equivalency authorized by the board. Such examination may be in writing or
6 oral, or both, and shall fairly test the applicant's knowledge in theoretical and applied
7 primary medical care as it applies to the practice of the ~~physician's~~ physician assistant
8 in at least the subjects of physical diagnosis, laboratory procedures, common
9 childhood diseases and common medical diseases, emergency care and treatment,
10 minor surgery, emergency obstetrics, and common psychiatric disorders. The
11 applicant's professional skill and judgment in the utilization of medical and surgical
12 techniques may also be examined; and

13 ~~(7) Has submitted a written proposed employment contract required by § 36-4A-20;~~

14 (8) Has submitted verification that neither the ~~physician's~~ physician assistant applicant nor
15 the ~~employer~~ supervising physician named in the ~~employment contract~~ practice
16 agreement are subject to any disciplinary proceeding or pending complaint before any
17 medical or other licensing board unless such pending complaint is waived by the
18 licensing board.

19 Section 3. That § 36-4A-20 be amended to read as follows:

20 36-4A-20. A certified true copy of the proposed ~~employment contract~~ practice agreement
21 between the supervising physician and the ~~physician's~~ physician assistant outlining those activities
22 in §§ 36-4A-21 to 36-4A-26, inclusive, which the ~~physician's~~ physician assistant ~~shall~~ may
23 perform, shall be filed ~~in the office of~~ with and approved by the board ~~prior to the board's~~
24 ~~decision regarding placement.~~

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

1 36-4A-29.1. In consideration of the health care needs of urban and rural residents, ~~an~~
2 ~~employer~~ a supervising physician may apply to the board for authority to modify the method and
3 frequency of supervision of a ~~physician's~~ physician assistant as required by § 36-4A-29. The
4 board may grant the modifications it considers appropriate based upon its finding of adequate
5 supervision, training, and proficiency.

6 ~~An employer~~ A supervising physician may apply to the board for permission to supervise
7 more than one ~~physician's~~ physician assistant. The board shall establish the number of assistants,
8 up to four FTE, to be supervised by ~~an employer~~ a supervising physician based upon its finding
9 that adequate supervision will exist under the arrangement proposed by the ~~employer~~ supervising
10 physician.

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

13 Nothing in this section is intended to diminish the professional and legal responsibility of a
14 supervising physician toward the physician's patients as provided in § 36-4A-30.

15 Section 5. That chapter 36-4A be amended by adding thereto a NEW SECTION to read as
16 follows:

17 The board shall appoint a physician assistant advisory committee composed of three
18 physician assistants. Each committee member shall serve a term of three years, except initial
19 appointees whose terms shall be staggered so that no more than one member's term expires in
20 one year. A committee member may not be appointed to more than two consecutive terms. If
21 a vacancy occurs, the board shall appoint a person to fill the unexpired term. The committee shall
22 meet at least annually or as deemed necessary to conduct business. The advisory committee shall
23 assist the board in evaluating standards of physician assistant care and the regulation of physician
24 assistants pursuant to this chapter. The committee shall also make recommendations to the board
25 regarding rules promulgated pursuant to this chapter.

1 Section 6. The term, employer physician, wherever it is used in chapter 36-4A means
2 supervising physician. The Code Commission in future supplements and revisions of the South
3 Dakota Codified Laws shall substitute the term, supervising physician, and its derivatives for the
4 term, employer physician, and its derivatives.

5 Section 7. The term, employment contract, wherever it is used in chapter 36-4A means
6 practice agreement. The Code Commission in future supplements and revisions of the South
7 Dakota Codified Laws shall substitute the term, practice agreement, and its derivatives for the
8 term, employment contract, and its derivatives.

9 Section 8. The term, physician's assistant, wherever it is used in chapter 36-4A means
10 physician assistant. The Code Commission in future supplements and revisions of the South
11 Dakota Codified Laws shall substitute the term, physician assistant, and its derivatives for the
12 term, physician's assistant, and its derivatives.

13 Section 9. The term, certification, wherever it is used in chapter 36-4A means licensure. The
14 Code Commission in future supplements and revisions of the South Dakota Codified Laws shall
15 substitute the term, licensure, and its derivatives for the term, certification, and its derivatives.

16 Section 10. That § 36-9-3.1 be amended to read as follows:

17 36-9-3.1. A certified registered nurse anesthetist, in addition to performing all those functions
18 within the scope of practice of a registered nurse as provided in this chapter, may ~~accept the~~
19 ~~delegation of and~~ perform the following ~~medical~~ functions in collaboration with a physician
20 licensed pursuant to chapter 36-4, as a member of a physician-directed health care team:

- 21 (1) Develop an anesthesia care plan;
- 22 (2) Induce anesthesia;
- 23 (3) Maintain anesthesia at the required levels;
- 24 (4) Support life functions during the perioperative period;
- 25 (5) Recognize and take appropriate action for untoward patient responses during

1 anesthesia;

2 (6) Provide professional observation and management of the patient's emergence from
3 anesthesia during the immediate postoperative period;

4 (7) Conduct postanesthesia visit and assessment when appropriate; and

5 (8) Participate in the life support of the patient for whatever cause.

6 ~~The medical functions shall be performed only under the supervision of a licensed physician~~
7 ~~responsible for the medical care of the patient. For the purposes of this section, the term,~~
8 ~~collaboration, means the act of communicating pertinent information or consulting with a~~
9 ~~physician member of the health care team, with each provider contributing their respective~~
10 ~~expertise to optimize the overall care delivered to the patient.~~

11 Section 11. That § 36-9A-1 be amended to read as follows:

12 36-9A-1. Terms as used in this chapter mean:

13 (1) "Approved program," an educational program of study which meets the requirements
14 established by this chapter and by the boards for licensure under this chapter;

15 (2) "Boards," the South Dakota Board of Nursing and the South Dakota Board of
16 Medical and Osteopathic Examiners;

17 (3) "License," the written authorization by the boards required to practice the specialties
18 of nurse practitioner or nurse midwife;

19 (4) "Nurse midwife," a ~~person~~ provider duly authorized under this chapter to practice the
20 nursing specialty of nurse midwifery as defined in § 36-9A-13;

21 (5) "Nurse practitioner," a ~~person~~ provider duly authorized under this chapter to practice
22 the specialty of nurse practitioner as defined in § 36-9A-12;

23 (6) The feminine gender as used in this chapter shall also apply to the masculine and
24 neuter;

25 (7) "Collaboration," the act of communicating pertinent information or consulting with

1 a physician licensed pursuant to chapter 36-4, with each provider contributing their
2 respective expertise to optimize the overall care delivered to the patient.

3 Section 12. That § 36-9A-4 be amended to read as follows:

4 36-9A-4. No person may be licensed to practice as a nurse practitioner or nurse midwife
5 unless the person:

6 (1) Is currently licensed by the Board of Nursing as a registered nurse;

7 (2) Has completed an approved program for the preparation of nurse practitioners or
8 nurse midwives; and

9 (3) Has passed any examination, written or oral, or both, which the boards in their
10 discretion may require; and

11 ~~(4) Has submitted as part of the application for licensure a copy of the person's proposed~~
12 ~~practice agreement, and the practice agreement is approved by the boards.~~

13 Section 13. That chapter 36-9A be amended by adding thereto a NEW SECTION to read
14 as follows:

15 The nurse practitioner or nurse midwife advanced practice nursing functions include:

16 (1) Providing advanced nursing assessment, nursing intervention, and nursing case
17 management;

18 (2) Providing advanced health promotion and maintenance education and counseling to
19 clients, families, and other members of the health care team;

20 (3) Utilizing research findings to evaluate and implement changes in nursing practice,
21 programs, and policies; and

22 (4) Recognizing limits of knowledge and experience, planning for situations beyond
23 expertise, and consulting with or referring clients to other health care providers as
24 appropriate.

25 These advanced practice nursing functions are under the jurisdiction of the Board of

1 Nursing.

2 Section 14. That § 36-9A-12 be amended to read as follows:

3 36-9A-12. A nurse practitioner may ~~accept the delegation of and~~ perform the following
4 overlapping scope of advanced practice nursing and medical functions pursuant to § 36-9A-15,
5 including:

- 6 (1) The initial medical diagnosis and the institution of a plan of therapy or referral;
- 7 (2) The prescription of medications, including controlled drugs or substances listed on
8 Schedule II in chapter 34-20B for one period of not more than forty-eight hours, for
9 treatment of causative factors and symptoms;
- 10 (3) The writing of a chemical or physical restraint order when the patient may do personal
11 harm or harm others;
- 12 (4) The completion and signing of official documents such as death certificates, birth
13 certificates, and similar documents required by law; and
- 14 (5) The performance of a physical examination for participation in athletics and the
15 certification that the patient is healthy and able to participate in athletics.

16 Section 15. That § 36-9A-13 be amended to read as follows:

17 36-9A-13. A nurse midwife may ~~accept the delegation of and~~ perform the following
18 overlapping scope of advanced practice nursing and medical functions pursuant to § 36-9A-15,
19 including:

- 20 (1) Management of the prenatal and postpartum care of the mother-baby unit;
- 21 (2) Management and direction of the birth;
- 22 (3) Provision of appropriate health supervision during ~~the interconceptual period~~ all
23 phases of the reproductive life span to include family planning services, menopausal
24 care, and cancer screening and prevention; and
- 25 (4) Prescription of appropriate medications for individuals under the nurse midwife's care

1 pursuant to the scope of practice defined in this section, including controlled drugs
2 or substances listed on Schedule II in chapter 34-20B for one period of not more than
3 forty-eight hours; ~~during the antepartal, intrapartal, and postpartal period.~~

4 ~~Such medical acts may be performed by the nurse midwife if, and as long as, the mother-baby~~
5 ~~unit is in normal health, and pregnancy and birth are normal as determined by the nurse midwife~~
6 ~~and her supervising physician.~~

7 Section 16. That § 36-9A-15 be amended to read as follows:

8 36-9A-15. Practice The term, collaborative agreement, as used in this chapter, ~~unless the~~
9 ~~context plainly otherwise requires~~, means the a written agreement authored and signed by the
10 ~~nurse practitioner or nurse midwife and the agency or physicians~~ physician with whom ~~she is~~
11 ~~associated, identifying the settings within which she is to practice; naming the physicians~~
12 ~~responsible for her supervision; defining or describing the agreed upon medical functions, not~~
13 ~~inconsistent with § 36-9A-12 or 36-9A-13, that she may perform; and containing such other~~
14 ~~information as required by the boards~~ the nurse practitioner or nurse midwife is collaborating.
15 A collaborative agreement defines or describes the agreed upon overlapping scope of advanced
16 practice nursing and medical functions that may be performed, consistent with § 36-9A-12 or 36-
17 9A-13, and contains such other information as required by the boards. A copy of each
18 collaborative agreement shall be maintained on file with and be approved by the boards prior to
19 performing any of the acts contained in the agreement.

20 Section 17. That § 36-9A-16 be repealed.

21 ~~—36-9A-16. The specific medical functions to be performed by a nurse practitioner or nurse~~
22 ~~midwife within the scope of permitted practice defined by §§ 36-9A-12 and 36-9A-13 shall be~~
23 ~~described and defined in her practice agreement, a copy of which shall be maintained on file with~~
24 ~~and be approved by the boards as a condition of lawful practice under this chapter. No nurse~~
25 ~~practitioner nor nurse midwife may perform any medical functions not authorized by the~~

1 ~~approved practice agreement.~~

2 Section 18. That § 36-9A-17 be amended to read as follows:

3 36-9A-17. A nurse practitioner or nurse midwife ~~shall~~ may perform the overlapping scope
4 of advanced practice nursing and medical functions ~~of the nurse practitioner's or nurse midwife's~~
5 ~~specialty only under the supervision of~~ only under the terms of a collaborative agreement with
6 a physician licensed under chapter 36-4 ~~who is responsible for the medical care of the patients~~
7 ~~that are named in the practice agreement maintained on file with the boards. The supervision.~~
8 Any collaborative agreement shall be maintained on file with the boards. Collaboration may be
9 by direct personal contact, or by a combination of direct personal contact and indirect contact
10 via telecommunication, as may be required by the boards. If the ~~supervising~~ collaborating
11 physician named in ~~the practice~~ a collaborative agreement becomes temporarily unavailable, the
12 nurse practitioner or nurse midwife may perform the agreed upon overlapping scope of advanced
13 practice nursing and medical functions ~~of the nurse practitioner's or nurse midwife's specialty~~
14 ~~only under the supervision of~~ in consultation with another licensed physician designated as a
15 substitute ~~for that purpose by the supervising physician for the temporary period.~~

16 Section 19. That § 36-9A-17.1 be amended to read as follows:

17 36-9A-17.1. The boards may authorize those modifications in the method and frequency of
18 ~~supervision~~ collaboration of a nurse practitioner or nurse midwife required by § 36-9A-17 that
19 they consider appropriate based upon a finding of adequate ~~supervision~~ collaboration, training,
20 and proficiency. The boards may permit a physician to ~~supervise~~ establish a collaborative
21 relationship with more than one nurse practitioner or nurse midwife and shall establish the
22 number of nurse practitioners or nurse midwives, up to four FTE, ~~to be supervised by a physician~~
23 based upon a finding that adequate ~~supervision~~ collaboration will exist under the ~~arrangement~~
24 modification proposed.

25 Nothing in this section is intended to diminish the professional and legal responsibility of a

1 ~~supervising collaborating~~ physician toward the physician's patients or the nurse practitioner or
2 nurse midwife as provided in § 36-9A-17.

3 Section 20. That § 36-9A-20 be amended to read as follows:

4 36-9A-20. If a nurse practitioner or nurse midwife intends to alter ~~her~~ practice status by
5 reason of a change in setting, ~~supervision by a different physician,~~ modification, or expansion of
6 the ~~medical~~ functions ~~she~~ the nurse practitioner or nurse midwife is authorized to perform, or for
7 any other reason, ~~she~~ the nurse practitioner or nurse midwife shall submit a new or amended
8 ~~practice collaborative~~ agreement to the boards for approval before any change may be permitted.

9 Section 21. That § 36-9A-29 be amended to read as follows:

10 36-9A-29. The boards may deny, revoke, or suspend any license or application for licensure
11 to practice as a nurse practitioner or nurse midwife in this state, and may take such other
12 disciplinary or corrective action as ~~they~~ the boards deem appropriate upon proof that the license
13 holder or applicant has:

- 14 (1) Committed fraud, deceit, or misrepresentation in procuring or in attempting to
15 procure a license;
- 16 (2) Aided or abetted an unlicensed person to practice as a nurse practitioner or nurse
17 midwife;
- 18 (3) Engaged in practice as a nurse practitioner or nurse midwife under a false or assumed
19 name and failed to register that name pursuant to chapter 37-11, or impersonated
20 another license holder of a like or different name;
- 21 (4) Become addicted to the habitual use of intoxicating liquors or controlled drugs as
22 defined by chapter 34-20B to such an extent as to incapacitate ~~her~~ the license holder
23 or applicant from the performance of ~~her~~ professional duties;
- 24 (5) Negligently, willfully, or intentionally acted in a manner inconsistent with the health
25 and safety of persons entrusted to ~~her~~ the license holder's care;

- 1 (6) Had authorization to practice as a nurse practitioner or nurse midwife denied,
2 revoked, or suspended or had other disciplinary action taken in another state;
- 3 (7) Failed to maintain on file with the boards a copy of ~~the practice agreement~~ each
4 collaborative agreement accurately containing the current information regarding ~~her~~
5 the license holder's practice status required by the boards;
- 6 (8) Practiced as a nurse practitioner or nurse midwife without a valid license;
- 7 (9) Engaged in the performance of advanced practice nursing and medical functions
8 beyond the scope of practice authorized by ~~the any current practice collaborative~~
9 agreement or by § 36-9A-12 or 36-9A-13;
- 10 (10) Violated any provisions of this chapter or the rules and regulations of the boards
11 promulgated hereunder.

12 Section 22. That § 36-9A-41 be amended to read as follows:

13 36-9A-41. The boards may promulgate rules pursuant to chapter 1-26 pertaining to: licensure
14 and licenses, ~~supervision of~~ collaborative practice, ~~prescription~~ prescriptive authority, and
15 disciplinary proceedings.

16 Section 23. That chapter 36-9A be amended by adding thereto a NEW SECTION to read
17 as follows:

18 The Board of Nursing shall appoint an advanced practice nurse advisory committee
19 composed of two certified nurse midwives and four certified nurse practitioners. Committee
20 members shall be selected from a list of nominees by the Board of Nursing. Each committee
21 member shall serve a term of three years, except initial appointees whose terms shall be staggered
22 so that no more than two member's terms expire in one year. A committee member may not be
23 appointed to more than two consecutive terms. If a vacancy occurs the board shall appoint a
24 person to fill the unexpired term. The committee shall meet at least annually, or as deemed
25 necessary, to conduct business. The advisory committee shall assist the boards in evaluating

1 standards of advanced practice nursing care and the regulation of nurse practitioners and nurse
2 midwives pursuant to this chapter. The committee shall also make recommendations to the
3 boards regarding rules promulgated pursuant to this chapter.