# 2024 South Dakota Legislature

# Senate Bill 87

# ENROLLED

AN ACT

**ENTITLED An Act to revise provisions related to the State Board of Medical and Osteopathic Examiners and its appointed professional councils.**

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

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

**36-4-1.** The State Board of Medical and Osteopathic Examiners, hereinafter called the Board of Examiners, consists of:

(1) Nine physicians licensed in accordance with this chapter;

(2) One physician assistant licensed in accordance with chapter 36-4A;

(3) One emergency medical services personnel licensed in accordance with chapter 36-4B;

(4) One respiratory care practitioner licensed in accordance with chapter 36-4C;

(5) One nutritionist or dietician licensed in accordance with chapter 36-10B;

(6) One athletic trainer licensed in accordance with chapter 36-29;

(7) One occupational therapist or occupational therapy assistant licensed in accordance with chapter 36-31;

(8) One genetic counselor licensed in accordance with chapter 36-36; and

(9) One individual who is a representative of the public.

The Governor shall appoint each member of the board. The term of office for each member is three years. A member's term begins on October thirty-first of the calendar year in which the Governor appoints the member, unless otherwise designated by the Governor. The member's term expires on October thirtieth in the third year of appointment.

No member may serve more than three consecutive, full terms. An appointment to an unexpired term is not considered a full term. Each member shall hold office until a successor is appointed and qualified. The Governor shall appoint a new member to fill any

vacancy on the board. The Governor may stagger terms to enable the board to have different terms expire each year.

**Section 2. That § 36-4-4 be AMENDED:**

**36-4-4.** The Board of Examiners shall hold two regular meetings each year at a time to be fixed by the board. The Board of Examiners may hold special meetings at such other times as necessary. All meetings must be held at the place within the state as the board shall determine.

The Board of Examiners may act on matters without receiving prior communication or recommendations from any of its appointed professional councils if the board determines that action is necessary to protect public health, interest, or safety.

**Section 3. That a NEW SECTION be added to chapter 36-4:**

Notwithstanding any other provision of this chapter, only the nine physician members and the representative of the public referenced in § 36-4-1 may:

(1) Participate in discussion on matters related to the licensure, practice, education, continuing education, investigation, and discipline of physicians;

(2) Be present for discussion of confidential matters and have access to confidential materials related to the licensure, practice, education, continuing education, investigation, and discipline of physicians; and

(3) Act on matters related to the licensure, practice, education, continuing education, investigation, and discipline of physicians.

**Section 4. That § 36-4A-3.1 be AMENDED:**

**36-4A-3.1.** The board shall appoint a physician assistant council composed of three physician assistants. The term of office for each member is three years. No member may be appointed to more than three consecutive, full terms. If a vacancy occurs, the board must appoint a new member to fill the unexpired term. The appointment of a member to an unexpired term is not considered a full term.

The council shall meet at least twice each year, at a time and place set by the council, and may hold additional meetings as necessary to conduct business. The council shall meet the requirements of chapter 1-25 regarding open meetings.

The council shall:

(1) Assist the board in all matters related to the licensure, practice, education, continuing education, investigation, and discipline of physician assistants pursuant to this chapter;

(2) Make recommendations to the board regarding rules promulgated pursuant to this chapter; and

(3) Submit meeting minutes and any recommendations to the board following each council meeting.

The board shall communicate activity on all matters relating to physician assistants with the council.

**Section 5. That § 36-4B-37 be AMENDED:**

**36-4B-37.** The board shall appoint an emergency medical services personnel council composed of five members:

(1) One emergency medical technician;

(2) One emergency medical technician-intermediate/85, emergency medical technician-intermediate/99, or advanced emergency medical technician;

(3) Two paramedics; and

(4) One physician licensed in accordance with chapter 36-4 and trained in emergency medicine.

The term of office for each member is three years. No member may be appointed to more than three consecutive, full terms. If a vacancy occurs, the board must appoint a new member to fill the unexpired term. The appointment of a member to an unexpired term is not considered a full term.

The council shall meet at least twice each year, at a time and place set by the council, and may hold additional meetings as necessary to conduct business. The council shall meet the requirements of chapter 1-25 regarding open meetings.

The council shall assist the board in all matters related to the licensure, practice, education, continuing education, investigation, and discipline of emergency medical services personnel pursuant to this chapter. The council shall make recommendations to the board regarding rules promulgated pursuant to this chapter. The council shall submit meeting minutes and any recommendations to the board following each council meeting.

The board shall communicate activity on all matters relating to emergency medical services personnel with the council.

**Section 6. That § 36-4C-1 be AMENDED:**

**36-4C-1.** Terms used in this chapter mean:

(1) "Affiliate," the South Dakota affiliate of the American Association for Respiratory Care;

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

(3) "Certified respiratory therapist," a respiratory care practitioner who has successfully completed a training program accredited by the Commission on Accreditation of Allied Health Education Programs in collaboration with the Committee on Accreditation for Respiratory Care and who has successfully completed the entry level examination for respiratory therapists administered by the National Board for Respiratory Care, Incorporated;

(4) "Graduate respiratory care practitioner," a person who has graduated from an education and training program accredited by the Commission on Accreditation of Allied Health Education Programs in collaboration with the Committee on Accreditation for Respiratory Care and who is eligible to take the licensure examination required by § 36-4C-8;

(5) "Qualified medical director," a physician licensed pursuant to chapter 36-4 who has a special interest and knowledge in the diagnosis and treatment of cardiopulmonary problems and is responsible for the medical direction of any inpatient or outpatient respiratory care service, department, or home care agency. If possible, the medical director must be qualified by special training or be experienced in the management of acute and chronic respiratory disorders or both. The medical director is responsible for the quality, safety, and appropriateness of respiratory care services;

(6) "Respiratory care practitioner," any person with a temporary permit or license to practice respiratory care as defined in this chapter and whose temporary permit or license is in good standing;

(7) "Registered respiratory therapist," a respiratory care practitioner who has successfully completed a training program accredited by the Commission on Accreditation of Allied Health Education Programs in collaboration with the Committee on Accreditation for Respiratory Care and who has successfully completed the registry examination for advanced respiratory therapists administered by the National Board for Respiratory Care, Incorporated; and

(8) "Student respiratory care practitioner," a person who is enrolled in an education and training program for respiratory care practitioners that is accredited by the Commission on Accreditation of Allied Health Education Programs and the

Committee on Accreditation for Respiratory Care and who provides respiratory care under direct supervision of a licensed respiratory care practitioner who is on the premises where the respiratory care services are provided and who is available for immediate consultation.

**Section 7. That § 36-4C-4 be AMENDED:**

**36-4C-4.** The board shall appoint a respiratory care practitioners council composed of five members:

(1) Two registered respiratory therapists;

(2) Two certified respiratory therapists; and

(3) A physician licensed pursuant to chapter 36-4 who practices as a pulmonologist.

The term of office for each member is three years. No member may be appointed to more than three consecutive, full terms. If a vacancy occurs, the board shall appoint a new member to fill the unexpired term. The appointment of a member to an unexpired term is not considered a full term.

The council shall meet at least twice each year, at a time and place set by the council, and may hold additional meetings as necessary to conduct business. The council shall meet the requirements of chapter 1-25 regarding open meetings.

The council shall assist the board in all matters related to the licensure, practice, education, investigation, and discipline of respiratory care practitioners. The council shall make recommendations to the board regarding rules promulgated pursuant to this chapter. The council shall submit meeting minutes and any recommendations to the board following each council meeting.

The board shall communicate activity on all matters relating to respiratory care practitioners with the council.

**Section 8. That § 36-4C-9 be AMENDED:**

**36-4C-9.** Any applicant for a license as a respiratory care practitioner shall file a written application, on a form provided by the board, containing evidence satisfactory to the board for showing that the applicant:

(1) Is of good moral character;

(2) Has successfully completed an education and training program accredited by the Commission on Accreditation of Allied Health Education Programs in collaboration with the Committee on Accreditation for Respiratory Care; and

(3) Will pass an examination recommended by the respiratory care practitioners council and approved by the board.

**Section 9. That § 36-10B-1 be AMENDED:**

**36-10B-1.** Terms used in this chapter mean:

(1) "Accredited college or university," a college or university accredited by the United States regional accrediting agencies recognized by the Council on Postsecondary Accreditation and the United States Department of Education;

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

(3) "Commission," the Commission on Dietetic Registration that is a member of the National Commission for Certifying Agencies;

(4) "Dietitian," a person who engages in nutrition or dietetics practice and uses the title dietitian pursuant to § 36-10B-2;

(5) "Licensed nutritionist," a person licensed under this chapter;

(6) "Nutritionist," a person who engages in nutrition or dietetics practice and uses the title of nutritionist pursuant to § 36-10B-2;

(7) "Nutrition care services," any of the following:

(a) Assessment of the nutritional needs of individuals or groups;

(b) Establishment of priorities, goals, and objectives to meet nutritional needs;

(c) Provision of nutrition counseling for both normal and therapeutic needs;

(d) Development, implementation, and management of nutrition care services; or

(e) Evaluation, adjustment, and maintenance of appropriate standards of quality in nutrition care;

(8) "Nutritional assessment," the evaluation of the nutritional needs of individuals or groups based on appropriate biochemical, anthropometric, physical, and dietary data to determine nutrient needs and recommend appropriate nutritional intake; and

(9) "Nutrition counseling," advising and assisting individuals or groups on appropriate nutritional intake by integrating information from the nutritional assessment with information on food and other sources of nutrients and meal preparation consistent with cultural background and socioeconomic status.

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

**36-10B-3.** The board may:

(1) Examine qualified applicants for a license to practice nutrition and dietetics, issue licenses to applicants who meet the requirements established by this chapter, and renew licenses as recommended by the nutrition and dietetics council; and

(2) Adopt rules pursuant to chapter 1-26, that set professional, practice, and ethical standards for licensed nutritionists.

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

**36-10B-4.** The board shall appoint a nutrition and dietetics council composed of five members. Each member must be a registered dietitian or licensed nutritionist. The term of office for each member is three years. No member may be appointed to more than three consecutive, full terms. If a vacancy occurs, the board must appoint a new member to fill the unexpired term. The appointment of a member to an unexpired term is not considered a full term.

The council shall meet at least twice each year, at a time and place set by the council, and may hold additional meetings as necessary to conduct business. The council shall meet the requirements of chapter 1-25 regarding open meetings.

The council shall:

(1) Assist the board in all matters related to the licensure, practice, education, continuing education, investigation, and discipline of dieticians and nutritionists;

(2) Make recommendations to the board regarding rules promulgated pursuant to this chapter; and

(3) Submit meeting minutes and any recommendations to the board following each council meeting.

The board shall communicate activity on all matters relating to dieticians and licensed nutritionists with the council.

**Section 12. That § 36-29-8 be AMENDED:**

**36-29-8.** The board shall appoint an athletic training council composed of three residents of this state who are licensed to practice athletic training in accordance with this chapter. The term of office for each member is three years. No member may serve more than three consecutive, full terms. If a vacancy occurs, the board must appoint a new member to fill the unexpired term. The appointment of a member to an unexpired term is not considered a full term.

The council shall meet at least twice each year, at a time and place set by the council, and may hold additional meetings as necessary to conduct business. The council shall meet the requirements of chapter 1-25 regarding open meetings.

The council shall:

(1) Assist the board in all matters related to the licensure, practice, education, continuing education, investigation, and discipline of athletic trainers;

(2) Make recommendations to the board regarding rules promulgated pursuant to this chapter; and

(3) Submit meeting minutes and any recommendations to the board following each council meeting.

The board shall communicate activity on all matters relating to athletic trainers with the council.

**Section 13. That § 36-31-1 be AMENDED:**

**36-31-1.** Terms used in this chapter mean:

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

(2) "Occupational therapist," any person licensed to practice occupational therapy as defined in this chapter and whose license is in good standing;

(3) "Occupational therapy," the evaluation, planning and implementation of a program of purposeful activities to develop or maintain adaptive skills necessary to achieve the maximal physical and mental functioning of the individual in his or her daily pursuits. The practice of occupational therapy includes consultation, evaluation, and treatment of individuals whose abilities to cope with the tasks of living are threatened or impaired by developmental deficits, the aging process, learning disabilities, poverty and cultural differences, physical injury or disease, psychological and social disabilities, or anticipated dysfunction. Occupational therapy services include such treatment techniques as task-oriented activities to prevent or correct physical or emotional deficits or to minimize the disabling effect of these deficits in the life of the individual; such evaluation techniques as assessment of sensory integration and motor abilities, assessment of development of self-care and feeding, activities and capacity for independence, assessment of the physical capacity for prevocational and work tasks, assessment of play and leisure performance, and appraisal of living areas for the handicapped; physical agent modalities limited to the upper extremities to enhance physical functional performance, if certified in accordance with § 36-31-6; and specific occupational

therapy techniques such as activities of daily living skills, designing, fabricating, or applying selected orthotic devices or selecting adaptive equipment, sensory integration and motor activities, the use of specifically designed manual and creative activities, specific exercises to enhance functional performance, and treatment techniques for physical capabilities for work activities. Such techniques are applied in the treatment of individual patients or clients, in groups, or through social systems;

(4) "Occupational therapy aide," any person who assists in the practice of occupational therapy under the direct supervision of an occupational therapist or occupational therapy assistant;

(5) "Occupational therapy assistant," any person licensed to assist in the practice of occupational therapy, under the supervision of or with the consultation of a licensed occupational therapist and whose license is in good standing; and

(6) "Physical agent modalities," modalities that produce a biophysiological response through the use of light, water, temperature, sound, or electricity, or mechanical devices. Physical agent modalities include:

(a) Superficial thermal agents such as hydrotherapy/whirlpool, cryotherapy (cold packs/ice), fluidotherapy, hot packs, paraffin, water, infrared, and other commercially available superficial heating and cooling technologies;

(b) Deep thermal agents such as therapeutic ultrasound, phonophoresis, and other commercially available technologies;

(c) Electrotherapeutic agents such as biofeedback, neuromuscular electrical stimulation, functional electrical stimulation, transcutaneous electrical nerve stimulation, electrical stimulation for tissue repair, high-voltage galvanic stimulation, and iontophoresis and other commercially available technologies; and

(d) Mechanical devices such as vasopneumatic devices and CPM (continuous passive motion).

**Section 14. That § 36-31-2 be AMENDED:**

**36-31-2.** The board shall appoint an occupational therapy council composed of two occupational therapists and one occupational therapy assistant. The term of office for each member is three years. No member may serve more than three consecutive, full terms.

If a vacancy occurs, the board must appoint a new member to fill the unexpired term. The appointment of a member to an unexpired term is not considered a full term.

The council shall meet at least twice each year, at a time and place set by the council, and may hold additional meetings as necessary to conduct business. The council shall meet the requirements of chapter 1-25 regarding open meetings.

The council shall:

(1) Assist the board in all matters related to the licensure, practice, education, continuing education, investigation, and discipline of occupational therapists and occupational therapy assistants;

(2) Make recommendations to the board regarding rules promulgated pursuant to this chapter; and

(3) Submit meeting minutes and any recommendations to the board following each council meeting.

The board shall communicate activity on all matters relating to occupational therapists or occupational therapy assistants with the council.

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

**36-36-15.** The board shall appoint a genetic counselor council composed of one genetic counselor and three physicians licensed pursuant to chapter 36-4. The term of office for each member is three years. No member may be appointed to more than three consecutive, full terms. If a vacancy occurs, the board must appoint a new member to fill the unexpired term. The appointment of a member to an unexpired term is not considered a full term.

The council shall meet at least twice each year, at a time and place set by the council, and may hold additional meetings as necessary to conduct business. The council shall meet the requirements of chapter 1-25 regarding open meetings.

The council shall:

(1) Assist the board in all matters related to the licensure, practice, education, continuing education, investigation, and discipline of genetic counselors pursuant to this chapter;

(2) Make recommendations to the board regarding rules promulgated pursuant to this chapter; and

(3) Submit meeting minutes and any recommendations to the board following each council meeting.

The board shall communicate activity on all matters relating to genetic counselors with the council.

**Section 16. That § 36-4-2 be REPEALED.**

**Section 17. That § 36-4-2.1 be REPEALED.**

An Act to revise provisions related to the State Board of Medical and Osteopathic Examiners and its appointed professional councils.

I certify that the attached Act originated in the:

Senate as Bill No. 87

_____
Secretary of the Senate

_____
President of the Senate

Attest:

_____
Secretary of the Senate

_____
Speaker of the House

Attest:

_____
Chief Clerk

Senate Bill No. 87
File No. _____
Chapter No. _____

Received at this Executive Office
this _____ day of _____,

2024 at _____M.

By _____
for the Governor

The attached Act is hereby
approved this _____ day of
_____, A.D., 2024

_____
Governor

**STATE OF SOUTH DAKOTA,**
ss.
Office of the Secretary of State

Filed _____, 2024
at _____ o'clock __M.

_____
Secretary of State

By _____
Asst. Secretary of State