



## SOUTH DAKOTA BOARD OF NURSING

SOUTH DAKOTA DEPARTMENT OF HEALTH  
4305 S. Louise Avenue Suite 201 v Sioux Falls, SD 57106-3115  
(605) 362-2760 v FAX: 362-2768 v www.state.sd.us/doh/nursing

August 8, 2017

MEMO

To: Interested Parties

From: Gloria Damgaard, Executive Director

Re: Proposed Changes to ARSD Chapter 20:48:01; Chapter 20:48:16; and Chapter 20:48:08

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Please find attached a copy of the Board of Nursing's proposed rule changes to ARSD Chapter 20:48:01; Chapter 20:48:16; and ARSD Chapter 20:48:08 and Notice of Public Hearing to Adopt Rules. Please note that the hearing will take place at the DDN Site located at the South Dakota University Center Room FADM 145, 4801 North Career Avenue, Sioux Falls, SD, on September 6, 2017, at 2 pm. If you plan to attend the meeting in person, please let me know by September 1, 2017 to ensure that adequate space is available. (605-362-2760).

The effect of the rules will be to amend the definition section of ARSD Chapter 20:48:01 to include a definition of registrant. A registrant is defined as unlicensed assistive personnel who are registered by the board. Chapter 20:48:16 adds the requirements for the operation of the unlicensed assistive personnel registry, defines the application process for registration, defines the renewal and reactivation requirements and the process for denial or removal from the registry.

Chapter 20:48:08 amends the process for disciplinary action for licensed nurses and registrants. The primary effect of the amendments is to remove language that identifies an informal proceeding for disciplinary procedures and clarifies the staff representative's role when a notice of claimed misconduct is received. The rules define board action following notification of the claimed misconduct and add a letter of reprimand and probation as actions that require a hearing.

Persons interested in presenting data, opinions, and arguments for or against the proposed rules may do so by appearing in person at the hearing or by sending them to the South Dakota Board of Nursing, 4305 South Louise Ave., Suite 201, Sioux Falls, South Dakota 57106. Material sent by mail must reach the South Dakota Board of Nursing by September 1, 2017, to be considered.

Thank you for your interest. If you have any questions about the proposed rule changes, please contact me at the Board of Nursing office.

South Dakota Board of Nursing  
Notice of Public Hearing to Adopt Rules

A public hearing will be held at the University Center DDN Site, UC- FADM 145, 4801 North Career Avenue., Sioux Falls, SD, on September 6, 2017, at 2 pm to consider adoption of proposed rules: ARSD Chapter 20:48:01; ARSD Chapter 20:48:16; and ARSD Chapter 20:48:08;

The effect of the rules will be to amend the definition section of ARSD Chapter 20:48:01 to include a definition of registrant. A registrant is defined as unlicensed assistive personnel who are registered by the board. Chapter 20:48:16 adds the requirements for the operation of the unlicensed assistive personnel registry, defines the application process for registration, defines the renewal and reactivation requirements and the process for denial or removal from the registry.

Chapter 20:48:08 amends the process for disciplinary action for licensed nurses and registrants. The primary effect of the amendments is to remove language that identifies an informal process for disciplinary procedures and clarifies the staff representative's role when a notice of claimed misconduct is received. The rules further define board action following notification of the claimed misconduct and add a letter of reprimand and probation as actions that require a hearing.

Persons interested in presenting data, opinions, and arguments for or against the proposed rules may do so by appearing in person at the hearing or by sending them to the South Dakota Board of Nursing, 4305 South Louise Ave., Suite 201, Sioux Falls, South Dakota 57106. Material sent by mail must reach the South Dakota Board of Nursing by September 1, 2017, to be considered.

After the hearing, the board will consider all written and oral comments it receives on the proposed rules. The board may modify or amend a proposed rule at that time to include or exclude matters that are described in this notice.

Notice is further given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the SD Board of Nursing at least 48 hours before the public hearing if you have special needs for which special arrangements must be made. The telephone number for making special arrangements is (605) 362-2760.

Copies of the proposed rules may be obtained without charge from the  
South Dakota Board of Nursing  
4305 South Louise Ave., Suite 201  
Sioux Falls, SD 57106

Published at the approximate cost of \$\_\_\_\_\_.

## CHAPTER 20:48:01

### DEFINITIONS

Section

20:48:01:01 Definitions.

**20:48:01:01. Definitions.** Terms defined in SDCL chapter 36-9 have the same meaning when used in this article. In addition, terms used in this article mean:

- (1) "Adolescent," a person at least 12 years of age but not yet 18;
- (2) "Applicant," a person applying to the board for any purpose relating to that person's licensure or certification by the board;
- (3) "Client," a consumer of nursing care;
- (4) "Clinical enrichment program," any program designed to provide supervised clinical experience based on the nursing process and offered by an employing institution or agency to nursing students outside a formal educational program;
- (5) "Complex nursing situation," a situation in which the client's clinical and behavioral state is not predictable and rapid change in that state is reasonably anticipated;
- (6) "Controlling institution," an educational institution or general hospital under whose auspices a school is organized and operated;
- (7) "Cooperating agency," an institution or agency other than a controlling institution which provides learning resources to a school;
- (8) "Delegation," transferring to a trained individual the authority to perform a specific nursing task in a specific situation;
- (9) "Direct supervision," supervision given by a registered nurse or licensed physician who is physically present in the immediate area where the client is being provided nursing service;

(10) "Equivalent" or "equivalency," the completion, in a school that is not approved by the board or in a school of another kind, of a program that is substantially equal to the preparation received in an approved school of practical nursing;

(11) "Licensee," a person who holds a license issued by the board as either a registered or licensed practical nurse, certified registered nurse anesthetist, or clinical nurse specialist;

(12) "Minimal supervision," supervision given by a registered nurse, licensed physician, or dentist who is physically on the premises where the client is being cared for or readily available by telephone;

(13) "School," a school that conducts a course of study for the preparation of registered nurses, licensed practical nurses, or certified registered nurse anesthetists;

(14) "Stable nursing situation," a situation in which the client's clinical and behavioral state is known and predictable and no rapid change in that state is reasonably anticipated;

(15) "Unlicensed assistive personnel," individuals not licensed as a nurse under SDCL chapter 36-9 who are trained to assist a licensed nurse in the provision of nursing care to a client as delegated by the nurse and authorized by chapter 20:48:04.01-;

(16) "Registrant," unlicensed assistive personnel who are registered by the board.

**Source:** SL 1975, ch 16, § 1; 3 SDR 35, effective November 11, 1976; 4 SDR 26, effective November 1, 1977; 6 SDR 88, effective March 3, 1980; 12 SDR 109, effective January 9, 1986; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 13 SDR 175, effective May 28, 1987; 21 SDR 13, effective August 7, 1994; 26 SDR 174, effective July 4, 2000; 41 SDR 12, effective July 31, 2014.

**General Authority:** SDCL 36-9-21 (5).

**Law Implemented:** SDCL 36-9-21 (5).

## CHAPTER 20:48:16

### Registration of Unlicensed Assistive Personnel

#### Section

20:48:16:01 Operation of registry.

20:48:16:02 Application for registration.

20:48:16:03 Renewal or reactivation of registration.

20:48:16:04 Denial or removal from registry.

**20:48:16:01. Operation of registry.** The board is accountable for the operation of the unlicensed assistive personnel registry. The registry contains the following information for each individual who has gained registry status:

- (1) Full name of the registrant, including maiden name and any surnames used;
- (2) Last known home address;
- (3) Registration number;
- (4) Date the registry status expires;
- (5) Date of birth;
- (6) Most recent employment;
- (7) Date of successful completion of the board approved examination; and
- (8) Disciplinary proceedings against the registrant.

**Source:**

**General Authority:** SDCL 36-9-21 (5).

**Law Implemented:** SDCL 36-9-21 (5).

**20:48:16:02. Application for registration.** An individual seeking initial registration shall:

- (1) Apply on the form provided by the board;
- (2) Hold a high school diploma or equivalent;

(3) Successfully complete a board approved training program in accordance with § 20:48:04.01:13, § 20:48:04.01:16, or § 20:48:04.02:07. An individual seeking registration who completed education that was not approved by the board shall make a request for an equivalency determination on a form provided by the board.

(4) Evidence of having passed a board approved examination.

**Source:**

**General Authority:** SDCL 36-9-21 (5).

**Law Implemented:** SDCL 36-9-21 (5).

20:48:16:03. Renewal or reinstatement of registration. A registrant shall renew biennially. A notice for renewal shall be sent by the board to the last known address of each current registrant at least 90 days prior to the registrant's expiration date. Failure to receive the notice for renewal does not relieve the registrant of the responsibility for renewing within the prescribed time. Any renewal received by the board after the filing date indicated in the notice shall be listed as lapsed on the registry.

The board shall renew or reinstate a registrant upon meeting the following requirements:

- (1) Apply on the form provided by the board;
- (2) A verified statement that indicates whether the applicant has been convicted of a crime during the period of time since becoming registered or renewing registration;
- (3) A verified statement that indicates whether the applicant has been employed for a minimum of 12 hours of employment in the registrant's role of an unlicensed diabetes aide, medication aide, or dialysis technician during the preceding 24 months. Applicants who do not meet the employment requirement must repeat the training program and examination requirements listed in 20:48:16:02; and
- (4) For the unlicensed dialysis technician, current certification as a dialysis technician with a national certification body approved by the board.

**Source:**

**General Authority:** SDCL 36-9-21 (5).

**Law Implemented:** SDCL 36-9-21 (5).

**20:48:16:04. Denial or removal from registry.** The board may deny or remove a registrant or applicant in compliance with SDCL chapter 1-26, pursuant to § 36-9-49 to 36-9-57 inclusive and § 20:48:08.

**Source:**

**General Authority:** SDCL 36-9-21 (6).

**Law Implemented:** SDCL 36-9-21 (6), SDCL 36-9-49, SDCL 36-9-49.1, SDCL 36-9-51.1, SDCL 36-9-51.2, SDCL 36-9-51.3, SDCL 36-9-51.4, SDCL 36-9-57.

## CHAPTER 20:48:08

### DISCIPLINARY PROCEEDINGS

#### Section

20:48:08:01	Repealed.
20:48:08:02	Repealed.
20:48:08:03	Repealed.
20:48:08:04	Repealed.
20:48:08:05	Repealed.
20:48:08:06	Repealed.
20:48:08:07	Repealed.
20:48:08:08	Notification to board of claimed misconduct.
20:48:08:09	Dismissal of claim of misconduct.
20:48:08:10	<del>Informal proceeding.</del> <u>Action by staff representative.</u>
20:48:08:11	Investigation.
20:48:08:12	Board action following informal proceeding.
20:48:08:13	Repealed.
20:48:08:14	Answer.
20:48:08:15	Publication of board actions.

**Cross-References:** Procedure to follow in licensing matters, SDCL 1-26-16 to 1-26-19.1.

**20:48:08:08. Notification to board of claimed misconduct.** Any person claiming that a holder of or applicant for a license or ~~certificate~~ registration has engaged or is engaging in misconduct constituting grounds for disciplinary or corrective action ~~as provided in SDCL 36-9-~~



49 may contact the board office either verbally or in writing stating that person's name and address, the name and address of the applicant, licensee, or ~~certificate holder~~ registrant claimed to be guilty of misconduct, and full details of the claimed misconduct. The board's staff representative assigned to handle such matters may require the person claiming misconduct to file with the board office a written complaint, verified on oath, providing the information referred to above.

**Source:** 6 SDR 88, effective March 3, 1980; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

**General Authority:** SDCL 36-9-21.

**Law Implemented:** SDCL 36-9-49.

**Declaratory Ruling:** If a licensee of the Board of Nursing who is reported under ARSD 44:20:02:08 to have a communicable disease, such as HIV or hepatitis B, fails to follow universal precautions as set forth by the Centers for Disease Control and Prevention (CDC) and adopted by the South Dakota Department of Health, the Board of Nursing could discipline the licensee under SDCL 36-9-49(5) upon proof that the licensee has negligently, willfully, or intentionally acted in a manner inconsistent with the health or safety of persons entrusted to the nurse's care or under SDCL 36-9-49(10) upon proof that the licensee has been guilty of gross incompetence or unprofessional or dishonorable conduct. The board must investigate and decide each case individually and judge the case on its facts and circumstances. Violation of the guidelines would be evidence of a possible violation of the statutes cited but would not create an irrebuttable presumption of the violation or cause automatic disciplinary action. Testimony would have to establish whether a violation of SDCL 36-9-49(5) or (10) occurred because of the violation of the guidelines, and the licensee could raise defenses on mitigating evidence.

(**Editor's Note:** The Department of Health adopted guidelines for universal precautions and required health care workers to comply with them effective January 26, 1995.) South Dakota Board of Nursing Declaratory Ruling 94-4.

**20:48:08:09. Dismissal of claim of misconduct.** If the board's staff representative determines that the misconduct charged is frivolous, would not constitute grounds for disciplinary action, is outside the jurisdiction of the board, or is otherwise inappropriate for board action, the representative shall advise in writing the person claiming the misconduct and the affected applicant, licensee, or ~~certificate holder~~ registrant that the board will not pursue the matter, stating the grounds for the decision.

**Source:** 6 SDR 88, effective March 3, 1980; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

**General Authority:** SDCL 36-9-21.

**Law Implemented:** SDCL 36-9-51.2.

**20:48:08:10. ~~Informal proceeding.~~ Action by staff representative.** ~~If the board's staff representative determines that the misconduct charged, if proved to be true, could constitute grounds for disciplinary action by the board, the representative shall notify in writing the applicant, licensee, or certificate holder claimed to be guilty of misconduct of the time and place for an informal meeting as provided by SDCL 1-26-16.1 or 1-26-29. The informal meeting may be conducted by a staff representative or by one or more designated members of the board who shall report fully to the board regarding the meeting for further board action pursuant to § 20:48:08:12.~~ Upon notice of claimed misconduct, the board's staff representative must provide

written notice to the applicant, licensee or registrant of the claimed misconduct. The notice must also advise the applicant, licensee, or registrant of an opportunity to attend an informal meeting with the board's staff representative to discuss the claimed misconduct, at which the applicant, licensee, or registrant may be represented by counsel. Regardless of whether an informal meeting occurs, if the board's staff representative determines that the claimed misconduct constitutes grounds for corrective or disciplinary action, he or she must then notify the board of the claimed misconduct for further action.

**Source:** 6 SDR 88, effective March 3, 1980; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

**General Authority:** SDCL 36-9-21.

**Law Implemented:** SDCL 36-9-49, 36-9-51.2.

**20:48:08:11. Investigation.** The board's staff representative, or any other person designated by the board, may conduct an investigation of the claimed misconduct either before or after the informal ~~proceeding~~ meeting.

**Source:** 6 SDR 88, effective March 3, 1980; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

**General Authority:** SDCL 36-9-21.

**Law Implemented:** SDCL 36-9-49, 36-9-51.2.

**20:48:08:12. Board action following ~~informal proceeding~~ notification of misconduct.**  
After the informal proceeding When notified by the board's staff representative of claimed

misconduct under § 20:48:08:10, the board shall may in its discretion take one of the following actions:

(1) Notify in writing the person claiming misconduct, the applicant, licensee, or ~~certificate holder~~ registrant claimed to be guilty of misconduct, and all other interested or affected parties that the board will not pursue the matter further, stating the grounds for the decision;

(2) Without a hearing take any non-disciplinary or corrective action deemed appropriate other than a letter of reprimand, probation, denial, revocation, suspension, annulment, withdrawal, or amendment of any application, license, or certificate-registration; or

(3) ~~Serve~~ For those actions constituting discipline under SDCL § 36-9-49, including a letter of reprimand or probation, serve by mail to the last known address, upon the applicant, licensee, or certificate holder registrant claimed to be guilty of misconduct and all other interested or affected parties a formal complaint together with a notice of hearing issued pursuant to SDCL 1-26. The applicant, licensee or registrant may waive a hearing or enter into a settlement agreement with the board without a hearing.

**Source:** 6 SDR 88, effective March 3, 1980; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

**General Authority:** SDCL 36-9-21.

**Law Implemented:** SDCL 36-9-49, 36-9-51.2.

**Cross-Reference:** Contents of notice of hearing, SDCL 1-26-17.

**20:48:08:14. Answer.** The applicant, licensee, or ~~certificate holder~~ registrant may file before or submit at the time of the hearing an answer admitting, denying, qualifying, or explaining any of the matters contained in the complaint or notice of hearing.

**Source:** 6 SDR 88, effective March 3, 1980; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

**General Authority:** SDCL 36-9-21.

**Law Implemented:** SDCL 36-9-51.2.