

JOINT MEETING OF THE BOARDS OF MEDICINE AND NURSING

Public Board Meeting

Thursday, September 8, 2016 - 9:00 am (CDT)

The public may attend the meeting using any of the following:

1. **Pierre - Public DDN site:** CAP A, 500 E. Capitol Ave., Room B12, Pierre, SD 57105
2. **Rapid City - Public DDN site:** Rapid City Dept. of Transportation (DOT), 2300 Eglin St., Rapid City, SD 57703
3. **Board Conference Room:** 101 N. Main Ave., Suite 215, Sioux Falls, SD 57104

(NOTE: This meeting is being held in a physically accessible place. Individuals needing assistance, pursuant to the Americans with Disabilities Act, should contact the Legislative Research Council (605/367-7781) in advance of the meeting to make any necessary arrangements.)

Meeting Agenda

Scheduled times are estimates only. Agenda items may be delayed due to prior scheduled items or items may be moved up on the agenda.

1. **9:00 am:** Call to Order & Roll Call
Presiding Officer: Nancy Nelson, RN, Secretary: Laurie Landeen, MD
2. **Consent Agenda:** *The consent agenda allows the board to approve all these items together without discussion or individual motions. Items may be removed from the consent agenda on the request of any one member. Items not removed may be adopted by general consent without debate. Removed items may be taken up either immediately after the consent agenda or placed later on the agenda at the discretion of the assembly.*¹
 - a. Agenda
 - b. Minutes: September 24, 2015
 - c. Reports:
 - a. (Detailed) CNM Out-of-Hospital Birth Report - 2016
 - b. (Condensed) CNM Out-of-Hospital Birth Report - 2016
 - c. CNM Waiver Document
 - d. CNM Waiver Document Request
 - e. Financial Report of Activity FY 2016
3. **9:00 am: Public Hearing on Proposed Administrative Rules**
 - LRC Comments - Style and Form
 - Rules Hearing Materials
4. **General Rules Affecting Boards**

Article 20:62; Chapter 20:62:01; Section 20:62:01:02: Annual Meetings
5. **Nurse Practitioners and Midwives**

Article 20:62; Chapter 20:62:02; Section 20:62:02:02: Application for licensure
Article 20:62; Chapter 20:62:02; Section 20:62:02:04: Examination
Article 20:62; Chapter 20:62:02; Section 20:62:02:06: Renewal of license
Article 20:62; Chapter 20:62:02; Section 20:62:02:07: Reinstatement of lapsed licenses
Article 20:62; Chapter 20:62:02; Section 20:62:02:09: Reactivation of inactive license
Article 20:62; Chapter 20:62:02; Section 20:62:03:03: Collaboration with a licensed physician or physicians
Article 20:62; Chapter 20:62:02; Section 20:62:03:04: Direct personal contact
Article 20:62; Chapter 20:62:02; Section 20:62:03:05: Collaboration – Separate practice location
6. **Medical Assistants**

Article 20:84; Chapter 20:84:01: Definitions
Article 20:84; Chapter 20:84:02: Contents of application
Article 20:84; Chapter 20:84:03: Qualifications of applicants
Article 20:84; Chapter 20:84:04: Approval of schools
Article 20:84; Chapter 20:84:05: Renewal of registration
7. **Medical Assistants - Application Procedures**

Article 20:78; Chapter 20:78:03; Sections 01,02,03,04,05,06,07,08,09,10: Application Procedures
Article 20:78; Chapter 20:78:04; 01,02,03,04,05,06: Complaint Procedures Contested
Article 20:78; Chapter 20:78:05; Sections 01,02,03,04,05,06,07,08: Contested Case Hearing Procedures
8. **New Business**
 - a. Election of Officers
 - b. Date of Next Joint Board Meeting
9. **Adjournment**

¹ Adapted from http://www.wvcc.edu/CMS/fileadmin/PDF/Learning_Center/Consent_Agenda_FAQ.pdf



Minutes

Annual Joint Meeting
 South Dakota Board of Nursing and
 South Dakota Board of Medical and Osteopathic Examiners
 September 24, 2015

South Dakota Board of Medical and Osteopathic Examiners Members:

Kevin Bjordahl	SD BMOE	Present
Deb Bowman	SD BMOE	Absent
Walter Carlson, MD	SD BMOE	Present
Mary Carpenter, MD	SD BMOE	Present
David Erickson, MD	SD BMOE	Present
Laurie Landeen, MD	SD BMOE	Present
Brent Lindbloom, DO	SD BMOE	Present, Presiding Officer
David Lust	SD BMOE	Absent
Jeffrey Murray, MD	SD BMOE	Absent

South Dakota Board of Nursing Members:

Darlene Bergeleen, RN	SDBON	Present
Diana Berkland, RN	SD BON	Absent
Christine Callaghan, LPN	SD BON	Absent
June Larson, RN	SD BON	Present
Adrian Mohr	SD BON	Present
Jean Murphy, RN	SD BON	Present
Nancy Nelson, RN	SD BON	Present
Sharon Neuharth, LPN	SD BON	Present
Betty Oldenkamp	SD BON	Absent
Kristin Possehl, RN	SD BON	Present, Secretary
Mary Schmidt, LPN	SD BON	Present

Staff Present:

Gloria Damgaard, RN, MS	SD BON Executive Director
Margaret Hansen, PA-C, MPAS	SD BMOE Executive Director
Tyler Klatt	SD BMOE Staff
Erin Matthies	SD BON Staff
Francie Miller, RN	SD BON Staff
Kristine O'Connell	SD BON Attorney
Jane Phalen	SD BMOE Staff
Jill Vanderbush	SD BON Staff
Linda Young, RN, MS	SD BON Staff

1. Call to Order and Roll Call

Presiding Officer B Lindbloom called the meeting to order at 12:08 p.m. on September 24, 2015.

2. Approval of Minutes

The September 11, 2014 minutes were approved in a unanimous voice vote.

MOTION

W Carlson moved approval of the Joint Board minutes from September 11, 2014. Seconded by L Landeen.

SD BOME:	Bjordahl	Absent	Landeen	Yes		
	Bowman	Absent	Lindbloom	Yes		
	Carlson	Yes	Lust	Absent		
	Carpenter	Yes	Murray	Absent		
	Erickson	Yes			5 Yes	MOTION Carried

SD BON:	Bergeleen	Yes	Nelson	Yes		
	Berkland	Absent	Neuharth	Yes		
	Callaghan	Absent	Oldenkamp	Absent		
	Larson	Yes	Possehl	Yes		
	Mohr	Yes	Schmidt	Yes		
	Murphy	Yes			8 Yes	MOTION Carried

3. Approval of the Agenda

The Joint Board moved to approve the agenda.

MOTION

K Possehl moved approval of the Joint Board agenda as presented. Seconded by M Schmidt.

SD BOME:	Bjordahl	Absent	Landeen	Yes		
	Bowman	Absent	Lindbloom	Yes		
	Carlson	Yes	Lust	Absent		
	Carpenter	Yes	Murray	Absent		
	Erickson	Yes			5 Yes	MOTION Carried

SD BON:	Bergeleen	Yes	Nelson	Yes		
	Berkland	Absent	Neuharth	Yes		
	Callaghan	Absent	Oldenkamp	Absent		
	Larson	Yes	Possehl	Yes		
	Mohr	Yes	Schmidt	Yes		
	Murphy	Yes			8 Yes	MOTION Carried

4. New Business

- a. Designation of the office for the Board of Nursing as the principal office for the Joint Boards

MOTION

W Carlson moved approval of the South Dakota Board of Nursing as the principal office for the Joint Board. Seconded by M Schmidt.

SD BOME:	Bjordahl	Yes	Landeen	Yes		
	Bowman	Absent	Lindbloom	Yes		
	Carlson	Yes	Lust	Absent		
	Carpenter	Yes	Murray	Absent		
	Erickson	Yes			6 Yes	MOTION Carried

SD BON:	Bergeleen	Yes	Nelson	Yes		
	Berkland	Absent	Neuharth	Yes		
	Callaghan	Absent	Oldenkamp	Absent		
	Larson	Yes	Possehl	Yes		
	Mohr	Yes	Schmidt	Yes		
	Murphy	Yes			8 Yes	MOTION Carried

b. Administrative rules: Initial Review and requests for staff to move forward

i. Proposed Revisions for Medical Assistants

M Hansen presented information regarding the proposed revision to include medical assistants in Article 20:78. She responded to board member questions.

MOTION

W Carlson moved that the Joint Board direct staff to move forward with the administrative rules process to revise ARSD 20:78 to include medical assistants. Seconded by K Possehl.

SD BOME:

Bjordahl	Yes	Landeen	Yes		
Bowman	Absent	Lindbloom	Yes		
Carlson	Yes	Lust	Absent		
Carpenter	Yes	Murray	Absent		
Erickson	Yes			6 Yes	MOTION Carried

SD BON:

Bergeleen	Yes	Nelson	Yes		
Berkland	Absent	Neuharth	Yes		
Callaghan	Absent	Oldenkamp	Absent		
Larson	Yes	Possehl	Yes		
Mohr	Yes	Schmidt	Yes		
Murphy	Yes			8 Yes	MOTION Carried

G Damgaard presented information regarding revising the Joint Board’s definition of supervision for medical assistants. The previous statement, adopted by the Joint Board in 1994, defined “direct supervision” as onsite supervision by a physician, physician’s assistant (PA), nurse practitioner (NP), or nurse midwife (NM). G Damgaard reviewed the new drafted statement which would allow the physician, PA, NP, or NM to provide direct supervision onsite or by electronic communication. She responded to board member questions.

MOTION

W Carlson moved that the Joint Board adopt the revised statement as presented: “For purposes of this chapter, SDCL 36-9B, the term, direct supervision, means that the physician, physician assistant, certified nurse practitioner or certified nurse midwife are physically present or available by means of electronic communication.” Seconded by M Schmidt.

SD BOME:

Bjordahl	Yes	Landeen	Yes		
Bowman	Absent	Lindbloom	Yes		
Carlson	Yes	Lust	Absent		
Carpenter	Yes	Murray	Absent		
Erickson	Yes			6 Yes	MOTION Carried

SD BON:

Bergeleen	Yes	Nelson	Yes		
Berkland	Absent	Neuharth	Yes		
Callaghan	Absent	Oldenkamp	Absent		
Larson	Yes	Possehl	Yes		
Mohr	Yes	Schmidt	Yes		
Murphy	Yes			8 Yes	MOTION Carried

ii. Proposed Revisions to ARSD 20:62 certified nurse practitioners and certified nurse midwives

G Damgaard presented information regarding revising ARSD 20:62:03:03, 20:62:03:04 and 20:62:03:05 to amend the required direct personal contact collaboration between the physician and nurse practitioner or nurse midwife to occur by being physically present or by means of electronic communication. She responded to board member questions.

MOTION

J Murphy moved that the Joint Board accept the draft revisions to the administrative rules and to direct staff to move forward with the administrative rules process to revise ARSD 20:62:03:03, 20:62:03:04 and 20:62:03:05 . Seconded by W Carlson.

SD BOME:	Bjordahl	Yes	Landeen	Yes		
	Bowman	Absent	Lindbloom	Yes		
	Carlson	Yes	Lust	Absent		
	Carpenter	Yes	Murray	Absent		
	Erickson	Yes			6 Yes	MOTION Carried

SD BON:	Bergeleen	Yes	Nelson	Yes		
	Berkland	Absent	Neuharth	Yes		
	Callaghan	Absent	Oldenkamp	Absent		
	Larson	Yes	Possehl	Yes		
	Mohr	Yes	Schmidt	Yes		
	Murphy	Yes			8 Yes	MOTION Carried

iii. Proposed Revision to ARSD 20:62:01:02. Annual Meetings. An annual meeting of the boards shall be held each year in September at a place designated by the presiding officer of the boards.

MOTION

W Carlson moved that the Joint Board direct staff to revise ARSD 20:62:01:02 to remove the word "September". Seconded by K Possehl.

SD BOME:	Bjordahl	Yes	Landeen	Yes		
	Bowman	Absent	Lindbloom	Yes		
	Carlson	Yes	Lust	Absent		
	Carpenter	Yes	Murray	Absent		
	Erickson	Yes			6 Yes	MOTION Carried

SD BON:	Bergeleen	Yes	Nelson	Yes		
	Berkland	Absent	Neuharth	Yes		
	Callaghan	Absent	Oldenkamp	Absent		
	Larson	Yes	Possehl	Yes		
	Mohr	Yes	Schmidt	Yes		
	Murphy	Yes			8 Yes	MOTION Carried

c. Election of Officers

Administration Rule 20:62:01:05. Presiding officer and secretary. At the annual meeting of the boards, the last order of business shall be to elect a presiding officer and a secretary of the boards to serve through the next annual meeting. One officer shall be elected from each of the two separate boards.

MOTION

K Possehl moved to nominate Nancy Nelson for Presiding Officer. Seconded by J Murphy.

MOTION

W Carlson moved to nominate Laurie Landeen for Secretary. Seconded by B Lindbloom.

SD BOME:

Bjordahl	Yes	Landeen	Yes		
Bowman	Absent	Lindbloom	Yes		
Carlson	Yes	Lust	Absent		
Carpenter	Yes	Murray	Absent		
Erickson	Yes			6 Yes	MOTION Carried

SD BON:

Bergeleen	Yes	Nelson	Yes		
Berkland	Absent	Neuharth	Yes		
Callaghan	Absent	Oldenkamp	Absent		
Larson	Yes	Possehl	Yes		
Mohr	Yes	Schmidt	Yes		
Murphy	Yes			8 Yes	MOTION Carried

5. Consent Agenda

- a. Financial Report of Activity Fiscal Year 2015
- b. 2008-2015 Report on Out-of-Hospital Births Performed by Certified Nurse Midwives
- c. Date of Next Joint Board Meeting: Thursday, September 8, 2016 at 9 a.m.

MOTION

W Carlson moved to accept the Consent Agenda as presented. Seconded by K Possehl.

SD BOME:

Bjordahl	Yes	Landeen	Yes		
Bowman	Absent	Lindbloom	Yes		
Carlson	Yes	Lust	Absent		
Carpenter	Yes	Murray	Absent		
Erickson	Yes			6 Yes	MOTION Carried

SD BON:

Bergeleen	Yes	Nelson	Yes		
Berkland	Absent	Neuharth	Yes		
Callaghan	Absent	Oldenkamp	Absent		
Larson	Yes	Possehl	Yes		
Mohr	Yes	Schmidt	Yes		
Murphy	Yes			8 Yes	MOTION Carried

6. Adjournment

Meeting adjourned at 12:48 p.m.

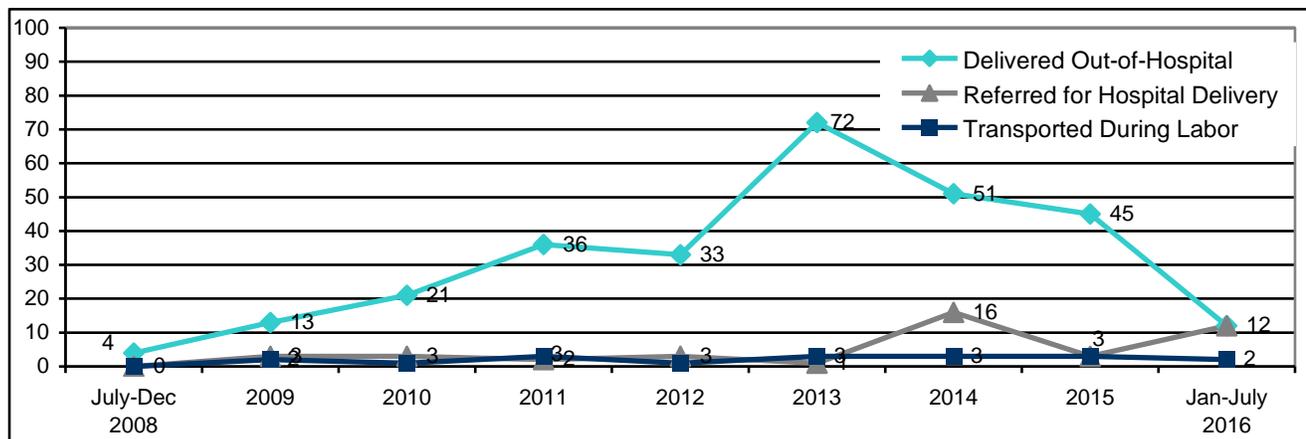


2016

Report on South Dakota's Out-of-Hospital Births by Certified Nurse Midwives (CNM) practicing on an Approved Waiver to a Collaborative Agreement with a Physician

In July 2008 legislative approval was granted to allow Certified Nurse Midwives (CNM) the opportunity to request a waiver of the collaborative agreement requirement to attend out-of-hospital (OOH) births under certain circumstances.

Annual Outcomes for SD Resident Out-of-Hospital Births Attended by CNMs



Total Birth Outcomes 2008 –2016

Since 2008 a total of **348** women requested CNM services for an OOH birth. As shown in the chart, 287 (82.5%) delivered in an OOH birth setting; 42 (12.1%) were referred to another provider for a hospital birth based on the OOH birth criteria listed in the CNM's waiver; and 19 (5.5%) were transported during labor to a hospital. The SD Department of Health's 2014 Natality Report revealed that 72 women had a home birth, accounting for 0.6% of resident births in SD. In 2013, 77 women had a home birth.



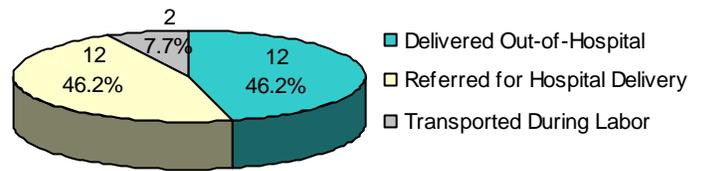
2014 South Dakota Resident Live Births		2008-2016 CNM OOH Births = 306**	
Intrapartum and Postpartum Outcomes:	Number (%)	Number (%)	Number (%)
Fetal Intolerance (distress)	449 3.7%	8	2.6%
Meconium stained fluid	1,009 8.2%	10	3.3%
3 rd /4 th degree perineal laceration	112 0.9%	2	0.7%
Newborn Outcomes:			
Apgar score <7 at 5 min.	233 1.9%	3	1.0%
Transferred to hospital/NICU	1,245 10.1%	8	2.6%
Assisted ventilation required immediately after delivery	806 6.6%	1	0.3%
Assisted ventilation required for more than 6 hours	258 2.1%	2	0.7%
Congenital anomalies	97 0.8%	1	0.3%
Significant birth injuries	13 0.1%	0	0
Weight <2500 grams (5lbs 8oz)	805 6.6%	1	0.3%
Weight >4500 grams (9lbs 15oz)	157 1.3%	1	0.3%
Gestation <37 weeks	1,038 8.5%	0	0
Neonatal Death Rate per 1000 Live Births	42 3.42	2	6.54

*Source: South Dakota Department of Health, Office of Data, Statistics, and Vital Records.

**Does not include referred women.

Time Period: January – July 2016

Ten CNMs were granted a waiver to perform OOH births but only 5 actively performed OOH births. During this time period a total of **26** women requested an OOH birth. As shown in the chart, 12 of those women delivered in an OOH birth setting; 12 were referred to another provider for a hospital birth based on the OOH birth criteria listed in the CNM's waiver; and 2 were transported during labor to a hospital. Conditions requiring consultation are listed below.



Conditions that resulted in transport to a hospital, consultation or referral with a physician:

1. ***Pregnancy conditions reported:***

- 12 women were referred for a hospital birth as they did not meet criteria for an OOH birth for various reasons according to the waiver.
 - One woman developed spontaneous preterm labor at 33.4 weeks, she was emergently referred by the CNM to the hospital for care; the woman had an emergent C-section with fetal death.

2. ***Intrapartum conditions:***

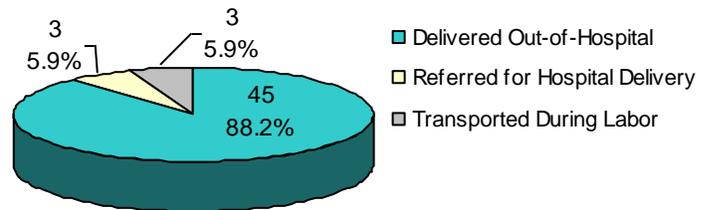
- One woman had failure to descend in 2nd stage labor, she was transported to the hospital and delivered with vacuum assist.
- One woman had maternal exhaustion, fetal heart tone decel and was transported to the hospital; she had an epidural and delivered without complication.

3. ***Postpartum conditions reported:*** None.

4. ***Neonatal conditions reported:*** None.

Time Period: January – December 2015

Nine CNMs were granted a waiver to perform OOH births, only 7 actively performed OOH births. A total of **51** women requested the services of a CNM for an OOH birth. As shown in the chart, 45 women delivered in an OOH birth setting; 3 were referred to another provider for a hospital birth based on the OOH birth criteria listed in the CNM's waiver; and 3 were transported during labor to a hospital. Conditions requiring consultation are listed below.



Conditions that resulted in transport to a hospital, consultation or referral with a physician:

1. ***Pregnancy conditions reported:***

- Woman referred to physician at 36 weeks for SGA.

2. ***Intrapartum conditions reported:***

- Women transported to hospital during labor, Cesarean performed after physician attempted version; positive outcome.
- Woman transported due to long labor, meconium, and breech position; Cesarean performed; positive outcome.
- Woman's labor started 7 hours prior to CNM arriving, upon initial assessment had no FHTs per doppler; immediately transported to hospital; fetal demise.
- Woman had precipitous labor, CNM unable to arrive in time so woman was referred to the hospital, she delivered in the ED; positive outcome.

3. ***Postpartum conditions reported:***

- Woman had post-partum bleeding/hemorrhage 5 days after delivery; referred to physician; positive outcome.

4. ***Neonatal conditions reported:***

- Infant transferred to hospital for respiratory distress and temperature instability; positive outcome.



2016 Report on South Dakota's Out-of-Hospital Births by Certified Nurse Midwives (CNM) practicing on an Approved Waiver to a Collaborative Agreement with a Physician

Linda Young, RN, MS, FRE,
Nursing Program Specialist
South Dakota Board of Nursing

Overview

In July 2008 legislative approval was granted to allow Certified Nurse Midwives (CNM) the opportunity to request a waiver of the collaborative agreement to attend out-of-hospital (OOH) births under certain circumstances; pursuant to SDCL 36-9A-17.3. Following approval of a waiver by the Joint Board of Nursing and Medical and Osteopathic Examiners, the CNM may perform OOH birth services according to the guidelines in the waiver. The approval of a waiver remains in effect unless terminated by either the CNM or the Joint Board.

Nurse Midwifery care is the practice of giving care to women during pregnancy, labor, birth and the postpartum period, as well as care to the newborn infant. It also includes well woman care during all phases of life. Nurse Midwifery care is provided in accordance with standards established by the American College of Nurse Midwives, which promotes safe and competent care.

The goal of selection criteria in an OOH midwifery practice is to identify the client who, by all current medical and midwifery standards and knowledge, has an excellent prognosis for a normal, healthy pregnancy, birth, and postpartum course. Birth site selection is an ongoing process throughout pregnancy, labor, and the postpartum period. Ongoing evaluation of the childbearing woman choosing an OOH birth includes risk screening to assess and identify conditions which may indicate a deviation from normalcy which may then require physician involvement and/or alternate birth place selection. In making this assessment, a CNM relies on training, skill, and clinical judgment. If a referral is needed, the CNM will remain in consultation with the provider until resolution of the concern. To the greatest degree possible and in accordance with the woman's wishes it is appropriate for the CNM to maintain care of the woman and remain present through the birth if possible.

To allow for the OOH practice of nurse midwifery in South Dakota, in the absence of a collaborative agreement, the CNM waiver requires:

- Documentation of "Informed Consent" for an OOH birth which is reflective of the midwife's and clients' joint acceptance of a written "Plan of Care". The plan of care is a representative but not an exhaustive list of situations which may assist both the parents and the CNM in decision making. The plan may include information regarding the CNM's responsibilities and parents' rights.
- Review of practice guidelines by each potential client. Upon review, the client will complete an informed consent document that they understand the practice guidelines.
- Written acceptance or refusal of the CNM's recommended care, and information regarding client's conditions/concerns for which a CNM may need to consult with or refer a client to a physician, and/or transfer the client out of CNM's care to a physician's care.
- Documentation of indications for consultation, referral or transfer of care; and a definition of suitable OOH birth clients.
- Appropriate medications and equipment and certifications necessary to assure safety.
- Mechanism for documentation of care, record keeping, continuous quality improvement, and peer review.
- Completion of all required birth registration information with appropriate prenatal data and report any reportable diseases in accordance with South Dakota law for Vital Statistics Reporting to the South Dakota Department of Health.
- Provide documentation to the Joint Board upon request for review, and report within 48 hours any neonatal or maternal mortality in patients for whom she has provided care in the perinatal period.

Conditions on Waiver Requiring Consultation and Possible Alternate Birth Place

Pre-existing:

- | | |
|--|--|
| <ul style="list-style-type: none"> • Asymptomatic cardiac disease; • Active tuberculosis; • Asthma, severe or uncontrolled by medication; • Renal disease; • Hepatic disorders; • Endocrine disorders; • Significant hematological disorders; • Significant neurologic disorders; • Essential hypertension; | <ul style="list-style-type: none"> • Active cancer; • Diabetes mellitus; • Previous Cesarean section • Current alcoholism or abuse; • Current drug addiction or abuse; • Current severe psychiatric illness; • Isoimmunization; • Positive for HIV antibody. |
|--|--|

Pregnancy:

- | | |
|---|--|
| <ul style="list-style-type: none"> • Labor before completion of 36th gestational week; • Lie other than vertex at term; • Multiple gestations; • Significant vaginal bleeding; • Gestational Diabetes Mellitus, uncontrolled by diet; • Severe anemia, not responsive to treatment; • Evidence of pre-eclampsia; • Consistent size/dates discrepancy; | <ul style="list-style-type: none"> • Deep vein thrombosis (DVT); • Known fetal anomalies or conditions affected by site of birth, with an infant compatible with life; • Threatened or spontaneous abortion after 12 weeks; • Abnormal ultrasound findings; • Isoimmunization; • Documented placental anomaly or previa; |
|---|--|

- Post-term pregnancy;
- Positive HIV antibody test;
- Abnormal fetal surveillance;
- Known hemoglobinopathy or thrombophilia.

Intrapartum:

- Fetal intolerance of labor;
- Abnormal bleeding;
- Thick meconium-stained fluid with birth not imminent;
- Development of pre-eclampsia;
- Maternal fever >100.4 degrees Fahrenheit, unresponsive to treatment;
- Abnormal Presentation;
- Presence of herpes lesions;
- Prolapsed cord;
- Client's desire for pain medication.

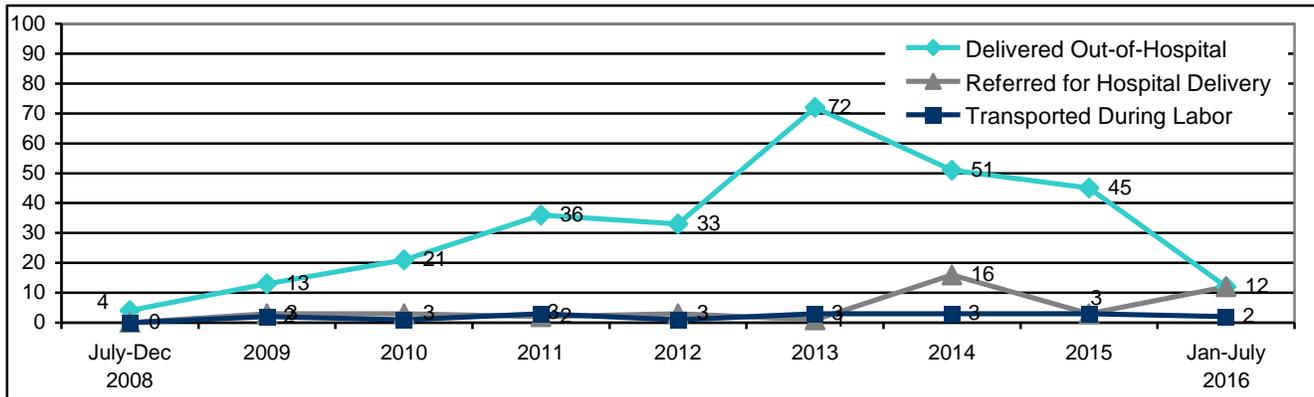
Postpartum:

- Seizure
- Significant hemorrhage, not responsive to treatment;
- Adherent or retained placenta;
- Sustained maternal vital sign instability;
- Uterine prolapse;
- Uterine inversion;
- Repair of lacerations(s)/ beyond CNM's level of expertise;
- Anaphylaxis.

Neonatal:

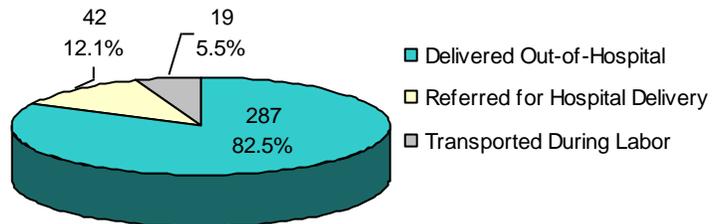
- Apgar score less than 7 at five minutes of age, without significant improvement at 10 minutes;
- Persistent respiratory distress;
- Persistent cardiac irregularities;
- Central cyanosis or pallor;
- Prolonged temperature instability or fever >100.4 degrees Fahrenheit, unresponsive to treatment;
- Significant clinical evidence of glycemic instability;
- Evidence of seizure;
- Birth weight <2300gms;
- Significant clinical evidence of prematurity;
- Significant jaundice or jaundice prior to 24 hours;
- Loss of >10% of birth weight/failure to thrive;
- Major apparent congenital anomalies;
- Significant birth injury.

Annual Outcomes for SD Resident Out-of-Hospital Births Attended by CNMs



Total Birth Outcomes 2008 –2016

Since 2008 a total of **348** women requested CNM services for an OOH birth. As shown in the chart, 287 (82.5%) delivered in an OOH birth setting; 42 (12.1%) were referred to another provider for a hospital birth based on the OOH birth criteria listed in the CNM's waiver; and 19 (5.5%) were transported during labor to a hospital. The SD Department of Health's 2014 Natality Report revealed that 72 women had a home birth, accounting for 0.6% of resident births in SD. In 2013, 77 women had a home birth.



2014 South Dakota Resident Live Births		2008-2016 CNM OOH Births = 306**	
Intrapartum and Postpartum Outcomes:	Number (%)	Number (%)	
Fetal Intolerance (distress)	449 3.7%	8 2.6%	
Meconium stained fluid	1,009 8.2%	10 3.3%	
3 rd /4 th degree perineal laceration	112 0.9%	2 0.7%	

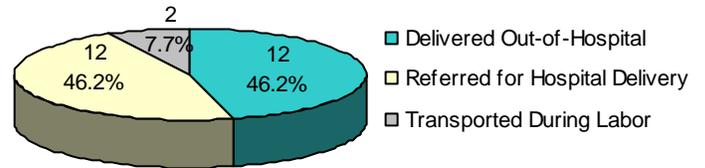
Newborn Outcomes:				
Apgar score <7 at 5 min.	233	1.9%	3	1.0%
Transferred to hospital/NICU	1,245	10.1%	8	2.6%
Assisted ventilation required immediately after delivery	806	6.6%	1	0.3%
Assisted ventilation required for more than 6 hours	258	2.1%	2	0.7%
Congenital anomalies	97	0.8%	1	0.3%
Significant birth injuries	13	0.1%	0	0
Weight <2500 grams (5lbs 8oz)	805	6.6%	1	0.3%
Weight >4500 grams (9lbs 15oz)	157	1.3%	1	0.3%
Gestation <37 weeks	1,038	8.5%	0	0
Neonatal Death Rate per 1000 Live Births	42	3.42	2	6.54

*Source: South Dakota Department of Health, Office of Data, Statistics, and Vital Records.

**Does not include referred women.

Time Period: January – July 2016

Ten CNMs were granted a waiver to perform OOH births but only 5 actively performed OOH births. During this time period a total of **26** women requested an OOH birth. As shown in the chart, 12 of those women delivered in an OOH birth setting; 12 were referred to another provider for a hospital birth based on the OOH birth criteria listed in the CNM's waiver; and 2 were transported during labor to a hospital. Conditions requiring consultation are listed below.



Conditions that resulted in transport to a hospital, consultation or referral with a physician:

1. **Pregnancy conditions reported:**

- 12 women were referred for a hospital birth as they did not meet criteria for an OOH birth for various reasons according to the waiver.
 - One woman developed spontaneous preterm labor at 33.4 weeks, she was emergently referred by the CNM to the hospital for care; the woman had an emergent C-section with fetal death.

2. **Intrapartum conditions:**

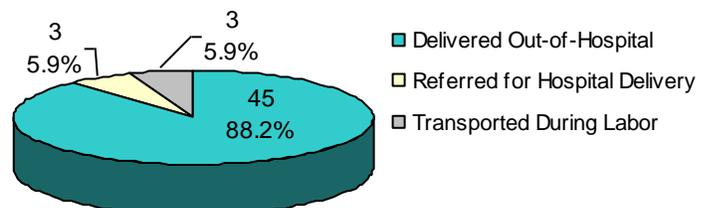
- One woman had failure to descend in 2nd stage labor, she was transported to the hospital and delivered with vacuum assist.
- One woman had maternal exhaustion, fetal heart tone decel and was transported to the hospital; she had an epidural and delivered without complication.

3. **Postpartum conditions reported:** None.

4. **Neonatal conditions reported:** None.

Time Period: January – December 2015

Nine CNMs were granted a waiver to perform OOH births, only 7 actively performed OOH births. A total of **51** women requested the services of a CNM for an OOH birth. As shown in the chart, 45 women delivered in an OOH birth setting; 3 were referred to another provider for a hospital birth based on the OOH birth criteria listed in the CNM's waiver; and 3 were transported during labor to a hospital. Conditions requiring consultation are listed below.



Conditions that resulted in transport to a hospital, consultation or referral with a physician:

1. **Pregnancy conditions reported:**

- Woman referred to physician at 36 weeks for SGA.

2. **Intrapartum conditions reported:**

- Women transported to hospital during labor, Cesarean performed after physician attempted version; positive outcome.
- Woman transported due to long labor, meconium, and breech position; Cesarean performed; positive outcome.
- Woman's labor started 7 hours prior to CNM arriving, upon initial assessment had no FHTs per doppler; immediately transported to hospital; fetal demise.
- Woman had precipitous labor, CNM unable to arrive in time so woman was referred to the hospital, she delivered in the ED; positive outcome.

3. **Postpartum conditions reported:**

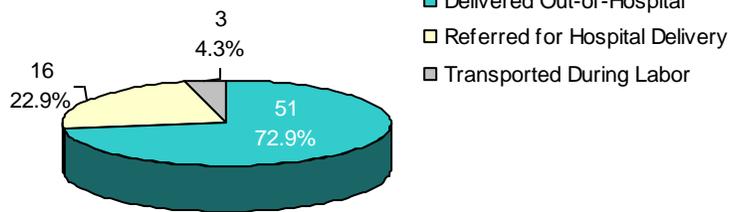
- a. Woman had post-partum bleeding/hemorrhage 5 days after delivery; referred to physician; positive outcome.

4. **Neonatal conditions reported:**

- a. Infant transferred to hospital for respiratory distress and temperature instability; positive outcome.

Time Period: January – December 2014

Seven CNMs were granted a waiver to perform OOH births, only 5 actively performed OOH births. A total of 70 women requested the services of a CNM for an OOH birth. As shown in the chart, 51 women delivered in an OOH birth setting; 16 were referred to another provider for a hospital birth; and 3 were transported during labor to a hospital. The SD Department of Health's 2014 Natality Report revealed that 73 women had a home birth, less than one percent of resident births in SD (0.6%).



Conditions that resulted in transport to a hospital, consultation or referral with a physician:

5. **Pregnancy conditions reported:**

- a. Woman's care transferred due to gestational diabetes mellitus;
- b. Woman dilated to 4cm at 32 weeks gestation, care transferred;
- c. Woman's care transferred due to anemia;
- d. Woman's care transferred due to high blood pressure;
- e. Two women transferred due to vaginal birth after cesarean (VBAC);
- f. Woman's care transferred at 35 weeks: GBS positive; later developed oligohydrodramnios; had emergency cesarean.

6. **Intrapartum conditions:**

- a. Two women transported to hospital due to prolonged pushing, 3 hours with minimal progress; both positive outcomes;
- b. Woman transported due to maternal exhaustion; stalled labor;
- c. Two women transported due to request for pain medications;
- d. Woman had moderate bleeding in early labor; physician assessed, had negative OB US for placenta previa/abruption; delivered at home, positive outcome.

7. **Postpartum conditions:**

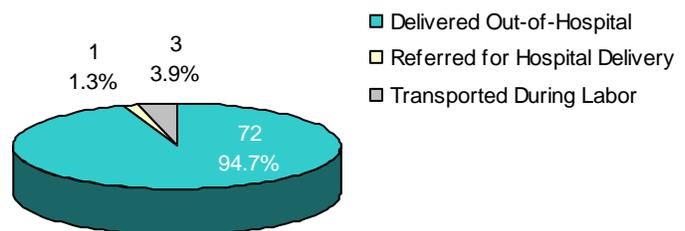
- a. Woman had vaginal hematoma after birth, transferred to hospital for 24 hour observation;
- b. Woman had post-partum hemorrhage; admitted to the hospital 7 hours after home delivery. Administered methergin, cytotec, had blood transfusion, received D&C for retained placenta, and Bakri balloon.
- c. Woman had history of NF1 (neurofibromas), developed IUGR. Referred to maternal-fetal medicine for evaluation. Delivered vaginally at home, developed hypertension/HELLP, transported after delivery by EMS to hospital and admitted for vaginal bleeding and repair of 2nd degree laceration; treated with mag sulfate and blood transfusions.

8. **Neonatal conditions:**

- a. Infant of woman described in item 3.c. above had meconium present at delivery, infant DeLee suctioned, Apgars 5/8; developed respiratory distress; transported and admitted to NICU.
- b. Woman had an unattended birth due to poor weather conditions, father delivered infant. EMS notified and arrived shortly after birth; EMS reported infant's head as initially blue, Apgars 9/10. CNM assessed baby as stable but later that day the infant was admitted to NICU for seizures, stroke, blood sugar control.
- c. Woman had an unattended birth; father delivered infant 6 minutes before CNM arrived. Infant admitted to hospital for observation and suctioning.

Time Period: January – December 2013

Six CNMs were granted a waiver to perform OOH births, only 3 actively performed OOH births. A total of 76 women requested the services of a CNM for an OOH birth. As shown in the chart, 72 women delivered in an OOH birth setting; 1 was referred to another provider for a hospital birth; and 3 were transported during labor to a hospital. The SD Department of Health's 2013 Natality Report revealed that 77 women had a home birth, less than one percent of resident births in SD (0.6%).



Conditions that resulted in transport to a hospital, consultation or referral with a physician:

1. **Intrapartum conditions:**

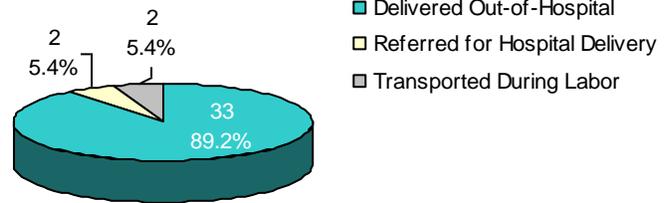
- a. Woman transported to hospital for failure to progress, delivered Cesarean, 8/9 Apgar.
- b. Woman transported to hospital for fetal heart tone decelerations; second episode with slow recovery, oxygen applied, IV therapy initiated; delivered vaginally; 8/9 Apgar.

2. **Neonatal conditions:**

- a. Infant with nuchal cord x1; infant floppy; Apgar's 4/5/7; DeLee suctioned clear mucous; developed retractions/grunting; oxygen administered, EMS transport to hospital. No assisted ventilation required.

Time Period: January – December 2012

Six CNMs were granted a waiver to perform OOH births, only 4 actively performed OOH births. A total of 37 women requested the services of a CNM for an OOH birth. As shown in the chart, 33 women delivered in an OOH birth setting; 2 were referred to another provider for a hospital birth; and 2 were transported during labor to a hospital. The SD Department of Health's 2013 Natality Report revealed that 69 women had a home birth in 2012, less than 1% of SD's resident births (0.6%).

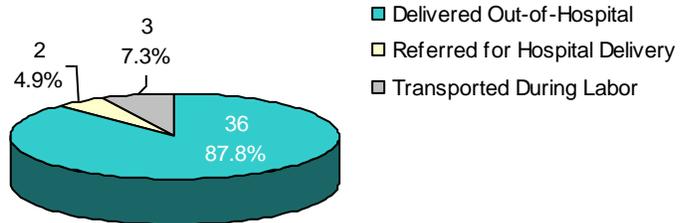


Conditions that resulted in transport to a hospital, consultation or referral with a physician:

- Pregnancy conditions:**
 - Woman's care transferred at 38 wks gestation for persistent breech; delivered Cesarean; good outcome.
 - Woman's care transferred at 35 wks gestation for positive herpes simplex virus; delivered vaginally, good outcome.
 - Maternal fetal medicine physician and CNM followed care of woman with history of infants born with Zellwanger's syndrome. She opted for home birth; infant born with Zellwanger's; infant transported to NICU 2 hours after birth, then discharged home. (Zellwanger's syndrome has no known cure and is incompatible with life.)
- Intrapartum conditions:**
 - Woman had SROM with light meconium and no active labor for 24 hours. Delivered in hospital; good outcome.
 - Woman had SROM at 3:45 AM; CNM called at 4:20 AM. CNM arrived at 5:35 AM, observed woman actively pushing. CNM noted FHT in the 40's with no progress. Oxygen applied, knee-chest position, no cord felt on exam; EMS called at 5:45 AM, the hospital ER notified to prepare for possible C-section. The woman arrived at the hospital at 6:30 AM, the admitting physician noted FHTs in the 130-140s, -4 station, light meconium, delivered vaginally at 7:21 AM. Infant had thick meconium, Apgar 2/4/6, deep suctioned, respiratory support provided. Five hours after birth, infant transferred to NICU, intubated, and discharged 2 weeks later.
- Neonatal conditions:**
 - Infant delivered vaginally at 39 weeks gestation, Apgar's 9/10; developed respiratory distress; oxygen and antibiotics administered, transported to NICU; good outcome.

Time Period: January – December 2011

Seven CNMs were granted a waiver to perform OOH births, however 3 actively performed OOH births. A total of 41 women requested the services of a CNM for an OOH birth. As shown in the pie chart, 36 women delivered in an OOH birth setting; 2 were referred to another provider for a hospital birth; and 3 were transported during labor to a hospital. The SD Department of Health's 2013 Natality Report revealed that 66 women had a home birth in 2011, less than 1% of SD's resident births (0.6%).

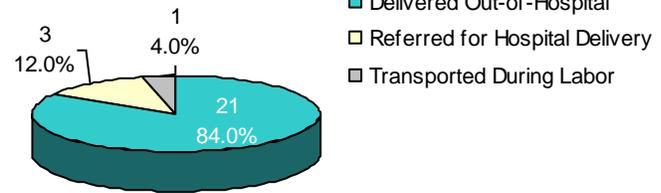


Conditions that resulted in transport to a hospital, consultation or referral with a physician:

- Pregnancy conditions:**
 - Woman had SROM at 35 weeks; delivered in the hospital;
 - Woman had polyhydramnios, unstable lie; induced in hospital after ROM; AFI>20; delivered vaginally; good outcome.
 - Woman had early previa, which resolved, delivered in an OOH setting without complication.
 - Two women had sonogram evaluations; both women delivered in an OOH birth setting without complication.
- Intrapartum conditions:**
 - Woman transported to hospital for maternal exhaustion and arrested contractions in 2nd stage labor; received Pitocin, internal monitoring, epidural; delivered vaginally, good outcome.
 - Woman transported to hospital for maternal exhaustion and episode of Brady lasting 3 minutes; delivered vaginally with forceps in ED, no complications.
 - Woman transported to hospital for FHT deceleration; received O2, IV fluids, amnioinfusion, epidural; delivered vaginally with vacuum assist, good outcome.
- Postpartum conditions:**
 - Woman transported to hospital after OOH delivery for perineal repair of 4th degree tear; returned home after.
- Neonatal conditions:**
 - Still born; at 38th week visit woman had no fetal movement for 2 days. US revealed intrauterine fetal demise (IUID). Physician confirmed IUID. Woman requested home birth and delivered a still born with no obvious deformities. Infant had tight nuchal cord x2; autopsy refused.

Time Period: January – December 2010

Four CNMs were granted a waiver to perform OOH births, however one actively performed OOH births. A total of **25** women requested the services of a CNM for an OOH birth. As shown in the pie chart, 21 women delivered in an OOH birth setting; 3 were referred to another provider for a hospital birth; and 1 was transported during labor to a hospital. The SD Department of Health's 2013 Natality Report revealed that 67 women had a home birth in 2010, less than 1% of SD's resident births (0.6%).

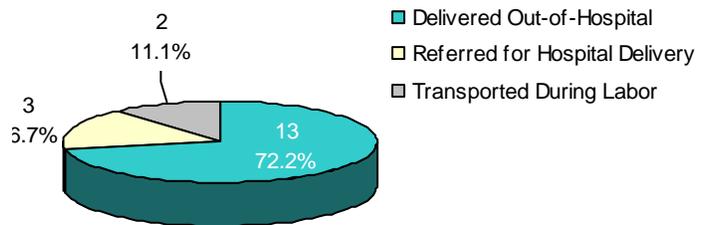


Conditions that resulted in transport to a hospital, consultation or referral with a physician:

- Pregnancy conditions:**
 - Woman's care transferred due to preterm labor at 36 weeks gestation; good outcome.
 - Woman's care transferred due to hypertension and toxemia; induced at 37 weeks; good outcome.
 - Woman's care transferred due to intrauterine growth retardation at 36 weeks.
- Intrapartum conditions:**
 - Woman transported in early labor due to heavy meconium; delivered vaginally, good outcome.
- Postpartum conditions:**
 - Woman referred to physician for hypertension 3 days postpartum.
- Neonatal conditions:**
 - OB US at 20 weeks revealed possible renal pyelectasis, neonate referred for evaluation of kidney status after delivery.

Time Period: January – December 2009

Three CNMs were granted a waiver to perform OOH births, however one actively performed OOH births. A total of **18** women requested the services of a CNM for an OOH birth. As shown in the pie chart, 13 women delivered in an OOH birth setting; 3 were referred to another provider for a hospital birth; and 2 were transported during labor to a hospital. The SD Department of Health's 2013 Natality Report revealed that 57 women had a home birth in 2009, less than 1% of SD's resident births (0.5%).



Conditions that resulted in transport to a hospital, consultation or referral with a physician:

- Pregnancy conditions:**
 - Premature ROM, preterm labor at 34 weeks gestation; delivered in the hospital; good outcome;
 - Suspected Herpes; had a Cesarean section with a good outcome;
 - Polyhydramnios; delivered in a hospital; good outcome.
- Intrapartum conditions:**
 - Maternal exhaustion, failure to progress, cervical swelling; received epidural, delivered vaginally; good outcome;
 - Two episodes of FHT decelerations in 70-80s, oxygen applied. Following second episode, FHT recovery was greater than one minute; EMS called. Admitted to hospital after 20 minutes. CNM provided report to physician. Three hours later, stillborn delivered vaginally; physician documented, "when the mother arrived here, the strip had some variables, but otherwise was non-concerning. ... The strip shows that there were good fetal heart tones, even up to a minute prior to delivery."

Time Period: July – December 2008

One CNM was granted a waiver to perform OOH births. A total of **4** women requested the services of a CNM for an OOH birth; all 4 women delivered in an OOH birth setting. Birth outcomes are shown below. The SD Department of Health's 2013 Natality Report revealed that 50 women had a home birth in 2008, less than 1% of SD's resident births (0.4%).



SOUTH DAKOTA BOARD OF NURSING

4305 S. Louise Ave., Suite 201
Sioux Falls, South Dakota 57106-3115
Phone: 605-362-2760

CNP/CNM REPORT OF ACTIVITY FOR FY 2016 July 1, 2015 to June 30, 2016

Active Licensess

CNP	801
CNM	39

Financial Report

Revenue	
Renewals	21,560.00
New Licenses	16,400.00
Temporary Permits	700.00
	<u>38,660.00</u>

Expenses	
Salary Linda Young (0.4 FTE)	34,748.00
Salary Erin Matthies (0.1 FTE)	5,593.50
Postage	1,922.40
Supplies/Printing	600.00
Telephone	200.00
Legal Fees	8,023.25
Licensure Database	6,000.00
	<u>57,087.15</u>

Expense over Revenue	18,427.15
-----------------------------	-----------

Board Share of Expense	9,213.58
-------------------------------	-----------------

Total Due SDBON	\$ 9,213.58
------------------------	--------------------



JOINT BOARDS
SOUTH DAKOTA BOARD OF NURSING
SOUTH DAKOTA BOARD OF MEDICAL AND OSTEOPATHIC EXAMINERS

4305 S. Louise Avenue, Suite 201, Sioux Falls, South Dakota 57106-3115
Phone: 605-362-2760 Fax: 605-362-2768 www.nursing.sd.gov

Certified Nurse Midwife

WAIVER of the Collaborative Agreement to Attend Out-of-Hospital Births

THIS REQUEST for a WAIVER, is made this _____ day of _____, 20____, by

_____ hereinafter referred to as Certified Nurse Midwife, WITNESSETH:

Whereas, a plan provided for under SDCL Chapter [36-9A](#) whereby certain professional services may be performed by a qualified, licensed Certified Nurse Midwife in compliance with educational and training requirements, pursuant to SDCL [36-9A](#), as administered by the South Dakota Board of Nursing and the South Dakota Board of Medical and Osteopathic Examiners, hereinafter referred to as Boards,

Whereas, performance of the overlapping scope of advanced practice nursing and medical functions requires licensure as a Certified Nurse Midwife and furthermore that such services shall be performed in collaboration with a physician, as defined in SDCL [36-9A-17](#),

Whereas, the Boards recognize the following nationally recognized documents to describe standards of practice and entry-level competencies for the practice of the Certified Nurse Midwife,

1. *American College of Nurse-Midwives: Core Competencies for Basic Midwifery Practice* (May 2002, Revised June 2004). Silver Spring, MD: American College of Nurse-Midwives. <http://www.acnm.org/education.cfm?id=331>
2. *Standards for the Practice of Midwifery* (March 2003). Silver Spring, MD: American College of Nurse-Midwives. <http://www.acnm.org/education.cfm?id=331>

Whereas, pursuant to SDCL 36-9A, a qualified, licensed, Certified Nurse Midwife, may request a waiver of the collaborative agreement requirement to attend out-of-hospital births under certain circumstances.

And whereas, a waiver of the requirement of a collaborative agreement to allow a Certified Nurse Midwife to attend out of hospital births shall not take effect until this request has been filed in the office of the State Board of Nursing and approved by the Boards.

NOW, THEREFORE, IT IS AGREED: the Certified Nurse Midwife may perform such services as are allowed by SDCL [36-9A-13](#) and other tasks authorized by the Boards and not expressly excluded by SDCL Chapter [36-9A](#) for which educational and clinic competency has been demonstrated in a manner satisfactory to said Boards, pursuant to SDCL [36-9A-15](#).

The Certified Nurse Midwife, following approval of this request, may perform out of hospital birth services in accordance with the guidelines as written below. It is further agreed that once approved, the waiver shall remain in effect unless terminated by either the Certified Nurse Midwife or the Boards.

Practice Guidelines for Out of Hospital Birth by Certified Nurse Midwives in South Dakota

Nurse Midwifery care is the practice of giving care to women during pregnancy, labor, birth and the postpartum period, as well as care to the newborn infant. It also includes the well woman care during all phases of life. Nurse Midwifery care is provided in accordance with standards established by the American College of Nurse Midwives, which promotes safe and competent care. The Certified Nurse Midwife (CNM) implements these standards through knowledge of the Core Competencies established by the American College of Nurse Midwives.

The goal of selection criteria in an out of hospital midwifery practice is to identify the client who, by all current medical and midwifery standards and knowledge, has an excellent prognosis for a normal, healthy pregnancy, birth, and postpartum course. Birth site selection is an ongoing process throughout pregnancy labor and the postpartum period.

Ongoing evaluation of the childbearing woman choosing an out of hospital birth includes risk screening to assess and identify conditions which may indicate a deviation from normalcy. The identification of those conditions may require physician involvement and or alternate birth place. In making this assessment, a CNM relies on her/his training, skill, and clinical judgment.

To allow for the out of hospital practice of nurse midwifery in South Dakota, in the absence of a collaborative agreement, the CNM must provide evidence for the following:

1. Documentation of "Informed Consent" for out of hospital birth which is reflective of the midwife's and clients' joint acceptance of the written "Plan of Care" document;
2. Documentation of indications for consultation, referral or transfer of care document;
3. Documentation of definition of suitable clients for out of hospital birth care;
4. Appropriate medications and equipment and certifications necessary to Assure safety;
5. Mechanism for documentation of care, record keeping, continuous quality improvement and peer review,

The Plan of Care Agreement (POC)

The POC is representative but not an exhaustive list of situations which may assist in decision making for the parents and the CNM. The CNM will keep on file a signed statement verifying that each client has read and understood the CNM's initial POC. The POC will be written or translated in language understandable to the client. The POC shall include information regarding the CNM's responsibilities, client's rights and practice guidelines. The ongoing POC does not require signature and may be incorporated into routine client records. The initial POC may include but is not limited to:

1. Philosophy of practice and care;
2. Credentials of the CNM;
3. Benefits and risks of out-of hospital birth;
4. Information regarding the CNM's emergency care plan;
5. Information regarding care/equipment provided;
6. Information regarding a client's right to give informed consent prior to any procedure and/or administration of any prescribed medication to the mother or newborn, including risks, benefits, options, and alternatives;
7. Information regarding the CNM's expectations of the client's responsibilities and the CNM's right to discontinue care;
8. Legal requirements regarding mandated newborn screening for inborn errors of metabolism (PKU), hearing screening, eye prophylaxis, reporting of communicable diseases, and registration of birth and death certificates;
9. Client financial agreement;
10. HIPPA Compliance information.

Addendums to the POC may include but are not limited to:

1. Acceptance/refusal of the CNM's recommended care. The client's decision to refuse/decline recommended care will be made in writing, signed by the client, and kept with the client's POC.

2. Information regarding client conditions/concerns for which a CNM may need to consult with a physician, refer a client to a physician, and/or transfer the client out of CNM's care to a physician's care;
3. The CNM will give a copy of the initial POC to the client and keep a copy of the initial POC in the client's records.

Nurse Midwifery Record Keeping

The CNM shall:

1. Document completely and accurately the client's history, physical exam, laboratory tests results, prenatal visits, consultation reports, referrals, labor and birth care, postpartum care/visits, and neonatal evaluations at the time CNM services are delivered and when reports are received;
2. Facilitate clients' access to their own records;
3. Maintain the confidentiality of clients records in accordance with HIPPA regulations
4. Retain records for a minimum of five years;
5. Complete/file all state required certificates in a timely manner.
6. Provide complete copy of records as necessary for transfer of care with a signed release of information from client.

Practice Guidelines

Practice guidelines will be reviewed by each potential client. Upon review, the client will complete an informed consent document that they understand the practice guidelines.

The client shall be seen by the CNM or other appropriate health care provider at least once every four weeks until 30 weeks gestation, once every two weeks from 30 until 36 weeks gestation, and weekly after 36 weeks gestation, or as appropriate. The responsibilities of the CNM shall include, but are not limited to:

A. Prenatal Care

1. Initial and subsequent prenatal visits
2. History/assessment of general health.
3. History/assessment of obstetric status.
4. History/assessment of psychosocial status.
5. Physical Exam
6. Laboratory Tests; the client will be offered the following laboratory tests to include but not limited to:
 - Hemoglobin, Hematocrit, or CBC
 - Urinalysis
 - Syphilis serology
 - Blood group, Rh type, and antibody screen
 - Hepatitis B surface antigen
 - Rubella screen
 - Genetic screening
 - Gonorrhea
 - Chlamydia
 - HIV
 - Group B Strep
 - Ultrasound for fetal well being and dating
 - Glucose, for Gestational Diabetes
 - Others as indicated
7. Determine the appropriateness of the birth site according to ACNM guidelines.

B. Intrapartum Care

During labor, the CNM shall monitor and support the natural process of labor and birth, assessing mother and baby throughout the birthing process. The responsibilities of the CNM shall include, but are not limited to:

1. Assess and monitor fetal well-being through intermittent auscultation of fetal heart tones in accordance with ACNM guidelines.
2. Assess and monitor maternal well-being. While in attendance assess vital signs at least every 4 hours, or as indicated;
3. Monitor the progress of labor;
4. Monitor membrane status for rupture, relative fluid volume, odor, and color of amniotic fluid;

5. Assess cervical dilation, effacement, station, and position during each exam and document in client's chart.
6. Assist in birth of baby;
7. Inspection of placenta and membranes;

C. Postpartum Care

After the birth of the baby, the CNM shall assess, monitor, and support the mother during the immediate postpartum period until the mother is in stable condition and during the on-going postpartum period. The responsibilities of the CNM shall include, but are not limited to:

1. Immediate Postpartum Care
 - a. Overall maternal well-being;
 - b. Bleeding; including emergency management of postpartum hemorrhage as needed
 - c. Vital signs;
 - d. Abdomen, including fundal height and firmness;
 - e. Bowel/bladder function;
 - f. Perineal exam and assessment;
 - g. Repair of episiotomy or laceration, as indicated;
 - h. Facilitation of maternal-infant bonding and family adjustment.
 - i. Maternal nutritional status assessment.
2. On-going Postpartum Care
 - a. Overall maternal well-being;
 - b. Bleeding
 - c. Abdomen, including fundal height and firmness;
 - d. Bowel/bladder function;
 - e. Perineal exam and assessment, as indicated
 - f. Facilitation of maternal-infant bonding and family adjustment;
 - g. Maternal nutritional status assessment;
 - h. Lactation assessment.

D. Newborn Care

After the birth of the baby, the CNM shall assess, monitor, and support the baby during the immediate postpartum period until the baby is in stable condition and during the on-going postpartum period. The responsibilities of the CNM include but are not limited to:

1. Immediate Newborn Care
 - a. Overall newborn well-being;
 - b. Vital signs;
 - c. Color;
 - d. Tone/Reflexes;
 - e. APGAR scores at 1 and 5 minutes, and at 10 minutes when indicated;
 - f. Temperature
 - g. Feeding;
 - h. Bowel/bladder function;
 - i. Clamping/cutting of umbilical cord;
 - j. Newborn physical exam, including weight and measurements;
 - k. Eye prophylaxis upon consent
 - l. Administration of Vitamin K, orally or intramuscularly upon consent
 - m. Concerns of the family.
2. Ongoing Newborn Care
 - a. Vital signs, including color and temperature;
 - b. Tone/Reflexes;
 - c. Feeding;
 - d. Bowel/Bladder function;
 - e. Weight gain;
 - f. Newborn screening (PKU) as required by state law;
 - g. Evaluation / treatment /referral for newborn jaundice;
 - h. Referral for hearing screening;

- i. Circumcision as requested;
- j. Concerns of family.

E. Physician consultation and Referral

The CNM shall consult with the clients selected physician or facility whenever there are significant deviations (including abnormal laboratory results), during a client's pregnancy and birth, and/or with the newborn. If a referral is needed, the CNM will remain in consultation with the provider until resolution of the concern. It is appropriate for the CNM to maintain care of her client to the greatest degree possible, in accordance with the client's wishes, remaining present through the birth, if possible. The following conditions require physician consultation and may require physician referral and/or transfer of care.

1. Pre-existing Conditions, include but are not limited to:
 - a. Asymptomatic cardiac disease;
 - b. Active tuberculosis;
 - c. Asthma, severe or uncontrolled by medication;
 - d. Renal disease;
 - e. Hepatic disorders;
 - f. Endocrine disorders;
 - g. Significant hematological disorders;
 - h. Significant neurologic disorders;
 - i. Essential hypertension
 - j. Active cancer;
 - k. Diabetes mellitus;
 - l. Previous Cesarean section
 - m. Current alcoholism or abuse;
 - n. Current drug addiction or abuse;
 - o. Current severe psychiatric illness;
 - p. Isoimmunization;
 - q. Positive for HIV antibody.
2. Pregnancy Related Conditions, include but are not limited to:
 - a. Labor before the completion of the 36th week of gestation;
 - b. Lie other than vertex at term;
 - c. Multiple gestations;
 - d. Significant vaginal bleeding;
 - e. Gestational Diabetes Mellitus, uncontrolled by diet;
 - f. Severe anemia, not responsive to treatment;
 - g. Evidence of pre-eclampsia;
 - h. Consistent size/dates discrepancy;
 - i. Deep vein thrombosis (DVT);
 - j. Known fetal anomalies or conditions affected by site of birth, with an infant compatible with life;
 - k. Threatened or spontaneous abortion after 12 weeks;
 - l. Abnormal ultrasound findings;
 - m. Isoimmunization;
 - n. Documented placental anomaly or previa;
 - o. Post-term pregnancy;
 - p. Positive HIV antibody test;
 - q. Abnormal fetal surveillance;
 - r. Known hemoglobinopathy or thombophilia.
3. Intrapartum Conditions, because of time urgency during certain intrapartal situations, it may be necessary to institute emergency interventions while waiting for physician consultation. These conditions include but are not limited to:
 - a. Fetal intolerance of labor;
 - b. Abnormal bleeding;
 - c. Thick meconium-stained fluid with birth not imminent;
 - d. Development of pre-eclampsia;

- e. Maternal fever >100.4 degrees Fahrenheit, unresponsive to treatment;
 - f. Abnormal Presentation
 - g. Presence of herpes lesions;
 - h. Prolapsed cord;
 - i. Client's desire for pain medication.
4. Postpartum Conditions, because of time urgency during certain postpartal situations, it may be necessary to institute emergency interventions while waiting for physician consultation. These conditions include but are not limited to:
 - a. Seizure
 - b. Significant hemorrhage, not responsive to treatment;
 - c. Adherent or retained placenta;
 - d. Sustained maternal vital sign instability;
 - e. Uterine prolapse;
 - f. Uterine inversion;
 - g. Repair of lacerations(s)/ beyond CNM's level of expertise;
 - h. Anaphylaxis.
 5. Neonatal Conditions, because of time urgency during certain postpartal situations, it may be necessary to institute emergency interventions while waiting for physician consultation. These conditions include but are not limited to:
 - a. Apgar score less than 7 at five minutes of age, without significant improvement at 10 minutes;
 - b. Persistent respiratory distress;
 - c. Persistent cardiac irregularities;
 - d. Central cyanosis or pallor;
 - e. Prolonged temperature instability or fever >100.4 degrees Fahrenheit, unresponsive to treatment;
 - f. Significant clinical evidence of glycemic instability;
 - g. Evidence of seizure;
 - h. Birth weight <2300gms;
 - i. Significant clinical evidence of prematurity;
 - j. Significant jaundice or jaundice prior to 24 hours;
 - k. Loss of >10% of birth weight/failure to thrive;
 - l. Major apparent congenital anomalies;
 - m. Significant birth injury.

F. Medications

The CNM shall prescribe and/or administer medications in accordance with SDCL 36-9A-13 and SDCL 34-20B. A CNM who dispenses, administers, or prescribes controlled substances in South Dakota must have a South Dakota Controlled Substance Registration and federal Drug Enforcement Administration registration. The CNM shall document in the client's chart the type of prescribed medication(s) administered, name of prescribed medication, expiration date, lot number, dosage, method of administration, site of administration, date, time and the prescribed medication's effect.

The CNM shall maintain, prescribe and administer all necessary medications for safe birth including but not limited to:

- Antibiotics
- Oxygen
- Analgesics
- Anti-emetics
- Local Anesthetic
- IV fluids
- Anti-hemorrhagics
- Vaccines

G. Emergency Care

Certain emergency procedures and medications may be administered by the CNM in a situation in which the health and safety of the mother or newborn are determined to be at risk to include but not limited to:

1. Cardiopulmonary resuscitation of the mother or newborn in accordance with American Pediatric Association and American Heart Association Guidelines.
2. Manual exploration of the uterus for placenta to control severe bleeding.

H. Safe Environment for Birth

In order to provide the safest possible birth, the CNM shall:

1. Assess the birth setting for freedom from environmental hazards and appropriateness for out of hospital birth including the following but not limited to:
 - a. Make certain that potential of hospital birth client has adequate social supports before and during birth;
 - b. Provide clients with a signed agreement to transfer mother and/or infant to the hospital at the discretion of the attendant at any time during labor, delivery and postpartum;
 - c. Provide clients with a signed agreement to use anti-hemorrhagics when indicated for the health of the mother;
 - d. Develop arrangements for emergency transport prior to 36 weeks;
 - e. Make certain that potential of out of hospital birth client has received adequate childbirth and breastfeeding education;
 - f. Make certain that potential out of hospital birth clients have a clean birthing environment and that supplies are orderly;
 - g. Receive and review complete records from previous provider for current and/or past pregnancies;
 - h. Make certain that potential out of hospital birth client has in-home help available 24 hours/day for at least 3 days postpartum
 - i. Make certain that potential out of hospital birth client has Pediatric care arranged prior to 36 weeks pregnancy;
 - j. Make certain that potential out of hospital birth client is physically and mentally healthy and well nourished
 - k. Make certain preparation of persons planning to be present at the birth is completed;
 - l. Make certain that primary participants are mature and able to accept responsibility for outcome of birth;
2. Make certain that potential client understands that there will be no interventions unless medically necessary;
3. Make certain that potential client understands that there will be no use of labor pain medications in the out of hospital setting.
4. Bring client records and her/his own equipment, supplies to birth setting, as identified under sections F. Medications and I. Equipment and Supplies.
5. Promptly respond to the clients' needs by providing clients with;
 - a. Appropriate contact information for CNM;
 - b. Emergency contact and backup plan information.

I. Equipment and Supplies

The CNM shall maintain in good working order all necessary maternal and infant equipment and supplies for safe birth including but not limited to:

- Sterile instruments and supplies
- Doppler/Fetoscope
- Suctioning
- Suturing
- Resuscitation
- IV therapy
- Medication and oxygen administration
- Sterile soft goods
- Lab

J. Birth Registration and Reportable Diseases

The CNM shall complete all required birth registration information with appropriate prenatal data and report any reportable diseases in accordance with South Dakota law for Vital Statistics Reporting to the South Dakota Department of Health.

K. Quality Review

Birth registration and reportable information shall be reviewed by the Boards for each out-of-hospital birth for evaluation and quality management purposes. The CNM shall provide additional documentation to the Boards upon request for review. The CNM shall report within 48 hours to the Boards any neonatal or maternal mortality in patients for whom she has cared in the perinatal period.

I, the undersigned, declare and affirm that this document has been examined by me, and I agree to follow these guidelines.

I am aware that should I violate the terms of this document, such an act may constitute cause for denial of approval of this waiver, removal of an approved waiver, and/or discipline of my license to practice in South Dakota.

I understand that my request to waive the collaborative agreement to allow me to attend out-of-hospital births utilizing these guidelines will not take effect until written approval from the Boards has been received by me.

Signature of Certified Nurse Midwife

Date

Print / Type Name

IT IS HEREBY APPROVED that the above CNM is granted a waiver of the collaborative agreement to attend out-of-hospital births as adopted by the Boards.

Gloria Damgaard, Executive Director
South Dakota Board of Nursing

Date

Margaret B. Hansen, Executive Director
South Dakota Board of Medical and Osteopathic Examiners

Date

September 8, 2016

To: Members of the Joint Board of Nursing and Medical and Osteopathic Examiners
From: Linda Young, Nursing Program Specialist, SD BON
RE: Request to revise CNM Waiver of the Collaborative Agreement to Attend Out-of-Hospital Births

Issue: A nurse midwife that has an approved waiver requests an editorial change to the document to provide a more clear description of when she is required to refer or consult with a physician when a woman goes into labor “before the completion of the 36th week of gestation”. As stated now, she interprets the requirement as allowing her to attend and deliver a woman that is 36 weeks and 0 days of gestation in the home setting.

The Joint Board OOH Birth Review Members, Brent Lindbloom, MD and Kristin Possehl, RN, recommend changing the wording to “Labor prior to 37 weeks gestation”. This change would more clearly reflect that a woman that goes into labor prior to 37 weeks gestation would need to be referred to a physician for consultation.

Current CNM Waiver requirement:

Practice Guidelines... the responsibilities of the CNM shall include, but are not limited to:

E. Physician Consultation and Referral (copied from Page 4 and 5 of CNM waiver document)

The CNM shall consult with the clients selected physician or facility whenever there are significant deviations (including abnormal laboratory results) during a client’s pregnancy and birth, or/or with the newborn. If a referral is needed, the CNM will remain in consultation with the provider until resolution of the concern. It is appropriate for the CNM to maintain care of her client to the greatest degree possible, in accordance with the client’s wishes, remaining present through the birth, if possible. The following conditions require physician consultation and may require physician referral and/or transfer of care:

2. Pregnancy Related Conditions, include but are not limited to:

a. Labor before the completion of the 36th week of gestation

Action Required: Accept or reject recommended action to revise the CNM Waiver of the Collaborative Agreement document item E. 2. a. to delete “Labor before the completion of the 36th week of gestation” and replace with “Labor prior to 37 weeks gestation”.

RECEIVED
AUG 31 2016
SD BOARD OF NURSING

SOUTH  DAKOTA
STATE MEDICAL ASSOCIATION
Values. Ethics. Advocacy.

2600 W. 49th Street
PO Box 7406
Sioux Falls, SD 57117-7406
605-336-1965
Fax 605-274-3274
www.sdsma.org

August 30, 2016

SD Board of Nursing
4305 S. Louise Ave., #201
Sioux Falls, SD 57106-3315

RE: Joint Boards Rules Hearing - September 8, 2016

Dear Board Members:

As president of the South Dakota State Medical Association (SDSMA), I am writing on behalf of SDSMA and its approximately 2,500 members to express our concern about certain proposals scheduled for consideration at a public hearing on September 8, 2016.

Specifically, I am reaching out to express SDSMA's concerns about certain of the proposed changes to ARSD Chapters 20:62:02 and 20:62:03. I will discuss our concerns below, starting with Chapter 20:62:03.

The changes to ARSD Chapter 20:62:03 completely eliminate the in-person contact requirements for nurse practitioners and nurse midwives. SDSMA believes the existing requirement for periodic in-person contact between the physician and the collaborating nurse practitioner or nurse midwife is important so that the collaborating physician can judge the demeanor of the nurse practitioner or nurse midwife and view the setting in which they are providing care. In-person contact is also important so that the physician is exposed to the community in which the collaborating nurse practitioner or nurse midwife practices, including the patient community and other health care professionals. Absent the ability to judge the nurse practitioner or nurse midwife's demeanor and care setting, and without feedback from the community (whether it be direct feedback or simply judging the reaction of others), it will be much more difficult for the collaborating physician to detect problems such as substance abuse, poor work habits and general quality of care issues.

Chief Executive Officer
Barbara A. Smith

President
H. Thomas Hermann, Jr., M.D.
Sturgis

President-Elect
Robert E. Van Demark, Jr., M.D.
Sioux Falls

Vice President
Christopher T. Dietrich, M.D.
Rapid City

Secretary
Robert J. Summerer, D.O.
Madison

Treasurer
Michelle L. Baack, M.D.
Sioux Falls

The elimination of the in-person contact requirement also undermines the goal of improving health care statewide through a team-based approach to care-giving. It is certainly more difficult to build and maintain a team by telephone than through periodic in-person collaboration and the accompanying relationship building resulting from spending time together.

SDSMA recognizes that in-person contact is time-consuming and costly, especially when the collaborating nurse practitioner or nurse midwife practices in a rural area. In order to address those concerns, SDSMA recommends that the in-person contact requirement be limited to once every 120 days. SDSMA's proposal to revise ARSD 20:62:03:02, 20:62:03:04 and 20:63:03:05 to provide for in-person contact no less often than once every 120 days is included with this letter as Attachment One.

SDSMA also acknowledges that a collaborating physician could require in-person contact as a condition of executing a collaboration agreement. SDSMA recognizes and supports the

role of the joint boards as advocates for and protectors of the public health, and believes in this case the establishment of a minimum requirement for in-person contact is appropriate and consistent with the joint boards' role and responsibilities.

With respect to the proposed changes to ARSD Ch. 20:62:02, SDSMA does not oppose the specific changes presented, however, the SDSMA is concerned that these proposals may condone the practice of a physician collaborating in an area of medical practice in which the physician has no experience or expertise. The proposed change to ARSD 10:62:02:02(2) and the proposed repeal of ARSD 20:62:02:04 both eliminate the requirement that the certification exam be "specific to the applicant's area of practice." The SDSMA is concerned that the joint boards not encourage (by design or unintentionally) the practice of a physician collaborating in an area of medical practice in which the physician has no current experience or expertise. As a hypothetical example, SDSMA is concerned about a specialist or subspecialist with little experience in general patient care collaborating with a nurse practitioner who routinely provides general patient care.

In situations such as those described above, SDSMA questions whether the collaboration is a meaningful one. Rather, SDSMA believes it may be a collaboration for convenience only, and not consistent with the best interest of patients and public health.

SDSMA's proposed changes to rule 20:62:03:05 (included in Attachment One) address SDSMA's concern by requiring that the nurse practitioner's areas of practice overlap those of the collaborating physician.

Although not the subject of the rules up for consideration, SDSMA also reiterates its belief that the supervision requirements for physician assistants ought to be substantially the same as the collaboration requirements for nurse practitioners or nurse midwives. Consistency among the rules will reduce the administrative burdens on supervising or collaborating physicians, which in turn should encourage further participation by physicians in a team-based approach to care-giving.

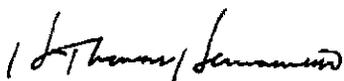
In summary, SDSMA opposes the proposed changes to ARSD Chapter 20:62:03 as they stand today. SDSMA would support changes that are consistent with those proposed on Attachment One. SDSMA does not oppose the specific proposed changes to Chapter 20:62:02, but recommends that SDSMA's proposed amendment to ARSD 20:62:03:05 be adopted in order to avoid any perception that the joint boards are weakening the requirements for collaborative agreements.

SDSMA has no comments on any of the other proposed amendments.

Representatives of SDSMA will be available during the hearing on September 8 to provide oral testimony and to answer questions.

Thank you for your consideration of SDSMA's comments and concerns.

Sincerely,



H. Thomas Hermann, Jr., MD
President

Enclosure

Proposed Changes to ARSD Chapter 20:62:03:03; 20:62:03:04; and 20:62:03:05

Attachment One

20:62:03:03. Collaboration with a licensed physician or physicians. A nurse practitioner or nurse midwife may perform the overlapping scope of advanced practice nursing and medical functions defined in SDCL 36-9A-12 and 36-9A-13, in collaboration with a physician or physicians licensed under SDCL chapter 36-4. Collaboration must occur by direct personal contact with each collaborating physician ~~must occur no less than twice each month unless it is established in the collaborative agreement that one of the twice monthly meetings may be held by telecommunication.~~ Collaboration with each collaborating physician shall occur at least once per month by direct personal contact. A nurse practitioner or nurse midwife may perform only those duties and responsibilities that are documented in their collaboration agreement. A nurse practitioner or nurse midwife shall not provide patient care which is beyond or different than the type or specialty of patient care provided by the collaborating physician.

20:62:03:04. Direct personal contact. For purposes of this chapter, the term, direct personal contact, means that both the collaborating physician and the nurse practitioner or nurse midwife are physically present or available by means of electronic communication on-site and available for the purposes of collaboration. ~~When the collaborating physician is not in direct personal contact with the nurse practitioner or nurse midwife, the physician must be available by telecommunication. If the boards consider additional direct personal contact necessary for a nurse practitioner or nurse midwife, they shall set the terms of that additional collaboration and require inclusion of those terms in that nurse practitioner's or midwife's collaborative agreement as a condition for its approval.~~ The collaborating physician must be available for collaboration at all times while the nurse practitioner or nurse midwife are involved in patient care.

20:62:03:05. Collaboration — ~~Separate practice location.~~ Collaboration shall occur on a regular and routine basis. In addition to the required two meetings per month, the The collaborating physician must be physically present on-site every ~~ninety~~ one hundred twenty days at each practice location. This requirement does not apply to locations where health care services are not routine to the setting, such as patient homes and school health screening events.



P.O. Box 1015 - Pierre, SD 57501
P: (605) 945-4265 | F: (888) 425-3032
E: contactus@sdnurses.org
H: www.sdnurses.org

Sent via email

Ms. Gloria Damgaard, Executive Director
South Dakota Board of Nursing
4305 S. Louise Ave., Suite 201
Sioux Falls, SD 57106

Ms. Damgaard and Ms. Hansen:

On behalf of the South Dakota Nurses Association (SDNA), we would like to thank the joint boards for the work put into the proposed revisions. We sincerely appreciate the opportunity to review these proposed rules and provide feedback.

As part of its Health Policy Agenda, the SDNA supports regulation that provides access to quality, cost-effective health care for all South Dakotans and recognizes advanced practice nurses as qualified providers of primary health care services. The SDNA supports the revisions proposed to chapter 20:62:03, which relate to the collaboration between a nurse practitioner or nurse midwife and a physician. Allowing collaboration to occur by means of electronic communication will help increase access to care and remove barriers in South Dakota.

Sincerely,

A handwritten signature in cursive script that reads "Carrie Clausen Hansen".

Carrie Clausen Hansen, MSN, RN-BC
Government Relations Chair

A handwritten signature in cursive script that reads "Margie Washnok".

Margie Washnok, APRN, MS, DNP
President

Phalen, Jane

From: Mindy Mulheron <mindy@ncctinc.com>
Sent: Thursday, September 01, 2016 2:49 PM
To: SDBMOE
Subject: BMOE Proposed MA Regulation

Dear Sir or Madam:

The National Center for Competency Testing (NCCT) is proud to provide National Commission for Certifying Agencies (NCAA) accredited medical assistant certification tests. It has come to our attention that new regulations regarding medical assistants have been proposed in your state (Article 20.84, section 03). If the ultimate goal of these regulations is to ensure entry level competence, we would argue that defining the national examination requirements, rather than educational program requirements, might be more effective. Any examination sponsored by an NCAA accredited certification program will be psychometrically sound, and the candidates who qualify to take it will have met appropriate, route-equivalent eligibility standards.

While we support added measures to ensure proficiency, we cannot support the proposed regulation in its entirety as written. We would instead propose the following options:

Option 1:

Eliminate qualification (1) all together and change (5) to “Proof of certification from an NCCA accredited certification program with a national certifying examination.”

Option 2:

Change (1) to “Proof of completion of medical assistant training or education sponsored by (a) the US Military or the US Department of Labor (i.e., Registered Apprenticeship); (b) an educational institution accredited by an entity recognized by the US Department of Education; (c) an educational program accredited programmatically by an entity recognized by the US Department of Education; (d) an education/ training program approved by the State (e.g., Workforce Development, Career Technical Education); or (e) an accredited hospital or medical office providing documented on-the-job training and experience acceptable to the state; and

Change (5) to “Proof of certification from an NCCA accredited certification program with a national certifying examination.”

We believe that these changes would maintain the integrity of the proposed regulation, but present a more inclusive approach. Allowing the regulation to be enacted as currently written will limit the number of qualified MAs available in the state—without a compelling reason.

Thank you very much for your kind consideration of our comments.

Respectfully,

Mindy Mulheron



Mindy Mulheron | Research Analyst

National Center for Competency Testing
p 800.875.4404 | f 913.498.1243
e mindy@ncctinc.com
www.ncctinc.com | [Facebook](#) | [LinkedIn](#) | [Twitter](#)



CONFIDENTIALITY NOTICE: This e-mail message including attachments, if any, is intended for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message. Thank you.

NCCT: 7007 College Boulevard, Suite 385, Overland Park Kansas 66211
Office Hours: M-F 7:30am - 7:00pm CST; Saturday 9:00am - 3:00pm CST

On behalf of the Nurse Practitioner Association of South Dakota (NPASD) Board of Directors, our members, and their patients, NPASD appreciates the opportunity to comment in support proposed rule changes to collaborative agreement requirements. While we acknowledge that additional statute change is needed to bring the state into alignment with national APRN licensure recommendations and improve access to high quality patient care for residents of South Dakota, these proposed regulations will address some of the challenges that patients and NPs encounter under the existing statute.

Extensive research on nurse practitioner practice demonstrates that the Boards stand on strong evidence in proposing this regulatory change. Decades of research has documented the high quality and competent acute and chronic care that NPs provide to the patients they serve. Patient outcomes from the care nurse practitioners provide are equivocal to those outcomes provided by physicians. Currently, South Dakota is one of a decreasing number of states that requires visits by a physician as a condition of NP licensure or practice. Nurse practitioners work in urban, rural, and frontier settings. At times, they are the only providers available for a community. If the clinic is not open due to the need for face to face collaboration, the population served by that clinic does not have timely access to healthcare if needed. By keeping nurse practitioners and physicians in the clinic setting and removing the need to travel for the required face to face required meeting, clinics are able to stay open to provide quality healthcare to patients who need this service. Allowing all collaboration to be through electronic communication provides timely collaboration without restricting patient access to high quality care provided by nurse practitioners.

Due to these reasons, NPASD supports the suggested rule changes and encourages these rules to be enforced. NPASD will continue to work toward advancing the health of all patients in South Dakota by improving access to care.

Thank you for your time.

(This letter will be presented as oral testimony by Abigail Gramlick-Mueller, CNP, on behalf of the Nurse Practitioner Association of South Dakota)

IN THE MATTER OF THE
PROMULGATION OF
ADMINISTRATIVE RULES

ADMISSION OF SERVICE

Personal service of

(1) the Joint Board of Medical and Osteopathic Examiners and Board of Nursing
proposed rules §§ 20:62:01, 20:62:02, 20:62:03, 20:78, and 20:84
is admitted at Pierre, South Dakota, this 2nd day of August, 2016.



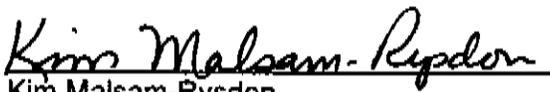
Kim Malsam-Rysdon
Secretary of Health

IN THE MATTER OF THE
PROMULGATION OF
ADMINISTRATIVE RULES

AUTHORIZATION TO PROCEED

Pursuant to SDCL subdivision 1-26-4(2), I, Kim Malsam-Rysdon, Secretary of the Department of Health, authorize the Joint Board of Medical and Osteopathic Examiners and Board of Nursing to proceed with the promulgation of the proposed rules §§ 20:62:01, 20:62:02, 20:62:03, 20:78, and 20:84

Dated this 2nd day of August, 2016.


Kim Malsam-Rysdon
Secretary of Health

IN THE MATTER OF THE
PROMULGATION OF
ADMINISTRATIVE RULES

ADMISSION OF SERVICE

Personal service of

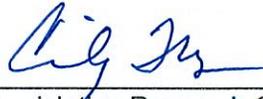
(1) the Joint Board of Nursing and Medical and Osteopathic Examiner's
proposed rules §§ 20:62:01, 20:62:02, 20:62:03, 20:78, and 20:84

(2) the Notice of Hearing

(3) the Fiscal Note, and

(4) the Small Business Impact Statement

is admitted at Pierre, South Dakota, this 2nd day of August, 2016.



Legislative Research Council

For these rules, the Agency contact person is: Tyler Klatt

Phone Number: 367-7781

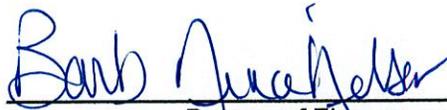
IN THE MATTER OF THE
PROMULGATION OF
ADMINISTRATIVE RULES

ADMISSION OF SERVICE

Personal service of

- (1) the Joint Board of Nursing and Medical and Osteopathic Examiner's proposed rules §§ 20:62:01, 20:62:02, 20:62:03, 20:78, and 20:84
- (2) the Notice of Hearing
- (3) the Fiscal Note, and
- (4) the Small Business Impact Statement

is admitted at Pierre, South Dakota, this 2nd day of August, 2016.



Bureau of Finance and Management

**ADMINISTRATIVE PROCEDURES ACT
FISCAL NOTE
Prepared by Submitting Agency**

	CODE	NAME
DEPARTMENT	09	Department of Health
DIVISION	092	Boards
PROGRAM	0920600	Board of Nursing

PROPOSED RULE: 20:62:01; 20:62:02; 20:62:03; 20:78; and 20:84

Hearing Date: September 8, 2016

FISCAL IMPACT STATEMENT:

The proposed rule changes will not have a financial impact on the Joint Board of Nursing and Medical and Osteopathic Examiners or the licensees that are regulated under this Chapter.

FISCAL NOTE SUMMARY:

List state agencies of local governmental subdivisions affected. **None**

COST INCREASES (DECREASES)

State Agencies:	First-Year Impact	Continuous-Yearly Impact
Joint Board of Nursing and Medical and Osteopathic Examiners	None	None
TOTAL	None	None
Local Subdivisions:		
TOTAL	None	None
Small Business Increases (Decreases)		
TOTAL	None	None
Revenue Increases(Decreases)	First-Year Impact	Continuous-Yearly Impact
TOTAL	None	None

APPROVED *Storia Damgaard* DATE 7/26/16
Signature Department Secretary or Board or Commission Chairman

APPROVED *Margaret B. Hansen* DATE 7/26/2016
Signature Department Secretary or Board or Commission Chairman

ATTACH: Copy of proposed rules; separate sections for: 1) explanation of rules effect, i.e. what procedures, schedules, activities, etc. will change with its adoption 2) statistics used, and their source, 3) assumptions that were made to arrive at fiscal impact, 4) computations that were made, and 5) small business impact statement

South Dakota Department of Health
Notice of Public Hearing to Adopt Rules

A public hearing will be held at 101 N. Main Ave, in the First Dakota National Bank building in room 215, Sioux Falls, SD on September 8, 2016 , at 9:00 am CDT, to consider the adoption and amendment of proposed rules numbered: §§ 20:62:01, 20:62:02, 20:62:03, 20:78, and 20:84. The public hearing will also be accessible via the Dakota Digital Network (DDN) at the following locations: CAP A, 500 E. Capitol, Pierre, SD and the Rapid City Dept. of Transportation (DOT), 2300 Eglin St., Rapid City, SD.

The effect of the rules will be to improve the efficiency and operation of the joint boards of Medical and Osteopathic Examiners (BMOE) and Nursing (BON), to provide clarification to the licensing process, update collaboration requirements to improve access to care; to include reference to medical assistants in BMOE rule; and to create a new article covering medical assistants.

The reasons for adopting the proposed rules are to update the licensing process, remove restrictive language that is creating healthcare access barriers; to provide consistency regarding the regulation, discipline, and administration of medical assistants; and to provide clarity to the application requirements, licensing, and renewal of registration for medical assistants.

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 BMOE, 101 N. Main Ave., Suite 301, Sioux Falls, SD 57104 or by email to SDBMOE@state.sd.us, or to the BON, 4305 S. Louise Ave., Suite 201, Sioux Falls, SD 57106 or by email to Gloria.Damgaard@state.sd.us. Material sent by mail must reach the BMOE or BON by September 3, 2016 to be considered.

After the hearing, the joint boards will consider all written and oral comments received on the proposed rules. The joint boards 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 BMOE or BON 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) 367-7781 or (605) 362-2760.

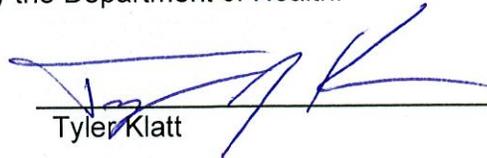
Proposed rules text is available on the following websites: www.sdbmoe.gov, <http://doh.sd.gov/boards/nursing/>, or rules.sd.gov. Copies of the proposed rules may be obtained without charge from either board at the addresses listed above.

Published at the approximate cost of \$_____.

IN THE MATTER OF THE
PROMULGATION OF
ADMINISTRATIVE RULES

AFFIDAVIT OF MAILING NOTICE
TO INTERESTED PARTIES

I, Tyler Klatt, under oath, do swear, that on August 9, 2016, I mailed a copy of the notice attached to this affidavit to the list of persons attached to this affidavit. I further swear that the attached list is a true and correct list of all persons who have requested advance notice of rule-making proceedings by the Department of Health.


Tyler Klatt

Subscribed and sworn to
before me this 9th day
of August, 2016.


Notary Public - South Dakota

(SEAL)

My Commission expires
9/15/17.



From: [SDBMOE](#)
Bcc: ["todd.salfrank@avera.org"](#); ["kara.mcmachen@gmail.com"](#); ["sdhca@sdhca.org"](#); ["jrbarnett12@gmail.com"](#); ["nick.kotzea@sanfordhealth.org"](#); [Shanard-Koenders, Kari](#); ["Deb Fischer-Clemens"](#); ["Thinkaboutit@GWTC.net"](#); ["enelson@aarp.org"](#); ["MBANDERS@Swiftel.net"](#); ["Debra.owen@sdaho.org"](#); ["Kathy.Schweitzer@SanfordHealth.org"](#); [Hansen, Margaret](#); ["NPASD.executivedirector@gmail.com"](#); ["meast@sdsma.org"](#); ["BWermers@hotmail.com"](#); [Gibson, Nicole](#); ["Diana.Berkland@SanfordHealth.org"](#); ["Deb.Soholt@Avera.org"](#); ["Brittany.Novotny@midwestsolutions.com"](#); ["Jessica.Cherenegar@usioxfalls.edu"](#); [Fahrenwald, Nancy](#); ["Contactus@sdnurses.org"](#); [Gibson, Sheri](#); ["Deborah.Hickman@SanfordHealth.org"](#); [Foland, Kay](#); ["Lynn.White@augie.edu"](#); ["Michael.Farritor@sanfordhealth.org"](#); ["Kim.Patrick@sanfordhealth.org"](#); ["scott.duke@sdaho.org"](#); [Damgaard, Gloria](#); ["pmcinerney@regionalhealth.com"](#); ["bsmith@sdsma.org"](#); ["meast@sdsma.org"](#); [Shanard-Koenders, Kari](#); ["jen.porter@sdaho.org"](#); ["diedrich@regionalhealth.com"](#); ["TME@magt.com"](#); ["sdpha@sdpha.org"](#); ["Ann.Roemen@independentcare.org"](#); ["jonellis@argusleader.com"](#); ["jcleland@ksfy.com"](#); ["jacob.iversen@ksfy.com"](#); ["a_anderson@kdlt.com"](#); ["jandrews@keloland.com"](#); ["Tryg.Odney@gmail.com"](#); ["quinn.stein@sanfordhealth.org"](#); ["Janice@brandenburgerconsulting.com"](#); ["Julie.Kalahar@lakeareatech.edu"](#); ["yorkdrew@hotmail.com"](#); ["mrs_hagen@yahoo.com"](#); ["dawn.rost@bunl.com"](#); ["president@sdemsa.org"](#); ["cvokeley@aota.org"](#); [Damgaard, Gloria](#)
Subject: Notice of Public Hearing
Date: Tuesday, August 09, 2016 8:57:07 AM
Attachments: [6. Joint Boards Notice of Public Hearing.pdf](#)

On behalf of the Joint Boards of Nursing and Medical and Osteopathic Examiners, please find attached a notice of public hearing for proposed administrative rules.

If you wish to participate in the hearing, please contact the Board of Medical and Osteopathic Examiners or Board of Nursing staff by September 3, 2016, and provide your comments, materials, and indicate whether you wish to testify in front of the Joint Boards at the hearing on Thursday, September 8, 2016 at 9:00 AM.

Copies of the proposed rules may be obtained from the South Dakota Administrative Rules website <https://rules.sd.gov/detail.aspx?Id=291> or by contacting the Board of Medical and Osteopathic Examiners or the Board of Nursing.

Sincerely,

Tyler Klatt, MPA
Management Analyst
South Dakota Board of Medical and Osteopathic Examiners
101 N. Main Ave., Suite 301
Sioux Falls, SD 57104
Phone 605-367-7781

FORM 14

SMALL BUSINESS IMPACT STATEMENT FORM

See SDCL 1-26-2.1

(NOTE: This form must be signed by either the head of the agency or the presiding officer of the board or commission empowered to adopt the rules. Check your statutes to see who is authorized to promulgate rules. A small business is defined as any business with 25 or fewer full-time employees. When a set of rules is proposed, a general summary shall be provided; each proposed rule amendment shall also be explained thoroughly. In the case of a large set of proposed rules which all have a single purpose and impact, one explanation is sufficient. The law makes it clear that agencies or commissions shall use readily available information and existing resources to prepare the impact statement.)

1. Our agency has determined that the rule/s we are proposing have the following type of impact on small businesses:
 - Direct impact *(please complete remainder of form)*
 - Indirect impact *(please provide a brief explanation, then sign, date, and submit form. Questions 2 through 8 do not need to be answered)*
 - No impact *(please provide a brief explanation, sign, date, and submit form - Questions 2 through 8 do not need to be answered)*

The proposed rules focus on administrative procedures and do not create or change any requirements related to small businesses.

2. A general narrative and overview of the effect of the rule(s) on small business - written in plain, easy to read language:
3. What is the basis for the enactment of the rules(s)?
 - Required to meet changes in federal law
 - Required to meet changes in state law
 - Required solely due to changes in date (i.e. must be changed annually)Other: _____

4. Why is the rule(s) needed?

5. What small businesses or types of small businesses would be subject to the rule?

6. Estimate the number of small businesses that would be subject to the rule.
 - 1-99
 - 100-499
 - 500-999
 - 1,000-4,999
 - More than 5,000

Unknown - please explain _____

7. Are small businesses required to file or maintain any reports or records under this rule?

Yes No

a. If "yes," how many reports must a small business submit to the state on an annual basis?

b. If "yes," how much ongoing recordkeeping within the business is necessary?

c. If "yes," what type of professional skills would be necessary to prepare the reports or records?

The average owner of a small business should be able to complete the reports and/or records with no assistance

It is likely that a bookkeeper for a small business should be able to complete the reports and/or records

It is likely that a small business person would need the assistance of a CPA to complete the reports and/or records

It is likely that a small business person would need the assistance of an attorney to complete the reports and/or records

Other _____

Unknown - please explain _____

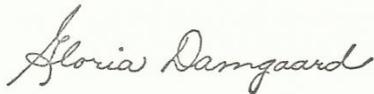
8. Are there any less intrusive or less costly methods to achieve the purpose of the rule (i.e. fewer reports, less recordkeeping, lower penalties)?

No - please explain _____

Yes - please explain _____

July 26, 2016.

Gloria Damgaard for the Joint Board of Nursing and Medical and Osteopathic Examiners



7/26/2016
Dated


Authorized Signature

BMOE
Name of Agency

SENATOR GARY CAMMACK, CHAIR | REPRESENTATIVE DEAN WINK, VICE CHAIR
JASON HANCOCK, DIRECTOR | SUE CICHOS, DEPUTY DIRECTOR | DOUG DECKER, CODE COUNSEL
500 EAST CAPITOL AVENUE, PIERRE, SD 57501 | 605-773-3251 | LEGIS.SD.GOV



August 15, 2016

Mr. Tyler Klatt
SD Board of Medical and Osteopathic Examiners
101 N. Main Ave., Ste. 301
Sioux Falls, SD 57104

Dear Mr. Klatt:

The South Dakota Board of Medical and Osteopathic Examiners has proposed the amendment and adoption of ARSD 20:62:01, 20:62:02, 20:62:03, 20:78, and 20:84. We have reviewed the proposed rules, scheduled for hearing on September 8, 2016, and approve the rules for legality with the following comment:

- It is preferred that a singular subject be used instead of a plural subject when drafting rules and legislation.

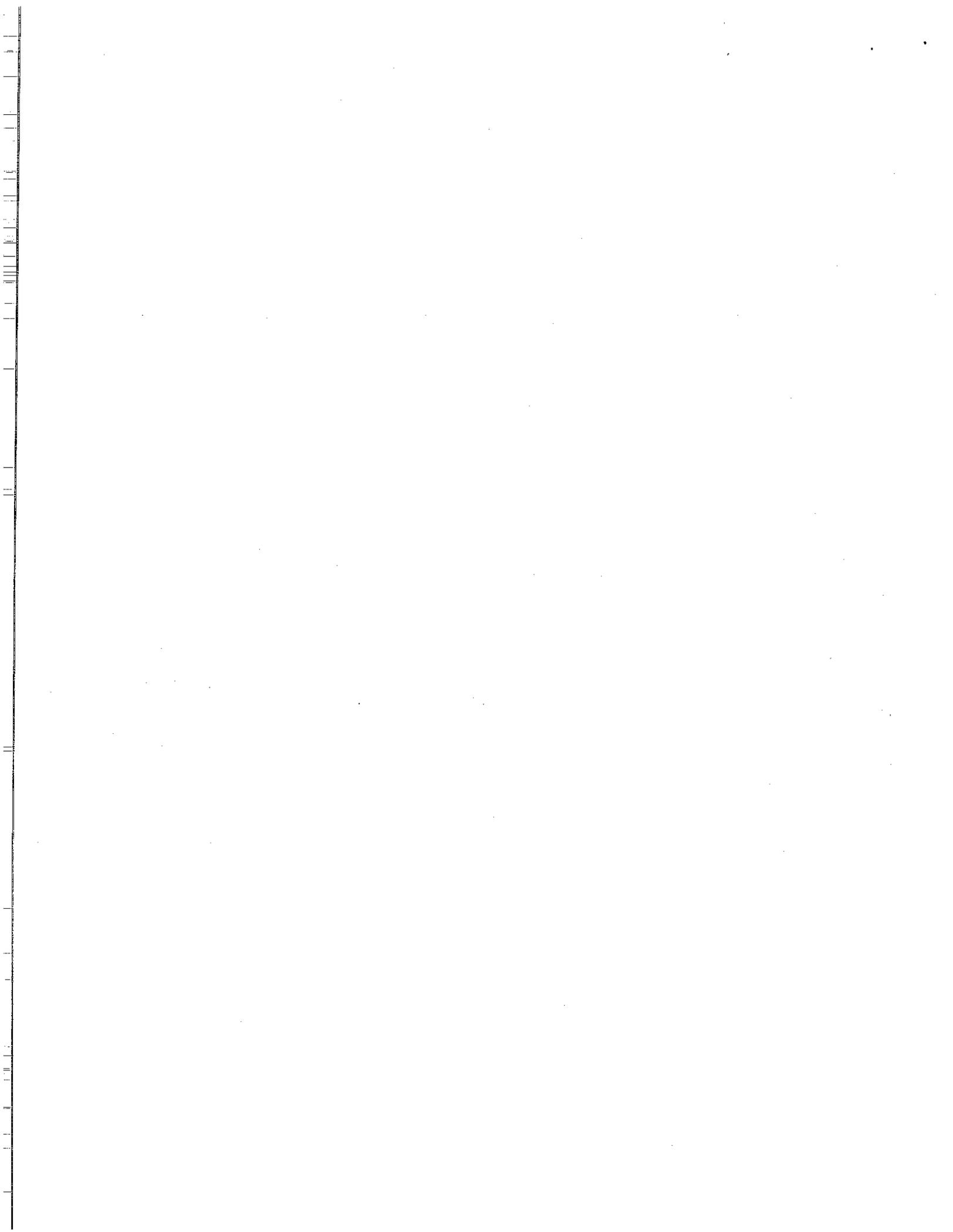
This letter is based on a preliminary review of your rules. Attached are your rules edited for form and style pursuant to SDCL 1-26-6.5, the Directions for Submitting the Final Draft of the Rules, and the Interim Rules Review Committee Recommended Rules Presentation Format. If you have any questions, please do not hesitate to call me or the staff member who has reviewed your rules.

Sincerely yours,

A handwritten signature in cursive script that reads "Doug".

Doug Decker
Code Counsel

DD:CVC



Form + Style

ARTICLE 20:62

NURSE PRACTITIONERS AND MIDWIVES

Chapter

- 20:62:01 General rules affecting boards.
- 20:62:02 Licensure and licenses.
- 20:62:03 Collaborative practice.
- 20:62:04 Prescriptive authority, Repealed.
- 20:62:05 Declaratory rulings.
- 20:62:06 Disciplinary proceedings.

CHAPTER 20:62:01

GENERAL RULES AFFECTING BOARDS

Section

- 20:62:01:01 Notice to and filing with boards.
- 20:62:01:02 Annual meetings.
- 20:62:01:03 Special meetings.
- 20:62:01:04 Notice of meetings.
- 20:62:01:05 Presiding officer and secretary.
- 20:62:01:06 Duties of presiding officer.
- 20:62:01:07 Duties of secretary.
- 20:62:01:08 Vacancy in offices.
- 20:62:01:09 Absence of officers from meetings.
- 20:62:01:10 Action by boards.
- 20:62:01:11 Fees.
- 20:62:01:12 Handling of finances.

20:62:01:13 Administrative duties.

20:62:01:02. Annual meetings. An annual meeting of the boards shall be held each year ~~in September~~ at a place designated by the presiding officer of the boards.

Source: 9 SDR 126, effective April 13, 1983; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 22 SDR 179, effective June 26, 1996.

General Authority: SDCL 36-9A-41.

Law Implemented: SDCL 36-9A-5.

CHAPTER 20:62:02

LICENSURE AND LICENSES

Section

- 20:62:02:01 Repealed.
- 20:62:02:01.01 Approved education programs.
- 20:62:02:02 Application for licensure.
- 20:62:02:03 Temporary permit prior to licensure.
- 20:62:02:04 ~~Examination.~~ Repealed.
- 20:62:02:05 Expiration date of licenses.
- 20:62:02:06 Renewal of license.
- 20:62:02:07 Reinstatement of lapsed licenses.
- 20:62:02:08 Inactive status.
- 20:62:02:09 Reactivation of inactive license.

20:62:02:02. Application for licensure. An applicant for licensure as a nurse practitioner or nurse midwife shall file with the executive ~~secretary~~ director of the Board of Nursing an application containing the following information:

(1) Evidence that the applicant has completed an approved educational program that meets the requirements of § 20:62:02:01.01;

(2) Evidence that the applicant has passed ~~the certification examination listed in § 20:62:02:04~~ a nationally recognized certification examination approved by the boards which is specific to the applicant's ~~area of practice~~ advanced practice registered nurse role and educational preparation, and maintains current certification; and

(3) The fee required by subdivision 20:62:01:11(1).

Source: 9 SDR 126, effective April 13, 1983; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 22 SDR 179, effective June 26, 1996; 26 SDR 67, effective November 21, 1999.

General Authority: SDCL 36-9A-41.

Law Implemented: SDCL 36-9A-4, 36-9A-9, 36-9A-26.

20:62:02:04. Examination. ~~Each applicant must pass one of the standardized qualifying certification examinations prepared by the organizations listed below which is specific to the applicant's area of practice:~~

~~—— (1) American College of Nurse-Midwives, 818 Connecticut Avenue N.W., Suite 900, Washington, DC 20006;~~

~~—— (2) American Nurses Credentialing Center, 600 Maryland Avenue S.W., Suite 100 West, Washington, DC 20024-2571;~~

~~—— (3) National Certification Board of Pediatric Nurse Practitioners and Nurses, 800 South Frederick Avenue, Suite 104, Gaithersburg, MD 20877-4150;~~

~~(4) National Certification Corporation for the Obstetric, Gynecologic and Neonatal Nursing Specialties, Box 11082, Chicago, IL 60611-0082.~~

~~(5) American Academy of Nurse Practitioners Certification Program, Capitol Station, LBJ Building, P.O. Box 12926, Austin, TX 78711-2926. Repealed.~~

Source: 9 SDR 126, effective April 13, 1983; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 22 SDR 179, effective June 26, 1996; 23 SDR 118, effective January 28, 1997; 26 SDR 67, effective November 21, 1999.

~~**General Authority:** SDCL 36-9A-41.~~

~~**Law Implemented:** SDCL 36-9A-4.~~

20:62:02:06. Renewal of license. Licensure as a nurse practitioner or nurse midwife must be renewed biennially according to the expiration dates provided in § 20:62:02:05. The licensee shall complete the application for renewal as provided by the boards, including:

(1) Written evidence of current certification ~~with one of the national organizations listed in § 20:62:02:04;~~ as set forth ⁱⁿ ~~by~~ subdivision § 20:62:02:02(2);

(2) An affidavit that the licensee has committed no act of misconduct as set forth by SDCL 36-9A-29 and 36-9A-30; and

(3) The fees required by subdivision 20:62:01:11(3).

The title "Certified Nurse Practitioner" or "Certified Nurse Midwife" and the specialty area of practice for the CNP shall be designated on the current renewal certificate.

Any person licensed pursuant to SDCL 36-9A-4 before June 26, 1996, is exempt from subdivision (1) of this section.

Source: 9 SDR 126, effective April 13, 1983; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 22 SDR 179, effective June 26, 1996; 23 SDR 118, effective January 28, 1997; 26 SDR 67, effective November 21, 1999; 28 SDR 92, effective December 31, 2001.

General Authority: SDCL 36-9A-41.

Law Implemented: SDCL 36-9A-22, 36-9A-23, 36-9A-26, 36-9A-29, 36-9A-30, 36-9A-35, 36-9A-36.

20:62:02:07. Reinstatement of lapsed licenses. A licensee who fails to renew the license may be reinstated by filing a written explanation for failure to renew with the Board of Nursing. The applicant for reinstatement of licensure must provide written evidence of current certification ~~with one of the national organizations listed in § 20:62:02:04 as set forth by~~ subdivision § 20:62:02:02(2). The licensee must submit an affidavit that the applicant has committed no act of misconduct as set forth by SDCL 36-9A-29 and 36-9A-30, and the fees required by subdivision 20:62:01:11(4). If the licensee intends to perform the overlapping scope of advanced practice nursing and medical functions set forth in SDCL 36-9A-12 and 36-9A-13, the applicant must also submit a collaborative agreement pursuant to § 20:62:03:06.

Source: 9 SDR 126, effective April 13, 1983; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 22 SDR 179, effective June 26, 1996; 26 SDR 67, effective November 21, 1999.

General Authority: SDCL 36-9A-41.

Law Implemented: SDCL 36-9A-15, 36-9A-24, 36-9A-26, 36-9A-29, 36-9A-30, 36-9A-35, 36-9A-36.

20:62:02:09. Reactivation of inactive license. The holder of an inactive license may reactivate the license by filing an application with the Board of Nursing. The applicant must submit written evidence of current certification ~~with one of the national organizations listed in § 20:62:02:04 as set forth~~ ⁱⁿ subdivision § 20:62:02:02(2), an affidavit that the applicant has committed no act of misconduct as set forth in SDCL 36-9A-29 and 36-9A-30, the renewal fee required by subdivision 20:62:01:11(3) for the current biennial period. If the licensee intends to

perform the overlapping scope of advanced practice nursing and medical functions set forth in SDCL 36-9A-12 and 36-9A-13, the applicant must also submit a collaborative agreement pursuant to § 20:62:03:06.

Source: 9 SDR 126, effective April 13, 1983; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 22 SDR 179, effective June 26, 1996; 26 SDR 67, effective November 21, 1999.

General Authority: SDCL 36-9A-41.

Law Implemented: SDCL 36-9A-15, 36-9A-25, 36-9A-26, 36-9A-29, 36-9A-30, 36-9A-35, 36-9A-36.

CHAPTER 20:62:03

COLLABORATIVE PRACTICE

Section

20:62:03:01 and 20:62:03:02 Repealed.

20:62:03:03 Collaboration with a licensed physician or physicians.

20:62:03:04 Direct personal contact.

20:62:03:05 ~~Collaboration—Separate practice location.~~ Repealed.

20:62:03:06 Identification of secondary physician.

20:62:03:07 Temporary collaborating physician.

20:62:03:08 Collaborative agreement.

20:62:03:03. Collaboration with a licensed physician or physicians. A nurse practitioner or nurse midwife may perform the overlapping scope of advanced practice nursing and medical functions defined in SDCL 36-9A-12 and 36-9A-13, in collaboration with a physician or physicians licensed under SDCL chapter 36-4. Collaboration must occur by direct personal contact, ~~with each collaborating physician must occur no less than twice each month~~

~~unless it is established in the collaborative agreement that one of the twice monthly meetings may be held by telecommunication. Collaboration with each collaborating physician shall occur at least once per month by direct personal contact.~~

Source: 26 SDR 67, effective November 21, 1999; 35 SDR 166, effective December 26, 2008.

General Authority: SDCL 36-9A-41.

Law Implemented: SDCL 36-9A-12, 36-9A-13, 36-9A-15, 36-9A-17.

20:62:03:04. Direct personal contact. For purposes of this chapter, the term, direct personal contact, means that both the collaborating physician and the nurse practitioner or nurse midwife are physically present or available by means of electronic communication on-site and available for the purposes of collaboration. ~~When the collaborating physician is not in direct personal contact with the nurse practitioner or nurse midwife, the physician must be available by telecommunication. If the boards consider additional direct personal contact necessary for a nurse practitioner or nurse midwife, they shall set the terms of that additional collaboration and require inclusion of those terms in that nurse practitioner's or midwife's collaborative agreement as a condition for its approval.~~

Source: 26 SDR 67, effective November 21, 1999.

General Authority: SDCL 36-9A-41.

Law Implemented: SDCL 36-9A-15, 36-9A-17.

20:62:03:05. Collaboration – Separate practice location. ~~In addition to the required two meetings per month, the collaborating physician must be physically present on-site every ninety~~

~~days at each practice location. This requirement does not apply to locations where health care services are not routine to the setting, such as patient homes and school health screening events.~~

Repealed.

Source: 26 SDR 67, effective November 21, 1999; 35 SDR 312, effective July 6, 2009.

General Authority: ~~SDCL 36-9A-41.~~

Law Implemented: ~~SDCL 36-9A-15, 36-9A-17.~~

ARTICLE 20:78

BOARD OF MEDICAL AND OSTEOPATHIC EXAMINERS

Chapter

- 20:78:01 Operation of board.
- 20:78:02 Declaratory rulings.
- 20:78:03 Application procedures.
- 20:78:04 Complaint procedures.
- 20:78:05 Contested case hearing procedures.
- 20:78:06 Opioid overdose prevention.

CHAPTER 20:78:03

APPLICATION PROCEDURES

Section

- 20:78:03:01 Applicability.
- 20:78:03:02 Initial review.
- 20:78:03:03 Incomplete application.
- 20:78:03:04 Primary source documentation.
- 20:78:03:05 Summary action on application.
- 20:78:03:06 Investigation of application.
- 20:78:03:07 Application withdrawn during investigation.
- 20:78:03:08 Executive secretary determinations.
- 20:78:03:09 Provisional licenses, permits or certificates issued pursuant to settlement agreement.
- 20:78:03:10 Renewals and reinstatement.

20:78:03.01. Applicability. This chapter applies to the licenses, certificates, and permits issued by the Board of Medical and Osteopathic Examiners under SDCL 36-4 (Physicians and Surgeons), 36-4A (Physician Assistants), 36-4B (Advanced Life Support Personnel), 36-9B (Medical Assistants), 36-10 (Physical Therapists), 36-10B (Dietetics and Nutrition), 36-29 (Athletic Trainers), 36-31 (Occupational Therapists), and 36-36 (Genetic Counselors).

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-7, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-20, 36-4-20.2, 36-4-20.9, 36-4-20.10, 36-4-20.11, 36-4-20.13, 36-4-24.1, 36-4-31.4, 36-4A-1, 36-4A-8, 36-4A-8.1, 36-4B-1, 36-4B-29, 36-9B-1, 36-10B-1, 36-29-1, 36-31-1, 36-36-1.

20:78:03.02. Initial review. The executive secretary shall review all license, permit, and certificate applications subject to this chapter to determine if the applicant has submitted all required documents, information, fees, and other materials. The executive secretary shall notify the applicant of any materials missing from the application. The applicant has 120 days to provide the information intended to complete the application.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-7, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-11, 36-4-17, 36-4-20.2, 36-4-20.7, 36-4-20.10 36-4A-8, 36-4A-8.1, 36-4B-6, 36-4B-13, 36-9B-4, 36-10-27, 36-10-28, 36-10-35.1, 36-10B-6, 36-10B-7, 36-10B-10, 36-29-3, 36-29-3.1, 36-31-5, 36-31-6, 36-31-9, 36-36-5, 36-36-9.

20:78:03.03. Incomplete application. If an applicant fails to submit required materials within 120 days of notice that materials are missing from the application, the executive secretary shall designate the application as withdrawn, or, upon receiving a written request showing good cause, may allow an applicant additional time to complete the application. The executive secretary shall notify the applicant if an application is designated as withdrawn.

The executive secretary's designation of an application as withdrawn may be appealed to the board by written notice filed with the executive secretary within ten days after notice of withdrawal by the executive secretary. If no timely appeal to the board is filed, the executive secretary's designation of an application as withdrawn remains.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-7, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-11, 36-4-17, 36-4-20.2, 36-4-20.7, 36-4-20.10, 36-4A-8, 36-4A-8.1, 36-4B-6, 36-4B-13, 36-9B-4, 36-10-27, 36-10-28, 36-10-35.1, 36-10B-6, 36-10B-7, 36-10B-10, 36-29-3, 36-29-3.1, 36-31-5, 36-31-6, 36-31-9, 36-36-5, 36-36-9.

20:78:03.04. Primary source documentation. The executive secretary shall initiate processing of complete applications after receiving documentation from primary sources to verify that the applicant has met the education, examination, training, or certification requirements of applicable statutes and regulations. The executive secretary shall notify the applicant when all primary source documentation has been received.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-7, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-11, 36-4-17, 36-4-20.2, 36-4-20.7, 36-4-20.10, 36-4A-8, 36-4A-8.1, 36-4B-6, 36-4B-13, 36-9B-4, 36-10-27, 36-10-28, 36-10-35.1, 36-10B-6, 36-10B-7, 36-10B-10, 36-29-3, 36-29-3.1, 36-31-5, 36-31-6, 36-31-9, 36-36-5, 36-36-9.

20:78:03:05. Summary action on application. The executive secretary may summarily deny an application based upon primary source documentation that demonstrates that the applicant has not met the education, examination, training, or certification requirements of applicable statutes and regulations. The executive secretary shall notify the applicant in writing of any summary action taken by the executive secretary. The executive secretary's summary action may be appealed to the board by written notice filed with the executive secretary within ten days after notice of the action taken by the executive secretary. If no timely appeal is filed, the executive secretary's action shall be deemed final board action.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-7, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-11, 36-4-17, 36-4-20.2, 36-4-20.7, 36-4-20.10, 36-4A-8, 36-4A-8.1, 36-4B-6, 36-4B-13, 36-9B-4, 36-10-27, 36-10-28, 36-10-35.1, 36-10B-6, 36-10B-7, 36-10B-10, 36-29-3, 36-29-3.1, 36-31-5, 36-31-6, 36-31-9, 36-36-5, 36-36-9.

20:78:03:06. Investigation of application. The executive secretary may determine that the information disclosed in an application or primary source documentation requires investigation to determine whether the applicant meets the qualifications or standards for issuance of a license. The executive secretary shall conduct that investigation, and may appoint a board member to assist in the investigation. The executive secretary shall notify the applicant of

any issues requiring investigation. An applicant may meet with the executive secretary and appointed board member to discuss the issues under investigation.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-7, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-11, 36-4-17, 36-4-20.2, 36-4-20.7, 36-4-20.10, 36-4A-8, 36-4A-8.1, 36-4B-6, 36-4B-13, 36-9B-4, 36-10-27, 36-10-28, 36-10-35.1, 36-10-49, 36-10B-6, 36-10B-7, 36-10B-10, 36-29-3, 36-29-3.1, 36-39-26, 36-31-5, 36-31-6, 36-31-9, 36-31-22, 36-36-5, 36-36-9.

20:78:03:07. Application withdrawn during investigation. An applicant may withdraw an application after an investigation has been initiated by the executive secretary. An application withdrawn after investigation has been initiated shall be reported as "withdrawn under investigation" in the board's permanent license files and in any national databases to which the board is required to report licensure action.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-7, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-11, 36-4-17, 36-4-20.2, 36-4-20.7, 36-4-20.10, 36-4A-8, 36-4A-8.1, 36-4B-6, 36-4B-13, 36-9B-4, 36-10-27, 36-10-28, 36-10-35.1, 36-10-49, 36-10B-6, 36-10B-7, 36-10B-10, 36-29-3, 36-29-3.1, 36-29-26, 36-31-5, 36-31-6, 36-31-9, 36-31-22, 36-36-5, 36-36-9.

20:78:03:08. Executive secretary determinations. Upon completion of the review of an application and any associated investigation, the executive secretary may:

(1) Summarily issue a license, permit, or certificate if the applicant meets the standards and requirements for licensure established by the applicable statutes or regulations;

(2) Recommend the board issue the license, permit, or certificate upon specified terms and conditions; or

(3) Recommend the board deny the license, permit, or certification application.

If the executive secretary recommends issuance of a license, permit, or certificate under specified terms and conditions, or recommends denial of a license, permit, or certificate, the executive secretary shall notify the applicant of the right to contest the executive secretary's recommendation. If contested by the applicant, the executive secretary shall issue a petition for hearing that sets out the recommendation and the reasons for the recommendation, and initiates a contested case hearing. A copy of the petition for hearing shall be sent to the applicant along with a statement that the applicant is entitled to due process rights, including the right to notice and an opportunity to be heard and to be represented by counsel. The executive secretary and applicant may enter into a settlement agreement concerning the recommendation to be made to the board on the application.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-7, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-18, 36-4-20.2, 36-4-20.7, 36-4-20.10, 36-4-28, 36-4-30, 36-4-31.6, 36-4A-8, 36-4A-8.1, 36-4A-38, 36-4A-39, 36-4B-6, 36-4B-13, 36-4B-31, 36-9B-4, 36-9B-8, 36-10-27, 36-10-28, 36-10-29, 36-10-35.1, 36-10-35.2, 36-10-38, 36-10-40, 36-10-41, 36-10B-3, 36-10B-6, 36-10B-7, 36-10B-10, 36-29-3, 36-29-3.1, 36-29-7, 36-29-22, 36-31-5, 36-31-6, 36-31-9, 36-31-10, 36-31-18, 36-36-5, 36-36-6, 36-36-9, 36-36-13.

20:78:03:09. Provisional licenses, permits, or certificates issued pursuant to settlement agreement. The executive secretary may enter into a settlement agreement with an applicant that provides for the issuance of a provisional license, permit, or certificate by the executive secretary. A provisional license, permit, or certificate issued by the executive secretary is valid only until the board takes final agency action on the settlement agreement and notice is provided to the applicant. Board approval of the settlement agreement ratifies the action of the executive secretary and the license, permit, or certificate is valid for its term under any specified terms and conditions. Board disapproval of a settlement agreement voids the provisional license, permit, or certificate upon notice to the applicant. If the board disapproves a settlement agreement, the board shall schedule a contested case hearing for final agency action on the application and require the executive secretary to file a petition for hearing.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-7, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-18, 36-4-20.2, 36-4-20.7, 36-4-20.10, 36-4-28, 36-4-30, 36-4-31.6, 36-4A-8, 36-4A-8.1, 36-4A-38, 36-4A-39, 36-4B-6, 36-4B-13, 36-4B-31, 36-9B-4, 36-9B-8, 36-10-27, 36-10-28, 36-10-29, 36-10-35.1, 36-10-35.2, 36-10-38, 36-10-40, 36-10-41, 36-10B-3, 36-10B-6, 36-10B-7, 36-10B-10, 36-29-3, 36-29-3.1, 36-29-7, 36-29-22, 36-31-5, 36-31-6, 36-31-9, 36-31-10, 36-31-18, 36-36-5, 36-36-9, 36-36-13.

20:78:03:10. Renewals and reinstatement. Renewal and reinstatement applications are subject to the same process as original licenses.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-7, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-11, 36-4-17, 36-4-20.2, 36-4-20.7, 36-4-20.10, 36-4-20.12, 36-4-24.1, 36-4-24.2, 36-4A-8, 36-4A-8.1, 36-4A-31, 36-4A-32, 36-4A-33, 36-4B-6, 36-4B-13, 36-4B-27, 36-4B-28, 36-9B-4, 36-10-27, 36-10-28, 36-10-33, 36-10-35.1, 36-10B-3, 36-10B-6, 36-10B-7, 36-10B-9, 36-10B-10, 36-29-3, 36-29-3.1, 36-29-11, 36-29-15, 36-31-5, 36-31-6, 36-31-9, 36-31-11, 36-31-19, 36-36-5, 36-36-9, 36-36-11, 36-36-14.

CHAPTER 20:78:04

COMPLAINT PROCEDURES

Section

- 20:78:04:01 Applicability.
- 20:78:04:02 Complaints.
- 20:78:04:03 Investigations.
- 20:78:04:04 Completion of complaint investigation.
- 20:78:04:05 Status of complainant.
- 20:78:04:06 Effect of failure to renew during investigation.

20:78:04:01. Applicability. The following procedure applies to complaints about holders of the licenses, permits, or certificates regulated by the Board of Medical and Osteopathic Examiners.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-3, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-27, 36-4-28, 36-4-29, 36-4-30, 36-4-32, 36-4A-37, 36-4A-38, 36-4A-39, 36-4A-40, 36-4B-28, 36-4B-31, 36-4B-32, 36-4B-33, 36-9B-8, 36-10-38, 36-10-39, 36-10-40, 36-10-41, 36-10-44, 36-10-45, 36-10-46, 36-10-49, 36-10B-13, 36-10B-14, 36-29-18, 36-29-19, 36-29-20, 36-29-21, 36-29-22, 36-29-25, 36-29-26, 36-29-27, 36-31-14, 36-31-15, 36-31-16, 36-31-17, 36-31-18, 36-31-21, 36-31-22, 36-36-6, 36-36-13.

20:78:04:02. Complaints. The executive secretary may initiate an investigation based on a written complaint. Any person filing a complaint shall submit the complaint in writing to the executive secretary. A complaint is not a public record. The executive secretary shall dismiss any complaint that concerns matters over which the board does not have jurisdiction, and shall notify the complainant of that action. The executive secretary may also initiate an investigation upon reasonable suspicion that a licensee is in violation of any applicable standard for professional conduct.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-3, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-27, 36-4-28, 36-4-29, 36-4-30, 36-4-32, 36-4A-37, 36-4A-38, 36-4A-39, 36-4A-40, 36-4B-28, 36-4B-31, 36-4B-32, 36-4B-33, 36-9B-8, 36-10-38, 36-10-39, 36-10-40, 36-10-41, 36-10-44, 36-10-45, 36-10-46, 36-10-49, 36-10B-13, 36-10B-14, 36-29-18, 36-29-19, 36-29-20, 36-29-21, 36-29-22, 36-29-25, 36-29-26, 36-29-27, 36-31-14, 36-31-15, 36-31-16, 36-31-17, 36-31-18, 36-31-21, 36-31-22, 36-36-6, 36-36-13.

20:78:04:03. Investigations. The executive secretary shall initiate investigation of a complaint by notifying the license, permit, or certificate holder of the complaint and obtaining a response to the complaint. If the executive secretary determines that the complaint concerns compliance with licensing standards and requirements, the executive shall investigate the complaint. The notice shall be in writing and shall include a statement that the licensure or licensee is entitled to due process rights, including the right to notice and an opportunity to be heard and to be represented by counsel. The executive secretary may appoint a board member to assist in the investigation.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-3, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-27, 36-4-28, 36-4-29, 36-4-30, 36-4-32, 36-4A-37, 36-4A-38, 36-4A-39, 36-4A-40, 36-4B-28, 36-4B-31, 36-4B-32, 36-4B-33, 36-9B-8, 36-10-38, 36-10-39, 36-10-40, 36-10-41, 36-10-44, 36-10-45, 36-10-46, 36-10-49, 36-10B-13, 36-10B-14, 36-29-18, 36-29-19, 36-29-20, 36-29-21, 36-29-22, 36-29-25, 36-29-26, 36-29-27, 36-31-14, 36-31-15, 36-31-16, 36-31-17, 36-31-18, 36-31-21, 36-31-22, 36-36-6, 36-36-13.

20:78:04:04. Completion of complaint investigation. Upon completion of a complaint investigation, the executive secretary may:

(1) Dismiss the complaint as unsubstantiated or requiring no further action. Dismissal of a complaint is not a public record;

- (2) Issue a letter of concern, which shall be placed in the licensee's permanent records. A letter of concern is not a public record;
- (3) Recommend the board issue the licensee a public reprimand;
- (4) Recommend the board re-open and modify the license to include compliance with specified terms and conditions;
- (5) Recommend the board suspend or revoke the license.

If the executive secretary recommends issuance of a public reprimand, re-opening and modification, or suspension or revocation of the license, permit, or certificate held by the licensee, the executive secretary shall notify the licensee of the right to contest the recommendation. If contested, the executive secretary shall issue a petition for hearing that sets out the recommendation and the reasons for the recommendation and initiates a contested case hearing. A copy of the petition for hearing shall be sent to the licensee. The executive secretary and licensee may enter into a settlement agreement concerning the recommendation to be made to the board.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-3, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-18, 36-4-20.2, 36-4-20.7, 36-4-20.10, 36-4-27, 36-4-28, 36-4-29, 36-4-30, 36-4-31.6, 36-4-32, 36-4A-8, 36-4A-8.1, 36-4A-37, 36-4A-38, 36-4A-39, 36-4A-40, 36-4B-6, 36-4B-13, 36-4B-28, 36-4B-31, 36-4B-32, 36-4B-33, 36-9B-8, 36-10-27, 36-10-28, 36-10-29, 36-10-35.1, 36-10-35.2, 36-10-38, 36-10-39, 36-10-40, 36-10-41, 36-10-44, 36-10-45, 36-10-46, 36-10-49, 36-10B-6, 36-10B-7, 36-10B-10, 36-10B-13, 36-10B-14, 36-29-3, 36-29-3.1, 36-29-7, 36-29-18, 36-29-19, 36-29-20, 36-29-21, 36-29-22, 36-29-25, 36-29-26, 36-29-

27, 36-31-5, 36-31-6, 36-31-9, 36-31-10, 36-31-14, 36-31-15, 36-31-16, 36-31-17, 36-31-18, 36-31-21, 36-31-22, 36-36-5, 36-36-6, 36-36-9, 36-36-13.

20:78:04:05. Status of complainant. The complainant is not a party to any contested case hearing resulting from the executive secretary's investigation of a complaint, although the complainant may be called as a witness in the hearing. The executive secretary shall notify a complainant of any public final agency action taken as a result of a complaint.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-3, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-18, 36-4-20.2, 36-4-20.7, 36-4-20.10, 36-4-27, 36-4-28, 36-4-29, 36-4-30, 36-4-31.6, 36-4-32, 36-4A-8, 36-4A-8.1, 36-4A-37, 36-4A-38, 36-4A-39, 36-4A-40, 36-4B-6, 36-4B-13, 36-4B-28, 36-4B-31, 36-4B-32, 36-4B-33, 36-9B-8, 36-10-27, 36-10-28, 36-10-29, 36-10-35.1, 36-10-35.2, 36-10-38, 36-10-39, 36-10-40, 36-10-41, 36-10-44, 36-10-45, 36-10-46, 36-10-49, 36-10B-6, 36-10B-7, 36-10B-10, 36-10B-13, 36-10B-14, 36-29-3, 36-29-3.1, 36-29-7, 36-29-18, 36-29-19, 36-29-20, 36-29-21, 36-29-22, 36-29-25, 36-29-26, 36-29-27, 36-31-5, 36-31-6, 36-31-9, 36-31-10, 36-31-14, 36-31-15, 36-31-16, 36-31-17, 36-31-18, 36-31-21, 36-31-22, 36-36-5, 36-36-6, 36-36-9, 36-36-13.

20:78:04:06. Effect of failure to renew during investigation. The holder of a license, permit, or certificate may choose not to renew the license, permit, or certificate after a complaint investigation has been initiated by the executive secretary. A failure to renew after investigation has been initiated shall be reported as "withdrawn under investigation" in the board's permanent

license files and in any national databases to which the board is required to report licensure action.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-3, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-18, 36-4-20.2, 36-4-20.7, 36-4-20.10, 36-4-27, 36-4-28, 36-4-29, 36-4-30, 36-4-31.6, 36-4-32, 36-4A-8, 36-4A-8.1, 36-4A-37, 36-4A-38, 36-4A-39, 36-4A-40, 36-4B-6, 36-4B-13, 36-4B-28, 36-4B-31, 36-4B-32, 36-4B-33, 36-9B-4, 36-9B-8, 36-10-27, 36-10-28, 36-10-29, 36-10-35.1, 36-10-35.2, 36-10-38, 36-10-39, 36-10-40, 36-10-41, 36-10-44, 36-10-45, 36-10-46, 36-10-49, 36-10B-6, 36-10B-7, 36-10B-10, 36-10B-13, 36-10B-14, 36-29-3, 36-29-3.1, 36-29-7, 36-29-18, 36-29-19, 36-29-20, 36-29-21, 36-29-22, 36-29-25, 36-29-26, 36-29-27, 36-31-5, 36-31-6, 36-31-9, 36-31-10, 36-31-14, 36-31-15, 36-31-16, 36-31-17, 36-31-18, 36-31-21, 36-31-22, 36-36-5, 36-36-6, 36-36-9, 36-36-13.

CHAPTER 20:78:05

CONTESTED CASE HEARING PROCEDURES

Section

- 20:78:05:01 Applicability.
- 20:78:05:02 Petitions for hearing.
- 20:78:05:03 Filing of petitions for hearing.
- 20:78:05:04 Scheduling of hearing.
- 20:78:05:05 Hearing procedure.

- 20:78:05:06 Final board decision.
- 20:78:05:07 Notice of decision.
- 20:78:05:08 Assessment of costs of disciplinary hearings.

20:78:05:01. Applicability. The following procedure applies to contested case proceedings for license, permit, or certificate applications and to disciplinary proceedings before the Board of Medical and Osteopathic Examiners.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-3, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-27, 36-4-28, 36-4-29, 36-4-30, 36-4-32, 36-4A-37, 36-4A-38, 36-4A-39, 36-4A-40, 36-4B-28, 36-4B-31, 36-4B-32, 36-4B-33, 36-9B-8 36-10-38, 36-10-39, 36-10-40, 36-10-41, 36-10-44, 36-10-45, 36-10-46, 36-10-49, 36-10B-13, 36-10B-14, 36-29-18, 36-29-19, 36-29-20, 36-29-21, 36-29-22, 36-29-25, 36-29-26, 36-29-27, 36-31-14, 36-31-15, 36-31-16, 36-31-17, 36-31-18, 36-31-21, 36-31-22, 36-36-6, 36-36-13.

20:78:05:02. Petitions for hearing. An applicant for a license, permit, or certificate issued by the board may file a petition for hearing at any time during the processing of an application. The executive secretary may file a petition for hearing to initiate a disciplinary proceeding against a licensee. A petition for hearing shall be signed by the petitioner and contain the following information: the name and address of the applicant or licensee, the basis for the request for hearing, recitation of the applicable statutes or regulations under which the petitioner is requesting board action, and the relief requested by the petitioner.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-3, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-31.6, 36-4A-39, 36-4B-32, 36-9B-8, 36-10-43, 36-10-45, 36-10-46, 36-29-19, 36-29-20, 36-29-21, 36-29-22, 36-31-15, 36-31-16, 36-36-13.

20:78:05:03. Filing of petitions for hearing. All petitions for hearing shall be filed with the executive secretary, who shall maintain the record of contested case proceedings held before the board.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-3, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-31.6, 36-4A-39, 36-4B-32, 36-9B-8, 36-10-43, 36-10-45, 36-10-46, 36-29-19, 36-29-20, 36-29-21, 36-29-22, 36-31-15, 36-31-16, 36-36-13.

20:78:05:04. Scheduling of hearing. Upon receipt of a petition for hearing, the board president may appoint an examiner to conduct the contested case hearing, or may schedule the contested case hearing before the board, as authorized by applicable statutes.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-3, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-31.6, 36-4A-39, 36-4B-32, 36-9B-8, 36-10-43, 36-10-45, 36-10-46, 36-29-19, 36-29-20, 36-29-21, 36-29-22, 36-31-15, 36-31-16, 36-36-13.

20:78:05:05. Hearing procedure. Contested case hearings shall be conducted in accordance with SDCL 1-26. The parties to a hearing are the executive secretary and the applicant or licensee. A board member who has participated in any investigation of the matter before the board shall disqualify himself from all deliberations and decisions.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-3, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-31.6, 36-4A-39, 36-4B-32, 36-9B-8, 36-10-43, 36-10-45, 36-10-46, 36-29-19, 36-29-20, 36-29-21, 36-29-22, 36-31-15, 36-31-16, 36-36-13.

20:78:05:06. Final board decision. If the board hears the proceeding itself, it shall issue a final decision and require the parties to submit proposed findings of fact and conclusions of law for consideration at the board's next meeting. If a hearing examiner hears the proceeding, the examiner shall issue a proposed decision including findings of fact and conclusions of law. The examiner shall serve the proposed decision upon the board and the parties. The board may request that the parties appear before it to present oral argument and objections to the examiner's proposed decision. The board shall issue a final decision and accept, reject, or modify the findings, conclusions, and decisions of the examiner.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-3, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-31.6, 36-4A-39, 36-4B-32, 36-9B-8 36-10-43, 36-10-45, 36-10-46, 36-29-19, 36-29-20, 36-29-21, 36-29-22, 36-31-15, 36-31-16, 36-36-13.

20:78:05:07. Notice of decision. The board shall issue a notice of decision, accompanied by the final board decision and findings of fact and conclusions of law, to the applicant or licensee and executive secretary.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-3, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-31.6, 36-4A-39, 36-4B-32, 36-9B-8, 36-10-43, 36-10-45, 36-10-46, 36-29-19, 36-29-20, 36-29-21, 36-29-22, 36-31-15, 36-31-16, 36-36-13.

20:78:05:08. Assessment of costs of disciplinary hearings. The board may assess its costs associated with a contested case proceeding resulting in disciplinary action, against a licensee upon motion by the executive secretary. If requesting the assessment of costs, the executive secretary shall present a statement of costs to the board or hearing examiner at the time it submits proposed findings of fact and conclusions of law.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-3, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 1-26-29.1.

ARTICLE 20:84

MEDICAL ASSISTANTS

Chapter

20:84:01 Definitions

20:84:02 Contents of application.

20:84:03 Qualifications of applicants.

20:84:04 Approval of schools. *Approved education programs.*

20:84:05 Renewal of registration.

20:84:01 Definitions

36-9B

20:84:01:01. Definitions. Terms defined in SDCL chapter ~~36-9A~~ have the same meaning when used in this article. In addition, terms used in this article mean:

- (1) “Boards,” the South Dakota Board of Nursing and the South Dakota Board of Medical and Osteopathic Examiners;
- (2) “Direct supervision,” the physician, physician assistant, certified nurse practitioner, or certified nurse midwife are physically present or available by means of electronic communication.

General Authority: SDCL 36-9B-7

Law Implemented: SDCL 36-9B-1; 36-9B-4

20:84:02 Contents of application.

20:84:02:01. Contents of application. An applicant for medical assistant registration shall apply for registration on a form approved by the boards.

General Authority: SDCL 36-9B-7

Law Implemented: SDCL 36-9B-4

20:84:02:02. Medical assistant supervision. A registered medical assistant shall submit with the application a supervision registration form. The supervision registration form shall be submitted on a form approved by the boards.

General Authority: SDCL 36-9B-7

Law Implemented: SDCL 36-9B-1; 36-9B-2

20:84:03 Qualifications of applicants

20:84:03:01. Qualifications of applicants. ^{An applicant} ~~Applicants~~ for registration shall provide:

- (1) Proof of graduation from an accredited medical assistant program approved by the
b
Boards;
- (2) Proof of good moral character;
- (3) Proof the applicant has graduated from high school or passed a standard equivalency
test;
- (4) Documentation showing the applicant is at least 18 years of age; ^{and}
- (5) Proof of having passed a national certifying exam approved by the board ^{boards.}

General Authority: SDCL 36-9B-7

Law Implemented: SDCL 36-9B-4

20:84:04 Approved education programs.
Approval of schools

20:84:04:01. Approval of schools. Any applicant
Applicants for registration shall have graduated from
a medical assistant program that is approved by the boards and accredited by the Commission on
Accreditation of Allied Health Education Programs (CAAHEP), or a similar accrediting
institution approved by the United States Department of Education. Approved programs must
provide classroom, laboratory, and clinical learning experiences that provide for student
attainment of entry level competence as a registered medical assistant.

General Authority: SDCL 36-9B-7

Law Implemented: SDCL 36-9B-5

20:84:05 Registration renewal

20:84:05:01. Medical assistant registration renewal. A registered medical assistant shall renew the registration biennially on an application form approved by the ^bBoards. The application shall be accompanied by the registration renewal fee. ^{If a} A registered medical assistant ~~that~~ does not submit ^a ~~their~~ registration renewal form by December 31 of the year of ^{the registration's} expiration, ~~the~~ ^{the} registration ~~shall have their registration lapse~~ ^{is lapsed.}

General Authority: SDCL 36-9B-7

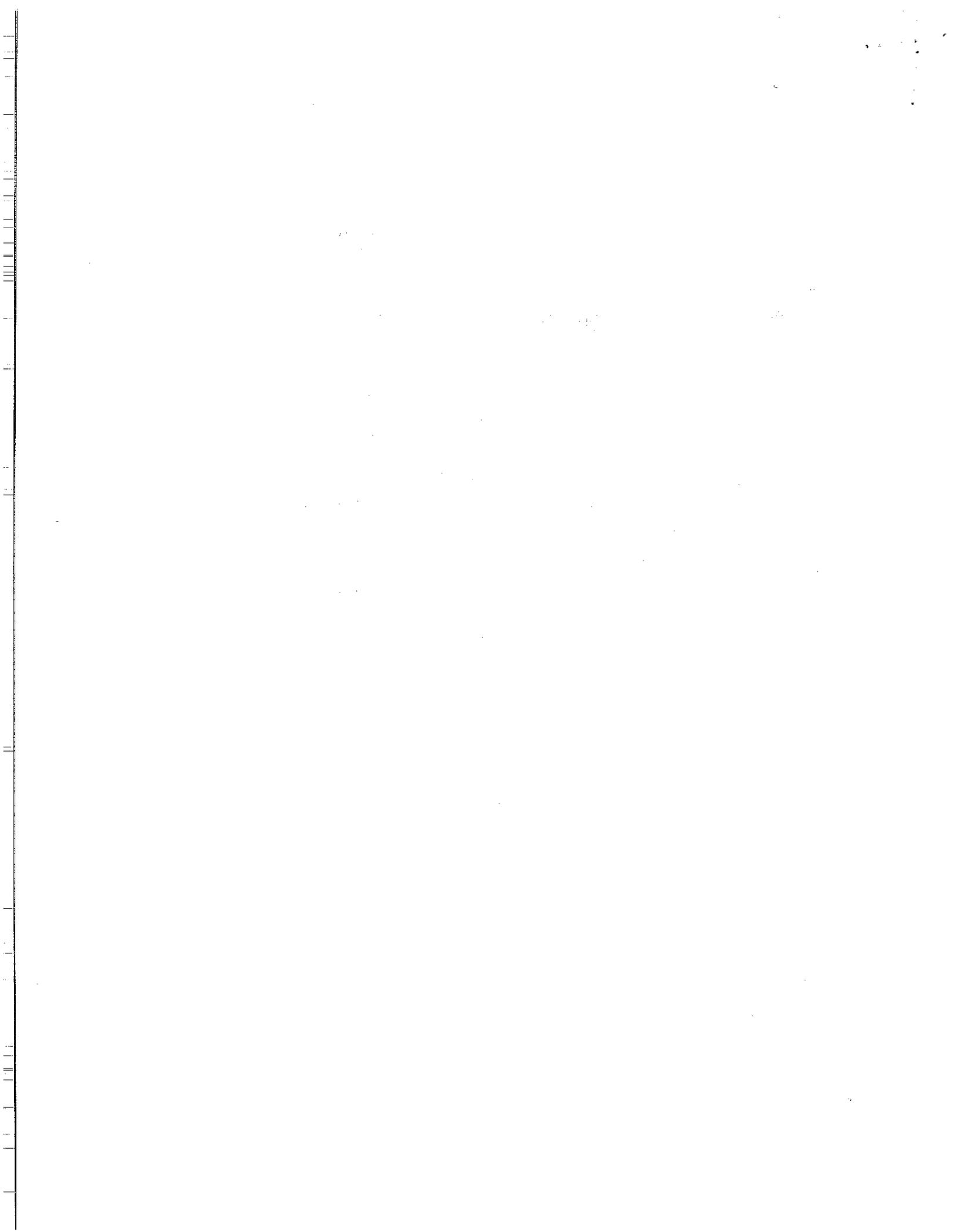
Law Implemented: SDCL 36-9B-4

Reinstatement of lapsed registrations.

20:84:05:02. Lapsed registration. Failure to renew the registration constitutes a lapse of such registration. ^{Any} ~~However, any~~ person whose registration has lapsed may have it reinstated by making written application on a form approved by the boards and ^{paying} ~~payment of~~ the biennial renewal fee.

General Authority: SDCL 36-9B-7

Law Implemented: SDCL 36-9B-4



SOUTH DAKOTA

BOARD OF MEDICAL
AND OSTEOPATHIC
EXAMINERS

SDBMOE

101 N MAIN AVE, SUITE 301

SIOUX FALLS, SD 57104

SDBMOE@STATE.SD.US

P 605-367-7781 F 605-367-7786

HTTP://WWW.SDBMOE.GOV



South Dakota Board of Medical and Osteopathic Examiners
101 N Main Ave, Suite 301
Sioux Falls, South Dakota 57104

August 9, 2016

Sent electronic mail only

Aberdeen News

americannews@aberdeennews.com

Attention: Nancy

Aberdeen, South Dakota

To whom it may concern:

Please publish the enclosed notices in your paper for one issue before August 14, 2016.

Please include your Affidavit of Publication with your invoice.

Sincerely,

Tyler Klatt

Tyler Klatt
Board Staff

Enclosure

SOUTH DAKOTA

BOARD OF MEDICAL
AND OSTEOPATHIC
EXAMINERS

SDBMOE
101 N MAIN AVE, SUITE 301
SIOUX FALLS, SD 57104
SDBMOE@STATE.SD.US
P 605-367-7781 F 605-367-7786
HTTP://WWW.SDBMOE.GOV



South Dakota Board of Medical and Osteopathic Examiners
101 N Main Ave, Suite 301
Sioux Falls, South Dakota 57104

August 9, 2016

Sent electronic mail only

Argus Leader
allegals@argusleader.com
Attention: Sara
Sioux Falls, South Dakota

To whom it may concern:

Please publish the enclosed notices in your paper for one issue before August 14, 2016.

Please include your Affidavit of Publication with your invoice.

Sincerely,

Tyler Klatt

Tyler Klatt
Board Staff

Enclosure

SOUTH DAKOTA

BOARD OF MEDICAL
AND OSTEOPATHIC
EXAMINERS

SDBMOE

101 N MAIN AVE, SUITE 301

SIOUX FALLS, SD 57104

SDBMOE@STATE.SD.US

P 605-367-7781 F 605-367-7786

HTTP://WWW.SDBMOE.GOV



South Dakota Board of Medical and Osteopathic Examiners
101 N Main Ave, Suite 301
Sioux Falls, South Dakota 57104

August 9, 2016

Sent electronic mail only

Rapid City Journal
legals@rapidcityjournal.com
Rapid City, South Dakota

To whom it may concern:

Please publish the enclosed notices in your paper for one issue before August 14, 2016.

Please include your Affidavit of Publication with your invoice.

Sincerely,

Tyler Klatt

Tyler Klatt
Board Staff

Enclosure

SENATOR GARY CAMMACK, CHAIR | REPRESENTATIVE DEAN WINK, VICE CHAIR
JASON HANCOCK, DIRECTOR | SUE CICHOS, DEPUTY DIRECTOR | DOUG DECKER, CODE COUNSEL
500 EAST CAPITOL AVENUE, PIERRE, SD 57501 | 605-773-3251 | LEGIS.SD.GOV



August 15, 2016

Mr. Tyler Klatt
SD Board of Medical and Osteopathic Examiners
101 N. Main Ave., Ste. 301
Sioux Falls, SD 57104

Dear Mr. Klatt:

The South Dakota Board of Medical and Osteopathic Examiners has proposed the amendment and adoption of ARSD 20:62:01, 20:62:02, 20:62:03, 20:78, and 20:84. We have reviewed the proposed rules, scheduled for hearing on September 8, 2016, and approve the rules for legality with the following comment:

- It is preferred that a singular subject be used instead of a plural subject when drafting rules and legislation.

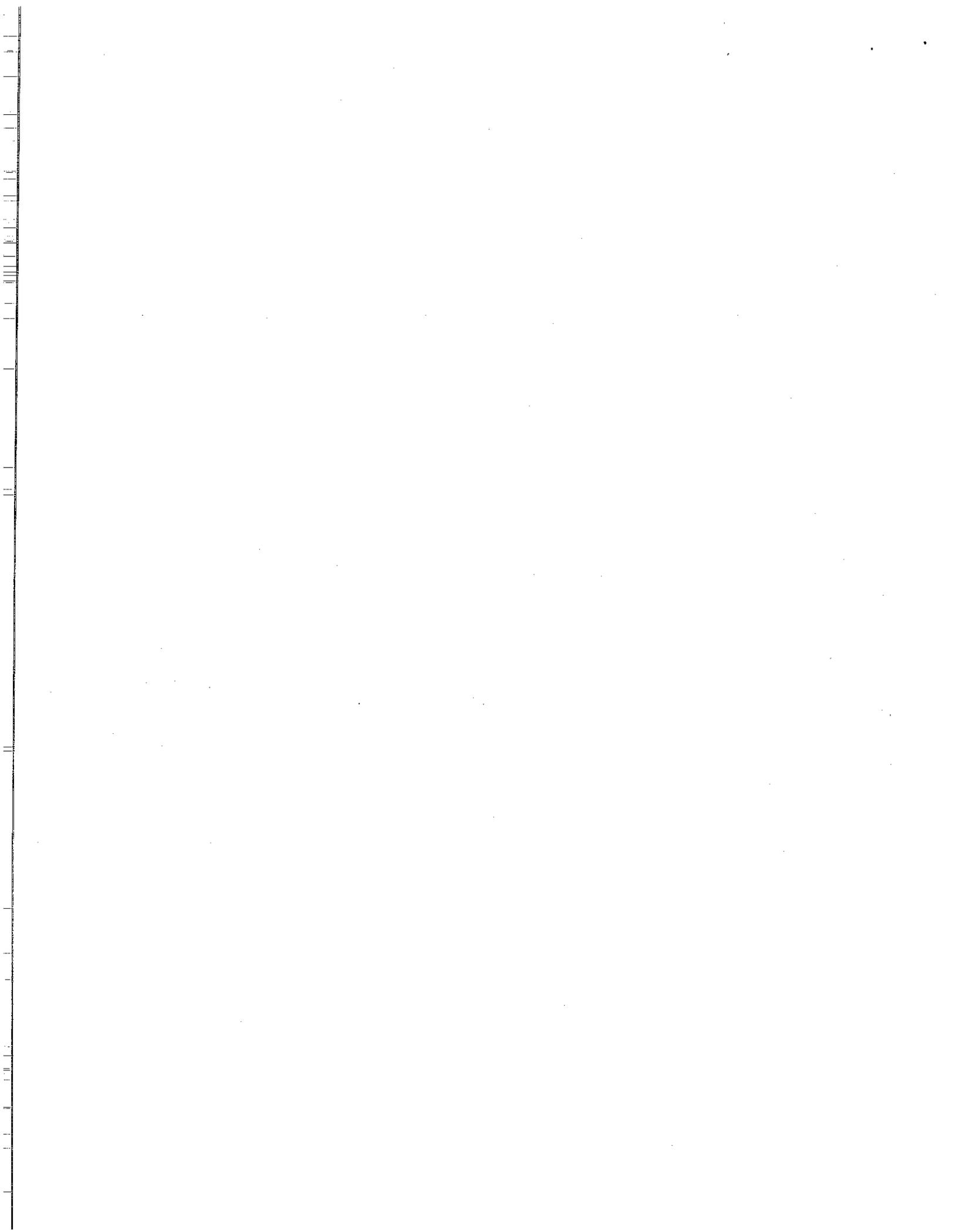
This letter is based on a preliminary review of your rules. Attached are your rules edited for form and style pursuant to SDCL 1-26-6.5, the Directions for Submitting the Final Draft of the Rules, and the Interim Rules Review Committee Recommended Rules Presentation Format. If you have any questions, please do not hesitate to call me or the staff member who has reviewed your rules.

Sincerely yours,

A handwritten signature in cursive script that reads "Doug".

Doug Decker
Code Counsel

DD:CVC



Form + Style

ARTICLE 20:62

NURSE PRACTITIONERS AND MIDWIVES

Chapter

- 20:62:01 General rules affecting boards.
- 20:62:02 Licensure and licenses.
- 20:62:03 Collaborative practice.
- 20:62:04 Prescriptive authority, Repealed.
- 20:62:05 Declaratory rulings.
- 20:62:06 Disciplinary proceedings.

CHAPTER 20:62:01

GENERAL RULES AFFECTING BOARDS

Section

- 20:62:01:01 Notice to and filing with boards.
- 20:62:01:02 Annual meetings.
- 20:62:01:03 Special meetings.
- 20:62:01:04 Notice of meetings.
- 20:62:01:05 Presiding officer and secretary.
- 20:62:01:06 Duties of presiding officer.
- 20:62:01:07 Duties of secretary.
- 20:62:01:08 Vacancy in offices.
- 20:62:01:09 Absence of officers from meetings.
- 20:62:01:10 Action by boards.
- 20:62:01:11 Fees.
- 20:62:01:12 Handling of finances.

20:62:01:13 Administrative duties.

20:62:01:02. Annual meetings. An annual meeting of the boards shall be held each year ~~in September~~ at a place designated by the presiding officer of the boards.

Source: 9 SDR 126, effective April 13, 1983; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 22 SDR 179, effective June 26, 1996.

General Authority: SDCL 36-9A-41.

Law Implemented: SDCL 36-9A-5.

CHAPTER 20:62:02

LICENSURE AND LICENSES

Section

- 20:62:02:01 Repealed.
- 20:62:02:01.01 Approved education programs.
- 20:62:02:02 Application for licensure.
- 20:62:02:03 Temporary permit prior to licensure.
- 20:62:02:04 ~~Examination.~~ Repealed.
- 20:62:02:05 Expiration date of licenses.
- 20:62:02:06 Renewal of license.
- 20:62:02:07 Reinstatement of lapsed licenses.
- 20:62:02:08 Inactive status.
- 20:62:02:09 Reactivation of inactive license.

20:62:02:02. Application for licensure. An applicant for licensure as a nurse practitioner or nurse midwife shall file with the executive ~~secretary~~ director of the Board of Nursing an application containing the following information:

(1) Evidence that the applicant has completed an approved educational program that meets the requirements of § 20:62:02:01.01;

(2) Evidence that the applicant has passed ~~the certification examination listed in § 20:62:02:04~~ a nationally recognized certification examination approved by the boards which is specific to the applicant's ~~area of practice~~ advanced practice registered nurse role and educational preparation, and maintains current certification; and

(3) The fee required by subdivision 20:62:01:11(1).

Source: 9 SDR 126, effective April 13, 1983; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 22 SDR 179, effective June 26, 1996; 26 SDR 67, effective November 21, 1999.

General Authority: SDCL 36-9A-41.

Law Implemented: SDCL 36-9A-4, 36-9A-9, 36-9A-26.

20:62:02:04. Examination. ~~Each applicant must pass one of the standardized qualifying certification examinations prepared by the organizations listed below which is specific to the applicant's area of practice:~~

~~—— (1) American College of Nurse-Midwives, 818 Connecticut Avenue N.W., Suite 900, Washington, DC 20006;~~

~~—— (2) American Nurses Credentialing Center, 600 Maryland Avenue S.W., Suite 100 West, Washington, DC 20024-2571;~~

~~—— (3) National Certification Board of Pediatric Nurse Practitioners and Nurses, 800 South Frederick Avenue, Suite 104, Gaithersburg, MD 20877-4150;~~

~~(4) National Certification Corporation for the Obstetric, Gynecologic and Neonatal Nursing Specialties, Box 11082, Chicago, IL 60611-0082.~~

~~(5) American Academy of Nurse Practitioners Certification Program, Capitol Station, LBJ Building, P.O. Box 12926, Austin, TX 78711-2926. Repealed.~~

Source: 9 SDR 126, effective April 13, 1983; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 22 SDR 179, effective June 26, 1996; 23 SDR 118, effective January 28, 1997; 26 SDR 67, effective November 21, 1999.

~~**General Authority:** SDCL 36-9A-41.~~

~~**Law Implemented:** SDCL 36-9A-4.~~

20:62:02:06. Renewal of license. Licensure as a nurse practitioner or nurse midwife must be renewed biennially according to the expiration dates provided in § 20:62:02:05. The licensee shall complete the application for renewal as provided by the boards, including:

(1) Written evidence of current certification ~~with one of the national organizations listed in § 20:62:02:04;~~ as set forth ⁱⁿ ~~by~~ subdivision § 20:62:02:02(2);

(2) An affidavit that the licensee has committed no act of misconduct as set forth by SDCL 36-9A-29 and 36-9A-30; and

(3) The fees required by subdivision 20:62:01:11(3).

The title "Certified Nurse Practitioner" or "Certified Nurse Midwife" and the specialty area of practice for the CNP shall be designated on the current renewal certificate.

Any person licensed pursuant to SDCL 36-9A-4 before June 26, 1996, is exempt from subdivision (1) of this section.

Source: 9 SDR 126, effective April 13, 1983; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 22 SDR 179, effective June 26, 1996; 23 SDR 118, effective January 28, 1997; 26 SDR 67, effective November 21, 1999; 28 SDR 92, effective December 31, 2001.

General Authority: SDCL 36-9A-41.

Law Implemented: SDCL 36-9A-22, 36-9A-23, 36-9A-26, 36-9A-29, 36-9A-30, 36-9A-35, 36-9A-36.

20:62:02:07. Reinstatement of lapsed licenses. A licensee who fails to renew the license may be reinstated by filing a written explanation for failure to renew with the Board of Nursing. The applicant for reinstatement of licensure must provide written evidence of current certification ~~with one of the national organizations listed in § 20:62:02:04 as set forth by~~ subdivision § 20:62:02:02(2). The licensee must submit an affidavit that the applicant has committed no act of misconduct as set forth by SDCL 36-9A-29 and 36-9A-30, and the fees required by subdivision 20:62:01:11(4). If the licensee intends to perform the overlapping scope of advanced practice nursing and medical functions set forth in SDCL 36-9A-12 and 36-9A-13, the applicant must also submit a collaborative agreement pursuant to § 20:62:03:06.

Source: 9 SDR 126, effective April 13, 1983; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 22 SDR 179, effective June 26, 1996; 26 SDR 67, effective November 21, 1999.

General Authority: SDCL 36-9A-41.

Law Implemented: SDCL 36-9A-15, 36-9A-24, 36-9A-26, 36-9A-29, 36-9A-30, 36-9A-35, 36-9A-36.

20:62:02:09. Reactivation of inactive license. The holder of an inactive license may reactivate the license by filing an application with the Board of Nursing. The applicant must submit written evidence of current certification ~~with one of the national organizations listed in § 20:62:02:04 as set forth~~ ⁱⁿ subdivision § 20:62:02:02(2), an affidavit that the applicant has committed no act of misconduct as set forth in SDCL 36-9A-29 and 36-9A-30, the renewal fee required by subdivision 20:62:01:11(3) for the current biennial period. If the licensee intends to

perform the overlapping scope of advanced practice nursing and medical functions set forth in SDCL 36-9A-12 and 36-9A-13, the applicant must also submit a collaborative agreement pursuant to § 20:62:03:06.

Source: 9 SDR 126, effective April 13, 1983; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 22 SDR 179, effective June 26, 1996; 26 SDR 67, effective November 21, 1999.

General Authority: SDCL 36-9A-41.

Law Implemented: SDCL 36-9A-15, 36-9A-25, 36-9A-26, 36-9A-29, 36-9A-30, 36-9A-35, 36-9A-36.

CHAPTER 20:62:03

COLLABORATIVE PRACTICE

Section

20:62:03:01 and 20:62:03:02 Repealed.

20:62:03:03 Collaboration with a licensed physician or physicians.

20:62:03:04 Direct personal contact.

20:62:03:05 ~~Collaboration—Separate practice location.~~ Repealed.

20:62:03:06 Identification of secondary physician.

20:62:03:07 Temporary collaborating physician.

20:62:03:08 Collaborative agreement.

20:62:03:03. Collaboration with a licensed physician or physicians. A nurse practitioner or nurse midwife may perform the overlapping scope of advanced practice nursing and medical functions defined in SDCL 36-9A-12 and 36-9A-13, in collaboration with a physician or physicians licensed under SDCL chapter 36-4. Collaboration must occur by direct personal contact, ~~with each collaborating physician must occur no less than twice each month~~

~~unless it is established in the collaborative agreement that one of the twice monthly meetings may be held by telecommunication. Collaboration with each collaborating physician shall occur at least once per month by direct personal contact.~~

Source: 26 SDR 67, effective November 21, 1999; 35 SDR 166, effective December 26, 2008.

General Authority: SDCL 36-9A-41.

Law Implemented: SDCL 36-9A-12, 36-9A-13, 36-9A-15, 36-9A-17.

20:62:03:04. Direct personal contact. For purposes of this chapter, the term, direct personal contact, means that both the collaborating physician and the nurse practitioner or nurse midwife are physically present or available by means of electronic communication on-site and available for the purposes of collaboration. ~~When the collaborating physician is not in direct personal contact with the nurse practitioner or nurse midwife, the physician must be available by telecommunication. If the boards consider additional direct personal contact necessary for a nurse practitioner or nurse midwife, they shall set the terms of that additional collaboration and require inclusion of those terms in that nurse practitioner's or midwife's collaborative agreement as a condition for its approval.~~

Source: 26 SDR 67, effective November 21, 1999.

General Authority: SDCL 36-9A-41.

Law Implemented: SDCL 36-9A-15, 36-9A-17.

20:62:03:05. Collaboration – Separate practice location. ~~In addition to the required two meetings per month, the collaborating physician must be physically present on-site every ninety~~

~~days at each practice location. This requirement does not apply to locations where health care services are not routine to the setting, such as patient homes and school health screening events.~~

Repealed.

Source: 26 SDR 67, effective November 21, 1999; 35 SDR 312, effective July 6, 2009.

General Authority: ~~SDCL 36-9A-41.~~

Law Implemented: ~~SDCL 36-9A-15, 36-9A-17.~~

ARTICLE 20:78

BOARD OF MEDICAL AND OSTEOPATHIC EXAMINERS

Chapter

- 20:78:01 Operation of board.
- 20:78:02 Declaratory rulings.
- 20:78:03 Application procedures.
- 20:78:04 Complaint procedures.
- 20:78:05 Contested case hearing procedures.
- 20:78:06 Opioid overdose prevention.

CHAPTER 20:78:03

APPLICATION PROCEDURES

Section

- 20:78:03:01 Applicability.
- 20:78:03:02 Initial review.
- 20:78:03:03 Incomplete application.
- 20:78:03:04 Primary source documentation.
- 20:78:03:05 Summary action on application.
- 20:78:03:06 Investigation of application.
- 20:78:03:07 Application withdrawn during investigation.
- 20:78:03:08 Executive secretary determinations.
- 20:78:03:09 Provisional licenses, permits or certificates issued pursuant to settlement agreement.
- 20:78:03:10 Renewals and reinstatement.

20:78:03.01. Applicability. This chapter applies to the licenses, certificates, and permits issued by the Board of Medical and Osteopathic Examiners under SDCL 36-4 (Physicians and Surgeons), 36-4A (Physician Assistants), 36-4B (Advanced Life Support Personnel), 36-9B (Medical Assistants), 36-10 (Physical Therapists), 36-10B (Dietetics and Nutrition), 36-29 (Athletic Trainers), 36-31 (Occupational Therapists), and 36-36 (Genetic Counselors).

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-7, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-20, 36-4-20.2, 36-4-20.9, 36-4-20.10, 36-4-20.11, 36-4-20.13, 36-4-24.1, 36-4-31.4, 36-4A-1, 36-4A-8, 36-4A-8.1, 36-4B-1, 36-4B-29, 36-9B-1, 36-10B-1, 36-29-1, 36-31-1, 36-36-1.

20:78:03.02. Initial review. The executive secretary shall review all license, permit, and certificate applications subject to this chapter to determine if the applicant has submitted all required documents, information, fees, and other materials. The executive secretary shall notify the applicant of any materials missing from the application. The applicant has 120 days to provide the information intended to complete the application.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-7, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-11, 36-4-17, 36-4-20.2, 36-4-20.7, 36-4-20.10 36-4A-8, 36-4A-8.1, 36-4B-6, 36-4B-13, 36-9B-4, 36-10-27, 36-10-28, 36-10-35.1, 36-10B-6, 36-10B-7, 36-10B-10, 36-29-3, 36-29-3.1, 36-31-5, 36-31-6, 36-31-9, 36-36-5, 36-36-9.

20:78:03.03. Incomplete application. If an applicant fails to submit required materials within 120 days of notice that materials are missing from the application, the executive secretary shall designate the application as withdrawn, or, upon receiving a written request showing good cause, may allow an applicant additional time to complete the application. The executive secretary shall notify the applicant if an application is designated as withdrawn.

The executive secretary's designation of an application as withdrawn may be appealed to the board by written notice filed with the executive secretary within ten days after notice of withdrawal by the executive secretary. If no timely appeal to the board is filed, the executive secretary's designation of an application as withdrawn remains.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-7, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-11, 36-4-17, 36-4-20.2, 36-4-20.7, 36-4-20.10, 36-4A-8, 36-4A-8.1, 36-4B-6, 36-4B-13, 36-9B-4, 36-10-27, 36-10-28, 36-10-35.1, 36-10B-6, 36-10B-7, 36-10B-10, 36-29-3, 36-29-3.1, 36-31-5, 36-31-6, 36-31-9, 36-36-5, 36-36-9.

20:78:03.04. Primary source documentation. The executive secretary shall initiate processing of complete applications after receiving documentation from primary sources to verify that the applicant has met the education, examination, training, or certification requirements of applicable statutes and regulations. The executive secretary shall notify the applicant when all primary source documentation has been received.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-7, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-11, 36-4-17, 36-4-20.2, 36-4-20.7, 36-4-20.10, 36-4A-8, 36-4A-8.1, 36-4B-6, 36-4B-13, 36-9B-4, 36-10-27, 36-10-28, 36-10-35.1, 36-10B-6, 36-10B-7, 36-10B-10, 36-29-3, 36-29-3.1, 36-31-5, 36-31-6, 36-31-9, 36-36-5, 36-36-9.

20:78:03:05. Summary action on application. The executive secretary may summarily deny an application based upon primary source documentation that demonstrates that the applicant has not met the education, examination, training, or certification requirements of applicable statutes and regulations. The executive secretary shall notify the applicant in writing of any summary action taken by the executive secretary. The executive secretary's summary action may be appealed to the board by written notice filed with the executive secretary within ten days after notice of the action taken by the executive secretary. If no timely appeal is filed, the executive secretary's action shall be deemed final board action.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-7, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-11, 36-4-17, 36-4-20.2, 36-4-20.7, 36-4-20.10, 36-4A-8, 36-4A-8.1, 36-4B-6, 36-4B-13, 36-9B-4, 36-10-27, 36-10-28, 36-10-35.1, 36-10B-6, 36-10B-7, 36-10B-10, 36-29-3, 36-29-3.1, 36-31-5, 36-31-6, 36-31-9, 36-36-5, 36-36-9.

20:78:03:06. Investigation of application. The executive secretary may determine that the information disclosed in an application or primary source documentation requires investigation to determine whether the applicant meets the qualifications or standards for issuance of a license. The executive secretary shall conduct that investigation, and may appoint a board member to assist in the investigation. The executive secretary shall notify the applicant of

any issues requiring investigation. An applicant may meet with the executive secretary and appointed board member to discuss the issues under investigation.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-7, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-11, 36-4-17, 36-4-20.2, 36-4-20.7, 36-4-20.10, 36-4A-8, 36-4A-8.1, 36-4B-6, 36-4B-13, 36-9B-4, 36-10-27, 36-10-28, 36-10-35.1, 36-10-49, 36-10B-6, 36-10B-7, 36-10B-10, 36-29-3, 36-29-3.1, 36-39-26, 36-31-5, 36-31-6, 36-31-9, 36-31-22, 36-36-5, 36-36-9.

20:78:03:07. Application withdrawn during investigation. An applicant may withdraw an application after an investigation has been initiated by the executive secretary. An application withdrawn after investigation has been initiated shall be reported as "withdrawn under investigation" in the board's permanent license files and in any national databases to which the board is required to report licensure action.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-7, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-11, 36-4-17, 36-4-20.2, 36-4-20.7, 36-4-20.10, 36-4A-8, 36-4A-8.1, 36-4B-6, 36-4B-13, 36-9B-4, 36-10-27, 36-10-28, 36-10-35.1, 36-10-49, 36-10B-6, 36-10B-7, 36-10B-10, 36-29-3, 36-29-3.1, 36-29-26, 36-31-5, 36-31-6, 36-31-9, 36-31-22, 36-36-5, 36-36-9.

20:78:03:08. Executive secretary determinations. Upon completion of the review of an application and any associated investigation, the executive secretary may:

(1) Summarily issue a license, permit, or certificate if the applicant meets the standards and requirements for licensure established by the applicable statutes or regulations;

(2) Recommend the board issue the license, permit, or certificate upon specified terms and conditions; or

(3) Recommend the board deny the license, permit, or certification application.

If the executive secretary recommends issuance of a license, permit, or certificate under specified terms and conditions, or recommends denial of a license, permit, or certificate, the executive secretary shall notify the applicant of the right to contest the executive secretary's recommendation. If contested by the applicant, the executive secretary shall issue a petition for hearing that sets out the recommendation and the reasons for the recommendation, and initiates a contested case hearing. A copy of the petition for hearing shall be sent to the applicant along with a statement that the applicant is entitled to due process rights, including the right to notice and an opportunity to be heard and to be represented by counsel. The executive secretary and applicant may enter into a settlement agreement concerning the recommendation to be made to the board on the application.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-7, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-18, 36-4-20.2, 36-4-20.7, 36-4-20.10, 36-4-28, 36-4-30, 36-4-31.6, 36-4A-8, 36-4A-8.1, 36-4A-38, 36-4A-39, 36-4B-6, 36-4B-13, 36-4B-31, 36-9B-4, 36-9B-8, 36-10-27, 36-10-28, 36-10-29, 36-10-35.1, 36-10-35.2, 36-10-38, 36-10-40, 36-10-41, 36-10B-3, 36-10B-6, 36-10B-7, 36-10B-10, 36-29-3, 36-29-3.1, 36-29-7, 36-29-22, 36-31-5, 36-31-6, 36-31-9, 36-31-10, 36-31-18, 36-36-5, 36-36-6, 36-36-9, 36-36-13.

20:78:03:09. Provisional licenses, permits, or certificates issued pursuant to settlement agreement. The executive secretary may enter into a settlement agreement with an applicant that provides for the issuance of a provisional license, permit, or certificate by the executive secretary. A provisional license, permit, or certificate issued by the executive secretary is valid only until the board takes final agency action on the settlement agreement and notice is provided to the applicant. Board approval of the settlement agreement ratifies the action of the executive secretary and the license, permit, or certificate is valid for its term under any specified terms and conditions. Board disapproval of a settlement agreement voids the provisional license, permit, or certificate upon notice to the applicant. If the board disapproves a settlement agreement, the board shall schedule a contested case hearing for final agency action on the application and require the executive secretary to file a petition for hearing.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-7, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-18, 36-4-20.2, 36-4-20.7, 36-4-20.10, 36-4-28, 36-4-30, 36-4-31.6, 36-4A-8, 36-4A-8.1, 36-4A-38, 36-4A-39, 36-4B-6, 36-4B-13, 36-4B-31, 36-9B-4, 36-9B-8, 36-10-27, 36-10-28, 36-10-29, 36-10-35.1, 36-10-35.2, 36-10-38, 36-10-40, 36-10-41, 36-10B-3, 36-10B-6, 36-10B-7, 36-10B-10, 36-29-3, 36-29-3.1, 36-29-7, 36-29-22, 36-31-5, 36-31-6, 36-31-9, 36-31-10, 36-31-18, 36-36-5, 36-36-9, 36-36-13.

20:78:03:10. Renewals and reinstatement. Renewal and reinstatement applications are subject to the same process as original licenses.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-7, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-11, 36-4-17, 36-4-20.2, 36-4-20.7, 36-4-20.10, 36-4-20.12, 36-4-24.1, 36-4-24.2, 36-4A-8, 36-4A-8.1, 36-4A-31, 36-4A-32, 36-4A-33, 36-4B-6, 36-4B-13, 36-4B-27, 36-4B-28, 36-9B-4, 36-10-27, 36-10-28, 36-10-33, 36-10-35.1, 36-10B-3, 36-10B-6, 36-10B-7, 36-10B-9, 36-10B-10, 36-29-3, 36-29-3.1, 36-29-11, 36-29-15, 36-31-5, 36-31-6, 36-31-9, 36-31-11, 36-31-19, 36-36-5, 36-36-9, 36-36-11, 36-36-14.

CHAPTER 20:78:04

COMPLAINT PROCEDURES

Section

- 20:78:04:01 Applicability.
- 20:78:04:02 Complaints.
- 20:78:04:03 Investigations.
- 20:78:04:04 Completion of complaint investigation.
- 20:78:04:05 Status of complainant.
- 20:78:04:06 Effect of failure to renew during investigation.

20:78:04:01. Applicability. The following procedure applies to complaints about holders of the licenses, permits, or certificates regulated by the Board of Medical and Osteopathic Examiners.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-3, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-27, 36-4-28, 36-4-29, 36-4-30, 36-4-32, 36-4A-37, 36-4A-38, 36-4A-39, 36-4A-40, 36-4B-28, 36-4B-31, 36-4B-32, 36-4B-33, 36-9B-8, 36-10-38, 36-10-39, 36-10-40, 36-10-41, 36-10-44, 36-10-45, 36-10-46, 36-10-49, 36-10B-13, 36-10B-14, 36-29-18, 36-29-19, 36-29-20, 36-29-21, 36-29-22, 36-29-25, 36-29-26, 36-29-27, 36-31-14, 36-31-15, 36-31-16, 36-31-17, 36-31-18, 36-31-21, 36-31-22, 36-36-6, 36-36-13.

20:78:04:02. Complaints. The executive secretary may initiate an investigation based on a written complaint. Any person filing a complaint shall submit the complaint in writing to the executive secretary. A complaint is not a public record. The executive secretary shall dismiss any complaint that concerns matters over which the board does not have jurisdiction, and shall notify the complainant of that action. The executive secretary may also initiate an investigation upon reasonable suspicion that a licensee is in violation of any applicable standard for professional conduct.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-3, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-27, 36-4-28, 36-4-29, 36-4-30, 36-4-32, 36-4A-37, 36-4A-38, 36-4A-39, 36-4A-40, 36-4B-28, 36-4B-31, 36-4B-32, 36-4B-33, 36-9B-8, 36-10-38, 36-10-39, 36-10-40, 36-10-41, 36-10-44, 36-10-45, 36-10-46, 36-10-49, 36-10B-13, 36-10B-14, 36-29-18, 36-29-19, 36-29-20, 36-29-21, 36-29-22, 36-29-25, 36-29-26, 36-29-27, 36-31-14, 36-31-15, 36-31-16, 36-31-17, 36-31-18, 36-31-21, 36-31-22, 36-36-6, 36-36-13.

20:78:04:03. Investigations. The executive secretary shall initiate investigation of a complaint by notifying the license, permit, or certificate holder of the complaint and obtaining a response to the complaint. If the executive secretary determines that the complaint concerns compliance with licensing standards and requirements, the executive shall investigate the complaint. The notice shall be in writing and shall include a statement that the licensure or licensee is entitled to due process rights, including the right to notice and an opportunity to be heard and to be represented by counsel. The executive secretary may appoint a board member to assist in the investigation.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-3, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-27, 36-4-28, 36-4-29, 36-4-30, 36-4-32, 36-4A-37, 36-4A-38, 36-4A-39, 36-4A-40, 36-4B-28, 36-4B-31, 36-4B-32, 36-4B-33, 36-9B-8, 36-10-38, 36-10-39, 36-10-40, 36-10-41, 36-10-44, 36-10-45, 36-10-46, 36-10-49, 36-10B-13, 36-10B-14, 36-29-18, 36-29-19, 36-29-20, 36-29-21, 36-29-22, 36-29-25, 36-29-26, 36-29-27, 36-31-14, 36-31-15, 36-31-16, 36-31-17, 36-31-18, 36-31-21, 36-31-22, 36-36-6, 36-36-13.

20:78:04:04. Completion of complaint investigation. Upon completion of a complaint investigation, the executive secretary may:

(1) Dismiss the complaint as unsubstantiated or requiring no further action. Dismissal of a complaint is not a public record;

- (2) Issue a letter of concern, which shall be placed in the licensee's permanent records. A letter of concern is not a public record;
- (3) Recommend the board issue the licensee a public reprimand;
- (4) Recommend the board re-open and modify the license to include compliance with specified terms and conditions;
- (5) Recommend the board suspend or revoke the license.

If the executive secretary recommends issuance of a public reprimand, re-opening and modification, or suspension or revocation of the license, permit, or certificate held by the licensee, the executive secretary shall notify the licensee of the right to contest the recommendation. If contested, the executive secretary shall issue a petition for hearing that sets out the recommendation and the reasons for the recommendation and initiates a contested case hearing. A copy of the petition for hearing shall be sent to the licensee. The executive secretary and licensee may enter into a settlement agreement concerning the recommendation to be made to the board.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-3, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-18, 36-4-20.2, 36-4-20.7, 36-4-20.10, 36-4-27, 36-4-28, 36-4-29, 36-4-30, 36-4-31.6, 36-4-32, 36-4A-8, 36-4A-8.1, 36-4A-37, 36-4A-38, 36-4A-39, 36-4A-40, 36-4B-6, 36-4B-13, 36-4B-28, 36-4B-31, 36-4B-32, 36-4B-33, 36-9B-8, 36-10-27, 36-10-28, 36-10-29, 36-10-35.1, 36-10-35.2, 36-10-38, 36-10-39, 36-10-40, 36-10-41, 36-10-44, 36-10-45, 36-10-46, 36-10-49, 36-10B-6, 36-10B-7, 36-10B-10, 36-10B-13, 36-10B-14, 36-29-3, 36-29-3.1, 36-29-7, 36-29-18, 36-29-19, 36-29-20, 36-29-21, 36-29-22, 36-29-25, 36-29-26, 36-29-

27, 36-31-5, 36-31-6, 36-31-9, 36-31-10, 36-31-14, 36-31-15, 36-31-16, 36-31-17, 36-31-18, 36-31-21, 36-31-22, 36-36-5, 36-36-6, 36-36-9, 36-36-13.

20:78:04:05. Status of complainant. The complainant is not a party to any contested case hearing resulting from the executive secretary's investigation of a complaint, although the complainant may be called as a witness in the hearing. The executive secretary shall notify a complainant of any public final agency action taken as a result of a complaint.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-3, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-18, 36-4-20.2, 36-4-20.7, 36-4-20.10, 36-4-27, 36-4-28, 36-4-29, 36-4-30, 36-4-31.6, 36-4-32, 36-4A-8, 36-4A-8.1, 36-4A-37, 36-4A-38, 36-4A-39, 36-4A-40, 36-4B-6, 36-4B-13, 36-4B-28, 36-4B-31, 36-4B-32, 36-4B-33, 36-9B-8, 36-10-27, 36-10-28, 36-10-29, 36-10-35.1, 36-10-35.2, 36-10-38, 36-10-39, 36-10-40, 36-10-41, 36-10-44, 36-10-45, 36-10-46, 36-10-49, 36-10B-6, 36-10B-7, 36-10B-10, 36-10B-13, 36-10B-14, 36-29-3, 36-29-3.1, 36-29-7, 36-29-18, 36-29-19, 36-29-20, 36-29-21, 36-29-22, 36-29-25, 36-29-26, 36-29-27, 36-31-5, 36-31-6, 36-31-9, 36-31-10, 36-31-14, 36-31-15, 36-31-16, 36-31-17, 36-31-18, 36-31-21, 36-31-22, 36-36-5, 36-36-6, 36-36-9, 36-36-13.

20:78:04:06. Effect of failure to renew during investigation. The holder of a license, permit, or certificate may choose not to renew the license, permit, or certificate after a complaint investigation has been initiated by the executive secretary. A failure to renew after investigation has been initiated shall be reported as "withdrawn under investigation" in the board's permanent

license files and in any national databases to which the board is required to report licensure action.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-3, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-18, 36-4-20.2, 36-4-20.7, 36-4-20.10, 36-4-27, 36-4-28, 36-4-29, 36-4-30, 36-4-31.6, 36-4-32, 36-4A-8, 36-4A-8.1, 36-4A-37, 36-4A-38, 36-4A-39, 36-4A-40, 36-4B-6, 36-4B-13, 36-4B-28, 36-4B-31, 36-4B-32, 36-4B-33, 36-9B-4, 36-9B-8, 36-10-27, 36-10-28, 36-10-29, 36-10-35.1, 36-10-35.2, 36-10-38, 36-10-39, 36-10-40, 36-10-41, 36-10-44, 36-10-45, 36-10-46, 36-10-49, 36-10B-6, 36-10B-7, 36-10B-10, 36-10B-13, 36-10B-14, 36-29-3, 36-29-3.1, 36-29-7, 36-29-18, 36-29-19, 36-29-20, 36-29-21, 36-29-22, 36-29-25, 36-29-26, 36-29-27, 36-31-5, 36-31-6, 36-31-9, 36-31-10, 36-31-14, 36-31-15, 36-31-16, 36-31-17, 36-31-18, 36-31-21, 36-31-22, 36-36-5, 36-36-6, 36-36-9, 36-36-13.

CHAPTER 20:78:05

CONTESTED CASE HEARING PROCEDURES

Section

- 20:78:05:01 Applicability.
- 20:78:05:02 Petitions for hearing.
- 20:78:05:03 Filing of petitions for hearing.
- 20:78:05:04 Scheduling of hearing.
- 20:78:05:05 Hearing procedure.

- 20:78:05:06 Final board decision.
- 20:78:05:07 Notice of decision.
- 20:78:05:08 Assessment of costs of disciplinary hearings.

20:78:05:01. Applicability. The following procedure applies to contested case proceedings for license, permit, or certificate applications and to disciplinary proceedings before the Board of Medical and Osteopathic Examiners.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-3, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-27, 36-4-28, 36-4-29, 36-4-30, 36-4-32, 36-4A-37, 36-4A-38, 36-4A-39, 36-4A-40, 36-4B-28, 36-4B-31, 36-4B-32, 36-4B-33, 36-9B-8 36-10-38, 36-10-39, 36-10-40, 36-10-41, 36-10-44, 36-10-45, 36-10-46, 36-10-49, 36-10B-13, 36-10B-14, 36-29-18, 36-29-19, 36-29-20, 36-29-21, 36-29-22, 36-29-25, 36-29-26, 36-29-27, 36-31-14, 36-31-15, 36-31-16, 36-31-17, 36-31-18, 36-31-21, 36-31-22, 36-36-6, 36-36-13.

20:78:05:02. Petitions for hearing. An applicant for a license, permit, or certificate issued by the board may file a petition for hearing at any time during the processing of an application. The executive secretary may file a petition for hearing to initiate a disciplinary proceeding against a licensee. A petition for hearing shall be signed by the petitioner and contain the following information: the name and address of the applicant or licensee, the basis for the request for hearing, recitation of the applicable statutes or regulations under which the petitioner is requesting board action, and the relief requested by the petitioner.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-3, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-31.6, 36-4A-39, 36-4B-32, 36-9B-8, 36-10-43, 36-10-45, 36-10-46, 36-29-19, 36-29-20, 36-29-21, 36-29-22, 36-31-15, 36-31-16, 36-36-13.

20:78:05:03. Filing of petitions for hearing. All petitions for hearing shall be filed with the executive secretary, who shall maintain the record of contested case proceedings held before the board.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-3, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-31.6, 36-4A-39, 36-4B-32, 36-9B-8, 36-10-43, 36-10-45, 36-10-46, 36-29-19, 36-29-20, 36-29-21, 36-29-22, 36-31-15, 36-31-16, 36-36-13.

20:78:05:04. Scheduling of hearing. Upon receipt of a petition for hearing, the board president may appoint an examiner to conduct the contested case hearing, or may schedule the contested case hearing before the board, as authorized by applicable statutes.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-3, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-31.6, 36-4A-39, 36-4B-32, 36-9B-8, 36-10-43, 36-10-45, 36-10-46, 36-29-19, 36-29-20, 36-29-21, 36-29-22, 36-31-15, 36-31-16, 36-36-13.

20:78:05:05. Hearing procedure. Contested case hearings shall be conducted in accordance with SDCL 1-26. The parties to a hearing are the executive secretary and the applicant or licensee. A board member who has participated in any investigation of the matter before the board shall disqualify himself from all deliberations and decisions.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-3, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-31.6, 36-4A-39, 36-4B-32, 36-9B-8, 36-10-43, 36-10-45, 36-10-46, 36-29-19, 36-29-20, 36-29-21, 36-29-22, 36-31-15, 36-31-16, 36-36-13.

20:78:05:06. Final board decision. If the board hears the proceeding itself, it shall issue a final decision and require the parties to submit proposed findings of fact and conclusions of law for consideration at the board's next meeting. If a hearing examiner hears the proceeding, the examiner shall issue a proposed decision including findings of fact and conclusions of law. The examiner shall serve the proposed decision upon the board and the parties. The board may request that the parties appear before it to present oral argument and objections to the examiner's proposed decision. The board shall issue a final decision and accept, reject, or modify the findings, conclusions, and decisions of the examiner.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-3, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-31.6, 36-4A-39, 36-4B-32, 36-9B-8 36-10-43, 36-10-45, 36-10-46, 36-29-19, 36-29-20, 36-29-21, 36-29-22, 36-31-15, 36-31-16, 36-36-13.

20:78:05:07. Notice of decision. The board shall issue a notice of decision, accompanied by the final board decision and findings of fact and conclusions of law, to the applicant or licensee and executive secretary.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-3, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-31.6, 36-4A-39, 36-4B-32, 36-9B-8, 36-10-43, 36-10-45, 36-10-46, 36-29-19, 36-29-20, 36-29-21, 36-29-22, 36-31-15, 36-31-16, 36-36-13.

20:78:05:08. Assessment of costs of disciplinary hearings. The board may assess its costs associated with a contested case proceeding resulting in disciplinary action, against a licensee upon motion by the executive secretary. If requesting the assessment of costs, the executive secretary shall present a statement of costs to the board or hearing examiner at the time it submits proposed findings of fact and conclusions of law.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-3, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 1-26-29.1.

ARTICLE 20:84

MEDICAL ASSISTANTS

Chapter

20:84:01 Definitions

20:84:02 Contents of application.

20:84:03 Qualifications of applicants.

20:84:04 Approval of schools. *Approved education programs.*

20:84:05 Renewal of registration.

20:84:01 Definitions

36-9B

20:84:01:01. Definitions. Terms defined in SDCL chapter ~~36-9A~~ have the same meaning when used in this article. In addition, terms used in this article mean:

- (1) “Boards,” the South Dakota Board of Nursing and the South Dakota Board of Medical and Osteopathic Examiners;
- (2) “Direct supervision,” the physician, physician assistant, certified nurse practitioner, or certified nurse midwife are physically present or available by means of electronic communication.

General Authority: SDCL 36-9B-7

Law Implemented: SDCL 36-9B-1; 36-9B-4

20:84:02 Contents of application.

20:84:02:01. Contents of application. An applicant for medical assistant registration shall apply for registration on a form approved by the boards.

General Authority: SDCL 36-9B-7

Law Implemented: SDCL 36-9B-4

20:84:02:02. Medical assistant supervision. A registered medical assistant shall submit with the application a supervision registration form. The supervision registration form shall be submitted on a form approved by the boards.

General Authority: SDCL 36-9B-7

Law Implemented: SDCL 36-9B-1; 36-9B-2

20:84:03 Qualifications of applicants

20:84:03:01. Qualifications of applicants. ^{An applicant} ~~Applicants~~ for registration shall provide:

- (1) Proof of graduation from an accredited medical assistant program approved by the
b
Boards;
- (2) Proof of good moral character;
- (3) Proof the applicant has graduated from high school or passed a standard equivalency
test;
- (4) Documentation showing the applicant is at least 18 years of age; ^{and}
- (5) Proof of having passed a national certifying exam approved by the ~~board~~ boards.

General Authority: SDCL 36-9B-7

Law Implemented: SDCL 36-9B-4

20:84:04 Approved education programs.
Approval of schools

20:84:04:01. Approval of schools. Any applicant
Applicants for registration shall have graduated from
a medical assistant program that is approved by the boards and accredited by the Commission on
Accreditation of Allied Health Education Programs (CAAHEP), or a similar accrediting
institution approved by the United States Department of Education. Approved programs must
provide classroom, laboratory, and clinical learning experiences that provide for student
attainment of entry level competence as a registered medical assistant.

General Authority: SDCL 36-9B-7

Law Implemented: SDCL 36-9B-5

20:84:05 Registration renewal

20:84:05:01. Medical assistant registration renewal. A registered medical assistant shall renew the registration biennially on an application form approved by the ^bBoards. The application shall be accompanied by the registration renewal fee. ^{If a} A registered medical assistant ~~that~~ does not submit ^a ~~their~~ registration renewal form by December 31 of the year of ^{the registration's} expiration, ~~the~~ ^{the} registration ~~shall have their~~ registration ^{is lapsed.} lapse.

General Authority: SDCL 36-9B-7

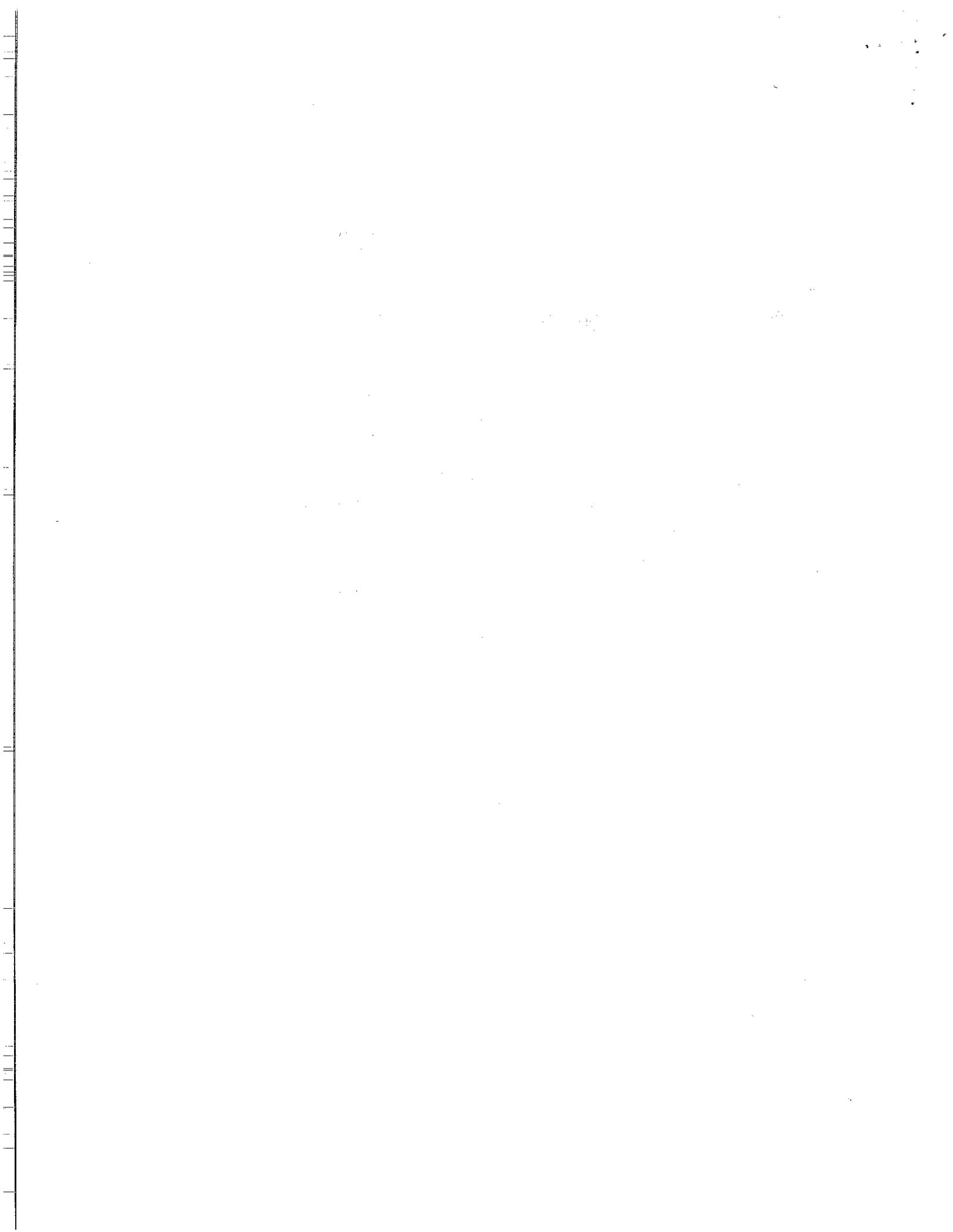
Law Implemented: SDCL 36-9B-4

Reinstatement of lapsed registrations.

20:84:05:02. Lapsed registration. Failure to renew the registration constitutes a lapse of such registration. ^{Any} ~~However, any~~ person whose registration has lapsed may have it reinstated by making written application on a form approved by the boards and ^{paying} ~~payment of~~ the biennial renewal fee.

General Authority: SDCL 36-9B-7

Law Implemented: SDCL 36-9B-4



ARTICLE 20:62

NURSE PRACTITIONERS AND MIDWIVES

CHAPTER 20:62:02

LICENSURE AND LICENSES

20:62:02:02. Application for licensure. An applicant for licensure as a nurse practitioner or nurse midwife shall file with the executive ~~secretary~~ director of the Board of Nursing an application containing the following information:

(1) Evidence that the applicant has completed an approved educational program that meets the requirements of § 20:62:02:01.01;

(2) Evidence that the applicant has passed ~~the certification examination listed in § 20:62:02:04~~ a nationally recognized certification examination approved by the boards which is specific to the applicant's ~~area of practice~~ advanced practice registered nurse role and educational preparation, and maintains current certification; and

(3) The fee required by subdivision 20:62:01:11(1).

Source: 9 SDR 126, effective April 13, 1983; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 22 SDR 179, effective June 26, 1996; 26 SDR 67, effective November 21, 1999.

General Authority:SDCL [36-9A-41](#).

Law Implemented:SDCL [36-9A-4](#), [36-9A-9](#), [36-9A-26](#).

~~**20:62:02:04. Examination.** Each applicant must pass one of the standardized qualifying certification examinations prepared by the organizations listed below which is specific to the applicant's area of practice:~~

~~—— (1) American College of Nurse-Midwives, 818 Connecticut Avenue N.W., Suite 900, Washington, DC 20006;~~

~~—— (2) American Nurses Credentialing Center, 600 Maryland Avenue S.W., Suite 100 West, Washington, DC 20024-2571;~~

~~—— (3) National Certification Board of Pediatric Nurse Practitioners and Nurses, 800 South Frederick Avenue, Suite 104, Gaithersburg, MD 20877-4150;~~

~~—— (4) National Certification Corporation for the Obstetric, Gynecologic and Neonatal Nursing Specialties, Box 11082, Chicago, IL 60611-0082.~~

~~—— (5) American Academy of Nurse Practitioners Certification Program, Capitol Station, LBJ Building, P.O. Box 12926, Austin, TX 78711-2926.~~

~~—— **Source:** 9 SDR 126, effective April 13, 1983; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 22 SDR 179, effective June 26, 1996; 23 SDR 118, effective January 28, 1997; 26 SDR 67, effective November 21, 1999.~~

~~—— **General Authority:** SDCL [36-9A-41](#).~~

~~—— **Law Implemented:** SDCL [36-9A-4](#).~~

20:62:02:06. Renewal of license. Licensure as a nurse practitioner or nurse midwife must be renewed biennially according to the expiration dates provided in § 20:62:02:05. The licensee shall complete the application for renewal as provided by the boards, including:

(1) Written evidence of current certification ~~with one of the national organizations listed in § 20:62:02:04;~~ as set forth by subdivision § 20:62:02:02(2);

(2) An affidavit that the licensee has committed no act of misconduct as set forth by SDCL [36-9A-29](#) and [36-9A-30](#); and

(3) The fees required by subdivision 20:62:01:11(3).

The title "Certified Nurse Practitioner" or "Certified Nurse Midwife" and the specialty area of practice for the CNP shall be designated on the current renewal certificate.

Any person licensed pursuant to SDCL [36-9A-4](#) before June 26, 1996, is exempt from subdivision (1) of this section.

Source: 9 SDR 126, effective April 13, 1983; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 22 SDR 179, effective June 26, 1996; 23 SDR 118, effective January 28, 1997; 26 SDR 67, effective November 21, 1999; 28 SDR 92, effective December 31, 2001.

General Authority:SDCL [36-9A-41](#).

Law Implemented:SDCL [36-9A-22](#), [36-9A-23](#), [36-9A-26](#), [36-9A-29](#), [36-9A-30](#), [36-9A-35](#), [36-9A-36](#).

20:62:02:07. Reinstatement of lapsed licenses. A licensee who fails to renew the license may be reinstated by filing a written explanation for failure to renew with the Board of Nursing. The applicant for reinstatement of licensure must provide written evidence of current certification ~~with one of the national organizations listed in § 20:62:02:04~~ as set forth by subdivision § 20:62:02:02(2). The licensee must submit an affidavit that the applicant has committed no act of misconduct as set forth by SDCL [36-9A-29](#) and [36-9A-30](#), and the fees required by subdivision 20:62:01:11(4). If the licensee intends to perform the overlapping scope of advanced practice nursing and medical functions set forth in SDCL 36-9A-12 and 36-9A-13, the applicant must also submit a collaborative agreement pursuant to § 20:62:03:06.

Source: 9 SDR 126, effective April 13, 1983; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 22 SDR 179, effective June 26, 1996; 26 SDR 67, effective November 21, 1999.

General Authority:SDCL [36-9A-41](#).

Law Implemented:SDCL [36-9A-15](#), [36-9A-24](#), [36-9A-26](#), [36-9A-29](#), [36-9A-30](#), [36-9A-35](#), [36-9A-36](#).

20:62:02:09. Reactivation of inactive license. The holder of an inactive license may reactivate the license by filing an application with the Board of Nursing. The applicant must submit written evidence of current certification ~~with one of the national organizations listed in § 20:62:02:04~~ as set forth by subdivision § 20:62:02:02(2), an affidavit that the applicant has committed no act of misconduct as set forth in SDCL [36-9A-29](#) and [36-9A-30](#), the renewal fee required by subdivision 20:62:01:11(3) for the current biennial period. If the licensee intends to perform the overlapping scope of advanced practice nursing and medical functions set forth in SDCL 36-9A-12 and 36-9A-13, the applicant must also submit a collaborative agreement pursuant to § 20:62:03:06.

Source: 9 SDR 126, effective April 13, 1983; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 22 SDR 179, effective June 26, 1996; 26 SDR 67, effective November 21, 1999.

General Authority:SDCL [36-9A-41](#).

Law Implemented:SDCL [36-9A-15](#), [36-9A-25](#), [36-9A-26](#), [36-9A-29](#), [36-9A-30](#), [36-9A-35](#), [36-9A-36](#).

ARTICLE 20:62

NURSE PRACTITIONERS AND MIDWIVES

CHAPTER 20:62:01

GENERAL RULES AFFECTING BOARDS

20:62:01:02. Annual meetings. An annual meeting of the boards shall be held each year ~~in September~~ at a place designated by the presiding officer of the boards.

Source: 9 SDR 126, effective April 13, 1983; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 22 SDR 179, effective June 26, 1996.

General Authority:SDCL [36-9A-41](#).

CHAPTER 20:78:03

APPLICATION PROCEDURES

Section

20:78:03:01	Applicability.
20:78:03:02	Initial review.
20:78:03:03	Incomplete application.
20:78:03:04	Primary source documentation.
20:78:03:05	Summary action on application.
20:78:03:06	Investigation of application.
20:78:03:07	Application withdrawn during investigation.
20:78:03:08	Executive secretary determinations.
20:78:03:09	Provisional licenses, permits or certificates issued pursuant to settlement agreement.
20:78:03:10	Renewals and reinstatement.

20:78:03.01. Applicability. This chapter applies to the licenses, certificates, and permits issued by the Board of Medical and Osteopathic Examiners under SDCL 36-4 (Physicians and Surgeons), 36-4A (Physician Assistants), 36-4B (Advanced Life Support Personnel), 36-9B (Medical Assistants), 36-10 (Physical Therapists), 36-10B (Dietetics and Nutrition), 36-29 (Athletic Trainers), 36-31 (Occupational Therapists), and 36-36 (Genetic Counselors).

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-7, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-20, 36-4-20.2, 36-4-20.9, 36-4-20.10, 36-4-20.11, 36-4-20.13, 36-4-24.1, 36-4-31.4, 36-4A-1, 36-4A-8, 36-4A-8.1, 36-4B-1, 36-4B-29, 36-9B-1, 36-10B-1, 36-29-1, 36-31-1, 36-36-1.

20:78:03.02. Initial review. The executive secretary shall review all license, permit, and certificate applications subject to this chapter to determine if the applicant has submitted all required documents, information, fees, and other materials. The executive secretary shall notify the applicant of any materials missing from the application. The applicant has 120 days to provide the information intended to complete the application.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-7, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-11, 36-4-17, 36-4-20.2, 36-4-20.7, 36-4-20.10 36-4A-8, 36-4A-8.1, 36-4B-6, 36-4B-13, 36-9B-4, 36-10-27, 36-10-28, 36-10-35.1, 36-10B-6, 36-10B-7, 36-10B-10, 36-29-3, 36-29-3.1, 36-31-5, 36-31-6, 36-31-9, 36-36-5, 36-36-9.

20:78:03:03. Incomplete application. If an applicant fails to submit required materials within 120 days of notice that materials are missing from the application, the executive secretary shall designate the application as withdrawn, or, upon receiving a written request showing good cause, may allow an applicant additional time to complete the application. The executive secretary shall notify the applicant if an application is designated as withdrawn.

The executive secretary's designation of an application as withdrawn may be appealed to the board by written notice filed with the executive secretary within ten days after notice of withdrawal by the executive secretary. If no timely appeal to the board is filed, the executive secretary's designation of an application as withdrawn remains.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-7, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-11, 36-4-17, 36-4-20.2, 36-4-20.7, 36-4-20.10, 36-4A-8, 36-4A-8.1, 36-4B-6, 36-4B-13, 36-9B-4, 36-10-27, 36-10-28, 36-10-35.1, 36-10B-6, 36-10B-7, 36-10B-10, 36-29-3, 36-29-3.1, 36-31-5, 36-31-6, 36-31-9, 36-36-5, 36-36-9.

20:78:03:04. Primary source documentation. The executive secretary shall initiate processing of complete applications after receiving documentation from primary sources to verify that the applicant has met the education, examination, training, or certification requirements of applicable statutes and regulations. The executive secretary shall notify the applicant when all primary source documentation has been received.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-7, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-11, 36-4-17, 36-4-20.2, 36-4-20.7, 36-4-20.10, 36-4A-8, 36-4A-8.1, 36-4B-6, 36-4B-13, 36-9B-4, 36-10-27, 36-10-28, 36-10-35.1, 36-10B-6, 36-10B-7, 36-10B-10, 36-29-3, 36-29-3.1, 36-31-5, 36-31-6, 36-31-9, 36-36-5, 36-36-9.

20:78:03:05. Summary action on application. The executive secretary may summarily deny an application based upon primary source documentation that demonstrates that the applicant has not met the education, examination, training, or certification requirements of applicable statutes and regulations. The executive secretary shall notify the applicant in writing of any summary action taken by the executive secretary. The executive secretary's summary action may be appealed to the board by written notice filed with the executive secretary within ten days after notice of the action taken by the executive secretary. If no timely appeal is filed, the executive secretary's action shall be deemed final board action.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-7, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-11, 36-4-17, 36-4-20.2, 36-4-20.7, 36-4-20.10, 36-4A-8, 36-4A-8.1, 36-4B-6, 36-4B-13, 36-9B-4, 36-10-27, 36-10-28, 36-10-35.1, 36-10B-6, 36-10B-7, 36-10B-10, 36-29-3, 36-29-3.1, 36-31-5, 36-31-6, 36-31-9, 36-36-5, 36-36-9.

20:78:03:06. Investigation of application. The executive secretary may determine that the information disclosed in an application or primary source documentation requires investigation to determine whether the applicant meets the qualifications or standards for issuance of a license. The executive secretary shall conduct that investigation, and may appoint a board member to assist in the investigation. The executive secretary shall notify the applicant of any issues requiring investigation. An applicant may meet with the executive secretary and appointed board member to discuss the issues under investigation.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-7, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-11, 36-4-17, 36-4-20.2, 36-4-20.7, 36-4-20.10, 36-4A-8, 36-4A-8.1, 36-4B-6, 36-4B-13, 36-9B-4, 36-10-27, 36-10-28, 36-10-35.1, 36-10-49, 36-10B-6, 36-10B-7, 36-10B-10, 36-29-3, 36-29-3.1, 36-39-26, 36-31-5, 36-31-6, 36-31-9, 36-31-22, 36-36-5, 36-36-9.

20:78:03:07. Application withdrawn during investigation. An applicant may withdraw an application after an investigation has been initiated by the executive secretary. An application withdrawn after investigation has been initiated shall be reported as "withdrawn under investigation" in the board's permanent license files and in any national databases to which the board is required to report licensure action.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-7, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-11, 36-4-17, 36-4-20.2, 36-4-20.7, 36-4-20.10, 36-4A-8, 36-4A-8.1, 36-4B-6, 36-4B-13, 36-9B-4, 36-10-27, 36-10-28, 36-10-35.1, 36-10-49, 36-10B-6, 36-10B-7, 36-10B-10, 36-29-3, 36-29-3.1, 36-29-26, 36-31-5, 36-31-6, 36-31-9, 36-31-22, 36-36-5, 36-36-9.

20:78:03:08. Executive secretary determinations. Upon completion of the review of an application and any associated investigation, the executive secretary may:

- (1) Summarily issue a license, permit, or certificate if the applicant meets the standards and requirements for licensure established by the applicable statutes or regulations;
- (2) Recommend the board issue the license, permit, or certificate upon specified terms and conditions; or
- (3) Recommend the board deny the license, permit, or certification application.

If the executive secretary recommends issuance of a license, permit, or certificate under specified terms and conditions, or recommends denial of a license, permit, or certificate, the executive secretary shall notify the applicant of the right to contest the executive secretary's recommendation. If contested by the applicant, the executive secretary shall issue a petition for

hearing that sets out the recommendation and the reasons for the recommendation, and initiates a contested case hearing. A copy of the petition for hearing shall be sent to the applicant along with a statement that the applicant is entitled to due process rights, including the right to notice and an opportunity to be heard and to be represented by counsel. The executive secretary and applicant may enter into a settlement agreement concerning the recommendation to be made to the board on the application.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-7, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-18, 36-4-20.2, 36-4-20.7, 36-4-20.10, 36-4-28, 36-4-30, 36-4-31.6, 36-4A-8, 36-4A-8.1, 36-4A-38, 36-4A-39, 36-4B-6, 36-4B-13, 36-4B-31, 36-9B-4, 36-9B-8, 36-10-27, 36-10-28, 36-10-29, 36-10-35.1, 36-10-35.2, 36-10-38, 36-10-40, 36-10-41, 36-10B-3, 36-10B-6, 36-10B-7, 36-10B-10, 36-29-3, 36-29-3.1, 36-29-7, 36-29-22, 36-31-5, 36-31-6, 36-31-9, 36-31-10, 36-31-18, 36-36-5, 36-36-6, 36-36-9, 36-36-13.

20:78:03:09. Provisional licenses, permits, or certificates issued pursuant to settlement agreement. The executive secretary may enter into a settlement agreement with an applicant that provides for the issuance of a provisional license, permit, or certificate by the executive secretary. A provisional license, permit, or certificate issued by the executive secretary is valid only until the board takes final agency action on the settlement agreement and notice is provided to the applicant. Board approval of the settlement agreement ratifies the action of the executive secretary and the license, permit, or certificate is valid for its term under any specified terms and conditions. Board disapproval of a settlement agreement voids the provisional license, permit, or certificate upon notice to the applicant. If the board disapproves a settlement agreement, the board shall schedule a contested case hearing for final agency action on the application and require the executive secretary to file a petition for hearing.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-7, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-18, 36-4-20.2, 36-4-20.7, 36-4-20.10, 36-4-28, 36-4-30, 36-4-31.6, 36-4A-8, 36-4A-8.1, 36-4A-38, 36-4A-39, 36-4B-6, 36-4B-13, 36-4B-31, 36-9B-4, 36-9B-8, 36-10-27, 36-10-28, 36-10-29, 36-10-35.1, 36-10-35.2, 36-10-38, 36-10-40, 36-10-41, 36-10B-3, 36-10B-6, 36-10B-7, 36-10B-10, 36-29-3, 36-29-3.1, 36-29-7, 36-29-22, 36-31-5, 36-31-6, 36-31-9, 36-31-10, 36-31-18, 36-36-5, 36-36-9, 36-36-13.

20:78:03:10. Renewals and reinstatement. Renewal and reinstatement applications are subject to the same process as original licenses.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-7, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-11, 36-4-17, 36-4-20.2, 36-4-20.7, 36-4-20.10, 36-4-20.12, 36-4-24.1, 36-4-24.2, 36-4A-8, 36-4A-8.1, 36-4A-31, 36-4A-32, 36-4A-33, 36-4B-6, 36-4B-13, 36-4B-27, 36-4B-28, 36-9B-4, 36-10-27, 36-10-28, 36-10-33, 36-10-35.1, 36-10B-3, 36-

10B-6, 36-10B-7, 36-10B-9, 36-10B-10, 36-29-3, 36-29-3.1, 36-29-11, 36-29-15, 36-31-5, 36-31-6, 36-31-9, 36-31-11, 36-31-19, 36-36-5, 36-36-9, 36-36-11, 36-36-14.

CHAPTER 20:78:04

COMPLAINT PROCEDURES

Section

20:78:04:01	Applicability.
20:78:04:02	Complaints.
20:78:04:03	Investigations.
20:78:04:04	Completion of complaint investigation.
20:78:04:05	Status of complainant.
20:78:04:06	Effect of failure to renew during investigation.

20:78:04:01. Applicability. The following procedure applies to complaints about holders of the licenses, permits, or certificates regulated by the Board of Medical and Osteopathic Examiners.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-3, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-27, 36-4-28, 36-4-29, 36-4-30, 36-4-32, 36-4A-37, 36-4A-38, 36-4A-39, 36-4A-40, 36-4B-28, 36-4B-31, 36-4B-32, 36-4B-33, 36-9B-8, 36-10-38, 36-10-39, 36-10-40, 36-10-41, 36-10-44, 36-10-45, 36-10-46, 36-10-49, 36-10B-13, 36-10B-14, 36-29-18, 36-29-19, 36-29-20, 36-29-21, 36-29-22, 36-29-25, 36-29-26, 36-29-27, 36-31-14, 36-31-15, 36-31-16, 36-31-17, 36-31-18, 36-31-21, 36-31-22, 36-36-6, 36-36-13.

20:78:04:02. Complaints. The executive secretary may initiate an investigation based on a written complaint. Any person filing a complaint shall submit the complaint in writing to the executive secretary. A complaint is not a public record. The executive secretary shall dismiss any complaint that concerns matters over which the board does not have jurisdiction, and shall notify the complainant of that action. The executive secretary may also initiate an investigation upon reasonable suspicion that a licensee is in violation of any applicable standard for professional conduct.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-3, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-27, 36-4-28, 36-4-29, 36-4-30, 36-4-32, 36-4A-37, 36-4A-38, 36-4A-39, 36-4A-40, 36-4B-28, 36-4B-31, 36-4B-32, 36-4B-33, 36-9B-8, 36-10-38, 36-10-39, 36-10-40, 36-10-41, 36-10-44, 36-10-45, 36-10-46, 36-10-49, 36-10B-13, 36-10B-14, 36-29-18, 36-29-19, 36-29-20, 36-29-21, 36-29-22, 36-29-25, 36-29-26, 36-29-27, 36-31-14, 36-31-15, 36-31-16, 36-31-17, 36-31-18, 36-31-21, 36-31-22, 36-36-6, 36-36-13.

20:78:04:03. Investigations. The executive secretary shall initiate investigation of a complaint by notifying the license, permit, or certificate holder of the complaint and obtaining a response to the complaint. If the executive secretary determines that the complaint concerns compliance with licensing standards and requirements, the executive shall investigate the complaint. The notice shall be in writing and shall include a statement that the licensure or licensee is entitled to due process rights, including the right to notice and an opportunity to be heard and to be represented by counsel. The executive secretary may appoint a board member to assist in the investigation.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-3, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-27, 36-4-28, 36-4-29, 36-4-30, 36-4-32, 36-4A-37, 36-4A-38, 36-4A-39, 36-4A-40, 36-4B-28, 36-4B-31, 36-4B-32, 36-4B-33, 36-9B-8, 36-10-38, 36-10-39, 36-10-40, 36-10-41, 36-10-44, 36-10-45, 36-10-46, 36-10-49, 36-10B-13, 36-10B-14, 36-29-18, 36-29-19, 36-29-20, 36-29-21, 36-29-22, 36-29-25, 36-29-26, 36-29-27, 36-31-14, 36-31-15, 36-31-16, 36-31-17, 36-31-18, 36-31-21, 36-31-22, 36-36-6, 36-36-13.

20:78:04:04. Completion of complaint investigation. Upon completion of a complaint investigation, the executive secretary may:

- (1) Dismiss the complaint as unsubstantiated or requiring no further action. Dismissal of a complaint is not a public record;
- (2) Issue a letter of concern, which shall be placed in the licensee's permanent records. A letter of concern is not a public record;
- (3) Recommend the board issue the licensee a public reprimand;
- (4) Recommend the board re-open and modify the license to include compliance with specified terms and conditions;
- (5) Recommend the board suspend or revoke the license.

If the executive secretary recommends issuance of a public reprimand, re-opening and modification, or suspension or revocation of the license, permit, or certificate held by the licensee, the executive secretary shall notify the licensee of the right to contest the recommendation. If contested, the executive secretary shall issue a petition for hearing that sets out the recommendation and the reasons for the recommendation and initiates a contested case hearing. A copy of the petition for hearing shall be sent to the licensee. The executive secretary and licensee may enter into a settlement agreement concerning the recommendation to be made to the board.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-3, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-18, 36-4-20.2, 36-4-20.7, 36-4-20.10, 36-4-27, 36-4-28, 36-4-29, 36-4-30, 36-4-31.6, 36-4-32, 36-4A-8, 36-4A-8.1, 36-4A-37, 36-4A-38, 36-4A-39, 36-4A-40, 36-4B-6, 36-4B-13, 36-4B-28, 36-4B-31, 36-4B-32, 36-4B-33, 36-9B-8, 36-10-27, 36-10-

28, 36-10-29, 36-10-35.1, 36-10-35.2, 36-10-38, 36-10-39, 36-10-40, 36-10-41, 36-10-44, 36-10-45, 36-10-46, 36-10-49, 36-10B-6, 36-10B-7, 36-10B-10, 36-10B-13, 36-10B-14, 36-29-3, 36-29-3.1, 36-29-7, 36-29-18, 36-29-19, 36-29-20, 36-29-21, 36-29-22, 36-29-25, 36-29-26, 36-29-27, 36-31-5, 36-31-6, 36-31-9, 36-31-10, 36-31-14, 36-31-15, 36-31-16, 36-31-17, 36-31-18, 36-31-21, 36-31-22, 36-36-5, 36-36-6, 36-36-9, 36-36-13.

20:78:04:05. Status of complainant. The complainant is not a party to any contested case hearing resulting from the executive secretary's investigation of a complaint, although the complainant may be called as a witness in the hearing. The executive secretary shall notify a complainant of any public final agency action taken as a result of a complaint.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-3, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-18, 36-4-20.2, 36-4-20.7, 36-4-20.10, 36-4-27, 36-4-28, 36-4-29, 36-4-30, 36-4-31.6, 36-4-32, 36-4A-8, 36-4A-8.1, 36-4A-37, 36-4A-38, 36-4A-39, 36-4A-40, 36-4B-6, 36-4B-13, 36-4B-28, 36-4B-31, 36-4B-32, 36-4B-33, 36-9B-8, 36-10-27, 36-10-28, 36-10-29, 36-10-35.1, 36-10-35.2, 36-10-38, 36-10-39, 36-10-40, 36-10-41, 36-10-44, 36-10-45, 36-10-46, 36-10-49, 36-10B-6, 36-10B-7, 36-10B-10, 36-10B-13, 36-10B-14, 36-29-3, 36-29-3.1, 36-29-7, 36-29-18, 36-29-19, 36-29-20, 36-29-21, 36-29-22, 36-29-25, 36-29-26, 36-29-27, 36-31-5, 36-31-6, 36-31-9, 36-31-10, 36-31-14, 36-31-15, 36-31-16, 36-31-17, 36-31-18, 36-31-21, 36-31-22, 36-36-5, 36-36-6, 36-36-9, 36-36-13.

20:78:04:06. Effect of failure to renew during investigation. The holder of a license, permit, or certificate may choose not to renew the license, permit, or certificate after a complaint investigation has been initiated by the executive secretary. A failure to renew after investigation has been initiated shall be reported as "withdrawn under investigation" in the board's permanent license files and in any national databases to which the board is required to report licensure action.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-3, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-18, 36-4-20.2, 36-4-20.7, 36-4-20.10, 36-4-27, 36-4-28, 36-4-29, 36-4-30, 36-4-31.6, 36-4-32, 36-4A-8, 36-4A-8.1, 36-4A-37, 36-4A-38, 36-4A-39, 36-4A-40, 36-4B-6, 36-4B-13, 36-4B-28, 36-4B-31, 36-4B-32, 36-4B-33, 36-9B-4, 36-9B-8, 36-10-27, 36-10-28, 36-10-29, 36-10-35.1, 36-10-35.2, 36-10-38, 36-10-39, 36-10-40, 36-10-41, 36-10-44, 36-10-45, 36-10-46, 36-10-49, 36-10B-6, 36-10B-7, 36-10B-10, 36-10B-13, 36-10B-14, 36-29-3, 36-29-3.1, 36-29-7, 36-29-18, 36-29-19, 36-29-20, 36-29-21, 36-29-22, 36-29-25, 36-29-26, 36-29-27, 36-31-5, 36-31-6, 36-31-9, 36-31-10, 36-31-14, 36-31-15, 36-31-16, 36-31-17, 36-31-18, 36-31-21, 36-31-22, 36-36-5, 36-36-6, 36-36-9, 36-36-13.

CHAPTER 20:78:05

CONTESTED CASE HEARING PROCEDURES

Section

20:78:05:01	Applicability.
20:78:05:02	Petitions for hearing.
20:78:05:03	Filing of petitions for hearing.
20:78:05:04	Scheduling of hearing.
20:78:05:05	Hearing procedure.
20:78:05:06	Final board decision.
20:78:05:07	Notice of decision.
20:78:05:08	Assessment of costs of disciplinary hearings.

20:78:05:01. Applicability. The following procedure applies to contested case proceedings for license, permit, or certificate applications and to disciplinary proceedings before the Board of Medical and Osteopathic Examiners.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-3, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-27, 36-4-28, 36-4-29, 36-4-30, 36-4-32, 36-4A-37, 36-4A-38, 36-4A-39, 36-4A-40, 36-4B-28, 36-4B-31, 36-4B-32, 36-4B-33, 36-9B-8 36-10-38, 36-10-39, 36-10-40, 36-10-41, 36-10-44, 36-10-45, 36-10-46, 36-10-49, 36-10B-13, 36-10B-14, 36-29-18, 36-29-19, 36-29-20, 36-29-21, 36-29-22, 36-29-25, 36-29-26, 36-29-27, 36-31-14, 36-31-15, 36-31-16, 36-31-17, 36-31-18, 36-31-21, 36-31-22, 36-36-6, 36-36-13.

20:78:05:02. Petitions for hearing. An applicant for a license, permit, or certificate issued by the board may file a petition for hearing at any time during the processing of an application. The executive secretary may file a petition for hearing to initiate a disciplinary proceeding against a licensee. A petition for hearing shall be signed by the petitioner and contain the following information: the name and address of the applicant or licensee, the basis for the request for hearing, recitation of the applicable statutes or regulations under which the petitioner is requesting board action, and the relief requested by the petitioner.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-3, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-31.6, 36-4A-39, 36-4B-32, 36-9B-8, 36-10-43, 36-10-45, 36-10-46, 36-29-19, 36-29-20, 36-29-21, 36-29-22, 36-31-15, 36-31-16, 36-36-13.

20:78:05:03. Filing of petitions for hearing. All petitions for hearing shall be filed with the executive secretary, who shall maintain the record of contested case proceedings held before the board.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-3, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-31.6, 36-4A-39, 36-4B-32, 36-9B-8, 36-10-43, 36-10-45, 36-10-46, 36-29-19, 36-29-20, 36-29-21, 36-29-22, 36-31-15, 36-31-16, 36-36-13.

20:78:05:04. Scheduling of hearing. Upon receipt of a petition for hearing, the board president may appoint an examiner to conduct the contested case hearing, or may schedule the contested case hearing before the board, as authorized by applicable statutes.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-3, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-31.6, 36-4A-39, 36-4B-32, 36-9B-8, 36-10-43, 36-10-45, 36-10-46, 36-29-19, 36-29-20, 36-29-21, 36-29-22, 36-31-15, 36-31-16, 36-36-13.

20:78:05:05. Hearing procedure. Contested case hearings shall be conducted in accordance with SDCL 1-26. The parties to a hearing are the executive secretary and the applicant or licensee. A board member who has participated in any investigation of the matter before the board shall disqualify himself from all deliberations and decisions.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-3, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-31.6, 36-4A-39, 36-4B-32, 36-9B-8, 36-10-43, 36-10-45, 36-10-46, 36-29-19, 36-29-20, 36-29-21, 36-29-22, 36-31-15, 36-31-16, 36-36-13.

20:78:05:06. Final board decision. If the board hears the proceeding itself, it shall issue a final decision and require the parties to submit proposed findings of fact and conclusions of law for consideration at the board's next meeting. If a hearing examiner hears the proceeding, the examiner shall issue a proposed decision including findings of fact and conclusions of law. The examiner shall serve the proposed decision upon the board and the parties. The board may request that the parties appear before it to present oral argument and objections to the examiner's proposed decision. The board shall issue a final decision and accept, reject, or modify the findings, conclusions, and decisions of the examiner.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-3, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-31.6, 36-4A-39, 36-4B-32, 36-9B-8, 36-10-43, 36-10-45, 36-10-46, 36-29-19, 36-29-20, 36-29-21, 36-29-22, 36-31-15, 36-31-16, 36-36-13.

20:78:05:07. Notice of decision. The board shall issue a notice of decision, accompanied by the final board decision and findings of fact and conclusions of law, to the applicant or licensee and executive secretary.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-3, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-31.6, 36-4A-39, 36-4B-32, 36-9B-8, 36-10-43, 36-10-45, 36-10-46, 36-29-19, 36-29-20, 36-29-21, 36-29-22, 36-31-15, 36-31-16, 36-36-13.

20:78:05:08. Assessment of costs of disciplinary hearings. The board may assess its costs associated with a contested case proceeding resulting in disciplinary action, against a licensee upon motion by the executive secretary. If requesting the assessment of costs, the executive secretary shall present a statement of costs to the board or hearing examiner at the time it submits proposed findings of fact and conclusions of law.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-3, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 1-26-29.1.

CHAPTER 20:84

MEDICAL ASSISTANTS

20:84:01 Definitions

20:84:02 Contents of application.

20:84:03 Qualifications of applicants.

20:84:04 Approval of schools.

20:84:05 Renewal of registration.

20:84:01 Definitions

20:84:01:01. Definitions. Terms defined in SDCL chapter 36-9A have the same meaning when used in this article. In addition, terms used in this article mean:

- (1) “Boards,” the South Dakota Board of Nursing and the South Dakota Board of Medical and Osteopathic Examiners;
- (2) “Direct supervision,” the physician, physician assistant, certified nurse practitioner, or certified nurse midwife are physically present or available by means of electronic communication.

20:84:02 Contents of application.

20:84:02:01. Contents of application. An applicant for medical assistant registration shall apply for registration on a form approved by the boards.

General Authority: SDCL 36-9B-7

Law Implemented: SDCL 36-9B-4

20:84:02:02. Medical assistant supervision. A registered medical assistant shall submit with the application a supervision registration form. The supervision registration form shall be submitted on a form approved by the boards.

General Authority: SDCL 36-9B-7

Law Implemented: SDCL 36-9B-1; 36-9B-2

20:84:03 Qualifications of applicants

20:84:03:01. Qualifications of applicants. Applicants for registration shall provide:

- (1) Proof of graduation from an accredited medical assistant program approved by the Boards;
- (2) Proof of good moral character;
- (3) Proof the applicant has graduated from high school or passed a standard equivalency test;
- (4) Documentation showing the applicant is at least 18 years of age
- (5) Proof of having passed a national certifying exam approved by the board

General Authority: SDCL 36-9B-7

Law Implemented: SDCL 36-9B-4

20:84:04 Approval of schools

20:84:04:01. Approval of schools. Applicants for registration shall have graduated from a medical assistant program that is approved by the boards and accredited by the Commission on Accreditation of Allied Health Education Programs (CAAHEP), or a similar accrediting institution approved by the United States Department of Education. Approved programs must provide classroom, laboratory, and clinical learning experiences that provide for student attainment of entry level competence as a registered medical assistant.

General Authority: SDCL 36-9B-7

Law Implemented: SDCL 36-9B-5

20:84:05 Registration renewal

20:84:05:01. Medical assistant registration renewal. A registered medical assistant shall renew the registration biennially on an application form approved by the Boards. The application shall be accompanied by the registration renewal fee. A registered medical assistant that does not submit their registration renewal form by December 31 of the year of expiration shall have their registration lapse.

General Authority: SDCL 36-9B-7

Law Implemented: SDCL 36-9B-4

20:84:05:02. Lapsed registration. Failure to renew the registration constitutes a lapse of such registration. However, any person whose registration has lapsed may have it reinstated by making written application on a form approved by the boards and payment of the biennial renewal fee.

General Authority: SDCL 36-9B-7

Law Implemented: SDCL 36-9B-4