

VIA TELECONFERENCE
SOUTH DAKOTA BOARD OF CERTIFIED PROFESSIONAL MIDWIVES
BOARD MEETING

27705 460th Ave. Chancellor SD
Thursday, MARCH 16, 2023 1:00pm - 4:00pm (CST)

AGENDA

1. Call to Order/ Roll Call/Quorum
2. Approval of Agenda
3. Open Forum – time for the public to address the Board
4. Approval of Draft Meeting Minutes from Sept 15, 2022
5. Financial Report
 - a. Revenue this fiscal year/expenditures/Cash balance
6. Introduce Bernadette Boes, Dept of Health Newborn Screening Coordinator
 - a. New education flyers
 - b. New refusal doc
 - c. Heel stick kits available
 - d. Hearing Screening equipment
7. Weis Office update
 - a. New licenses/ renewals
 - i. One new CPM pending
 - ii. One completed renewal/ two probable
 - iii. One inactive status
 - b. 42 births in 2022 with 5 transfers
 - i. 4 postpartum (2 maternal and 2 infant)
 - ii. 1 preterm labor
 - c. Board members
 - i. Waiting for the Governor
 - ii. Potential appointees submitted
 - d. Two Complaints in processing
 - i. Investigations are complete
8. Executive session pursuant to SDCL 36C 1-27-1.5 Sub (5) *Records developed or received by law enforcement agencies and other public bodies charged with duties of investigation or examination of persons, institutions, or businesses, if the records constitute a part of the examination, investigation, intelligence information, citizen complaints or inquiries, informant identification, or strategic or tactical information used in law enforcement training*
9. Action after Executive session
10. Completion of Care changes needed.
 - a. Steve Blair Assistant to the Attorney General
 - b. Complaint Algorithm Update
11. Executive Secretary Contract Renewal Approval
12. Legislative Report 2023
13. Announcements/Other business
 - a. Next Meeting Sept 21, 2023 (1-4pm CST)
14. Adjourn

Persons interested in joining the meeting may do so by appearing in person for the teleconference at the location listed above or by calling 605-743-4451 to arrange for a dial in number for the teleconference

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Minutes

President Debbie Pease **called the meeting to order at 1:00 p.m.** She gave some instructions to those on teleconference concerning use of electronics and procedures for speaking. The roll was called. A quorum was present.

Members of the board in attendance: Debbie Pease President, Sue Rooks Vice President, and Jackie Lopez were all present via phone. Autumn Cavender-Wilson Secretary joined the meeting after it was in progress.

Others in attendance: Tammy Weis, SD Board of CPM Exec Secretary at the CPM office. Steven Blair, Assistant to the Attorney General and legal counsel for the board was present via phone. Alaina Kerhove, joined the call for a short time while in progress and Ali Tornow Legal Counsel with the Dept of Health joined prior to the Executive session.

Pease asked to **adjust the agenda** to add a discussion about corrective actions under Birth Reports and assessments and to change the order by taking up item #8, *Adapting our complaint algorithm to conform to the new statute*, before item #7, *Birth Reports and Assessments*

Rooks moved to make those changes. Lopez second. The board voted unanimously. **MOTION PASSED.** Rooks then moved to **accept the agenda as amended**, seconded by Lopez. The board voted unanimously. **MOTION PASSED**

Pease asked if there was any **member of the public on the call** who wished to address the board.

Hearing none, the board moved to the **approval of the minutes from April 21, 2022**, which included the Public Hearing for our Rules Revision. There were no additions or corrections to the **Draft Meeting Minutes of April 21, 2022 or to the Minutes from the Public Hearing that was held at the same time.** Rooks moved to **accept them as presented.** Lopez second. The board voted unanimously. **MOTION PASSED**

Weis presented the financial report Total expenses including mandatory fees through the Dept of Health were **\$1874.37 so far this fiscal year.** There were no travel expenses submitted and no attorney fees yet. The document gives spending history of the board for the past 4 years. It also notes spending for 2023 fiscal year. The shortfall last spring was presented to Birth Matters organization which raised \$3500.00 so the board would finish the year in solvency. Legal Counsel will be provided by the Attorney General's office at a rate of just over \$100/hour going forward. **Cash Balance** was \$ 627.79 as of 8/31/2022 with \$400 deposited since then. There were no questions or concerns. Debbie Pease stated that she **did not want to be paid for this meeting.** Rooks and Lopez also requested not to be paid for the meeting.

Weis gave an office report including:

The May 3, 2022 **Administrative Rules Committee Hearing**, where the rules changes were approved except for Epinephrine Rule which was reverted. Weis thanked everyone for their excellent presentations. The Dept of Health has adopted our form as the official form for proving that births took place in South Dakota. Thank you to Cavender-Wilsen for her work on this issue.

The new “**When to file a Birth Report Instructions**” was reviewed with many changes made, including changing the title to **Completion of Care Form**. Rooks moved to accept the form with corrections, Lopez second. The board voted unanimously. **Motion Carried**

Complaint Algorithm needs to be updated to reflect the new statute. The board reviewed the Board of Nursing algorithm which is very simple. Then they looked at more changes that need to be made including the references to the SDCL. Sec. Weis and Legal Counsel Blair will finish the process and bring it to our next meeting for approval.

Birth Reports and assessments from Jan-Aug 2022

Jackie Lopez CPM stated that she had reviewed 11 reports and had flagged one for an investigation. Most reports were clear and complete but Transport forms tended to be missing.

Autumn Cavender-Wilsen CPM had reviewed 12 reports and did not find any that needed to be investigated further.

Secretary Weis stated that we continue to have Birth Reports filed after the 30 day deadline. Several emails have been sent asking CPMs to comply with the deadline. The Birth Report is written in SDCL [36-9C-37](#) and the deadline is in the administrative rules ARSD **20:86:04:07**. While we cannot add new fees without legislative authority we can impose fines under the new disciplinary statute [36-1C-5](#). *Option to authorize limited administrative fines for specified violations*. Is it time to impose a fine for any report not received by the 30 day deadline that is prescribed in the ARSD?

The discussion was active. Steve Blair mentioned that proving that a document was late can be difficult and cause legal difficulties. **The issue was tabled.**

Birth Report Assessment Process: Birth Reports and Birth Report Assessments will now be **Completion of Care forms**. The board may use them to take corrective action.

Motion was made by Rooks, Second by Lopez to **change the current language** for referring a Completion of Care form for a more thorough assessment

From: (Old language) *The physician and the CPM will review the report together and make a recommendation to the board to file or have the entire board assess and follow up on the information.*

To: (New Language) *The CPM who is completing the assessment and the physician (or other board representative) will review the report together and decide if the concern is valid and needs to be investigated. If the concern needs to be investigated the CPM and physician (or other board representative) will file a formal complaint to begin the complaint investigation process.*

The board voted unanimously. **MOTION CARRIED**

The Board discussed the challenges of requesting statutory changes this legislative session and determined **legislative action for 2023** is not something that should be undertaken at this time.

Board member terms and appointments were reviewed.

The board received **two complaints** about an event that happened in Minnesota which were **out of SD jurisdiction**. There is one complaint that is in process, the investigation is complete and the Investigative Committee has a report for the board.

Lopez moved that we go to Executive Session pursuant to SDCL 36C 1-27-1.5 Sub (5) *Records developed or received by law enforcement agencies and other public bodies charged with duties of investigation or examination of persons, institutions, or businesses, if the records constitute a part of the examination, investigation, intelligence information, citizen complaints or inquiries, informant identification, or strategic or tactical information used in law enforcement training ...to hear the investigative committee report.* Rooks Second. The board voted unanimously. **MOTION PASSED**

After we reconvened, **Cavender-Wilsen moved to accept the Investigative Committee's recommendation** and dismiss the complaint that was received by the SD Board of CPM on June 26, 2022. Lopez Second. The board voted unanimously with Rooks abstaining because of her role on the investigative committee. **MOTION CARRIED**

Weis announced: The DOH is attempting to use some grant money to help repair, calibrate, and secure supplies for **hearing screening equipment** (including getting more screeners) for use by community-based midwives . They also plan to help SD Licensed CPMs with **kits for blood spot collection**.

Renewal notices are to go out 90 days in advance of the renewal dates. First ones for 2023 will go out on Dec 1st, 2022. There are four current CPMs who could potentially renew this fiscal year. There are four current CPMs who could potentially renew in FY 2024.

We have had **26 births reported since Jan 1, 2022**.

Next meeting March 16, 2023 (1-4pm CST)

Motion to Adjourn by Rooks. Second by Lopez The board voted unanimously. **MOTION CARRIED**

STATE OF SOUTH DAKOTA
 REVENUE SUMMARY BY BUDGET UNIT
 FOR PERIOD ENDING: 02/28/2023

AGENCY 09 HEALTH
 BUDGET UNIT 09213 BOARD OF CERTIFIED PROF MIDWIVES - INFO

CENTER	COMP	ACCOUNT	DESCRIPTION	CURRENT MONTH	YEAR-TO-DATE	
COMPANY NO	6503					
COMPANY NAME	PROFESSIONAL & LICENSING BOARDS					
092130062401	6503	4293206	INITIAL LICENSE FEE	1,000.00	1,000.00	
092130062401	6503	4293209	STUDENT LICENSE FEE	.00	500.00	
092130062401	6503	4293216	ENDORSE TO ANOTHER JURIS	.00	150.00	
092130062401	6503	4293217	BIRTH DELIVERY FEE	200.00	3,200.00	
ACCT:	4293	BUSINESS & OCCUP LICENSING (NON-GOVERNMENTAL)		1,200.00	4,850.00	*
ACCT:	42	LICENSES, PERMITS & FEES		1,200.00	4,850.00	**
CNTR:	092130062401			1,200.00	4,850.00	***
CNTR:	092130062			1,200.00	4,850.00	****
CNTR:	0921300			1,200.00	4,850.00	*****
COMP:	6503			1,200.00	4,850.00	*****
B UNIT:	09213			1,200.00	4,850.00	*****
AGENCY:	09			13,966,763.93	96,956,530.86	*****

Remaining Authority by Object/Subobject

Expenditures current through 03/04/2023 05:20:33 PM

HEALTH -- Summary

FY 2023 Version -- AS -- Budgeted and Informational

FY Remaining: 32.6 %

09213 Board of Certified Prof Midwives - Info						PCT
Subobject	Operating	Expenditures	Encumbrances	Commitments	Remaining	AVL
EMPLOYEE SALARIES						
5101030 Board & Comm Mbrs Fees	1,105	0	0	0	1,105	100.0
Subtotal	1,105	0	0	0	1,105	100.0
EMPLOYEE BENEFITS						
5102010 Oasi-employer's Share	111	0	0	0	111	100.0
Subtotal	111	0	0	0	111	100.0
51 Personal Services						
Subtotal	1,216	0	0	0	1,216	100.0
TRAVEL						
5203030 Auto-priv (in-st.) H/rte	500	0	0	0	500	100.0
5203100 Lodging/in-state	500	0	0	0	500	100.0
5203140 Meals/taxable/in-state	300	0	0	0	300	100.0
5203260 Air-comm-out-of-state	1,500	0	0	0	1,500	100.0
5203320 Incidentals-out-of-state	200	0	0	0	200	100.0
Subtotal	3,000	0	0	0	3,000	100.0
CONTRACTUAL SERVICES						
5204080 Legal Consultant	3,807	0	0	0	3,807	100.0
5204090 Management Consultant	10,500	4,659	9,044	0	-3,203	0.0
5204200 Central Services	371	144	0	0	227	61.2
5204207 Central Services	300	28	0	0	272	90.7
5204590 Ins Premiums & Surety Bds	900	0	0	0	900	100.0
Subtotal	15,878	4,831	9,044	0	2,003	12.6
CAPITAL OUTLAY						
5207900 Computer Hardware	700	0	0	0	700	100.0
Subtotal	700	0	0	0	700	100.0
OTHER						
5208290 Other Interest Payments	0	4	0	0	-4	0.0
Subtotal	0	4	0	0	-4	0.0
52 Operating						
Subtotal	19,578	4,835	9,044	0	5,699	29.1

Total	20,794	4,835	9,044	0	6,915	33.3
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Expense Cat	SubObject	Account Name	Fiscal Year					Grand Total
			2019	2020	2021	2022	2023	
Other	5101030	BOARD & COMM MBRS FEES	840.00	600.00	480.00	60.00		1,980.00
	5102010	OASI-EMPLOYER'S SHARE	64.26	45.90	36.72	4.59		151.47
	5203100	LODGING/IN-STATE	0.00					0.00
	5204080	LEGAL CONSULTANT			0.00			0.00
	5204090	MANAGEMENT CONSULTANT	6,341.80	7,216.26	8,043.76	7,232.30	4,659.38	33,493.50
	5204160	WORKSHOP REGISTRATION FE	75.35	76.05				151.40
	5204181	BIT DEVELOPMENT COSTS			84.10	89.50		173.60
	5204200	CENTRAL SERVICES	289.19	320.11	350.12	298.61	143.54	1,401.57
	5204207	HUMAN RESOURCES SERVICES	376.54	225.87	173.46		28.28	804.15
	5204360	ADVERTISING-NEWSPAPER	696.42			276.81		973.23
	5204510	RENTS-OTHER		23.91				23.91
	5204590	INS PREMIUMS & SURETY BDS	900.00	880.00	245.00	825.00		2,850.00
	5208080	REFUND OF PRIOR YRS REV			1,000.00			1,000.00
	5208290	OTHER INTEREST PAYMENTS					4.07	4.07
	5228000	OPER TRANS OUT -NON BUDGT			917.39			917.39
Grand Total			9,583.56	9,388.10	11,330.55	8,786.81	4,835.27	43,924.29

NEWBORN SCREENING

Reminders for Home Births

- ♥ Timely newborn screening can be the difference between life and death for some newborns. The optimal time for collection of the newborn blood spot screen is between 24 and 48 hours of age; it is no longer based on feeding time.
- ♥ Remember to review the newborn blood spot screening brochure with the parent (s), include information on blood spot and hearing screenings.
- ♥ Fill out the blood spot screening form completely and accurately. Incomplete forms will cause a delay in results. Additional forms can be ordered at:
<https://doh.sd.gov/family/newborn/Screening/blood-spot/providers/Order.aspx>
- ♥ All babies born in South Dakota are required by law to have a newborn blood spot screening. Please see our website for information and refusal forms:
<https://doh.sd.gov/family/newborn/Screening/blood-spot/providers/>
- ♥ A hearing screening is the best way to check a baby's hearing. Undetected hearing loss can have a long-term impact on learning and language. Parent (s) cannot be sure their baby is able to hear all sounds. A baby with hearing loss may jump or startle to loud noises, but miss other sounds or speech.
- ♥ Educational trainings, materials, and technical assistance are available through the South Dakota Department of Health, Newborn Screening Program.



SOUTH DAKOTA NEWBORN SCREENING PROGRAM

Blood Spot & Hearing Screening

BLOOD SPOT SCREENING PROGRAM

A few drops of blood from your baby's heel is all that is needed to test your baby. Your doctor or midwife can perform this test. It can be done in your home if you have a home birth. The baby is easily soothed by swaddling and being held during the heel prick.

These disorders can occur in all people, but many of them are more common in Plain people.

Finding these disorders early and treating them before they show signs of sickness can prevent serious health problems. Health problems can include brain damage, other organ damage, or even death.

COMMON DISORDERS FOUND IN PLAIN PEOPLE:

- Phenylketonuria (PKU)
- Maple syrup urine disease (MSUD)
- Cystic fibrosis (CF)
- Severe combined immunodeficiency (SCID)
- Thyroid disease
- Galactosemia

HEARING SCREENING PROGRAM

The newborn hearing screening checks for hearing loss. Some babies with hearing loss startle to loud sounds but they cannot hear someone talking. It is important to know this before three months of age because finding out your baby has hearing loss early can help you and your baby learn ways to communicate.

During this screening, a small handheld device plays soft sounds and measures how well your baby responds. The screening only takes a few minutes and causes no pain or discomfort.

If the person delivering your baby does not have hearing screening equipment, please ask them where you can obtain a hearing screen. Birthing hospitals, some community health offices, and other midwives have hearing screening equipment.

Questions for the South Dakota Newborn Screening Program:



Bernadette Boes, RN

Newborn Screening Program Coordinator
SOUTH DAKOTA DEPARTMENT OF HEALTH
605-983-1389

Bernadette.boes@state.sd.us

SOUTH DAKOTA NEWBORN SCREENING PROGRAM

Questions Regarding Screening

When will I get my baby's results?

The hearing results are available immediately. The blood spot screening tests take a few days, but your midwife or doctor will contact you as soon as possible if the results suggest a problem. Be sure to ask your midwife or the person performing the screens for the results.

What if my baby has a positive blood spot screening?

Every condition screened is treatable. Your baby's doctor or midwife will advise you on the next steps to take after a diagnosis. If your baby has one of the conditions found through newborn screening, you will be helped by our team. Your midwife, doctor, or community health nurse will work with you to make sure your baby receives the care and services that are needed. You are not alone.

What personal information is written on the screening card?

The South Dakota screening cards are sent to the Iowa State lab for testing. Your screening card will have some information about you and your baby. Examples include: baby's name, date of birth, time of birth, mother's name, and who to contact if the baby has a positive screen.

What happens to the blood spots after screening?

Most of the dried blood is used up during testing. The leftover blood spots are destroyed with 60 days. They are not used for research.

Can I refuse screening for my baby?

South Dakota law requires hospitals, doctors, and midwives to tell you about newborn screening. Because screening is so important, all babies should have these screens. If you don't want your baby screened, you must sign the refusal form. Ask your midwife or doctor for the form. Newborn screening can save your baby's life. The possible health risks of not screening are serious.

What is the cost of the newborn blood spot screening?

As of September 1, 2022, the cost is \$97. No funds are paid to the State, it is billed through your provider to Iowa State Hygienic Lab.



doh.sd.gov/family/newborn/screening/



Refusal of Consent for Newborn Blood Screening

I, the parent /legal guardian/custodian of _____, born on _____,
Full name of infant Date of birth

refuse to have blood taken from my child to determine if he or she may have a metabolic, endocrine, hemoglobin, or other disorder that can be detected through newborn screening. Metabolic refers to how the body digests food. Endocrine refers to how the body controls many functions. Hemoglobin refers to blood.

- I have been informed that newborn screening is mandated for all babies born in South Dakota, pursuant to SDCL 34-24-17
- I have read the Newborn Screening and Services Brochure and discussed newborn screening with my doctor, my baby’s doctor, midwife, a member of the hospital nursing staff, or other healthcare provider.
- I understand that the screening is done for the early detection of treatable disorders. I understand that symptoms may not appear for several weeks, months, or years.
- I understand that when newborn screening conditions are not detected and treated in the newborn period, there can be permanent damage such as intellectual disabilities, developmental delays, growth failure, and even death.
- I understand the benefits of newborn blood screening. The potential risks/dangers of not being screened have been explained to me, and I understand the risks/dangers of not consenting to the blood screening.

My decision to refuse the blood screening was made knowingly, freely and without force or encouragement by my doctor or midwife, my baby’s doctor, the hospital staff, or state officials. I accept all responsibility for this decision.

Full name of mother or Legal Guardian/Custodian	Signature	Date
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Full name of father or Legal Guardian/Custodian	Signature	Date
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Full name of licensed healthcare provider*	Signature	Date
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*Licensed healthcare providers include physicians, nurses, and midwives.

Check one: Hospital birth Home birth

Healthcare provider instructions:

1. Have the parent(s)/legal guardian(s) read the Newborn Screening and Services Brochure.
2. Complete this form for each infant when the parent(s)/legal guardian(s) refuse(s) newborn screening.
3. Provide a copy of the form to the parent(s)/legal guardian(s) and send a copy to the baby’s primary care provider.
4. Keep the originals for your records.
5. Fax a copy of this form to 605-835-8001 Attention: Newborn Screening Program.
6. For additional forms, please print from the Department of Health website at <https://doh.sd.gov/family/newborn/Screening/blood-spot/providers/>

34-24-17. Screening of newborn infants for metabolic, inherited, and genetic disorders.
 Each infant born in South Dakota shall be screened for metabolic, inherited, and genetic disorders. This screening shall be as prescribed by the Department of Health.
 Source: SL 1973, ch 233, § 2; SL 1990, ch 170, § 8; SL 2015, ch 185, § 1.

44:19:02:05. Responsibilities of parents. The parent, guardian, or custodian of each infant is responsible for having blood tests as identified in § 44:19:01:04 performed within the first 48 hours of an infant’s life. If a parent, guardian, or custodian refuses to have a newborn tested pursuant to § 44:19:01:04, despite having been notified of the need for testing, the parent, guardian, or custodian shall sign a written statement regarding the refusal.
 Source: 18 SDR 67, effective October 16, 1991; 23 SDR 91, effective December 9, 1996; 31 SDR 164, effective May 9, 2005; 41 SDR 109, effective January 5, 2015; 42 SDR 14, effective August 10, 2015.
 General Authority: SDCL [34-24-25](#).

Law Implemented: SDCL [34-24-17](#), [34-24-23](#), [34-24-24](#).

44:19:02:06. Responsibilities of hospitals, physicians, and other health professionals. The attending physician, other health professional, hospital, or public health facility shall notify the parents, guardian, or custodian of each infant of the responsibility and need to have the newborn screening tests performed. The submitter shall place all newborn screening test results in the newborn patient’s record. If a parent, guardian, or custodian refuses to have the newborn tested, the attending physician, other health professional, hospital, or public health facility shall obtain a written signed statement from the parent, guardian, or custodian of the infant regarding the refusal and place it in the newborn patient’s record, notify the department within 24 hours of the refusal.
 Source: 31 SDR 164, effective May 9, 2005; 41 SDR 109, effective January 5, 2015.
 General Authority: SDCL [34-24-25](#). Law Implemented: SDCL [34-24-17](#), [34-24-23](#), [34-24-24](#).

On Tue, Sep 27, 2022, 8:08 PM Eudine Stevens <mykeiko64@yahoo.com> wrote:

Dear SD Board Members for CPMs

RE: Completion of care form and the expanded reporting requirements

SDCL 36-9C-37.

“The board shall review birth registration and reportable information for each out-of-hospital birth for evaluation and quality management purposes. The certified professional midwife shall provide additional documentation to the board upon request for review. The certified professional midwife shall report within forty-eight hours to the board any neonatal or maternal mortality in a patient for whom the certified professional midwife has cared in the perinatal period.”

Administrative rules 20:86:03:10 Professional Standards.

(6) “Report to the board outcomes of all clients for which the licensee has provided services at any point during labor or delivery within 30 days after each birth on the birth reporting form prescribed by the board. Adverse outcomes to mother or baby occurring anytime during the postpartum period shall also be reported to the board;”

The board has expanded the requirements of the (previous known Birth Report) Completion of Care Form beyond the parameters that either SDCL 39-9C-37 or administrative rules 20:86:03:10 Professional Standards states. This form is requesting CPMs to report more than is specified in the laws and rules. SDCL 39-9C-37 **requires birth registration and reportable information** for each out of hospital birth to be filed. It does not require a form to be filed for each person within a CPM’s care who does not labor or birth under her care. It requires if there is a reportable incident (information) it shall be filed. The definition by law is maternal or neonatal (after birth death) mortality.

Administrative rule 20:86:03:10 states CPMs are to **report outcomes** of all clients for which the **licensee has provided care** for at **any point during labor or delivery** or if there was an **adverse outcome for mother or newborn within the postpartum period** shall be filed within 30 days.

Points of conflict

1. The form and instruction states CPMs need to report and type a narrative for every transfer of care for any reason after 22 weeks viability. Nothing in the SDCL or Rules states a transfer qualifies for reporting unless it is labor, delivery or reportable information i.e. death of either the mother or the neonate.
2. The requirement to amend a form for a neonatal transfer after 4 weeks (28 days) is not required because the SDCL states it's required for only the neonatal period which ends at 28 days and does not continue to 42 days. However, there is an inconsistency between the SDCL and the Administrative rules in the language of the period of care. The SDCL specifies the neonatal period (28 days) yet the rule implies the entire postpartum period.

Issues of concerns as a CPM

In the letter to the CPMs on September 19th the statement was made “we need to be sure our records were coinciding with the Dept. of Health Vital records”. By following the SDCL and Admin Rules as written, CPMs records would coincide with their records, without having to report every change in care that did not result in a delivery, postpartum care or reportable incident. Vital Records do not care nor do they ask for transfers of care unless it happened during the intrapartum or postpartum period. Antepartum transfers are irrelevant to vital records so for the board to insist or mandate this additional paperwork is unacceptable. The board also greatly expanded their power in this matter beyond what is permitted or delineated by law.

Neither time or money will be wasted by following the current law and rules, whereas this enlargement of board oversight will increase both the expenditure of time and money to monitor the CPMs in the additional reports.

I request the board to revisit and reassess this matter to evaluate if their current decision is within the bounds of the law and rules.

Definitions:

Medical Definition of Neonate

Neonate: A newborn baby, specifically a baby in the first 4 weeks after birth. After 28 days, a baby is no longer considered a neonate.

Reportable information- maternal or neonatal mortality.

Sincerely

Eudine Stevens CPM

RE: New instructions for the Completion of Care forms...

Inbox

B

Blair, Steven <Steven.Blair@state.sd.us> Tue, Oct 4, 2022, 2:06 PM

to me, Debbie

Hello!

I have reviewed Ms. Stevens' letter voicing concerns over the Completion of Care Form. She interprets SDCL 36-9C-37 to require only the reporting of information regarding births ("birth registration" info in statute), or deaths of mother or newborn ("neonatal or maternal mortality"). Likewise, she asserts that ARSD 20:86:03:10 requires only the reporting of information related to labor, delivery, or birth. She takes issue with being asked to provide information regarding transfers of care that are not related to labor, delivery, or reportable information.

After review of her letter, and the applicable statutes and rules, I conclude that Ms. Stevens' conclusion are with merit. A strict interpretation of the statutes and administrative rules seems to limit reporting only to those periods that Ms. Stevens has identified. However, there may be a thin argument to allow the Board to continue to request the information asked for until a statute or rule change can be made.

SDCL 36-9C-37 requires the Board to review "birth registration and reportable information." Neither term is explicitly defined in statute. Birth registration is defined in SDCL 34-25-8 as essentially the birth certificate required to be filed for each live birth. Rules of statutory construction then define "birth registration" information as referenced in SDCL 36-9C-37 to be that information normally contained in the birth certificate. "Reportable information," while not explicitly defined in the traditional sense, is defined by the last sentence of the statute that requires reporting of "neonatal or maternal mortality in a patient ... cared [for] in the perinatal period." In my opinion, SDCL 36-9C-37 clearly requires the board to review the birth certificate information and information concerning reports of neonatal or maternal deaths.

The ambiguous part of SDCL 36-9C-37 is the middle sentence that requires CPM's to provide any additional documentation the Board requests. Is that sentence limited only to additional documentation related to birth certificate information, or to neonatal and maternal death? Or, can that sentence be read broadly to require submission of any information the Board requests? The statute is not clear. A strict interpretation would conclude that the "additional documentation" sentence is limited only to additional documentation regarding birth certificate information, or to information concerning child or mother mortality. The contrary opinion would be that the sentence gives the Board broad power to request any other additional documentation the Board feels is necessary. My personal legal opinion leans towards the former – the strict interpretation should win out.

In looking at the remainder of SDCL 36-9C for further guidance, I note that SDCL 36-9C-5 authorizes the board to regulate and supervise the practice of certified professional midwives in the state. SDCL 36-9C-13 clearly defines that practice as including "pregnancy, labor, delivery, and postpartum periods" which would in my opinion include the transfer of patients to the care of other health care providers in periods prior to labor and delivery. That could be enough to boot strap into an argument that there is implied intent to allow the Board to request information outside of birth certificate information and mortality information. The argument would then be that the second sentence of SDCL 36-9C-37 is the statutory embodiment of that implied general legislative intent. This argument is thin and may not hold up under further legal scrutiny by a hearing officer or a court.

Ms. Stevens also highlights the language of ARSD 20:86:03:10 which seems to limit information that must be

reported. ARSD 20:86:03:10 establishes the professional standards for CPM practice and was promulgated under the Board's authority in SDCL 36-9C-13 and -14 to establish the scope of practice for CPM's in the state. Using that statutory authority, the Board has required reporting of "outcomes of all clients" where the CPM "provided services at any point during labor or delivery[.]" ARSD 20:86:03:10(6). As noted, the language of the rule itself limits the reporting period to only outcomes concerning service during labor or delivery. It is important to note that this rule specifically calls for using the birth reporting form (which has now become the Completion of Care Form). This lends greater weight to Ms. Stevens arguments that the Board can only request information regarding services performed by a CPM during labor or delivery.

In summary, Ms. Stevens may be correct that the Board can only require reporting of birth certificate information, child or mother mortality information, or information related to outcomes of clients where the CPM provided services in labor or delivery. Interpretation of the statutes and rules leads most easily to this conclusion. There could be an alternative argument that the board has implied authority through the highlighted sentence in SDCL 36-9C-37 to request all the information requested on the Completion of Care form. If pressed in front of a hearing officer or court, however, that argument may fail.

I suggest the following changes to bring the statutes and rules in line with the perceived intent of the Board regarding information it wants from licensees. At a minimum ARSD 20:86:03:10 should be amended to clearly encompass all periods where services are provided that the Board desires information from the licensees and the time frames for reporting (i.e. within 30 days of each birth, etc.). Also, the Completion of Care report should be amended to reference not only SDCL 36-9C-37 but also ARSD 20:86:03:10. Referencing both in the form would fully encompass the 2 sources of authority in statute and administrative rule for the Board to require reporting of information. Secondly, the Board could amend SDCL 36-9C-37 to clearly state how that second sentence is to be applied. The Board could also amend the statute to include further authority to request information from licensees. However, in my opinion, amendments to SDCL 36-9C-37 are not necessary if ARSD 20:86:03:10 is amended.

I hope this all makes sense. If you want to discuss further, please don't hesitate to contact me.

Thanks!

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Section 1. That a NEW SECTION be added:

36-1C-1. Definitions.

Terms used in this Act mean:

- (1) "Administrator," the executive director, executive secretary, or other person designated as being responsible for a professional or occupational licensing's board, commission, or agency operation;
- (2) "Agency," a professional or occupational licensing board, commission, or agency set forth in title 36;
- (3) "Complaint," an allegation of a violation of the laws or rules of a professional or occupational licensing board, commission, or agency set forth in title 36;
- (4) "Investigative committee," one or more persons employed or contracted by a professional or occupational licensing board, commission, or agency set forth in title 36 to review and investigate complaints;
- (5) "License," any certification, license, permit, or other authorization related to the practice of any profession or occupation regulated under title 36.

Section 2. That a NEW SECTION be added:

36-1C-2. Complaints--Jurisdiction.

Any person claiming that a licensee or an applicant for a license under title 36 has engaged in or is engaging in conduct constituting grounds for disciplinary action, as enumerated in the laws or rules of the agency, may file with the agency a written complaint. The agency shall require the complaining party to file a complaint stating the name of the applicant or licensee against whom the complaint is made and setting out, in full detail, the conduct that is alleged to be in violation and may prescribe the form on which a written complaint is made.

The administrator shall request the complainant provide additional information if the complaint does not state a claim within the jurisdiction of the agency.

Failure of the complainant to comply with this section is basis for the administrator to reject the complaint without further action.

Section 3. That a NEW SECTION be added:

36-1C-3. Receipt of complaint--Time to respond--Failure to respond.

Upon receipt of a properly submitted complaint within the agency's jurisdiction, the administrator shall serve a copy of the complaint by mail or electronic mail upon the applicant or licensee complained against.

The applicant or licensee complained against shall send a response to the complaint to the administrator of the agency within twenty business days after service of the complaint on the applicant or licensee. Upon receipt of the response of the applicant

or licensee, or upon expiration of the time for the applicant or licensee complained against to respond, the administrator shall assign an investigative committee to determine if the complaint has probable cause and constitutes grounds for disciplinary action or lacks probable cause and should be dismissed.

The twenty business days may be extended by the administrator for good cause.

Failure to respond to the complaint is grounds for disciplinary action.

Section 4. That a NEW SECTION be added:

36-1C-4. Investigation--Dismissal permitted.

Upon completion of the investigation, the investigating committee shall recommend to the agency whether the complaint should be dismissed for lack of probable cause, resolved by informal disposition, or settled by a formal hearing. The failure of an applicant or licensee to comply with the investigation is grounds for denial of the application or disciplinary action.

An agency may allow the investigative committee to dismiss a complaint. Any dismissal by the investigative committee must be reported to the agency at its next scheduled meeting or within thirty days, whichever is shorter.

An investigative committee includes the agency's legal counsel.

Section 5. That a NEW SECTION be added:

36-1C-5. Option to authorize limited administrative fines for specified violations.

The agency may authorize the administrator to impose an administrative fine upon proof of a violation of specified statutes or rules without additional prior approval. Any action taken pursuant to this section shall be reported to the agency at its next scheduled meeting or within thirty days, whichever is shorter.

Any administrative fine issued under this section may be appealed by requesting a contested case under chapter 1-26. Notice of appeal must be submitted to the administrator within twenty calendar days of service of the fine.

Any fine issued under this section may not exceed five hundred dollars.

Section 6. That a NEW SECTION be added:

36-1C-6. Informal disposition--Notice.

The agency may accept an informal disposition regarding a violation of the laws or rules under the agency's jurisdiction. The agreed upon disposition must be in writing and is subject to the approval of the agency.

Failure to comply with the terms of an informal disposition is grounds for disciplinary action or allows the agency to institute or reinstitute formal proceedings.

The administrator shall notify, in writing, any complaining party of the results of the informal disposition of a complaint and the action taken, if any.

Section 7. That a NEW SECTION be added:

36-1C-7. Formal complaint.

If an alleged violation has probable cause constituting grounds for disciplinary action, the legal counsel for the agency may commence formal proceedings by serving a formal complaint by mail or electronic mail upon the applicant or licensee complained against.

The formal complaint must include the name of the applicant or licensee complained against, and a statement of facts setting forth the nature of the violations being charged that constitute grounds for disciplinary action.

Section 8. That a NEW SECTION be added:

36-1C-8. Response to formal complaint.

The applicant or licensee shall file an answer with the administrator within twenty calendar days after service of the complaint admitting, denying, qualifying, or explaining all facts alleged in the formal complaint and all defenses of the applicant or licensee or mitigating factors.

Section 9. That a NEW SECTION be added:

36-1C-9. Notice of hearing.

After the receipt of the response in § 36-1C-8, the agency's counsel shall file a notice of hearing pursuant to § 1-26-17. The notice of hearing must be served no later than twenty calendar days prior to the hearing date.

The agency may continue the date of the hearing as necessary. The agency's counsel shall serve notice of any new date by electronic mail to the applicant or licensee's address on file with the agency. If the applicant or licensee does not have electronic mail, communication shall be sent to the mailing address on file with the agency.