

**VIA TELECONFERENCE**  
**SOUTH DAKOTA BOARD OF CERTIFIED PROFESSIONAL MIDWIVES**  
**BOARD MEETING**

South Dakota Board of Certified Professional Midwives Office  
27705 460<sup>th</sup> Ave. Chancellor SD  
Thursday, July 15, 2021 1:00pm - 4:00pm (Central Standard Time)

**AGENDA**

1. Call to Order/ Roll Call
2. Approval of Agenda
3. Open Forum – time for the public to address the Board
4. Approval of Draft Meeting Minutes of March 18, 2021
5. Financial Report-- Tammy Weis, Exec Sec
  - a. End of the fiscal year report
6. Special Business
  - a. Legislative changes require us to appear before the Rules Committee
    - i. Complaint process (HB1014)
      1. See attached purposed rules
      2. See attached time line and requirements
7. Announcements
  - a. Alaina Kerkhove CPM and Debbie Eakes CPM
8. Next Meeting Sept 16, 2021 (1-4pm)
9. 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*



## SOUTH DAKOTA BOARD OF CERTIFIED PROFESSIONAL MIDWIVES

27705 460<sup>th</sup> Avenue, Chancellor, SD 57015

Phone: 605-743-4451 Email: cpmsdlicense@gmail.com

Home Page: [doh.sd.gov/boards/midwives/](http://doh.sd.gov/boards/midwives/)

President Debbie Pease **called the meeting to order at 1:08 p.m.** The roll was called. A quorum was present.

**Members of the board in attendance:** Debbie Pease, Susan Rooks, Kimberlee McKay and Jackie Lopez were all present via phone. (Autumn Cavender-Wilson is on Maternity Leave.)

**Others in attendance:** Justin Williams and Megan Borchert, DOH Legal Counsel, Laine Claycomb Student Professional Midwife, Bob Mercer KELO Land News via teleconference and Tammy Weis, SD Board of CPM Exec Secretary at the CPM office.

Weis suggested that the agenda be adjusted under old business to reverse the order of "i" and "ii" under Birth Report Assessment Form. Rooks moved to **accept the revised agenda.** Seconded by McKay. The board voted by roll call. Pease, Rooks, McKay, and Lopez voted aye. **MOTION PASSED**

Pease opened the floor for any **member of the public that wished to address the board.** Laine Claycomb introduced herself. She is a newly licensed Student Professional Midwife in South Dakota who is in her second year of Midwifery Education. She is working under Jackie Lopez, CPM on the west side of SD and in Wyoming. There were no other members of the public who wished to speak.

There were no additions or corrections to the **Draft Meeting Minutes of Sept 17, 2020.** Rooks moved to **accept them as presented.** Lopez seconded. The board voted by roll call Pease, Rooks, McKay, and Lopez voted aye. **MOTION PASSED**

The Financial Report Two items in the posted documents were the Financial Statement and the Vender Report. There are few changes from other meetings. If there are no unpleasant surprises between now and the end of the fiscal year, we should end the year in the positive column. The second two posted documents concerned the new expense for attorney fees. The first document showed the items and the hours that we were billed for and the second one shows the cost of the service each month. There were no questions or concerns. The Report was filed as presented.

DOH Legal Counsel **Megan Borchert will be General Counsel for the CPM Board.** Going forward Justin Williams will remain our liaison. He will receive our monthly report and invoice for reference. This will not incur a monthly legal fee.

Debbie Pease presented an update on the **hearing screening equipment** that our board received from the Dept of Health and gifted to SD Birth Matters so that both CPM and CNM providers of out of hospital births would have access to them. The forms developed by SD Birth Matters and an outline of the procedures they have implemented were explained to the board. There were no questions or discussion.



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**Birth Report Assessment Form** was presented by Pease. At our last meeting we put the following review of Birth Reports in place:

- 1) The birth reports would first be assessed for clerical errors by the Executive Secretary. If an error is suspected the CPM will be contacted to verify that the correct information is on the form.*
- 2) The Reports will then be sent for assessment to a CPM on the board who lives in a different region of the state than where the birth took place. If the CPM sees no unusual or concerning information the report will be filed.*
- 3) If the CPM assesses unusual information, she will then send a copy to the physician. 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.*

Weis explained that the form documents each of the three layers of the assessment and should be used to improve our processes and help trouble shoot anywhere that all of the midwives are having a problem. Once the form is approved, we will work on a way that it can be **shared electronically**. She then provided a recent example of how the assessment could be used to improve our processes and CPM services.

Jackie Lopez, CPM asked what we plan to do with the assessments once they are completed, especially if we find items that are outside of the perimeters of the rules? Does the Board have the authority to bring a complaint based on the assessment of the Birth Report? Do we plan to use them in that manner? Weis and McKay both agreed that we want honest reporting and we want the reports to accurately reflect what is happening at the births. Pease requested that we place this issue on the agenda for our next meeting and asked Borchert to look into the legal aspects of whether the board can bring a complaint against a midwife based on the Birth Report.

Lopez moved that **we accept the form as written**, Rooks second. The board voted by roll call Pease, Rooks, McKay, and Lopez voted aye. **MOTION PASSED**

Pease opened the discussion concerning **board conduct at meetings**, especially when addressing controversial topics. A document offering suggestions of items that our board needs to address was presented. The Assistant to the Attorney General was invited to speak to our board during an Executive Session. She was concerned that all of our board members needed to have a **better understanding of Open Meeting laws**. The board looked at a New Announcement which our Legal Counsel offered as an example of what other boards are doing to help with some of these issues. Borchert then presented a power point presentation which she has been offering to South Dakota Boards concerning how these issues pertain to the legal aspects of conducting official open-to-the-public meetings.



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Borchert also gave us a **brief overview of the three bills that were passed during legislative session which affect our board.** They are Complaint process (HB1014), Provisional license changes (HB1077) and Voice vote allowed on teleconferences when unanimous (HB1127). Borchert will research any changes that we need to make in our processes to implement the new legislation and report at our next meeting.

Pease offered two announcements:

**Sue Rooks has been offered a Fellowship with the American College of Nurse Midwives.** We want to recognize and congratulate her outstanding service to our board, the profession of midwifery, and to the families that she has served during her exemplary career.

**Autumn Cavender-Wilson** has also had an exciting event in her life. We offer our congratulations and celebration for the **birth of her new baby.**

**Our next meeting will be held Sept 16, 2021 (1-4pm)**

Rooks **moved to adjourn**, McKay second. The board voted by roll call. Pease, Rooks, McKay, and Lopez voted aye. **MOTION PASSED**

AVAILABLE FUNDS  
 AS OF: 06/29/2021  
 FY YEAR REMAINING: 0.5%  
 PAY DAYS REMAINING: 0

BUDGET UNIT 09213

DATE 06/26/2021

BUDGET UNIT NAME BOARD OF CERTIFIED PROF MIDWIVES - INFO

COMP	ORIGINAL APPROPRIATION	APPROPRIATION TRANSFERS	YEAR-TO-DATE COMMITMENTS	YEAR-TO-DATE ENCUMBRANCES	YEAR-TO-DATE EXPENDITURES	AVAILABLE APPROPRIATIONS	CASH BALANCE
6503-I	20,683.00	0.00	0.00	0.00	11,299.11	9,383.89	0.00
BUDGETED TOT	20,683.00	0.00	0.00	0.00	11,299.11	9,383.89	
ALL COMP TOT	20,683.00	0.00	0.00	0.00	11,299.11	9,383.89	

TOTAL BUDGETED:

	OBJECT OF EXPENDITURE	AMOUNT BUDGETED	COMMITMENTS YEAR-TO-DATE	ENCUMBRANCES YEAR-TO-DATE	EXPENDITURES		BUDGET AVAILABLE	PCT AVL
					MONTHLY	YEAR-TO-DATE		
5101	EMPLOYEE SALARIES	1,019.00	0.00	0.00	0.00	480.00	539.00	52.9
5102	EMPLOYEE BENEFITS	102.00	0.00	0.00	0.00	36.72	65.28	64.0
5203	TRAVEL	3,000.00	0.00	0.00	0.00	0.00	3,000.00	100.0
5204	CONTRACTUAL SVCS	15,862.00	0.00	0.00	885.95	9,782.39	6,079.61	38.3
5207	CAPITAL OUTLAY	700.00	0.00	0.00	0.00	0.00	700.00	100.0
5208	OTHER	0.00	0.00	0.00	0.00	1,000.00	1,000.00-	0.0
	TOTALS	20,683.00	0.00	0.00	885.95	11,299.11	9,383.89	45.4

BREAKOUT BY COMPANY:

COMPANY 6503-I PROFESSIONAL & LICENSING BOARDS

5101000	EMPLOYEE SALARIES	1,019.00	0.00	0.00	0.00	480.00	539.00	52.9
5102000	EMPLOYEE BENEFITS	102.00	0.00	0.00	0.00	36.72	65.28	64.0
5203000	TRAVEL	3,000.00	0.00	0.00	0.00	0.00	3,000.00	100.0
5204000	CONTRACTUAL SVCS	15,862.00	0.00	0.00	885.95	9,782.39	6,079.61	38.3
5207000	CAPITAL OUTLAY	700.00	0.00	0.00	0.00	0.00	700.00	100.0
5208000	OTHER	0.00	0.00	0.00	0.00	1,000.00	1,000.00-	0.0
	PS SUBTOTALS	1,121.00	0.00	0.00	0.00	516.72	604.28	53.9
	OE SUBTOTALS	19,562.00	0.00	0.00	885.95	10,782.39	8,779.61	44.9
	COMPANY 6503-I TOT	20,683.00	0.00	0.00	885.95	11,299.11	9,383.89	45.4

STATE OF SOUTH DAKOTA  
CASH CENTER BALANCES  
AS OF: 06/29/2021

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

COMPANY	CENTER	ACCOUNT	BALANCE	DR/CR	CENTER DESCRIPTION
6503	092100062401	1140000	1,111.14	DR	BOARD OF CERTIFIED PROFESSIONAL MIDWIVES
COMPANY/SOURCE TOTAL 6503 624			1,111.14	DR *	
COMP/BUDG UNIT TOTAL 6503 09213			1,111.14	DR **	
BUDGET UNIT TOTAL		09213	1,111.14	DR ***	
AGENCY TOTAL		09	13,792,587.94	CR ****	

**Vote** to begin process, approve language, and schedule Public Hearing. **July 15, 2021**

Final date to submit rules to Board Liaison for review **September 7, 2021**

Last date to submit Fiscal Note/Small Business Impact Statement to DOH Division of Finance for approval **September 14, 2021**

Last date for Secretary of Health to sign forms initiating rules process **September 21, 2021**

**Last date** for notice of public hearing to appear in newspaper (must be at least 20 days prior to the public hearing) **August 28, 2021**

**Date** to accept public comment and hold public hearing **Sept 16, 2021**

Last date to mail rules packet to Interim Rules Review Committee members **October 25, 2021**

Interim Rules Review Committee meeting **November 1, 2021**

Effective date of rules (or 20 days after filing with Secretary of State) **November 22, 2021**

2021 South Dakota Legislature

**House Bill 1014**

HOUSE ENGROSSED

*Introduced by: [The Committee on Commerce and Energy](#) at the request of the Department of Labor and Regulation*

**An Act to establish uniform complaint and declaratory ruling procedures for agencies  
regulating certain professions and occupations.**

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

**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.

**Section 10.** That a NEW SECTION be added:

**36-1C-10. Appearance required of applicant or licensee.**

The applicant or licensee appearing before the agency at a formal hearing shall appear in person unless otherwise waived by the agency. If an applicant or licensee fails to appear, the hearing may proceed without the applicant or licensee.

**Section 11.** That a NEW SECTION be added:

**36-1C-11. Board or commission member disqualified.**

If an alleged violation against an applicant or licensee is filed by a member of the agency's board or commission, or if a member of the agency's board or commission participates in the investigation of a violation by an applicant or licensee, that agency's board or commission member is disqualified from participating in the final decision rendered by the agency board or commission.

**Section 12.** That a NEW SECTION be added:

**36-1C-12. Written waiver of procedures.**

An applicant for a license or licensee may, in writing, waive any procedure granted to the applicant or licensee under this chapter.

Notwithstanding any other provision of law, nothing in this chapter shall be construed to limit an agency's authority for emergency action under [§ 1-26-29](#).

**Section 13.** That a NEW SECTION be added:

**36-1C-13. Promulgation of rules.**

The Departments of Agriculture, Health, Labor and Regulation, and Social Services shall promulgate rules, pursuant to chapter [1-26](#), to make any consistent

addition to the procedures in this chapter in order to comply with any federal statutes, rules, and regulations regarding a profession or occupation within their respective department.

**Section 14.** That a NEW SECTION be added:

**36-1C-14. Petition for declaratory ruling.**

A person seeking a ruling as to the applicability to that person of a law, rule, or order of an agency under title 36 may file with the agency a petition for declaratory ruling in substantially the following form:

Pursuant to the provisions of SDCL [1-26-15](#), I, (name of petitioner), of (address of petitioner), am (title or capacity of petitioner), and do hereby petition the professional or occupational board or commission of (state name of body) for its declaratory ruling in regard to the following:

- (1) The statutes or rules or order in question is: (here identify and quote the pertinent statute, rule, or order.):
  
- (2) The facts and circumstances that give rise to the issue to be answered by the professional or occupational board or commission's declaratory ruling:
  
- (3) The precise issue to be answered by the professional or occupational board or commission's declaratory ruling:

Dated at (city and state), this \_\_\_\_\_ day of \_\_\_\_\_,

\_\_\_\_\_

(Signature of Petitioner)

**Section 15.** That a NEW SECTION be added:

**36-1C-15. Action on petition.**

Upon receipt of the petition, the administrator may request from the petitioner any information that may be required for the issuance of its ruling. At the agency's next

regularly scheduled meeting following the receipt of the petition or following receipt of requested information, or within ninety days, whichever is shorter, the agency shall issue its declaratory ruling and serve a copy of it by mail or electronic mail upon the petitioner.

**Section 16.** That a NEW SECTION be added:

**36-1C-16. Appeal of declaratory ruling.**

Any person seeking a declaratory ruling hereunder, is considered aggrieved if, within thirty days of the agency's declaratory ruling, a request is made for the agency to conduct a formal hearing. The hearing must be held at the earliest convenience of the agency following the receipt of the request. A hearing under this section is a contested case under chapter 1-26.

**Section 17.** That § 36-4A-42 be AMENDED.

**36-4A-42. Promulgation of rules by board.**

The board shall promulgate rules pursuant to chapter [1-26](#) pertaining to fees, licensure of physician assistants, and supervision requirements, and disciplinary proceedings.

**Section 18.** That § 36-4C-23 be AMENDED.

**36-4C-23. Investigation of violations.**

The board shall investigate every alleged violation of this chapter and pursuant to the procedures set forth in chapter 36-1C. If the alleged violation is committed by a nonlicensee, the board shall report it to the proper law enforcement officials of the county wherein the alleged violation has occurred.

**Section 19.** That § 36-5-20 be AMENDED.

**36-5-20. Disciplinary committee--Immunity from liability--Conditions--Official immunity unaffected.**

The Notwithstanding any provision of chapter 36-1C, the Board of Examiners may act as a disciplinary committee or may appoint other chiropractors licensed to practice in this state to perform such functions to maintain the professional standards of the board. No monetary liability on the part of, and no cause of action for damages may arise against any member of a duly appointed disciplinary committee for any act or proceeding undertaken or performed within the scope of the functions of the committee, if the committee member acts without malice, has made a reasonable effort to obtain the facts of the matter on which the member acts, and acts in a reasonable effort to obtain the facts. The provisions of this section do not affect the official immunity of an officer or employee of a public corporation.

The board may promulgate rules pursuant to chapter [1-26](#) governing the administration and enforcement of this section and the conduct of licensees, including:

- (1) Purpose The purpose of the disciplinary committee;
- (2) Composition The composition of the disciplinary committee; and
- (3) Qualifications The qualifications of the disciplinary committee;
- (4) Procedure governing the conduct of investigations and hearings by the disciplinary committee.

**Section 20.** That § 36-9-21 be AMENDED.

**36-9-21. Promulgation of rules.**

The board shall promulgate rules pursuant to chapter [1-26](#) pertaining to:

- (1) Licensing and licenses;
- (2) The practice of nursing;

- (3) Scope of nursing practice;
- (4) Except as otherwise provided in § [36-9-28](#), the delegation of nursing functions to unlicensed assistive personnel under the supervision of a licensed nurse;
- (5) Except as otherwise provided in § [36-9-28](#), the training, registration, and supervisory requirements for unlicensed personnel performing delegated nursing functions under the supervision of a licensed nurse;
- (6) Disciplinary proceedings;
- (7) Fees; and
- (8)(7) Approval of nursing education and clinical enrichment programs.

**Section 21.** That § [36-9A-41](#) be AMENDED.

**[36-9A-41](#). Promulgation of rules.**

The board may promulgate rules pursuant to chapter [1-26](#) pertaining to: licensure and licenses, practice, prescriptive authority, disciplinary proceedings, and approval of education programs.

**Section 22.** That § [36-9C-32](#) be AMENDED.

**[36-9C-32](#). Promulgation of rules.**

The board shall promulgate rules pursuant to chapter [1-26](#) pertaining to:

- (1) Licensing and licenses;
- (2) The practice and scope, pursuant to § [36-9C-13](#), of certified professional midwives and certified professional midwife students;
- (3) Disciplinary proceedings;



(4) Fees;

(5)(4) Approval of certified professional midwife education programs; and

(6)(5) Criteria for low-risk pregnancy and delivery.

**Section 23.** That § 36-10-49 be AMENDED.

**36-10-49. Investigation of violations--Employment of counsel to assist in prosecution.**

The Board of Examiners and/or or the physical therapy committee, or both, shall investigate every supposed alleged violation of this chapter, and pursuant to the procedures set forth in chapter 36-1C. If the alleged violation is committed by a nonlicensee, the board shall report the same violation to the proper law enforcement officials wherein the act is committed. The board is authorized to may employ special counsel subject to the supervision, control and direction of the attorney general, to assist in the prosecution of violations of this chapter, and to expend the necessary funds for such purpose.

**Section 24.** That § 36-11-11 be AMENDED.

**36-11-11. Promulgation of rules .**

The Board of Pharmacy may promulgate rules pursuant to chapter 1-26 as follows:

(1) Pertaining to the practice of pharmacy;

(2) Relating to the sanitation of persons and establishments licensed under the provisions of this chapter;

(3) Pertaining to establishments licensed under the provisions of this chapter wherein any drug is compounded, prepared, dispensed or sold;

(4) Providing for minimum equipment and standards of establishments licensed under the provisions of this chapter;

- (5) Pertaining to the sale of drugs by or through any mechanical device;
- (6) In cooperation with other governmental agencies where there exists a joint responsibility for protecting the public health and welfare;
- (7) Pertaining to the sale of nonprescription drugs;
- (8) To adopt such publications or supplements thereto as shall from time to time be deemed necessary to describe the drugs, medicines, prescription drugs, dispensing physician or other terms used defined in § [36-11-2](#);
- (9) Pertaining to the posting of prescription prices on the premises of a pharmacy department to provide consumers with comparative pricing information;
- (10) Pertaining to registration of drug wholesalers and manufacturers;
- (11) Pertaining to home health care and service;
- (12) Pertaining to computerized pharmacy;
- (13) Pertaining to the registration of registered pharmacy technicians and the suspension or revocation of registration; an annual registration fee not to exceed thirty dollars; and tasks that may not be delegated by a licensed pharmacist to a registered technician;
- (14) Redispensing of pharmaceuticals; and
- (15) Pertaining to the dispensing of biological products.

**Section 25.** That § [36-18A-22](#) be AMENDED.

**[36-18A-22.](#) Board to promulgate rules--Scope of rules--Existing rules remain in effect.**

The board shall, pursuant to chapter [1-26](#), promulgate rules which that may be reasonably necessary for the performance of its duties, the regulation of proceedings before

it, and the licensure of the professions it regulates. The existing rules promulgated under the previous chapter [36-18](#) remain in effect until replaced. The board shall promulgate rules, pursuant to chapter [1-26](#), for the licensure of professional engineers, architects, land surveyors, landscape architects, and petroleum release assessors and remediators in the following areas:

- (1) Forms such as applications, renewals, licenses or certificates, and receipts for applicants, licensed professionals, and business entities;
- (2) Fees for applications, examinations, renewals, late penalties, lists and labels of licensees, returned checks, reinstatement, inactive status, ability to allow a vendor to collect fees for examinations, waiver of fees;
- (3) Criteria for types of education degrees, approval of accredited programs, intern programs, type of experience, length of experience, national and state specific examinations, use of computer examinations, criteria from other countries, procedure to evaluate foreign degrees, eligibility of applicants, dual licenses;
- (4) Continuing professional education and development content, hours, carryovers, and requirements;
- (5) How, when, and where to seal plans and documents; type of seal; required services to be provided; and criteria to define complete plans, minimum standards of practice, and guidelines;
- (6) Description of and criteria for construction administration, including a designation of who is to perform construction administration and criteria for a prime professional or a coordinating professional;
- (7) Requirements for compliance with local building code; and
- (8) The adoption of a code of professional conduct;
- (9) Procedures for disciplinary proceedings; and

(10) Procedures for contested cases pursuant to chapter [1-26](#).

**Section 26.** That § 36-19-9 be AMENDED.

**36-19-9. Officers of board--Scope of rules--Bond required of treasurer.**

The State Board of Funeral Service shall have the power to may elect, out of its own number, a president, a vice-president, and secretary-treasurer, and, pursuant to chapter [1-26](#), promulgate the rules as may be reasonable and proper to:

- (1) Establish the minimum physical standards of licensees' funeral establishments;
- (2) Regulate the inspection of each funeral establishment;
- (3) Establish the educational, training, reciprocity and renewal requirements for licensure;  
and
- (4) However, the board may not regulate the method and manner of providing funeral service; and
- (5) Conduct investigations and implement disciplinary proceedings.

The treasurer of such the board shall give bond in the sum of five thousand dollars with sufficient sureties to be approved by such the board, conditioned for the honest and faithful discharge of his the treasurer's duties.

**Section 27.** That § 36-20B-41 be AMENDED.

**36-20B-41. Investigations--Probable cause determination--Subpoena power of board.**

The board may, upon receipt of a complaint or other information suggesting violations of this chapter or of the rules of the board, conduct investigations in accordance with chapter 36-1C to determine whether there is probable cause to institute proceedings under chapter [1-26](#) or of this chapter against any person or firm for such violation. However,

no investigation under this section may be a prerequisite to such the proceedings in the event that if a determination of probable cause can be made without investigation. In aid of such investigations, the board or the chair thereof may issue subpoenas to compel witnesses to testify and to produce evidence.

**Section 28.** That § 36-20B-42 be AMENDED.

**36-20B-42. Investigating officer--Confidentiality of information.**

The board may designate a member, or any other person of appropriate competence, to serve as investigating officer to conduct an investigation. Upon completion of an investigation, the investigating officer shall file a report with the board. The board shall find probable cause or lack of probable cause upon the basis of the report or shall return the report to the investigating officer for further investigation. Unless there has been a determination of probable cause, If an investigation committee determines a complaint or other information suggesting a violation under § 36-20B-41 lacks probable cause, the report of the investigating officer committee, the complaint, if any, the testimony and documents submitted in support of the complaint or gathered in the investigation, and the fact of pendency of the investigation shall must be treated as confidential information and may not be disclosed to any person except law enforcement authorities and, to the extent deemed considered necessary in order to conduct the investigation, the subject of the investigation, persons the person whose complaints are complaint is being investigated, and witnesses any witness questioned in the course of the investigation.

**Section 29.** That § 36-20B-43 be AMENDED.

**36-20B-43. Findings of investigation--Effect.**

Upon a finding of probable cause, At the conclusion of the investigation under § 36-1C-4, if the subject of the investigation is a licensee or an individual with practice privileges under the provisions of § 36-20B-66 or 36-20B-67, the board staff shall proceed in accordance with chapter 1-26. If the subject of the investigation is not a licensee or an individual with privileges under this chapter, the board shall take appropriate action under

this chapter. Upon a finding of no probable cause, the board shall close the matter and shall thereafter release information relating thereto only with the consent of the person or firm under investigation.

**Section 30.** That § 36-20B-45 be AMENDED.

**36-20B-45. Issuance of complaint--Administrative hearing--Service of complaint and notice of hearing.**

If probable cause with respect to a violation by a licensee or an individual with practice privileges granted under the provisions of § [36-20B-66](#) or [36-20B-67](#) has been determined by the board, or upon receipt of notice of a decision by the board of another state furnishing grounds for a determination of probable cause, the board may issue a complaint setting forth appropriate charges and set a date for hearing before the board on such charges. If a complaint is issued and a hearing date set, the board shall, not less than thirty days prior to the date of the hearing, serve a copy of the complaint and notice of the time and place of the hearing upon the licensee or an individual with practice privileges granted under the provisions of § [36-20B-66](#) or [36-20B-67](#), together with a copy of the board's rules governing proceedings under this section, either by personal delivery or by mailing a copy thereof by registered mail to the licensee at the licensee's address, last known to the board. In the case of an individual exercising practice privileges under the provisions of § 36-20B-66 or 36-20B-67, service contested case proceedings under chapter 1-26. Service shall be by certified or registered mail to the address last known to the board, or pursuant to chapter [1-26](#).

**Section 31.** That § 36-20B-46 be AMENDED.

**36-20B-46. Respondent to have access to investigatory report and evidence.**

A licensee or an An individual with practice privileges under the provisions of § [36-20B-66](#) or [36-20B-67](#) against whom a complaint has been issued under this section may, reasonably in advance of the hearing, examine and copy the report of investigation, if any, and any documentary or testimonial evidence and summaries of anticipated evidence in the board's possession relating to the subject matter of the complaint. The board shall adopt

rules, promulgated pursuant to chapter [1-26](#), governing proceedings under this section to specify the manner in which such right may be exercised.

**Section 32.** That § [36-20B-47](#) be AMENDED.

**[36-20B-47](#). Appearance at hearing--Examination and presentation of witnesses and evidence--Subpoenas.**

The respondent licensee or an shall appear at the hearing as required by § 36-1C-10. An individual with practice privileges granted under the provisions of § [36-20B-66](#) or [36-20B-67](#) may appear at the hearing in person or, in the case of a firm, through a partner, officer, director, shareholder, member, or manager, and by counsel, examine witnesses and evidence presented in support of the complaint, and present evidence and witnesses on the licensee's or an individual's own behalf. The licensee or an individual granted practice privileges under the provisions of § [36-20B-66](#) or [36-20B-67](#) is entitled, on application to the board, to the issuance of subpoenas to compel the attendance of witnesses and the production of documentary evidence.

**Section 33.** That § [36-21A-89](#) be AMENDED.

**[36-21A-89](#). Administration and enforcement of chapter--Promulgation of rules.**

The commission may promulgate rules pursuant to chapter [1-26](#) relating to the administration and enforcement of the provisions of this chapter in the following areas:

- (1) Procedures for conducting the commission's business;
- (2) Procedures and qualifications for application, minimum requirements for examination, procedures for the examination and the administration of the examination, the required score for passing the examination, and procedures for replacement of a license;
- (3) Requirements for dividing a commission with a broker in another state, requirements for application for licensure by reciprocity and the practice of a nonresident licensee in the state;

- (4) Procedures for application to provide classroom instruction or correspondence work for prelicensing education, qualifications of the instructors and facilities, and procedures for approving classroom instruction and correspondence work and for withdrawing the approval;
- (5) Procedures for disciplinary proceedings, including requirements for filing a complaint, dismissal of a complaint, informal and formal resolution of a complaint, formal complaint and answer requirements, final action and review, disqualification of a commission member from a hearing and authorization for per diem and mileage;
- (6) Procedures for declaratory rulings, petitions for rules and contested cases;
- (7) Requirements for a real estate auction, use of unlicensed persons to call or take bids, and the requirements, duties and responsibilities of an auctioneer;
- (8)(6) Requirements for mortgage brokers, including areas such as trust accounts, record-keeping, written contracts, full disclosure and restrictions on chargeable costs and expenses;
- (9)(7) Requirements for continuing education including procedures for granting a certificate of accreditation; notification of a material change in an approved course offering; suspension, revocation and denial of course approval; notice to students regarding the course and opportunity for comment; auditing; certificates of attendance; preregistration and limits on correspondence courses;
- (10)(8) Requirements for property managers, including areas such as trust accounts, auditing, contracts, disclosure, disciplinary matters, financial obligations and records, and property management accounting; and
- (11)(9) Requirements for establishing and maintaining teams and the requirements, duties, and responsibilities of team leaders.

**Section 34. That § 36-21B-3 be AMENDED.**



### **36-21B-3. Promulgation of rules.**

The secretary of the Department of Labor and Regulation may promulgate rules pursuant to chapter [1-26](#) relating to appraisers and appraisals in the following areas:

- (1) Certification, licensing, and registration of appraisers;
- (2) Definition of terms;
- (3) Uniform standards of professional appraisal practice;
- (4) Application for and issuance of certificates;
- (5) Examinations and examination procedures;
- (6) Pre-certification education criteria and continuing education;
- (7) Qualifications for and upgrading of a certificate;
- (8) Transactions requiring certified, licensed, or registered appraisers;
- (9) Renewal and late renewal procedures;
- (10) Certificate by reciprocity;
- (11) Temporary practice and permits;
- (12) Complaints and grounds Grounds for disciplinary actions including denial, revocation, suspension, censure, and reprimand;
- (13) Conflict of interest and investigation;
- (14) Advertising by certified, licensed, or registered appraisers;
- (15) Retention and inspection of records, and rosters of appraisers;
- (16) Appraiser membership, competency, and independence;

- (17) Review of appraisals and contracting for investigations;
- (18) Inspection, examination, and photocopy of appraisal records for audit purposes;
- (19) Inactive status; and
- (20) Exemptions and standards allowing appraisers to perform an evaluation for a federally insured depository institution.

**Section 35.** That § 36-21C-6 be AMENDED.

**36-21C-6. Promulgation of rules for licensing and registration.**

The commission shall promulgate rules pursuant to chapter [1-26](#) for licensed and registered home inspectors in the following areas:

- (1) Standards and requirements for prelicense and continuing education, including qualifications of instructors, procedures for granting a certificate of accreditation, notification of a material change in an approved course offering, suspension, revocation, and denial of course approval, certification of attendance, preregistration, and hours required to renew a license or registration;
- (2) A code of ethics and standards of practice;
- (3) Fees for applications, examinations, registration, licensure, and renewals, not to exceed two hundred dollars for application and one hundred dollars for renewal; and
- (4) Procedures and qualifications for application, minimum requirements for examination, procedures for the examination and the administration of the examination, the required score for passing the examination, and procedures for replacement of a license;
- (5) Procedures for disciplinary proceedings, including requirements for filing a complaint, dismissal of a complaint, informal and formal resolution of a complaint, formal complaint and answer requirements, final action and review, disqualification of a commission member from a hearing, and authorization for per diem and mileage; and

(6) Procedures for declaratory rulings, petitions for rules, and contested cases.

**Section 36.** That § 36-21D-4 be AMENDED.

**36-21D-4. Promulgation of rules regarding companies and services.**

The secretary of the Department of Labor and Regulation may promulgate rules pursuant to chapter [1-26](#) relating to appraisal management companies and appraisal management services as follows in the following areas:

- (1) Registration of appraisal management companies;
- (2) Definition of terms;
- (3) Responsibilities and duties;
- (4) Application for and issuance of certificate of registration;
- (5) Renewal and late renewal procedures;
- (6) Investigation and contracting Contracting for investigations;
- (7) Complaints and grounds for disciplinary actions, including denial, revocation, suspension, censure, and reprimand;
- (8) Retention and inspection of records;
- (9) Roster;
- (10) Review of appraisal related records;
- (11) Inspection, examination, and photocopy of records;
- (12) National registry fee collection and remittance; and
- (13) Filing of surety bonds or irrevocable letters of credit.

**Section 37.** That § 36-26-41 be AMENDED.

**36-26-41. Investigation and report of violations--Employment of special counsel--Expenses.**

The board shall investigate every supposed alleged violation of this chapter, and pursuant to the procedures set forth in chapter 36-1C. If the board violation is committed by a nonlicensee, the board shall report the same to the proper law enforcement officials wherein the act is committed. The board is authorized to employ special counsel subject to the supervision, control and direction of the attorney general, to assist in the prosecution of violations of this chapter and to expend the necessary funds for such purpose.

**Section 38.** That § 36-27A-34 be AMENDED.

**36-27A-34. Investigation and prosecution of violations.**

The Board of Examiners of Psychologists shall investigate every alleged violation of this chapter pursuant to chapter 36-1C. The board may employ special counsel, subject to approval, supervision, control, and direction by the attorney general, to assist in the prosecution of violations of this chapter, and to spend the necessary funds for that purpose.

**Section 39.** That § 36-29-26 be AMENDED.

**36-29-26. Investigation and report of violations.**

The Board of Medical and Osteopathic Examiners shall investigate every supposed alleged violation of this chapter and pursuant to the procedures set forth in chapter 36-1C. If the alleged violation is committed by a nonlicensee, the board shall report the same to the proper law enforcement officials wherein the violation is committed.

**Section 40.** That § 36-31-22 be AMENDED.

**36-31-22. Investigation and report of violations.**

The board shall investigate every supposed alleged violation of this chapter and pursuant to the procedures set forth in chapter 36-1C. If the alleged violation is committed by a nonlicensee, the board shall report the same to the proper law enforcement officials wherein the violation is committed.

**Section 41.** That § 36-32-80 be AMENDED.

**36-32-80. Complaints--Investigation--Dismissal--Hearing--Appeal.**

The board shall receive complaints Complaints regarding any person licensed under this chapter shall be processed pursuant to chapter 36-1C. A record of each complaint shall be maintained by in the board office.

An Notwithstanding any provision of chapter 36-1C, an investigation shall may be conducted by a member, agent, or an appointee of the board to determine whether the alleged violation has been committed. The investigator, if a member of the board, may dismiss a complaint if it appears to the member, in consultation with the board president, that no violation has been committed. If the investigator is an agent or an appointee of the board, dismissal of the complaint may only be made by the board president. Any disposition agreed upon between the investigator and the licensee or permit holder shall be made known to and approved by the board.

Any disciplinary proceeding shall must be conducted in accordance with chapter 1-26. Any decision of the board entered in a contested proceeding may be appealed to the circuit court within thirty days. A license or permit shall remain remains in effect during the pendency of an appeal, unless suspended under § 36-32-86.

**Section 42.** That § 36-32-89 be AMENDED.

**36-32-89. Violations reported to law enforcement officials--Prosecution of violations.**

The board shall investigate and report an alleged violation of any provision of this chapter, pursuant to the procedures set forth in chapter 36-1C, and report the alleged violation. The board may employ special counsel subject to the supervision, control, and direction of the attorney general to assist in the prosecution of alleged criminal violations and may expend the necessary funds for this purpose.

**Section 43.** That § 36-33-58 be AMENDED.

**36-33-58. Complaints--Investigation--Dismissal--Hearing--Appeal.**

The board shall receive complaints regarding the enforcement of the provisions of this chapter pursuant to the procedures set forth in chapter 36-1C. A record of each complaint shall be maintained by the board. An investigation shall be conducted by a member, agent, or an appointee of the board to determine whether an alleged violation has been committed.

The Notwithstanding chapter 36-1C, the investigator, if a member of the board, may dismiss a complaint if it appears to the member, in consultation with the board president, that no violation has been committed. If the investigator is an agent or an appointee of the board, dismissal of the complaint may only be made by the board president. Any disposition agreed upon between the investigator and the licensee or permit holder shall be made known to and approved by the board.

Any disciplinary proceeding shall be conducted in accordance with chapter 1-26. Any decision of the board entered in a contested proceeding may be appealed to the circuit court within thirty days. A license or permit shall remain in effect during the pendency of an appeal unless suspended under § 36-33-64.

**Section 44.** That § 36-34-18 be AMENDED.

**36-34-18. Receipt and log of complaints--Investigation--Disciplinary proceeding.**

The board shall receive complaints concerning a practitioner's professional practices. Each complaint received shall be logged by the secretary-treasurer, or the board's designee, recording the practitioner's name, name of the complaining party, date of the complaint, a brief statement of the complaint, and its ultimate disposition. The board shall investigate each alleged violation of this chapter pursuant to the procedures set forth in chapter 36-1C. All disciplinary proceedings held under the authority of this chapter shall must be conducted in accordance with chapter 1-26.

**Section 45.** That § 36-35-20 be AMENDED.

**36-35-20. Investigation of complaints--Inspections.**

The board may shall receive and investigate any complaint filed with the board alleging a violation of this chapter pursuant to the procedures set forth in chapter 36-1C. The board may inspect the place of business of the licensee named in a complaint during normal business hours or upon written notice.

**Section 46.** That § 36-36-12 be AMENDED.

**36-36-12. Promulgation of rules.**

The board shall promulgate rules pursuant to chapter 1-26 pertaining to fees, licensure, investigations, disciplinary proceedings, and continuing education.

**Section 47.** That § 36-38-21 be AMENDED.

**36-38-21. Investigation of suspected violations--Prosecution of violations.**

The board shall investigate each suspected violation of this chapter and pursuant to the procedures set forth in chapter 36-1C. If the suspected violation is committed by a nonlicensee, the board shall report the violation to the proper law enforcement official where the act is committed. The board is authorized to employ special counsel subject to the

supervision, control, and direction of the attorney general to assist in the prosecution of violations of this chapter, and to expend the necessary funds for such purpose.

**Section 48.** That section 47 of this Act is repealed on July 1, 2024.



## ARTICLE 20:86

### CERTIFIED PROFESSIONAL MIDWIVES

Chapter	
20:86:01	Definitions.
20:86:02	Licensing.
20:86:03	The practice of certified professional midwifery.
20:86:04	Fees.
20:86:05	Disciplinary procedures.

#### CHAPTER 20:86:02

##### LICENSING

###### Section

20:86:02:01	Qualifications for licensure.
20:86:02:02	Background check required.
20:86:02:03	Issuance of license.
20:86:02:04	Renewal of license.
20:86:02:05	Relicensure.
20:86:02:06	Inactive status and reactivation of license.
20:86:02:07	<u>Grounds for denial, revocation, or suspension.</u>
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20:86:02:09	<u>Reissuance of a revoked or suspended license.</u>
20:86:02:10	<u>Actions which may warrant sanctions.</u>
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20:86:02:18	<u>Suspension and probation.</u>
20:86:02:19	<u>Formal reprimands and hearings.</u>

**20:86:02:01. Qualifications for licensure.** No person may be licensed to practice as a certified professional midwife in this state unless the person has completed the requirements set forth in SDCL 36-9C-4. In addition, each applicant shall ensure that the board receives all documentation necessary to prove to the satisfaction of the board that the applicant meets all the requirements for licensure. Each applicant shall provide:

- (1) A completed application and the required fee;

(2) Evidence that the applicant has not been convicted of a crime that the board determines would render the person unfit to practice midwifery; and

(3) Fingerprints and other information necessary for a criminal background check.

An applicant may also, at the discretion of the board, be required to appear for a personal interview with the board.

**Source:** 45 SDR 31, effective September 10, 2018.

**General Authority:** SDCL 36-9C-32(1).

**Law Implemented:** SDCL 36-9C-4, 36-9C-12.

**20:86:02:02. Background check required.** Each applicant for licensure shall submit to a state and federal criminal background investigation by means of fingerprint checks by the Division of Criminal Investigation and the Federal Bureau of Investigation. Failure to submit to or cooperate with the criminal background investigation is grounds for denial of an application. The applicant shall pay for any fees charged for the cost of fingerprinting or the criminal background investigation.

**Source:** 45 SDR 31, effective September 10, 2018.

**General Authority:** SDCL 36-9C-32(1).

**Law Implemented:** SDCL 36-9C-12.

**20:86:02:03. Issuance of license.** Licenses will be renewed biennially ~~on October 30<sup>th</sup>~~ from the date that it was issued.

**Source:** 45 SDR 31, effective September 10, 2018.

**General Authority:** SDCL 36-9C-32(1).

**Law Implemented:** SDCL 36-9C-11.

**20:86:02:04. Renewal of license.** A notice for renewal of license shall be sent by the board to the last known address of each current licensee. The address may either be physical or electronic. Failure to receive the notice for renewal of license does not relieve the licensee of the responsibility for renewing the license and paying the renewal fee within the prescribed time. Any fee for renewal of license delivered in person to the board or postmarked after the filing date indicated in the notice may not be accepted, and the license is lapsed. A lapsed license may be reinstated only in accordance with the provisions of SDCL 36-9C-17.

**Source:** 45 SDR 31, effective September 10, 2018.

**General Authority:** SDCL 32-9C-32(1).

**Law Implemented:** SDCL 32-9C-15, 32-9C-16.

**20:86:02:05. Relicensure.** An applicant may seek relicensure if the applicant has been licensed in this state and either failed to timely renew or is seeking to return to active clinical practice. The following shall be submitted at the time of reapplication:

- (1) A completed application and the required fee;
- (2) A current CPM certification from NARM;
- (3) A satisfactory explanation for the failure to renew; and
- (4) Evidence of employment status during the preceding six years as described in SDCL 36-9C-16.

**Source:** 45 SDR 31, effective September 10, 2018.

**General Authority:** SDCL 36-9C-32(1).

**Law Implemented:** SDCL 36-9C-16, 36-9C-17, 36-9C-18.

**20:86:02:06. Inactive status and reactivation of license.** Upon filing with the board a written statement requesting inactive status and paying the fee prescribed by chapter 20:86:04, the licensee shall be placed on inactive status and issued an inactive status card. Reinstatement of an inactive license shall follow the requirements set forth in § 20:86:02:05. Any individual who holds inactive licensure status is prohibited from practicing as a certified professional midwife.

**Source:** 45 SDR 31, effective September 10, 2018.

**General Authority:** SDCL 36-9C-32(1).

**Law Implemented:** SDCL 36-9C-18.

**20:86:05:02 20:86:02:07. Grounds for denial, revocation, or suspension.** The board may deny, revoke, or suspend any license or application for licensure to practice as a certified professional midwife or certified professional midwife student in this state, and may take other disciplinary or corrective action upon a showing that the license holder or applicant has committed or violated any of the provisions set forth in SDCL 36-9C-22.

**Source:** 45 SDR 31, effective September 10, 2018; transferred from § 20:86:05:02.

**General Authority:** SDCL ~~36-9C-32(3)~~ 36-9C-32(1).

**Law Implemented:** SDCL 36-9C-5, 36-9C-22.

**20:86:05:03 20:86:02:08. Unprofessional conduct.** Willfully practicing beyond the scope of practice, violating the terms of suspension or probation ordered by the board or following a course of conduct or practice in violation of SDCL 36-9C or in violation of this article constitutes unprofessional conduct.

**Source:** 45 SDR 31, effective September 10, 2018; transferred from § 20:85:05:03.

**General Authority:** SDCL ~~36-9C-32(3)~~ 36-9C-32(1).

**Law Implemented:** SDCL 36-9C-5, 36-9C-22, 36-9C-27.

**20:85:05:04 20:86:02:09**. **Reissuance of a revoked or suspended license.** A person whose license has been suspended, revoked, surrendered, restricted, conditioned, or otherwise disciplined under the provisions of chapter ~~20:86:05~~ 20:86:02 may apply for reinstatement once a year or at such shorter intervals as the board may direct in the order of suspension or any modification thereof. Upon receipt of an application for reinstatement, the board may take or direct any action necessary to determine whether the person's disability has been removed, including the examination of the person by a qualified medical expert designated by the board. The person may be directed to pay the expense of the examination. The application for reinstatement shall be granted by the board upon determination that the person's disability has been removed and the licensee is fit to resume the practice of certified professional midwifery. Any person applying for reinstatement shall submit the following:

- (1) A completed reinstatement application and payment of fee;
- (2) Evidence of complying with any requirements of a previous board order;
- (3) Evidence that the applicant has corrected the conduct that formed the basis of the discipline of the applicant's license and that the applicant is able to safely, skillfully, and competently practice; and
- (4) Evidence demonstrating just cause for reinstatement.

The board, at its discretion, may request that the applicant appear before the board.

**Source:** 45 SDR 31, effective September 10, 2018; transferred from § 20:85:05:04.

**General Authority:** SDCL ~~36-9C-32(3)~~ 36-9C-32(1).

**Law Implemented:** SDCL 36-9C-5, 36-9C-26.

**20:85:05:06 20:86:02:10**. **Actions which may warrant sanctions.** The board may impose sanctions based upon any of the following:

(1) Engaging in conduct outside the scope of certified professional midwifery practice including any conduct or practice contrary to recognized standard of ethics of the certified professional midwifery profession or any conduct or practice that may constitute a danger to the health or safety of a patient or the public or any conduct, practice, or condition that may impair a certified professional midwife's ability to safely and skillfully practice professional midwifery;

(2) Failure to maintain current knowledge of statutes, rules, and regulations regarding the practice of professional midwifery;

(3) Failure to cooperate with and respond in writing within 15 days after personal receipt of any board inquiry or investigation;

(4) Failure to maintain proper patient records on each patient. Patient records must be clear and legible and include:

(a) A description of the patient's complaint;  
(b) A history;  
(c) A record of diagnostic and therapeutic procedures; and  
(d) A record of daily documentation which must include subjective data, objective data, an assessment, and a plan for the patient's care;

(5) Failure to properly train and supervise staff engaged in patient care;

(6) Conviction of a felony or misdemeanor involving moral turpitude. A copy of the record of conviction certified to by the clerk of the court entering the conviction is conclusive evidence of the conviction;

(7) Fraud, misrepresentation, or deception include the following:

(a) Practicing or attempting to practice professional midwifery under a false or assumed name;

(b) Fraud or deceit in obtaining a license to practice professional midwifery;

(c) Making false or misleading statements or withholding relevant information regarding the qualifications of any person in order to attempt to obtain a license or engage in the practice of professional midwifery;

(d) Failing to report past, present, or pending disciplinary action by another licensing board or current status of final administrative disposition of a matter. A licensee is required to report any compromise or settlement of disciplinary action, whether voluntary or involuntary, that results in encumbrance of licensure;

(e) Making or filing a report which the licensee knows to be false, intentionally or negligently failing to file a report or record required by state or federal law, or willfully impeding or obstructing another person to do so; or

(f) Submitting to any insurer or third-party payor a claim for a service or treatment that was not actually provided to a patient;

(8) Habitual intemperance in the use of intoxicants or controlled substances to such an extent as to incapacitate the person from the performance of professional duties;

(9) Exercising influence on the patient or client for the purpose of financial gain of the licensee or a third party;

(10) Improperly interfering with an investigation or inspection authorized by statute or under the provisions of Article 20:86 or with any disciplinary proceeding;

(11) Repeated violations of this chapter; or

(12) Receiving three or more negative peer reviews within any twelve-month period.

**Source:** 45 SDR 31, effective September 10, 2018; transferred from § 20:85:05:06.

**General Authority:** SDCL ~~36-9C-32(3)~~ 36-9C-32(1),(2).

**Law Implemented:** SDCL 36-9C-5, 36-9C-22, 36-9C-23, 36-9C-27.

**~~20:86:05:09~~ 20:86:02:11. Sanctions.** The board may impose any of the following sanctions or a combination thereof:

- (1) Formal reprimand;
- (2) Probation of license to practice professional midwifery in South Dakota;
- (3) Suspension of license to practice professional midwifery in South Dakota;
- (4) Revocation of license to practice professional midwifery in South Dakota; or
- (5) Restitution and payment of all expenses of the investigation and proceedings.

**Source:** 45 SDR 31, effective September 10, 2018; transferred from § 20:85:05:09.

**General Authority:** SDCL ~~36-9C-32(3)~~ 36-9C-32(1).

**Law Implemented:** SDCL 36-9C-5, 36-9C-23.

**~~20:86:05:10~~ 20:86:02:12. Judicial declaration of incompetence or involuntary commitment.** If a person licensed or certified by this board has been judicially declared incompetent or involuntarily committed to a mental hospital or treatment center, the board of certified professional midwives, upon proof of that fact, shall enter an order either placing the person on inactive status or suspending the person from the practice of professional midwifery for an indefinite period until further order of the board. A copy of the order shall be served upon the person, the person's guardian, and the director of the mental hospital by certified mail, with return receipt requested.

**Source:** 45 SDR 31, effective September 10, 2018; transferred from § 20:85:05:10.

**General Authority:** SDCL ~~36-9C-32(3)~~ 36-9C-32(1).

**Law Implemented:** SDCL 36-9C-5, 36-9C-23, 36-9C-29.

**~~20:86:05:11~~ 20:86:02:13. Petition by board.** If any interested person petitions the board to determine whether a person licensed or certified by this board is incapacitated by reason of mental infirmity or illness or because of addiction to drugs or intoxicants, the board may take action to determine whether the person is so incapacitated, including the examination of the person by such qualified medical experts as the board designates. If the board concludes that the person is incapacitated from continuing to practice professional midwifery, the board shall enter an order either placing the person on inactive status or suspending the person on the grounds of the disability for an indefinite period until further order of the board. Any pending disciplinary proceeding against the person shall be held in abeyance. The board shall provide notice to the respondent of proceedings in the matter as provided in SDCL chapter 1-26 and may appoint an attorney to represent the respondent if the person is without representation.

**Source:** 45 SDR 31, effective September 10, 2018; transferred from § 20:85:05:11.

**General Authority:** SDCL ~~36-9C-32(3)~~ 36-9C-32(1).

**Law Implemented:** SDCL 36-9C-5, 36-9C-23, 36-9C-24, 36-9C-29.

**~~20:86:05:12~~ 20:86:02:14. Burden of proof.** In a proceeding seeking an order of inactive status, probation, or suspension based upon the reasons set forth in §~~20:86:05:10~~ ~~or 20:86:05:14~~ 20:86:02:12 or 20:86:02:13, the burden of proof shall rest with the party filing the complaint. In a proceeding seeking an order terminating inactive status or suspension, the burden of proof shall rest with the person who is inactive or suspended.

**Source:** 45 SDR 31, effective September 10, 2018; transferred from § 20:85:05:12.

**General Authority:** SDCL ~~36-9C-32(3)~~ 36-9C-32(1).

**Law Implemented:** SDCL 36-9C-5, 36-9C-23.

**~~20:86:05:13~~ 20:86:02:15. Respondent's claim of illness or infirmity.** If, during the course of a disciplinary proceeding, the respondent contends that the respondent is suffering from a disability by reason of mental or physical infirmity or illness or addiction to drugs or intoxicants that makes it impossible for the respondent to present an adequate defense, the board shall enter an order immediately suspending the respondent from continuing to practice professional midwifery until a determination is made of the respondent's capacity to continue to practice in a proceeding instituted as provided in § ~~20:86:05:14~~ 20:86:02:13. If the board determines that the respondent is not incapacitated from practicing, it shall take any action the board considers advisable, including a direction for the resumption of the disciplinary proceeding against the respondent.

**Source:** 45 SDR 31, effective September 10, 2018; transferred from § 20:85:05:13.

**General Authority:** SDCL ~~36-9C-32(3)~~ 36-9C-32(1).

**Law Implemented:** SDCL 36-9C-5, 36-9C-23, 36-9C-24.

Under the CPM Rules Draft on page 7 "20:86:02:16" was accidentally stuck out, instead of underlined

**~~20:86:05:14~~ 20:86:02:16. Doctor-patient privilege – Waiver.** The filing of an application for reinstatement by a person placed on inactive status or suspended for disability constitutes a waiver of any doctor-patient privilege with respect to any treatment of the person during the period of disability. The person shall disclose the name of every psychologist, physician, and hospital by whom or in which the person has been examined or treated since being placed on inactive status or suspension. The person shall furnish to the board written consent to each to divulge the information and records requested by board-appointed medical experts.

**Source:** 45 SDR 31, effective September 10, 2018; transferred from § 20:85:05:14.

**General Authority:** SDCL ~~36-9C-32(3)~~ 36-9C-32(1).

**Law Implemented:** SDCL 36-9C-5, 36-9C-23.

**~~20:86:05:15~~ 20:86:02:17. Judicial declaration of competence.** If a person has been suspended by an order as provided in § ~~20:86:05:10~~ ~~or 20:86:05:14~~ 20:86:02:12 or 20:86:02:13,

and has thereafter been judicially declared to be competent, the board may dispense with further evidence showing the disability has been removed and may direct reinstatement.

**Source:** 45 SDR 31, effective September 10, 2018; transferred from § 20:85:05:15.

**General Authority:** SDCL ~~36-9C-32(3)~~ 36-9C-32(1).

**Law Implemented:** SDCL 36-9C-5, 36-9C-23.

**~~20:86:05:16~~ 20:86:02:18. Suspension and probation.** The period of probation or suspension ordered pursuant to § ~~20:86:05:10 or 20:86:05:11~~ 20:86:02:12 or 20:86:02:13 may not exceed five years. The conditions of probation may include one or more of the following:

- (1) Additional mandatory continuing education;
- (2) Restitution;
- (3) Payment of all expenses of the investigation and proceedings; and
- (4) Mental health or alcoholism treatment.

**Source:** 45 SDR 31, effective September 10, 2018; transferred from § 20:85:05:16.

**General Authority:** SDCL ~~36-9C-32(3)~~ 36-9C-32(1).

**Law Implemented:** SDCL 36-9C-5, 36-9C-23.

**~~20:86:05:17~~ 20:86:02:19. Formal reprimands and files.** The board shall keep a permanent file of all complaints made to or by the board that result in an inquiry being directed to a licensee and a permanent file of board action taken, including formal reprimands. In considering action in a case, the board shall take into consideration at the hearing the past actions of the licensee or holder of a certificate, extending an opportunity to the person to rebut or explain past actions and files. The files are confidential except to board members acting within the scope of the board's duties and to the person or person's attorney or representative desiring to see the person's file.

**Source:** 45 SDR 31, effective September 10, 2018; transferred from § 20:85:05:17.

**General Authority:** SDCL ~~36-9C-32(3)~~ 36-9C-32(1).

**Law Implemented:** SDCL 36-9C-5, 36-9C-23.

## CHAPTER 20:86:05

### DISCIPLINARY PROCEDURES

#### Section

20:86:05:01	<del>Board action in general</del> <u>Repealed</u> .
20:86:05:02	<del>Grounds for denial, revocation, or suspension</del> <u>Transferred</u> .
20:86:05:03	<del>Unprofessional conduct</del> <u>Transferred</u> .
20:86:05:04	<del>Reissuance of a revoked or suspended license</del> <u>Transferred</u> .



20:86:05:05 ~~Disciplinary complaints~~ Repealed.  
 20:86:05:06 ~~Actions which may warrant sanctions~~ Transferred.  
 20:86:05:07 ~~Disciplinary procedures~~ Repealed.  
 20:86:05:08 ~~Procedures referred for formal hearing~~ Repealed.  
 20:86:05:09 ~~Sanctions~~ Transferred.  
 20:86:05:10 ~~Judicial declaration of incompetence or involuntary commitment~~ Transferred.  
 20:86:05:11 ~~Petition by board~~ Transferred.  
 20:86:05:12 ~~Burden of proof~~ Transferred.  
 20:86:05:13 ~~Respondent's claim of illness or infirmity~~ Transferred.  
 20:86:05:14 ~~Doctor-patient privilege—Waiver~~ Transferred.  
 20:86:05:15 ~~Judicial declaration of competence~~ Transferred.  
 20:86:05:16 ~~Suspension and probation~~ Transferred.  
 20:86:05:17 ~~Formal reprimands and hearings~~ Transferred.  
 20:86:05:18 ~~Board hearings—Procedure~~ Repealed.  
 20:86:05:19 ~~Appeal from board rulings or decisions~~ Repealed.

**20:86:05:01. Board action in general.** The board, through a designated investigator, shall promptly investigate all complaints filed in writing with the board or the disciplinary committee and any violations that come to the attention of one or more board members Repealed.

**Source:** 45 SDR 31, effective September 10, 2018.

**General Authority:** SDCL 36-9C-32(3).

**Law Implemented:** ~~SDCL 36-9C-5, 36-9C-22, 36-9C-23, 36-9C-27.~~

~~**20:86:05:02. Grounds for denial, revocation, or suspension.** The board may deny, revoke, or suspend any license or application for licensure to practice as a certified professional midwife or certified professional midwife student in this state, and may take other disciplinary or corrective action upon a showing that the license holder or applicant has committed or violated any of the provisions set forth in SDCL 36-9C-22~~ Transferred to § 20:86:02:07.

**Source:** 45 SDR 31, effective September 10, 2018.

**General Authority:** SDCL 36-9C-32(3).

**Law Implemented:** ~~SDCL 36-9C-5, 36-9C-22.~~

~~**20:86:05:03. Unprofessional conduct.** Willfully practicing beyond the scope of practice, violating the terms of suspension or probation ordered by the board or following a course of conduct or practice in violation of SDCL 36-9C or in violation of this article constitutes unprofessional conduct~~ Transferred to § 20:86:02:08.

**Source:** 45 SDR 31, effective September 10, 2018.

**General Authority:** SDCL 36-9C-32(3).

**Law Implemented:** ~~SDCL 36-9C-5, 36-9C-22, 36-9C-27.~~

~~**20:86:05:04. Reissuance of a revoked or suspended license.** A person whose license has been suspended, revoked, surrendered, restricted, conditioned, or otherwise disciplined under the~~

provisions of chapter 20:86:05 may apply for reinstatement once a year or at such shorter intervals as the board may direct in the order of suspension or any modification thereof. Upon receipt of an application for reinstatement, the board may take or direct any action necessary to determine whether the person's disability has been removed, including the examination of the person by a qualified medical expert designated by the board. The person may be directed to pay the expense of the examination. The application for reinstatement shall be granted by the board upon determination that the person's disability has been removed and the licensee is fit to resume the practice of certified professional midwifery. Any person applying for reinstatement shall submit the following:

- ~~(1) A completed reinstatement application and payment of fee;~~
- ~~(2) Evidence of complying with any requirements of a previous board order;~~
- ~~(3) Evidence that the applicant has corrected the conduct that formed the basis of the discipline of the applicant's license and that the applicant is able to safely, skillfully, and competently practice; and~~
- ~~(4) Evidence demonstrating just cause for reinstatement.~~

The board, at its discretion, may request that the applicant appear before the board  
Transferred to § 20:86:02:09.

**Source:** 45 SDR 31, effective September 10, 2018.

**General Authority:** SDCL 36-9C-32(3).

**Law Implemented:** SDCL 36-9C-5, 36-9C-26.

**20:86:05:05. Disciplinary complaints.** The board, through its investigator shall promptly investigate any complaints of misconduct or violations filed in writing and signed by a complaining party. The board shall impose appropriate sanctions as established under this chapter to protect the public health, safety, and welfare of the state of South Dakota. The board may also by resolution initiate disciplinary proceedings Repealed.

**Source:** 45 SDR 31, effective September 10, 2018.

**General Authority:** SDCL 36-9C-32(3).

**Law Implemented:** SDCL 36-9C-5.

**20:86:05:06. Actions which may warrant sanctions.** The board may impose sanctions based upon any of the following:

~~(1) Engaging in conduct outside the scope of certified professional midwifery practice including any conduct or practice contrary to recognized standard of ethics of the certified professional midwifery profession or any conduct or practice that may constitute a danger to the health or safety of a patient or the public or any conduct, practice, or condition that may impair a certified professional midwife's ability to safely and skillfully practice professional midwifery;~~

~~(2) Failure to maintain current knowledge of statutes, rules, and regulations regarding the practice of professional midwifery;~~

~~(3) Failure to cooperate with and respond in writing within 15 days after personal receipt of any board inquiry or investigation;~~

~~(4) Failure to maintain proper patient records on each patient. Patient records must be clear and legible and include:~~

- ~~(a) A description of the patient's complaint;~~
- ~~(b) A history;~~
- ~~(c) A record of diagnostic and therapeutic procedures; and~~
- ~~(d) A record of daily documentation which must include subjective data, objective data, an assessment, and a plan for the patient's care;~~

~~(6) Failure to properly train and supervise staff engaged in patient care;~~

~~(7) Conviction of a felony or misdemeanor involving moral turpitude. A copy of the record of conviction certified to by the clerk of the court entering the conviction is conclusive evidence of the conviction;~~

~~(8) Fraud, misrepresentation, or deception include the following:~~

- ~~(a) Practicing or attempting to practice professional midwifery under a false or assumed name;~~
- ~~(b) Fraud or deceit in obtaining a license to practice professional midwifery;~~
- ~~(c) Making false or misleading statements or withholding relevant information regarding the qualifications of any person in order to attempt to obtain a license or engage in the practice of professional midwifery;~~
- ~~(d) Failing to report past, present, or pending disciplinary action by another licensing board or current status of final administrative disposition of a matter. A licensee is required to report any compromise or settlement of disciplinary action, whether voluntary or involuntary, that results in encumbrance of licensure;~~
- ~~(e) Making or filing a report which the licensee knows to be false, intentionally or negligently failing to file a report or record required by state or federal law, or willfully impeding or obstructing another person to do so; or~~
- ~~(f) Submitting to any insurer or third party payor a claim for a service or treatment that was not actually provided to a patient;~~

~~(9) Habitual intemperance in the use of intoxicants or controlled substances to such an extent as to incapacitate the person from the performance of professional duties;~~

~~(10) Exercising influence on the patient or client for the purpose of financial gain of the licensee or a third party;~~

~~(11) Improperly interfering with an investigation or inspection authorized by statute or under the provisions of Article 20:85 or with any disciplinary proceeding;~~

~~(12) Repeated violations of this chapter; or~~

~~(13) Receiving three or more negative peer reviews within any twelve-month period  
Transferred to § 20:86:02:10.~~

~~**Source:** 45 SDR 31, effective September 10, 2018.~~

~~**General Authority:** SDCL 36-9C-32(3).~~

~~**20:86:05:07. Disciplinary procedures.** Disciplinary procedures shall be initiated by submission of a written complaint or by resolution of the board. Disciplinary procedures shall be conducted as follows:~~

~~—— (1) Each written complaint or board resolution for disciplinary investigation shall be given to the board investigator. The investigator shall investigate and prepare a report to be presented to the board;~~

~~—— (2) The investigator shall acknowledge receipt of the complaint;~~

~~—— (3) The investigator shall notify the certified professional midwife that a complaint has been received and request a response within 15 days to be mailed to the investigator. The notice shall include the basis for the complaint, including the name of the complaining party, and the name of the investigator assigned to investigate the complaint. A copy of these rules of procedure shall accompany the notice. The certified professional midwife shall promptly and appropriately respond to any request of the investigator;~~

~~—— (4) The investigator shall notify the complainant that the certified professional midwife has been notified of the allegations and requested to respond within 15 days and that the response shall be forwarded to the complainant;~~

~~—— (5) The investigator shall prepare a report to present to the board. The report shall include the identity of the complainant, the allegations that form the basis of the complaint, the position of the certified professional midwife against whom the complaint is lodged, and the proposed action, if any, that should be taken with regard to the complaint;~~

~~—— (6) Upon presentation of the report to the board, the board shall review the report and act upon the information before it by either dismissing the complaint, if frivolous or clearly unfounded in fact, or by initiating an informal inquiry or taking further action the board considers appropriate;~~

~~—— (7) If the board dismisses the complaint, the investigator shall give notice to the complainant and the certified professional midwife that the complaint has been reviewed with the determination that no board action is warranted;~~

~~—— (8) If the board finds the complaint to have merit, the committee shall afford the certified professional midwife against whom the complaint was filed a reasonable opportunity to state the certified professional midwife's position with respect to the allegations against the professional.~~

The hearing shall take the form of an informal conference between the board and the certified professional midwife; and

~~— (9) After an informal inquiry, the board may dismiss the complaint, or if the complaint has merit, refer for a formal hearing. In lieu of referral for hearing, the board and the certified professional midwife may enter a remedial stipulation satisfactory to both the certified professional midwife and the board. If a remedial stipulation is entered, the referral may not take place if the terms of the remedial stipulation are successfully completed and the board shall notify the complainant that the matter has been resolved in this manner. The complainant is not entitled to a copy of the remedial stipulation Repealed.~~

**Source:** 45 SDR 31, effective September 10, 2018.  
**General Authority:** SDCL 36-9C-32(3).  
**Law Implemented:** SDCL 36-9C-5, 36-9C-23.

**20:86:05:08. Procedures referred for formal hearing.** A formal hearing may be conducted by the board, or a hearing examiner, pursuant to ~~SDCL chapter 1-26 Repealed~~.

**Source:** 45 SDR 31, effective September 10, 2018.  
**General Authority:** SDCL 36-9C-32(3).  
**Law Implemented:** SDCL 36-9C-5, 36-9C-23.

**20:86:05:09. Sanctions.** The board may impose any of the following sanctions or a combination thereof:

- ~~(1) Formal reprimand;~~
- ~~(2) Probation of license to practice professional midwifery in South Dakota;~~
- ~~(3) Suspension of license to practice professional midwifery in South Dakota;~~
- ~~(4) Revocation of license to practice professional midwifery in South Dakota; or~~
- ~~(5) Restitution and payment of all expenses of the investigation and proceedings~~

Transferred to § 20:86:02:11.

**Source:** 45 SDR 31, effective September 10, 2018.  
**General Authority:** SDCL 36-9C-32(3).  
**Law Implemented:** SDCL 36-9C-5, 36-9C-23.

**20:86:05:10. Judicial declaration of incompetence or involuntary commitment.** If a person licensed or certified by this board has been judicially declared incompetent or involuntarily committed to a mental hospital or treatment center, the board of certified professional midwives, upon proof of that fact, shall enter an order either placing the person on inactive status or suspending the person from the practice of professional midwifery for an indefinite period until further order of the board. A copy of the order shall be served upon the person, the person's guardian, and the director of the mental hospital by certified mail, with return receipt requested Transferred to § 20:86:02:12.

**Source:** 45 SDR 31, effective September 10, 2018.

**General Authority:** SDCL 36-9C-32(3).

**Law Implemented:** SDCL 36-9C-5, 36-9C-23, 36-9C-29.

**20:86:05:11. Petition by board.** If any interested person petitions the board or the disciplinary committee to determine whether a person licensed or certified by this board is incapacitated by reason of mental infirmity or illness or because of addiction to drugs or intoxicants, the board may take action to determine whether the person is so incapacitated, including the examination of the person by such qualified medical experts as the board designates. If the board concludes that the person is incapacitated from continuing to practice professional midwifery, the board shall enter an order either placing the person on inactive status or suspending the person on the grounds of the disability for an indefinite period until further order of the board. Any pending disciplinary proceeding against the person shall be held in abeyance. The board shall provide notice to the respondent of proceedings in the matter as provided in SDCL chapter 1-26 and may appoint an attorney to represent the respondent if the person is without representation Transferred to § 20:86:02:13.

**Source:** 45 SDR 31, effective September 10, 2018.

**General Authority:** SDCL 36-9C-32(3).

**Law Implemented:** SDCL 36-9C-5, 36-9C-23, 36-9C-24, 36-9C-29.

**20:86:05:12. Burden of proof.** In a proceeding seeking an order of inactive status, probation, or suspension based upon the reasons set forth in § 20:86:05:10 or 20:86:05:11, the burden of proof shall rest with the party filing the complaint. In a proceeding seeking an order terminating inactive status or suspension, the burden of proof shall rest with the person who is inactive or suspended Transferred to § 20:86:02:14.

**Source:** 45 SDR 31, effective September 10, 2018.

**General Authority:** SDCL 36-9C-32(3).

**Law Implemented:** SDCL 36-9C-5, 36-9C-23.

**20:86:05:13. Respondent's claim of illness or infirmity.** If, during the course of a disciplinary proceeding, the respondent contends that the respondent is suffering from a disability by reason of mental or physical infirmity or illness or addiction to drugs or intoxicants that makes it impossible for the respondent to present an adequate defense, the board shall enter an order immediately suspending the respondent from continuing to practice professional midwifery until a determination is made of the respondent's capacity to continue to practice in a proceeding instituted as provided in § 20:86:05:11. If the board determines that the respondent is not incapacitated from practicing, it shall take any action the board considers advisable, including a direction for the resumption of the disciplinary proceeding against the respondent Transferred to § 20:86:02:15.

**Source:** 45 SDR 31, effective September 10, 2018.

**General Authority:** SDCL 36-9C-32(3).

**Law Implemented:** SDCL 36-9C-5, 36-9C-23, 36-9C-24.

~~**20:86:05:14. Doctor-patient privilege—Waiver.** The filing of an application for reinstatement by a person placed on inactive status or suspended for disability constitutes a waiver of any doctor-patient privilege with respect to any treatment of the person during the period of disability. The person shall disclose the name of every psychologist, physician, and hospital by whom or in which the person has been examined or treated since being placed on inactive status or suspension. The person shall furnish to the board written consent to each to divulge the information and records requested by board-appointed medical experts Transferred to § 20:86:02:16.~~

~~**Source:** 45 SDR 31, effective September 10, 2018.~~

~~**General Authority:** SDCL 36-9C-32(3).~~

~~**Law Implemented:** SDCL 36-9C-5, 36-9C-23.~~

~~**20:86:05:15. Judicial declaration of competence.** If a person has been suspended by an order as provided in § 20:86:05:10 or 20:86:05:11, and has thereafter been judicially declared to be competent, the board may dispense with further evidence showing the disability has been removed and may direct reinstatement Transferred to § 20:86:02:17.~~

~~**Source:** 45 SDR 31, effective September 10, 2018.~~

~~**General Authority:** SDCL 36-9C-32(3).~~

~~**Law Implemented:** SDCL 36-9C-5, 36-9C-23.~~

~~**20:86:05:16. Suspension and probation.** The period of probation or suspension ordered pursuant to § 20:86:05:10 or 20:86:05:11 may not exceed five years. The conditions of probation may include one or more of the following:~~

- ~~(1) Additional mandatory continuing education;~~
- ~~(2) Restitution;~~
- ~~(3) Payment of all expenses of the investigation and proceedings; and~~
- ~~(4) Mental health or alcoholism treatment Transferred to § 20:86:02:18.~~

~~**Source:** 45 SDR 31, effective September 10, 2018.~~

~~**General Authority:** SDCL 36-9C-32(3).~~

~~**Law Implemented:** SDCL 36-9C-5, 36-9C-23.~~

~~**20:86:05:17. Formal reprimands and files.** The board shall keep a permanent file of all complaints made to or by the board that result in an inquiry being directed to a licensee and a permanent file of board action taken, including formal reprimands. In considering action in a case, the board shall take into consideration at the hearing the past actions of the licensee or holder of a certificate, extending an opportunity to the person to rebut or explain past actions and files. The files are confidential except to board members acting within the scope of the board's duties and to the person or person's attorney or representative desiring to see the person's file Transferred to § 20:86:02:19.~~

~~**Source:** 45 SDR 31, effective September 10, 2018.~~

~~**General Authority:** SDCL 36-9C-32(3).~~

**Law Implemented:** ~~SDCL 36-9C-5, 36-9C-23.~~

**20:86:05:18. Board hearings – Procedure.** ~~Those portions of the rules of practice in trial courts of record and those portions of SDCL title 15 and chapter 1-26 that are consistent with SDCL chapter 36-9C or this article apply to the procedure for hearings held by the board. A record of the hearing in a contested case shall be taken by court reporter or recording equipment. If a transcript is requested, the board may require the person requesting it to pay the reasonable cost of preparing the transcript~~ Repealed.

**Source:** 45 SDR 31, effective September 10, 2018.

**General Authority:** ~~SDCL 36-9C-32(3).~~

**Law Implemented:** ~~SDCL 36-9C-5, 36-9C-23.~~

**20:86:05:19. Appeal from board rulings or decisions.** ~~Any party feeling aggrieved by any acts, ruling or decision of the board relating to the refusal to grant, suspend or revoke a license shall have the right to appeal pursuant to SDCL chapter 1-26~~ Repealed.

**Source:** 45 SDR 31, effective September 10, 2018.

**General Authority:** ~~SDCL 36-9C-32(3).~~

**Law Implemented:** ~~SDCL 36-9C-25.~~