



SOUTH DAKOTA BOARD OF CERTIFIED PROFESSIONAL MIDWIVES

27705 460th Avenue, Chancellor, SD 57015

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

Home Page: doh.sd.gov/boards/midwives/

CHAPTER [36-1C](#)

UNIFORM COMPLAINT AND DECLARATORY RULING PROCEDURES...

...[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.

Source: SL 2021, ch 168, § 2.

[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.



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Source: SL 2021, ch 168, § 3.

[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.

Source: SL 2021, ch 168, § 4.

[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.

Source: SL 2021, ch 168, § 5.

[36-1C-6](#). Informal disposition--Notice.



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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.

Source: SL 2021, ch 168, § 6.

[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.

Source: SL 2021, ch 168, § 7.

[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.

Source: SL 2021, ch 168, § 8.

[36-1C-9](#). Notice of hearing.



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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.

Source: SL 2021, ch 168, § 9.

[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.

Source: SL 2021, ch 168, § 10.

[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.

Source: SL 2021, ch 168, § 11.

[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.



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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](#).

Source: SL 2021, ch 168, § 12.

[36-1C-13](#). Promulgation of rules.

The Departments of Agriculture and Natural Resources, 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.

Source: SL 2021, ch 168, § 13; SL 2021, ch 1, § 14.

[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 _____, _____.



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(Signature of Petitioner)

Source: SL 2021, ch 168, § 14.

[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.

Source: SL 2021, ch 168, § 15.

[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](#).

Source: SL 2021, ch 168, § 16.

An update is available
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