

VIA TELECONFERENCE
SOUTH DAKOTA BOARD OF CERTIFIED PROFESSIONAL MIDWIVES
BOARD MEETING

South Dakota Board of Certified Professional Midwives Office
27705 460th Ave. Chancellor SD
Thursday, September 16, 2021 1:00pm - 4:00pm (Central Standard Time)

AGENDA

1. Call to Order/ Roll Call
2. Approval of Agenda
3. Public Hearing to accept comments concerning proposed changes to Administrative Rule 20:86
4. Discussion of proposed changes to Administrative Rules 20:86 and a vote to amend or approve
5. Open forum (5-10 minutes; time divided equally among public members wishing to comment on any other issue.)
6. Approval of Draft Meeting Minutes of July 17, 2021
7. Financial Report-- Tammy Weis, Exec Sec
8. Business
 - a. New changes to the Administrative Rules
 - i. Changes to the Formulary
 - ii. Change to Renewal Rules date (if not retained in current proposed rules)
9. Office updates
 - a. Numbers of SD Licensed CP Midwives and births in FY 2022
 - b. Request from Avera CNMs
 - i. If they are client back up request. Please send a letter informing them after labs are completed.
 - c. Birth Report assessment forms
 - i. Legally the board may take action based on birth reports
 - ii. Electronic transfer and form completion.
 - d. Two Student CPM inquiries, Rapid City and Aberdeen
 - e. Two CPM inquiries from Washington State
 - f. Jackie Lopez CPM moving to Montana but has agreed to remain on the SD Board.
10. Announcements
 - a. Autumn Cavender-Wilson recommended for reappointment
 - b. Rules Committee Hearing Date November 1, 2021
 - i. last one for this session
 - c. Next Meeting March 17, 2022 (1-4pm)
11. Adjourn



September 1, 2021

Ms. Tammy Weis
Board of Certified Professional Midwives
27705 460th Avenue
Chancellor, South Dakota 57015

Dear Ms. Weis:

The Legislative Research Council received proposed rules from the Board of Certified Professional Midwives on August 26, 2021. In accordance with SDCL 1-26-6.5, the Council reviewed the proposed rules for form, style, clarity, and legality, and now returns them with recommended corrections.

Please find attached:

- Proposed Rules Review Checklist;
- The proposed rules with recommended form, style, and clarity corrections;
- Directions for Submitting the Final Draft of the Rules; and
- The Interim Rules Review Committee Rules Presentation Format.

In addition to the recommended corrections to form, style, and clarity included in the proposed rules, the LRC identifies the following issues regarding legality:

- The list of proposed rules that the Board submitted on each of the forms, including on the notice of public hearing, does not reflect the proposed rules included in the packet. Specifically, issues include:
 - An incorrect reference to § 20:86:02:01, which is not included in the proposed rules;
 - An incorrect reference to § 20:86:02:0, which does not exist;
 - Two references to the same rule, § 20:86:05:15; and
 - Missing references to impacted rules, including §§ 20:86:02:03, 20:86:02:07, 20:86:02:17, 20:86:05:13, 20:86:05:18, and 20:86:05:19.
- Additionally, the effect and reason for the rules included in the notice of public hearing and on Form 14, as required by SDCL 1-26-4.1, does not accurately characterize the entirety of the proposed rules. The proposed amendment to § 20:86:02:03 appears to change when licenses are renewed, and several sections are being repealed. This would seem to go beyond the reason and effect submitted by the Board "to update the general authority for administrative rules for licensing as it related to complaints and disciplinary hearings."

Under SDCL 1-26-4(4), the Board is required to adopt the recommended corrections, subject to an appeal to the Interim Rules Review Committee for the Committee's final determination.

Please do not hesitate to contact me if you have any questions or if you would like to discuss any of the recommendations.

Sincerely,

A handwritten signature in black ink, appearing to read "Justin Goetz".

Justin Goetz
Code Counsel
JG:am
Enclosures

CC: Kim Malsam-Rysdon, Secretary, Department of Health

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Thursday, July 15, 2021 1:00pm - 4:00pm (Central Standard Time)

MEETING MINUTES

President Debbie Pease **called the meeting to order at 1:09 p.m.** The roll was called. A quorum was present.

Members of the board in attendance: Debbie Pease, Kimberlee McKay and Jackie Lopez were all present via phone. Autumn Cavender-Wilson texted that she was finishing an appointment and Sue Rooks joined the meeting after it was in progress.

Others in attendance: Megan Borchert, DOH Legal Counsel by phone and Tammy Weis, SD Board of CPM Exec Secretary at the CPM office.

Rooks moved to **accept the agenda as presented** seconded by Lopez. The board voted unanimously. **MOTION PASSED**

Pease opened the floor for any member of the **public that wished to address the board**. Alaina Kerkhove introduced herself. She is a newly licensed Certified Professional Midwife in South Dakota. She is working from Coleman, SD. She had prepared a letter for the Board's consideration concerning updating the medications formulary for CPMs. This would require changes in the Legislative Rules. Debbie Eakes also introduced herself and agreed that changes would make care safer for all CPM clients. The letter will be distributed to all board members. There were no other members of the public who wished to speak.

There were no additions or corrections to the **Draft Meeting Minutes of March 18, 2020**. McKay moved to **accept them as presented**. Lopez seconded. The board voted unanimously. **MOTION PASSED**

The Financial Report showed two posted documents detailing the closing balance for FY 2021 of 1111.14. Discussion followed concerning the lack of renewing CPMs for FY 2022 and subsequent revenue reduction. There were increased expenditures for FY 2021 because of the payments for legal counsel. There were no other questions. **The report was filed as presented.**

Pease opened the discussion about the special business by requesting that she not receive the \$60 payment for this short meeting. McKay, Lopez and Rooks also requested that they not receive compensation for the special meeting.

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Pease then explained that the reason for the special meeting is because HB1014 repealed the codified law authority for our complaint process. Those legislative changes require us to appear before the Rules Committee to establish the SDCL authority for certain existing rules and to repeal other rules which are now covered under SDCL. The Department of Health legal counsel provided us proposed rules that document the needed changes. Weis requested that we change the rule concerning renewal of licenses to better reflect what was in place in the SDCL. There was one typographical error that was also corrected. Meagan Borchert, SD DOH Legal Counsel offered no other concerns or changes.

Rooks moved that the SD Board of CPM accept the **changes to the Administrative Rules** as amended, McKay seconded. The board voted unanimously, **MOTION PASSED**

Pease offered two **announcements**:

Alaina Kerkhove is now our fifth SD Licensed CPM and Debbie Eakes CPM is waiting only for her background check to be completed to receive her license.

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

Rooks **moved to adjourn**, McKay second. The board voted unanimously, **MOTION PASSED**.
Meeting adjourned at 1:42pm

Remaining Authority by Object/Subobject

Expenditures current through 09/04/2021 01:50:13 PM

HEALTH -- Summary

FY 2022 Version -- AS -- Budgeted and Informational

FY Remaining: 82.2%

09213 Board of Certified Prof Midwives - Info						PCT
Subobject	Operating	Expenditures	Encumbrances	Commitments	Remaining	AVL
EMPLOYEE SALARIES						
5101030 Board & Comm Mbrs Fees	1,043	0	0	0	1,043	100.0
Subtotal	1,043	0	0	0	1,043	100.0
EMPLOYEE BENEFITS						
5102010 Oasi-employer's Share	105	0	0	0	105	100.0
Subtotal	105	0	0	0	105	100.0
51 Personal Services						
Subtotal	1,148	0	0	0	1,148	100.0
TRAVEL						
5203030 Auto-priv (in-st.) H/rte	500	0	0	0	500	100.0
5203100 Lodging/in-state	500	0	0	0	500	100.0
5203140 Meals/taxable/in-state	300	0	0	0	300	100.0
5203260 Air-comm-out-of-state	1,500	0	0	0	1,500	100.0
5203320 Incidentals-out-of-state	200	0	0	0	200	100.0
Subtotal	3,000	0	0	0	3,000	100.0
CONTRACTUAL SERVICES						
5204080 Legal Consultant	3,807	0	0	0	3,807	100.0
5204090 Management Consultant	10,500	2,080	10,848	0	-2,428	0.0
5204200 Central Services	359	107	0	0	252	70.2
5204207 Central Services	300	0	0	0	300	100.0
5204590 Ins Premiums & Surety Bds	900	0	0	0	900	100.0
Subtotal	15,866	2,187	10,848	0	2,831	17.8
CAPITAL OUTLAY						
5207900 Computer Hardware	700	0	0	0	700	100.0
Subtotal	700	0	0	0	700	100.0
52 Operating						
Subtotal	19,566	2,187	10,848	0	6,531	33.4
Total	20,714	2,187	10,848	0	7,679	37.1

To: The South Dakota Board of Certified Professional Midwives

The South Dakota Department of Health

From: Alaina Kerkhove, CPM

Re: Request for Updating South Dakota CPM Drug Formulary

Date: July 13, 2021

To Whom It May Concern:

I am writing this letter to request updating of the CPM Drug Formulary, as it is presented in Administrative Rule Chapter 20:86:03, Appendix A (SD Board of Certified Professional Midwives, 2018). I respectfully ask that you consider my perspective as a licensed and practicing midwife in South Dakota.

Statute 36-9C-13 (SD Codified Laws, 2021) refers to prescription drugs that a licensed CPM may administer. These are as follows:

- Vitamin K
- Postpartum antihemorrhagic medication
- Local anesthetic
- IV antibiotics for treatment of Group B Strep
- Oxygen
- Eye prophylaxis
- RhoGAM

The South Dakota statute is done in general terminology. The Drug Formulary then details the general terminology providing for more specific factors and medications. Seeing this, shows the rules section to be more easily revised or updated when experience and/or ever-changing science may dictate the need to do so.

An example of this detailing of the medications is seen in the Drug Formulary where the statute gives the more general wording of "Postpartum Antihemorrhagic Medications," the formulary goes on to specifying antihemorrhagic medications as "Oxytocin (Pitocin), Misoprostol and Methylergonovine (Methergine)" (SD Certified Professional Midwife Board, 2018). All of these medications are standard of care for postpartum hemorrhage.

I suggest the board add Tranexamic Acid (TXA) as another specific drug, commonly used to control postpartum hemorrhage. The World Health Organization (WHO) recommends use of TXA by midwives in all setting. WHO states, "Early use of intravenous tranexamic acid (within 3 hours of birth) in addition to standard care is recommended for women with clinically diagnosed postpartum hemorrhage following vaginal birth" (WHO, 2017). It seems reasonable that this medication should be added to the Formulary, as another option to treat hemorrhage, given the amount of rural area in the state.

Similarly, another common means of addressing a postpartum hemorrhage is to replace maternal fluid volume. While the South Dakota CPM Drug Formulary does include Lactated Ringers (LR), 0.9% Sodium Chloride (Normal Saline or NS), and 5% Dextrose in Lactated Ringer's solution (D5LR), the "Indication" column, shown in the Formulary's grid, states that these IV fluids are to be used only "to administer Group B Strep Prophylaxis". I am requesting the "Indication" column of the Drug Formulary grid be

modified to include usage of Lactated Ringers, Normal Saline fluids, and 5% Dextrose in Lactated Ringer's to replace fluid volume – or using Idaho's wording in their CPM Formulary: "To achieve maternal stabilization" (Rules of the Idaho Board of Midwifery, 2012).

My third suggestion to the board is consider adding Epinephrine to the Drug Formulary. It is standard of care, when using antibiotics and anesthetics (as the Formulary allows), to have Epinephrine available for emergency use, in case of severe allergic reactions to these medications. I would also suggest it be added for the infant as recommended in the 7th ed. of the American Heart Association Neonatal Resuscitation course.

Using the current South Dakota CPM Formulary as a template, I am including my proposed updates here:

DRUG	INDICATION	DOSE	ROUTE OF ADMIN	DURATION OF TX
Epinephrine HCL	Post-exposure treatment of severe allergic reaction	0.3 to 0.5 in a concentration of 1:1000	Intramuscular injection into anterolateral aspect of the thigh or via metered dose auto-injector	Seek medical attention immediately after administration of first injection. Can be given every 5-15 minutes as needed for 3 to 4 doses
Neonatal Resuscitation	Heart rate below 60 bpm not responding 30 seconds of PPV that inflates the lungs and another 60 seconds of chest compressions coordinated with PPV using 100% oxygen	Intravenous route dose 0.1-0.3 mL/kg (equal to 0.01 to 0.03 mg/kg) Endotracheal route 0.5 to 0.1 mg/kg (only use this dose endotracheal)	Intravenous through the umbilical vein or endotracheal Give rapidly follow intravenous with 0.5 to 1 mL flush of normal saline Endotracheal give PPV after	Seek immediate medical attention Repeat dose every 3-5 minutes. Do not exceed maximum recommended dose
Tranexamic Acid (TXA)	Control of Postpartum Hemorrhage	100mg/ml (1 g)	IV at 1 ml per minute	2 nd dose if bleeding continues past 30 min
Lactate Ringers (LR)	To achieve maternal stabilization	Infuse 1 liter in wide-open rate	IV line with 16-18 gauge needle	After first liter, a second liter may be titrated to client's condition

0.9% Sodium Chloride (NS)	To achieve maternal stabilization	Infuse 1 liter in wide-open rate	IV line with 16-18 gauge needle	After first liter, a second liter may be titrated the client's condition
5% Dextrose in Lactated Ringer's (D5LR)	To achieve maternal stabilization	Infuse 1 liter in wide open rate	IV line with 16-18 gauge needle	After first liter, a second liter can be titrated to the client's condition

I appreciate your attention to my requests. I feel strongly these suggestions reflect current accepted standard of care practice and do not contradict language in the Statute.

Respectfully,

Alaina Kerkhove

Alaina Kerkhove

References

Idaho Board of Midwifery. (2012). Rules of the Idaho Board of Midwifery. Retrieved from <https://adminrules.idaho.gov/rules/2012/24/2601.pdf>

SD Board of Certified Professional Midwives. (2018). Drug Formulary. Retrieved from <https://sdlegislature.gov/Rules/Administrative/39450>

SD Codified Laws. (2021). 36-9C-13; Practice in an out-of-hospital setting. Retrieved from https://sdlegislature.gov/Statutes/Codified_Laws/2059852

WHO. (2017). WHO recommendation on tranexamic acid for the treatment of postpartum haemorrhage. Retrieved from <http://apps.who.int/iris/bitstream/handle/10665/259374/9789241550154-eng.pdf?sequence=1>

WHO recommendation on tranexamic acid (TXA) for the treatment of postpartum haemorrhage

<https://apps.who.int/iris/bitstream/handle/10665/259374/9789241550154-eng.pdf?sequence=1>

“Regardless of the level of health system resources, TXA should be recognized as a life-saving intervention and be made readily available for the management of PPH in settings where emergency obstetric care is provided”

Your Letterhead Here

Facility/Medical Group

Patient Name _____ (G__P__; EDD: _____) has elected to have a planned home birth with _____ Certified Professional Midwives. She has received her prenatal care at _____ and is following a normal pregnancy course. She is a low-risk candidate for vaginal birth. All of our planned home birth clients select a preferred hospital where she would be transferred if the labor or delivery would require a transfer of care to medical management. She has chosen your hospital as her preference.

The purpose of this letter is to inform you, ahead of time, in case a transfer of care would be necessary. In the event of transfer, the attending CPM will first call and talk to the charge nurse and then with the physician or midwife on call who would take over care of the transferred client. All labor records will be brought with the client at the time of transfer. The CPM will accompany the transferring client to your hospital. Depending on the reason for transfer, the CPM may stay with the client as labor support, per the client's request.

It is anticipated this client will have a normal and uncomplicated birth attended by experienced CPMs, RNs and Birth Assistants. Our desire would be to have a seamless, respectful transfer to medical management if that would be necessary. Attached are the client's current prenatal records and labs for your information.

If more information regarding this client is necessary for your facility planning, please contact me _____. I am happy to discuss this client or any of the issues regarding continuity of care for the prenatal clients we serve.

Thank you!

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 Grounds for denial, revocation, or suspension.
- 20:86:02:08 Unprofessional conduct.
- 20:86:02:09 Reissuance of a revoked or suspended license.
- 20:86:02:10 Actions which may warrant sanctions.
- 20:86:02:11 Sanctions.

20:86:02:12 Judicial declaration of incompetence or involuntary commitment.

20:86:02:13 Petition by board.

20:86:02:14 Burden of proof.

20:86:02:15 Respondent's claim of illness or infirmity.

20:86:02:16 Doctor-patient privilege – Waiver.

20:86:02:17 Judicial declaration of competence.

20:86:02:18 Suspension and probation.

20:86:02:19 Formal reprimands and hearings.

20:86:02:03. Issuance of license. Licenses will be renewed biennially ~~on October~~
~~30th~~ 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.

~~20:86:05:02~~ **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 20:86:05:11~~ 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 ~~§ 20:86:05:11~~ 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.

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 ~~Board action in general~~ Repealed.
- 20:86:05:02 ~~Grounds for denial, revocation, or suspension~~ Transferred.
- 20:86:05:03 ~~Unprofessional conduct~~ Transferred.
- 20:86:05:04 ~~Reissuance of a revoked or suspended license~~ Transferred.
- 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.~~