

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 17, 2020 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 Meeting Minutes of March 19, 2020

5. Financial Report
 - a. Documents
 - b. Questions about revenue with addition of DOH attorney

6. Old Business
 - a. Introduce new attorney Megan Borchert to the board.
Justin Williams DOH Legal Counsel
 - b. New Complaint Legislation
Justin Williams DOH Laison
 - c. Application withdrawn

7. New Business
 - a. Reappointment of expired terms
Pease and McKay
 - b. Donated Hearing Screening Equipment
Plans for calibration and distribution
 - c. Birth Reports 2020

8. Next Meeting March 18, 2020 (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
BOARD MEETING MINUTES**

Thursday, March 19, 2020 1:00pm - 3:00pm (Central Standard Time)

President Debbie Pease **called the meeting to order** at 1:10p.m. (after some issues with the conference call electronics). The roll was called. A quorum was present.

Members of the board in attendance: Debbie Pease was present at the board office, Susan Rooks, Kimberlee McKay, Jackie Lopez and Autumn Cavender-Wilson were all present via phone.

Others in attendance: Justin Williams, DOH(via phone) and Tammy Weis, SD Board of CPM Exec Secretary.

New board member Jackie Lopez, CPM was welcomed and gave a brief introduction.

Rooks moved **approval of the agenda as posted**; seconded by **McKay**. The board voted by roll call. Pease, Lopez, Rooks, McKay, and Cavender-Wilson voted aye. **MOTION PASSED**

Pease reminded the board of the election policy and informed them that all of the current officers had been polled and were willing to serve another term.

The CPM Board will hold regular elections of officers during the Spring meeting of even numbered years. If an officer is leaving the board, the board will vote to replace that officer at the meeting closest to the time of the officer's departure.

Lopez moved that we re-elect the current slate of officers for another 2 year term. **McKay seconded. Rooks** mentioned that she would serve until April next year when she plans to let her license lapse and retire. The board voted by roll call. Pease, Lopez, Rooks, McKay, and Cavender-Wilson voted aye. **MOTION PASSED**

Pease **opened the floor for any member of the public** that wished to address the board. No one wished to speak.

There were no additions or corrections to the **Draft Meeting Minutes of Sept 19, 2019. McKay moved to accept them as presented.** Cavender-Wilson seconded. The board voted by roll call. Pease, Lopez, Rooks, McKay, and Cavender-Wilson voted aye. **MOTION PASSED**

The Financial Report included the Condition Report, Cash balance, and Projected Expenses for fiscal year(FY) 2019/20. There were no questions or discussion. The Report will be filed as presented.

Rooks reported that the board has no jurisdiction over Sanford Health's decision to refuse to honor CPM orders for lab work or ultrasound. Rooks will prepare a letter of explanation for the CPM who inquired about this difficulty. Birth Matters will also be informed.

Justin Williams, Dept of Health liaison, reported that the Dept of Health is planning to hire an attorney for several SD boards to share as needed for legal consultation. The cost to the board has not yet been established, estimate is \$500 annually.

Katie Mallery, SD Attorney General Assistant, joined the meeting. She explained the process when a board denies a license and the decision is challenged. She mentioned the costs to the board when the Office of Hearing Examiners is involved and informed the board what kinds of information, testimony and documents are acceptable for presentation before an Administrator Law Judge (ALJ).

Cavender-Wilson moved that we go to Executive Session pursuant to SDCL 1-25-2 (6) and subdivision 1-27-1.5(22) to discuss records which, if disclosed, would constitute an unreasonable

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release of personal information concerning a pending application for licensure. Rooks second. The board voted by roll call. Pease, Lopez, Rooks, McKay, and Cavender-Wilson voted aye. **MOTION PASSED**

Board returned from Exec Session. Cavender-Wilson moved that we appoint Rooks as the investigator for our pending application, when the investigation is complete we apply to have the matter heard by the ALJ. McKay second. The board voted by roll call. Pease, Lopez, Rooks, McKay, and Cavender-Wilson voted aye. **MOTION PASSED**

Pease stated that our time was depleted for the rest of the meeting. Several board members were unable to extend the time of the meeting. **Rooks** moved that we add the remaining items on the agenda to our next meeting on **Thursday July 9, 2020 1-3pm CST**. The board voted by roll call. Pease, Lopez, Rooks, McKay, and Cavender-Wilson voted aye. **MOTION PASSED**

At 3:06pm the meeting was **adjourned**

**DEPARTMENT OF HEALTH
BOARD OF CERTIFIED PROFESSIONAL MIDWIVES - INFORMATIONAL
CONDITION STATEMENT (6503-624-01)**

	ACTUAL FY2017	ACTUAL FY2018	ACTUAL FY2019	ACTUAL FY2020	PROJECTED FY2021
Fees			6,025	2,200	11,400
Interest, Dividends and Other Income		16	144	205	200
Donations	20,000		-	2,000	
TOTAL RECEIPTS	20,000	16	6,169	4,405	11,600
Personal Services		1,873	904	646	1,121
Travel		5,969			3,000
Contractual Services		1,632	8,679	8,742	15,862
Supplies and Materials		154			
Capital Outlay					700
TOTAL DISBURSEMENTS	-	9,628	9,584	9,388	20,683
NET (Receipts less Disbursements)	20,000	(9,612)	(3,415)	(4,983)	(9,083)
BEGINNING CASH BALANCE		20,000	10,388	6,974	1,990
ENDING CASH BALANCE	20,000	10,388	6,974	1,990	(7,093)

36-9C. Sources: License fees, renewal fees, penalty fees, and any other payments. The board is continuously appropriated for paying the expenses of administration. However, the total expense incurred by the board may not exceed the total money collected.

AVAILABLE FUNDS
AS OF: 08/31/2020
FY YEAR REMAINING: 83.3%
PAY DAYS REMAINING: 0

MONTHLY

BUDGET UNIT 09213

DATE 08/29/2020

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	11,475.12	2,264.94	6,942.94	0.00
BUDGETED TOT	20,683.00	0.00	0.00	11,475.12	2,264.94	6,942.94	
ALL COMP TOT	20,683.00	0.00	0.00	11,475.12	2,264.94	6,942.94	

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	0.00	1,019.00	100.0
5102	EMPLOYEE BENEFITS	102.00	0.00	0.00	0.00	0.00	102.00	100.0
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	11,475.12	693.23	1,264.94	3,121.94	19.7
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	11,475.12	693.23	2,264.94	6,942.94	33.6

BREAKOUT BY COMPANY:

COMPANY 6503-I PROFESSIONAL & LICENSING BOARDS

5101000	EMPLOYEE SALARIES	1,019.00	0.00	0.00	0.00	0.00	1,019.00	100.0
5102000	EMPLOYEE BENEFITS	102.00	0.00	0.00	0.00	0.00	102.00	100.0
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	11,475.12	693.23	1,264.94	3,121.94	19.7
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	0.00	1,121.00	100.0
	OE SUBTOTALS	19,562.00	0.00	11,475.12	693.23	2,264.94	5,821.94	29.8
	COMPANY 6503-I TOT	20,683.00	0.00	11,475.12	693.23	2,264.94	6,942.94	33.6

STATE OF SOUTH DAKOTA
 CASH CENTER BALANCES
 AS OF: 08/31/2020

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

COMPANY	CENTER	ACCOUNT	BALANCE	DR/CR	CENTER DESCRIPTION
6503	092100062401	1140000	145.31	DR	BOARD OF CERTIFIED PROFESSIONAL MIDWIVES
COMPANY/SOURCE TOTAL 6503 624			145.31	DR *	
COMP/BUDG UNIT TOTAL 6503 09213			145.31	DR **	
BUDGET UNIT TOTAL 09213			145.31	DR ***	
AGENCY TOTAL 09			9,716,128.63	DR ****	

Section 1. That Title 36 be amended by adding a NEW SECTION to read:

Terms used in this chapter mean:

- (1) "Administrator," means the person designated as being responsible for the agency's operations;
- (2) "Agency," means a professional or occupational licensing agency set forth in Title 36;
- (3) "Complaint," means an allegation of a violation of the laws or rules of an agency;

Section 2. That Title 36 be amended by adding a NEW SECTION to read:

Any person claiming that a licensee or an applicant for licensure under Title 36 has engaged in or is engaged 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 may require the complaining party to file a complaint verified under oath stating the name of the applicant or licensee against whom the complaint is made and setting out in full detail the conduct which is alleged to be in violation and may prescribe the form in which a written complaint is made.

The administrator may 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 provide additional information when requested is a basis for the administrator to reject the complaint without further action.

Failure to file a written complaint, verified under oath, in the form supplied by the agency, is a basis to reject the complaint.

Section 3. That chapter 36 be amended by adding a NEW SECTION to read:

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 respond to the

complaint within 20 calendar days after service of the complaint on the applicant or licensee. The response of the applicant or licensee shall be sent to the administrator of the agency. 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 merit and constitutes grounds for disciplinary action or lacks merit and should be dismissed.

Failure to respond is grounds for disciplinary action.

Section 4. That chapter 36 be amended by adding a NEW SECTION to read:

Upon completion of the investigation, the investigating committee shall recommend to the agency's board, commission, or department secretary whether the charges should be dismissed for lack of merit, resolved by informal disposition, or a formal hearing be instituted. The failure of an applicant or licensee to comply with the investigation request administered by agency staff may result in denial of the application or disciplinary action.

An agency may allow the agency's investigative committee to dismiss complaints provided the investigative committee includes agency counsel and a licensed member of the agency's board and commission, if applicable.

Section 5. That chapter 36 be amended by adding a NEW SECTION to read:

The agency may authorize the administrator to impose **monetary penalties** upon proof of violation of specified statutes and rules without prior approval of the agency. Any action taken pursuant to this section shall be reported to the agency at its next scheduled meeting or within 30 days, whichever is shorter.

Any **administrative fine** issued by the administrator may be appealed in writing to the board as a contested case under SDCL 1-26. Notice of appeal must be submitted to the administrator within 20 calendar days of service.

Any fine issued under this section may not exceed \$150.00.

Section 6. That chapter 36 be amended by adding a NEW SECTION to read:

The agency may accept an informal disposition regarding a violation of the laws or rules of the agency by stipulation, agreed settlement, assurance of voluntary compliance, or consent order. The agreed upon disposition shall be in writing, is subject to the approval of the agency, and may include a statement that the individual will not engage in such act or practice in the future and that the individual stipulates to voluntary acceptance of any disciplinary action available to the professional or occupational board or commission, repayment for the costs of investigation, or both.

Failure to comply with an agreement shall entitle the agency to institute or reinstitute formal proceedings.

The administrator shall notify in writing any complaining party, the applicant or licensee complained against, and any other affected parties of the results of an informal disposition of a complaint and the action taken, if any.

Section 7. That chapter 36 be amended by adding a NEW SECTION to read:

If an alleged violation has merit constituting grounds for disciplinary action, the counsel for the professional or occupational board or commission may commence formal proceedings. Formal proceedings shall be instituted by the serving a formal complaint by mail or electronic mail upon the applicant or licensee complained against.

The formal complaint shall 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 chapter 36 be amended by adding a NEW SECTION to read:

The applicant or licensee shall file an answer within 20 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. The licensees shall file the original answer with the administrator.

Section 9. That chapter 36 be amended by adding a NEW SECTION to read:

After the receipt of the answer in Section 6, the agency's counsel may file a notice of hearing pursuant to SDCL 1-26-17. The notice of hearing shall be served no later than 20 calendar days prior to the hearing date.

The agency may continue the date of the hearing as necessary. The licensing board's counsel shall serve notice of any new date by electronic mail of the applicant or licensee 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 chapter 36 be amended by adding a NEW SECTION to read:

The applicant or licensee appearing before the agency at a formal hearing shall appear in person, unless otherwise waived by the agency.

Section 11. That chapter 36 be amended by adding a NEW SECTION to read:

If an alleged violation against an applicant or licensee is filed by 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 a licensee or applicant that agency board or commission member is disqualified from sitting at the hearing as an agency board or commission member and from participating in the decision rendered by the agency board or commission.

Section 12. That chapter 36 be amended by adding a NEW SECTION to read:

A person seeking a ruling as to the applicability to that person of a law, rule or order of the professional or occupational board or commission may file with the professional or occupational board or commission 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 13. That chapter 36 be amended by adding a NEW SECTION to read:

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 professional or occupational board or commission's next regularly scheduled meeting following the receipt of the petition, or following receipt of requested information, or within 90 days, whichever is shorter the professional or occupational board or commission shall issue its declaratory ruling and serve a copy of it by mail upon the petitioner.

Section 14. That chapter 36 be amended by adding a NEW SECTION to read:

Any person seeking a declaratory ruling hereunder, is deemed to be aggrieved, if within 30 days of the professional or occupational board or commission's declaratory ruling, a request is made for the professional or occupational board or commission to conduct a formal hearing. The hearing shall be held at the earliest convenience of the professional or occupational board or commission following the receipt of the request. A hearing under this section is a contested case under chapter 1-26.

ARE TELECONFERENCES CONSIDERED PUBLIC MEETINGS?

Yes. The open meetings law allows meetings, including executive or closed meetings, to be conducted by teleconference – an information exchange by audio or video – if a place is provided for the public to participate by speaker phone. In addition, for teleconferences where less than a quorum is present at the location open to the public, arrangements must also be made for the public to listen by telephone or internet (except for portions of meetings properly closed for executive sessions). The media and public must be notified of teleconference meetings under the same notice requirements as any other meeting. **All votes shall be taken by roll call.**

WHAT IS THE PROPER PROCEDURE FOR EXECUTIVE SESSIONS?

Motions for executive sessions must refer to the specific state law allowing for the executive session i.e. "pursuant to SDCL 1-25-2(3)." Also, best practice to avoid public confusion would be that public bodies explain the reason for going into executive session. For example, the motion might state "motion to go into executive session pursuant to SDCL 1-25-2(1) for the purposes of discussing a personnel matter," or "motion to go into executive session pursuant to SDCL 1-25-2(3) for the purposes of consulting with legal counsel."

Discussion in the executive session must be strictly limited to the announced subject. No official votes may be taken on any matter during an executive session. The public body must return to open session before any official action can be taken.

Board members could be held personally liable for the results of an official vote taken illegally during an executive session. For example, a contract approved only during an executive session could be found void and the board members could be required to repay any public funds spent under the contract.

REQUESTING POINTS Certain situations need attention during the meeting, but they don't require a motion, second, debate or voting. It's permissible to state a point during a meeting where the chairperson needs to handle a situation right away. **Board members can declare a Point of Order, Point of Information, Point of Inquiry or Point of Personal Privilege.**

Point of Order: Draws attention to a breach of rules, improper procedure, breaching of established practices, etc. (*In Executive Session—the board MUST stay on the agenda. If the item is not DIRECTLY related to the topic for which executive session was called it MUST wait until the executive session is completed.*)

Point of Information: A member may need to bring up an additional point or additional information (in the form of a nondebatable statement) so that the other members can make fully informed votes.

Point of Inquiry: A member may use Point of Inquiry to ask for clarification in a report to make better voting decisions.

Point of Personal Privilege: A member may use Point of Personal Privilege to address the physical comfort of the setting such as temperature or noise. Members may also use it to address the accuracy of published reports or the accuracy of a member's conduct.