

ARTICLE 20:62

NURSE PRACTITIONERS AND MIDWIVES

Chapter

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CHAPTER 20:62:01

GENERAL RULES AFFECTING BOARDS

Section

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20:62:01:02. Annual meetings. An annual meeting of the boards shall be held each year in September at a place designated by the presiding officer of the boards.

Source: 9 SDR 126, effective April 13, 1983; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 22 SDR 179, effective June 26, 1996.

General Authority: SDCL 36-9A-41.

Law Implemented: SDCL 36-9A-5.

CHAPTER 20:62:02

LICENSURE AND LICENSES

Section

20:62:02:01 Repealed.

20:62:02:01.01 Approved education programs.

20:62:02:02 Application for licensure.

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20:62:02:04 ~~Examination.~~ Repealed.

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20:62:02:06 Renewal of license.

20:62:02:07 Reinstatement of lapsed licenses.

20:62:02:08 Inactive status.

20:62:02:09 Reactivation of inactive license.

20:62:02:02. Application for licensure. An applicant for licensure as a nurse practitioner or nurse midwife shall file with the executive ~~secretary~~ director of the Board of Nursing an application containing the following ~~information~~:

(1) Evidence that the applicant has completed an approved educational program that meets the requirements of § 20:62:02:01.01;

(2) Evidence that the applicant has passed ~~the certification examination listed in § 20:62:02:04~~ a nationally recognized certification examination approved by the boards which is specific to the applicant's ~~area of practice~~ advanced practice registered nurse role and educational preparation, and maintains current certification; and

(3) The fee required by subdivision 20:62:01:11(1).

Source: 9 SDR 126, effective April 13, 1983; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 22 SDR 179, effective June 26, 1996; 26 SDR 67, effective November 21, 1999.

General Authority: SDCL 36-9A-41.

Law Implemented: SDCL 36-9A-4, 36-9A-9, 36-9A-26.

20:62:02:04. Examination. ~~Each applicant must pass one of the standardized qualifying certification examinations prepared by the organizations listed below which is specific to the applicant's area of practice:~~

—— ~~(1) American College of Nurse-Midwives, 818 Connecticut Avenue N.W., Suite 900, Washington, DC 20006;~~

—— ~~(2) American Nurses Credentialing Center, 600 Maryland Avenue S.W., Suite 100 West, Washington, DC 20024-2571;~~

—— ~~(3) National Certification Board of Pediatric Nurse Practitioners and Nurses, 800 South Frederick Avenue, Suite 104, Gaithersburg, MD 20877-4150;~~

~~—— (4) National Certification Corporation for the Obstetric, Gynecologic and Neonatal Nursing Specialties, Box 11082, Chicago, IL 60611-0082.~~

~~—— (5) American Academy of Nurse Practitioners Certification Program, Capitol Station, LBJ Building, P.O. Box 12926, Austin, TX 78711-2926. Repealed.~~

Source: 9 SDR 126, effective April 13, 1983; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 22 SDR 179, effective June 26, 1996; 23 SDR 118, effective January 28, 1997; 26 SDR 67, effective November 21, 1999.

~~—— **General Authority:** SDCL 36-9A-41.~~

~~—— **Law Implemented:** SDCL 36-9A-4.~~

20:62:02:06. Renewal of license. Licensure as a nurse practitioner or nurse midwife must be renewed biennially according to the expiration dates provided in § 20:62:02:05. The licensee shall complete the application for renewal as provided by the boards, including:

(1) Written evidence of current certification ~~with one of the national organizations listed in § 20:62:02:04;~~ as set forth in subdivision § 20:62:02:02(2);

(2) An affidavit that the licensee has committed no act of misconduct as set forth by SDCL 36-9A-29 and 36-9A-30; and

(3) The fees required by subdivision 20:62:01:11(3).

The title "Certified Nurse Practitioner" or "Certified Nurse Midwife" and the specialty area of practice for the CNP shall be designated on the current renewal certificate.

Any person licensed pursuant to SDCL 36-9A-4 before June 26, 1996, is exempt from subdivision (1) of this section.

Source: 9 SDR 126, effective April 13, 1983; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 22 SDR 179, effective June 26, 1996; 23 SDR 118, effective January 28, 1997; 26 SDR 67, effective November 21, 1999; 28 SDR 92, effective December 31, 2001.

General Authority: SDCL 36-9A-41.

Law Implemented: SDCL 36-9A-22, 36-9A-23, 36-9A-26, 36-9A-29, 36-9A-30, 36-9A-35, 36-9A-36.

20:62:02:07. Reinstatement of lapsed licenses. A licensee who fails to renew the license may be reinstated by filing a written explanation for failure to renew with the Board of Nursing. The applicant for reinstatement of licensure must provide written evidence of current certification ~~with one of the national organizations listed in § 20:62:02:04~~ as set forth by subdivision § 20:62:02:02(2). The licensee must submit an affidavit that the applicant has committed no act of misconduct as set forth by SDCL 36-9A-29 and 36-9A-30, and the fees required by subdivision 20:62:01:11(4). If the licensee intends to perform the overlapping scope of advanced practice nursing and medical functions set forth in SDCL 36-9A-12 and 36-9A-13, the applicant must also submit a collaborative agreement pursuant to § 20:62:03:06.

Source: 9 SDR 126, effective April 13, 1983; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 22 SDR 179, effective June 26, 1996; 26 SDR 67, effective November 21, 1999.

General Authority: SDCL 36-9A-41.

Law Implemented: SDCL 36-9A-15, 36-9A-24, 36-9A-26, 36-9A-29, 36-9A-30, 36-9A-35, 36-9A-36.

20:62:02:09. Reactivation of inactive license. The holder of an inactive license may reactivate the license by filing an application with the Board of Nursing. The applicant must submit written evidence of current certification ~~with one of the national organizations listed in § 20:62:02:04~~ as set forth in subdivision § 20:62:02:02(2), an affidavit that the applicant has committed no act of misconduct as set forth in SDCL 36-9A-29 and 36-9A-30, the renewal fee required by subdivision 20:62:01:11(3) for the current biennial period. If the licensee intends to

perform the overlapping scope of advanced practice nursing and medical functions set forth in SDCL 36-9A-12 and 36-9A-13, the applicant must also submit a collaborative agreement pursuant to § 20:62:03:06.

Source: 9 SDR 126, effective April 13, 1983; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 22 SDR 179, effective June 26, 1996; 26 SDR 67, effective November 21, 1999.

General Authority: SDCL 36-9A-41.

Law Implemented: SDCL 36-9A-15, 36-9A-25, 36-9A-26, 36-9A-29, 36-9A-30, 36-9A-35, 36-9A-36.

CHAPTER 20:62:03

COLLABORATIVE PRACTICE

Section

20:62:03:01 and 20:62:03:02 Repealed.

20:62:03:03 Collaboration with a licensed physician or physicians.

20:62:03:04 Direct personal contact.

20:62:03:05 ~~Collaboration—Separate practice location.~~ Repealed.

20:62:03:06 Identification of secondary physician.

20:62:03:07 Temporary collaborating physician.

20:62:03:08 Collaborative agreement.

20:62:03:03. Collaboration with a licensed physician or physicians. A nurse practitioner or nurse midwife may perform the overlapping scope of advanced practice nursing and medical functions defined in SDCL 36-9A-12 and 36-9A-13, in collaboration with a physician or physicians licensed under SDCL chapter 36-4. Collaboration must occur by direct personal contact, ~~with each collaborating physician must occur no less than twice each month~~

~~unless it is established in the collaborative agreement that one of the twice monthly meetings may be held by telecommunication. Collaboration with each collaborating physician shall occur at least once per month by direct personal contact.~~

Source: 26 SDR 67, effective November 21, 1999; 35 SDR 166, effective December 26, 2008.

General Authority: SDCL 36-9A-41.

Law Implemented: SDCL 36-9A-12, 36-9A-13, 36-9A-15, 36-9A-17.

20:62:03:04. Direct personal contact. For purposes of this chapter, the term, direct personal contact, means that both the collaborating physician and the nurse practitioner or nurse midwife are physically present or available by means of electronic communication on-site and available for the purposes of collaboration. ~~When the collaborating physician is not in direct personal contact with the nurse practitioner or nurse midwife, the physician must be available by telecommunication. If the boards consider additional direct personal contact necessary for a nurse practitioner or nurse midwife, they shall set the terms of that additional collaboration and require inclusion of those terms in that nurse practitioner's or midwife's collaborative agreement as a condition for its approval.~~

Source: 26 SDR 67, effective November 21, 1999.

General Authority:SDCL 36-9A-41.

Law Implemented:SDCL 36-9A-15, 36-9A-17.

20:62:03:05. Collaboration – Separate practice location. ~~In addition to the required two meetings per month, the collaborating physician must be physically present on-site every ninety~~

~~days at each practice location. This requirement does not apply to locations where health care services are not routine to the setting, such as patient homes and school health screening events.~~
Repealed.

Source: 26 SDR 67, effective November 21, 1999; 35 SDR 312, effective July 6, 2009.

General Authority: ~~SDCL 36-9A-41.~~

Law Implemented: ~~SDCL 36-9A-15, 36-9A-17.~~

CHAPTER 20:78:03

APPLICATION PROCEDURES

Section

- 20:78:03:01 Applicability.
- 20:78:03:02 Initial review.
- 20:78:03:03 Incomplete application.
- 20:78:03:04 Primary source documentation.
- 20:78:03:05 Summary action on application.
- 20:78:03:06 Investigation of application.
- 20:78:03:07 Application withdrawn during investigation.
- 20:78:03:08 Executive secretary determinations.
- 20:78:03:09 Provisional licenses, permits or certificates issued pursuant to settlement agreement.
- 20:78:03:10 Renewals and reinstatement.

20:78:03.01. Applicability. This chapter applies to the licenses, certificates, and permits issued by the Board of Medical and Osteopathic Examiners under SDCL 36-4 (Physicians and Surgeons), 36-4A (Physician Assistants), 36-4B (Advanced Life Support Personnel), 36-9B (Medical Assistants), 36-10 (Physical Therapists), 36-10B (Dietetics and Nutrition), 36-29 (Athletic Trainers), 36-31 (Occupational Therapists), and 36-36 (Genetic Counselors).

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-7, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-20, 36-4-20.2, 36-4-20.9, 36-4-20.10, 36-4-20.11, 36-4-20.13, 36-4-24.1, 36-4-31.4, 36-4A-1, 36-4A-8, 36-4A-8.1, 36-4B-1, 36-4B-29, 36-9B-1, 36-10B-1, 36-29-1, 36-31-1, 36-36-1.

20:78:03:02. Initial review. The executive secretary shall review all license, permit, and certificate applications subject to this chapter to determine if the applicant has submitted all required documents, information, fees, and other materials. The executive secretary shall notify the applicant of any materials missing from the application. The applicant has 120 days to provide the information intended to complete the application.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-7, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-11, 36-4-17, 36-4-20.2, 36-4-20.7, 36-4-20.10 36-4A-8, 36-4A-8.1, 36-4B-6, 36-4B-13, 36-9B-4, 36-10-27, 36-10-28, 36-10-35.1, 36-10B-6, 36-10B-7, 36-10B-10, 36-29-3, 36-29-3.1, 36-31-5, 36-31-6, 36-31-9, 36-36-5, 36-36-9.

20:78:03:03. Incomplete application. If an applicant fails to submit required materials within 120 days of notice that materials are missing from the application, the executive secretary shall designate the application as withdrawn, or, upon receiving a written request showing good cause, may allow an applicant additional time to complete the application. The executive secretary shall notify the applicant if an application is designated as withdrawn.

The executive secretary's designation of an application as withdrawn may be appealed to the board by written notice filed with the executive secretary within ten days after notice of withdrawal by the executive secretary. If no timely appeal to the board is filed, the executive secretary's designation of an application as withdrawn remains.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-7, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-11, 36-4-17, 36-4-20.2, 36-4-20.7, 36-4-20.10, 36-4A-8, 36-4A-8.1, 36-4B-6, 36-4B-13, 36-9B-4, 36-10-27, 36-10-28, 36-10-35.1, 36-10B-6, 36-10B-7, 36-10B-10, 36-29-3, 36-29-3.1, 36-31-5, 36-31-6, 36-31-9, 36-36-5, 36-36-9.

20:78:03.04. Primary source documentation. The executive secretary shall initiate processing of complete applications after receiving documentation from primary sources to verify that the applicant has met the education, examination, training, or certification requirements of applicable statutes and regulations. The executive secretary shall notify the applicant when all primary source documentation has been received.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-7, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-11, 36-4-17, 36-4-20.2, 36-4-20.7, 36-4-20.10, 36-4A-8, 36-4A-8.1, 36-4B-6, 36-4B-13, 36-9B-4, 36-10-27, 36-10-28, 36-10-35.1, 36-10B-6, 36-10B-7, 36-10B-10, 36-29-3, 36-29-3.1, 36-31-5, 36-31-6, 36-31-9, 36-36-5, 36-36-9.

20:78:03:05. Summary action on application. The executive secretary may summarily deny an application based upon primary source documentation that demonstrates that the applicant has not met the education, examination, training, or certification requirements of applicable statutes and regulations. The executive secretary shall notify the applicant in writing of any summary action taken by the executive secretary. The executive secretary's summary action may be appealed to the board by written notice filed with the executive secretary within ten days after notice of the action taken by the executive secretary. If no timely appeal is filed, the executive secretary's action shall be deemed final board action.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-7, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-11, 36-4-17, 36-4-20.2, 36-4-20.7, 36-4-20.10, 36-4A-8, 36-4A-8.1, 36-4B-6, 36-4B-13, 36-9B-4, 36-10-27, 36-10-28, 36-10-35.1, 36-10B-6, 36-10B-7, 36-10B-10, 36-29-3, 36-29-3.1, 36-31-5, 36-31-6, 36-31-9, 36-36-5, 36-36-9.

20:78:03:06. Investigation of application. The executive secretary may determine that the information disclosed in an application or primary source documentation requires investigation to determine whether the applicant meets the qualifications or standards for issuance of a license. The executive secretary shall conduct that investigation, and may appoint a board member to assist in the investigation. The executive secretary shall notify the applicant of any issues requiring investigation. An applicant may meet with the executive secretary and appointed board member to discuss the issues under investigation.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-7, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-11, 36-4-17, 36-4-20.2, 36-4-20.7, 36-4-20.10, 36-4A-8, 36-4A-8.1, 36-4B-6, 36-4B-13, 36-9B-4, 36-10-27, 36-10-28, 36-10-35.1, 36-10-49, 36-10B-6, 36-10B-7, 36-10B-10, 36-29-3, 36-29-3.1, 36-39-26, 36-31-5, 36-31-6, 36-31-9, 36-31-22, 36-36-5, 36-36-9.

20:78:03:07. Application withdrawn during investigation. An applicant may withdraw an application after an investigation has been initiated by the executive secretary. An application withdrawn after investigation has been initiated shall be reported as "withdrawn under investigation" in the board's permanent license files and in any national databases to which the board is required to report licensure action.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-7, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-11, 36-4-17, 36-4-20.2, 36-4-20.7, 36-4-20.10, 36-4A-8, 36-4A-8.1, 36-4B-6, 36-4B-13, 36-9B-4, 36-10-27, 36-10-28, 36-10-35.1, 36-10-49, 36-10B-6, 36-10B-7, 36-10B-10, 36-29-3, 36-29-3.1, 36-29-26, 36-31-5, 36-31-6, 36-31-9, 36-31-22, 36-36-5, 36-36-9.

20:78:03:08. Executive secretary determinations. Upon completion of the review of an application and any associated investigation, the executive secretary may:

(1) Summarily issue a license, permit, or certificate if the applicant meets the standards and requirements for licensure established by the applicable statutes or regulations;

(2) Recommend the board issue the license, permit, or certificate upon specified terms and conditions; or

(3) Recommend the board deny the license, permit, or certification application.

If the executive secretary recommends issuance of a license, permit, or certificate under specified terms and conditions, or recommends denial of a license, permit, or certificate, the executive secretary shall notify the applicant of the right to contest the executive secretary's recommendation. If contested by the applicant, the executive secretary shall issue a petition for hearing that sets out the recommendation and the reasons for the recommendation, and initiates a contested case hearing. A copy of the petition for hearing shall be sent to the applicant along with a statement that the applicant is entitled to due process rights, including the right to notice and an opportunity to be heard and to be represented by counsel. The executive secretary and applicant may enter into a settlement agreement concerning the recommendation to be made to the board on the application.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-7, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-18, 36-4-20.2, 36-4-20.7, 36-4-20.10, 36-4-28, 36-4-30, 36-4-31.6, 36-4A-8, 36-4A-8.1, 36-4A-38, 36-4A-39, 36-4B-6, 36-4B-13, 36-4B-31, 36-9B-4, 36-9B-8, 36-10-27, 36-10-28, 36-10-29, 36-10-35.1, 36-10-35.2, 36-10-38, 36-10-40, 36-10-41,

36-10B-3, 36-10B-6, 36-10B-7, 36-10B-10, 36-29-3, 36-29-3.1, 36-29-7, 36-29-22, 36-31-5, 36-31-6, 36-31-9, 36-31-10, 36-31-18, 36-36-5, 36-36-6, 36-36-9, 36-36-13.

20:78:03:09. Provisional licenses, permits, or certificates issued pursuant to settlement agreement. The executive secretary may enter into a settlement agreement with an applicant that provides for the issuance of a provisional license, permit, or certificate by the executive secretary. A provisional license, permit, or certificate issued by the executive secretary is valid only until the board takes final agency action on the settlement agreement and notice is provided to the applicant. Board approval of the settlement agreement ratifies the action of the executive secretary and the license, permit, or certificate is valid for its term under any specified terms and conditions. Board disapproval of a settlement agreement voids the provisional license, permit, or certificate upon notice to the applicant. If the board disapproves a settlement agreement, the board shall schedule a contested case hearing for final agency action on the application and require the executive secretary to file a petition for hearing.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-7, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-18, 36-4-20.2, 36-4-20.7, 36-4-20.10, 36-4-28, 36-4-30, 36-4-31.6, 36-4A-8, 36-4A-8.1, 36-4A-38, 36-4A-39, 36-4B-6, 36-4B-13, 36-4B-31, 36-9B-4, 36-9B-8, 36-10-27, 36-10-28, 36-10-29, 36-10-35.1, 36-10-35.2, 36-10-38, 36-10-40, 36-10-41, 36-10B-3, 36-10B-6, 36-10B-7, 36-10B-10, 36-29-3, 36-29-3.1, 36-29-7, 36-29-22, 36-31-5, 36-31-6, 36-31-9, 36-31-10, 36-31-18, 36-36-5, 36-36-9, 36-36-13.

20:78:03:10. Renewals and reinstatement. Renewal and reinstatement applications are subject to the same process as original licenses.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-7, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-11, 36-4-17, 36-4-20.2, 36-4-20.7, 36-4-20.10, 36-4-20.12, 36-4-24.1, 36-4-24.2, 36-4A-8, 36-4A-8.1, 36-4A-31, 36-4A-32, 36-4A-33, 36-4B-6, 36-4B-13, 36-4B-27, 36-4B-28, 36-9B-4, 36-10-27, 36-10-28, 36-10-33, 36-10-35.1, 36-10B-3, 36-10B-6, 36-10B-7, 36-10B-9, 36-10B-10, 36-29-3, 36-29-3.1, 36-29-11, 36-29-15, 36-31-5, 36-31-6, 36-31-9, 36-31-11, 36-31-19, 36-36-5, 36-36-9, 36-36-11, 36-36-14.

CHAPTER 20:78:04

COMPLAINT PROCEDURES

Section

- 20:78:04:01 Applicability.
- 20:78:04:02 Complaints.
- 20:78:04:03 Investigations.
- 20:78:04:04 Completion of complaint investigation.
- 20:78:04:05 Status of complainant.
- 20:78:04:06 Effect of failure to renew during investigation.

20:78:04:01. Applicability. The following procedure applies to complaints about holders of the licenses, permits, or certificates regulated by the Board of Medical and Osteopathic Examiners.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-3, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-27, 36-4-28, 36-4-29, 36-4-30, 36-4-32, 36-4A-37, 36-4A-38, 36-4A-39, 36-4A-40, 36-4B-28, 36-4B-31, 36-4B-32, 36-4B-33, 36-9B-8, 36-10-38, 36-10-39, 36-10-40, 36-10-41, 36-10-44, 36-10-45, 36-10-46, 36-10-49, 36-10B-13, 36-10B-14, 36-29-18, 36-29-19, 36-29-20, 36-29-21, 36-29-22, 36-29-25, 36-29-26, 36-29-27, 36-31-14, 36-31-15, 36-31-16, 36-31-17, 36-31-18, 36-31-21, 36-31-22, 36-36-6, 36-36-13.

20:78:04:02. Complaints. The executive secretary may initiate an investigation based on a written complaint. Any person filing a complaint shall submit the complaint in writing to the executive secretary. A complaint is not a public record. The executive secretary shall dismiss any complaint that concerns matters over which the board does not have jurisdiction, and shall notify the complainant of that action. The executive secretary may also initiate an investigation upon reasonable suspicion that a licensee is in violation of any applicable standard for professional conduct.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-3, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-27, 36-4-28, 36-4-29, 36-4-30, 36-4-32, 36-4A-37, 36-4A-38, 36-4A-39, 36-4A-40, 36-4B-28, 36-4B-31, 36-4B-32, 36-4B-33, 36-9B-8, 36-10-38, 36-10-39, 36-10-40, 36-10-41, 36-10-44, 36-10-45, 36-10-46, 36-10-49, 36-10B-13, 36-10B-14, 36-29-18, 36-29-19, 36-29-20, 36-29-21, 36-29-22, 36-29-25, 36-29-26, 36-29-27, 36-31-14, 36-31-15, 36-31-16, 36-31-17, 36-31-18, 36-31-21, 36-31-22, 36-36-6, 36-36-13.

20:78:04:03. Investigations. The executive secretary shall initiate investigation of a complaint by notifying the license, permit, or certificate holder of the complaint and obtaining a response to the complaint. If the executive secretary determines that the complaint concerns compliance with licensing standards and requirements, the executive shall investigate the complaint. The notice shall be in writing and shall include a statement that the licensure or licensee is entitled to due process rights, including the right to notice and an opportunity to be heard and to be represented by counsel. The executive secretary may appoint a board member to assist in the investigation.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-3, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-27, 36-4-28, 36-4-29, 36-4-30, 36-4-32, 36-4A-37, 36-4A-38, 36-4A-39, 36-4A-40, 36-4B-28, 36-4B-31, 36-4B-32, 36-4B-33, 36-9B-8, 36-10-38, 36-10-39, 36-10-40, 36-10-41, 36-10-44, 36-10-45, 36-10-46, 36-10-49, 36-10B-13, 36-10B-14, 36-29-18, 36-29-19, 36-29-20, 36-29-21, 36-29-22, 36-29-25, 36-29-26, 36-29-27, 36-31-14, 36-31-15, 36-31-16, 36-31-17, 36-31-18, 36-31-21, 36-31-22, 36-36-6, 36-36-13.

20:78:04:04. Completion of complaint investigation. Upon completion of a complaint investigation, the executive secretary may:

- (1) Dismiss the complaint as unsubstantiated or requiring no further action. Dismissal of a complaint is not a public record;
- (2) Issue a letter of concern, which shall be placed in the licensee's permanent records. A letter of concern is not a public record;
- (3) Recommend the board issue the licensee a public reprimand;
- (4) Recommend the board re-open and modify the license to include compliance with specified terms and conditions;
- (5) Recommend the board suspend or revoke the license.

If the executive secretary recommends issuance of a public reprimand, re-opening and modification, or suspension or revocation of the license, permit, or certificate held by the licensee, the executive secretary shall notify the licensee of the right to contest the recommendation. If contested, the executive secretary shall issue a petition for hearing that sets out the recommendation and the reasons for the recommendation and initiates a contested case hearing. A copy of the petition for hearing shall be sent to the licensee. The executive secretary and licensee may enter into a settlement agreement concerning the recommendation to be made to the board.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-3, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-18, 36-4-20.2, 36-4-20.7, 36-4-20.10, 36-4-27, 36-4-28, 36-4-29, 36-4-30, 36-4-31.6, 36-4-32, 36-4A-8, 36-4A-8.1, 36-4A-37, 36-4A-38, 36-4A-39, 36-4A-40, 36-4B-6, 36-4B-13, 36-4B-28, 36-4B-31, 36-4B-32, 36-4B-33, 36-9B-8, 36-10-27, 36-10-28, 36-10-29, 36-10-35.1, 36-10-35.2, 36-10-38, 36-10-39, 36-10-40, 36-10-41, 36-10-44, 36-10-45, 36-10-46, 36-10-49, 36-10B-6, 36-10B-7, 36-10B-10, 36-10B-13, 36-10B-14, 36-29-3, 36-29-3.1, 36-29-7, 36-29-18, 36-29-19, 36-29-20, 36-29-21, 36-29-22, 36-29-25, 36-29-26, 36-29-27, 36-31-5, 36-31-6, 36-31-9, 36-31-10, 36-31-14, 36-31-15, 36-31-16, 36-31-17, 36-31-18, 36-31-21, 36-31-22, 36-36-5, 36-36-6, 36-36-9, 36-36-13.

20:78:04:05. Status of complainant. The complainant is not a party to any contested case hearing resulting from the executive secretary's investigation of a complaint, although the complainant may be called as a witness in the hearing. The executive secretary shall notify a complainant of any public final agency action taken as a result of a complaint.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-3, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-18, 36-4-20.2, 36-4-20.7, 36-4-20.10, 36-4-27, 36-4-28, 36-4-29, 36-4-30, 36-4-31.6, 36-4-32, 36-4A-8, 36-4A-8.1, 36-4A-37, 36-4A-38, 36-4A-39, 36-4A-40, 36-4B-6, 36-4B-13, 36-4B-28, 36-4B-31, 36-4B-32, 36-4B-33, 36-9B-8, 36-10-27, 36-10-28, 36-10-29, 36-10-35.1, 36-10-35.2, 36-10-38, 36-10-39, 36-10-40, 36-10-41, 36-10-44, 36-10-45, 36-10-46, 36-10-49, 36-10B-6, 36-10B-7, 36-10B-10, 36-10B-13, 36-10B-14, 36-29-3, 36-29-3.1, 36-29-7, 36-29-18, 36-29-19, 36-29-20, 36-29-21, 36-29-22, 36-29-25, 36-29-26, 36-29-27, 36-31-5, 36-31-6, 36-31-9, 36-31-10, 36-31-14, 36-31-15, 36-31-16, 36-31-17, 36-31-18, 36-31-21, 36-31-22, 36-36-5, 36-36-6, 36-36-9, 36-36-13.

20:78:04:06. Effect of failure to renew during investigation. The holder of a license, permit, or certificate may choose not to renew the license, permit, or certificate after a complaint investigation has been initiated by the executive secretary. A failure to renew after investigation has been initiated shall be reported as "withdrawn under investigation" in the board's permanent license files and in any national databases to which the board is required to report licensure action.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-3, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-18, 36-4-20.2, 36-4-20.7, 36-4-20.10, 36-4-27, 36-4-28, 36-4-29, 36-4-30, 36-4-31.6, 36-4-32, 36-4A-8, 36-4A-8.1, 36-4A-37, 36-4A-38, 36-4A-39, 36-4A-40, 36-4B-6, 36-4B-13, 36-4B-28, 36-4B-31, 36-4B-32, 36-4B-33, 36-9B-4, 36-9B-8, 36-10-27, 36-10-28, 36-10-29, 36-10-35.1, 36-10-35.2, 36-10-38, 36-10-39, 36-10-40, 36-10-41, 36-10-44, 36-10-45, 36-10-46, 36-10-49, 36-10B-6, 36-10B-7, 36-10B-10, 36-10B-13, 36-10B-14, 36-29-3, 36-29-3.1, 36-29-7, 36-29-18, 36-29-19, 36-29-20, 36-29-21, 36-29-22, 36-29-25, 36-29-26, 36-29-27, 36-31-5, 36-31-6, 36-31-9, 36-31-10, 36-31-14, 36-31-15, 36-31-16, 36-31-17, 36-31-18, 36-31-21, 36-31-22, 36-36-5, 36-36-6, 36-36-9, 36-36-13.

CHAPTER 20:78:05

CONTESTED CASE HEARING PROCEDURES

Section

20:78:05:01	Applicability.
20:78:05:02	Petitions for hearing.
20:78:05:03	Filing of petitions for hearing.
20:78:05:04	Scheduling of hearing.
20:78:05:05	Hearing procedure.
20:78:05:06	Final board decision.
20:78:05:07	Notice of decision.
20:78:05:08	Assessment of costs of disciplinary hearings.

20:78:05:01. Applicability. The following procedure applies to contested case proceedings for license, permit, or certificate applications and to disciplinary proceedings before the Board of Medical and Osteopathic Examiners.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-3, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-27, 36-4-28, 36-4-29, 36-4-30, 36-4-32, 36-4A-37, 36-4A-38, 36-4A-39, 36-4A-40, 36-4B-28, 36-4B-31, 36-4B-32, 36-4B-33, 36-9B-8 36-10-38, 36-10-39, 36-10-40, 36-10-41, 36-10-44, 36-10-45, 36-10-46, 36-10-49, 36-10B-13, 36-10B-14, 36-29-18, 36-29-19, 36-29-20, 36-29-21, 36-29-22, 36-29-25, 36-29-26, 36-29-27, 36-31-14, 36-31-15, 36-31-16, 36-31-17, 36-31-18, 36-31-21, 36-31-22, 36-36-6, 36-36-13.

20:78:05:02. Petitions for hearing. An applicant for a license, permit, or certificate issued by the board may file a petition for hearing at any time during the processing of an application. The executive secretary may file a petition for hearing to initiate a disciplinary proceeding against a licensee. A petition for hearing shall be signed by the petitioner and contain the following information: the name and address of the applicant or licensee, the basis for the request for hearing, recitation of the applicable statutes or regulations under which the petitioner is requesting board action, and the relief requested by the petitioner.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-3, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-31.6, 36-4A-39, 36-4B-32, 36-9B-8, 36-10-43, 36-10-45, 36-10-46, 36-29-19, 36-29-20, 36-29-21, 36-29-22, 36-31-15, 36-31-16, 36-36-13.

20:78:05:03. Filing of petitions for hearing. All petitions for hearing shall be filed with the executive secretary, who shall maintain the record of contested case proceedings held before the board.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-3, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-31.6, 36-4A-39, 36-4B-32, 36-9B-8, 36-10-43, 36-10-45, 36-10-46, 36-29-19, 36-29-20, 36-29-21, 36-29-22, 36-31-15, 36-31-16, 36-36-13.

20:78:05:04. Scheduling of hearing. Upon receipt of a petition for hearing, the board president may appoint an examiner to conduct the contested case hearing, or may schedule the contested case hearing before the board, as authorized by applicable statutes.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-3, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-31.6, 36-4A-39, 36-4B-32, 36-9B-8, 36-10-43, 36-10-45, 36-10-46, 36-29-19, 36-29-20, 36-29-21, 36-29-22, 36-31-15, 36-31-16, 36-36-13.

20:78:05:05. Hearing procedure. Contested case hearings shall be conducted in accordance with SDCL 1-26. The parties to a hearing are the executive secretary and the applicant or licensee. A board member who has participated in any investigation of the matter before the board shall disqualify himself from all deliberations and decisions.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-3, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-31.6, 36-4A-39, 36-4B-32, 36-9B-8, 36-10-43, 36-10-45, 36-10-46, 36-29-19, 36-29-20, 36-29-21, 36-29-22, 36-31-15, 36-31-16, 36-36-13.

20:78:05:06. Final board decision. If the board hears the proceeding itself, it shall issue a final decision and require the parties to submit proposed findings of fact and conclusions of law for consideration at the board's next meeting. If a hearing examiner hears the proceeding, the examiner shall issue a proposed decision including findings of fact and conclusions of law. The

examiner shall serve the proposed decision upon the board and the parties. The board may request that the parties appear before it to present oral argument and objections to the examiner's proposed decision. The board shall issue a final decision and accept, reject, or modify the findings, conclusions, and decisions of the examiner.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-3, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-31.6, 36-4A-39, 36-4B-32, 36-9B-8, 36-10-43, 36-10-45, 36-10-46, 36-29-19, 36-29-20, 36-29-21, 36-29-22, 36-31-15, 36-31-16, 36-36-13.

20:78:05:07. Notice of decision. The board shall issue a notice of decision, accompanied by the final board decision and findings of fact and conclusions of law, to the applicant or licensee and executive secretary.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-3, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 36-4-31.6, 36-4A-39, 36-4B-32, 36-9B-8, 36-10-43, 36-10-45, 36-10-46, 36-29-19, 36-29-20, 36-29-21, 36-29-22, 36-31-15, 36-31-16, 36-36-13.

20:78:05:08. Assessment of costs of disciplinary hearings. The board may assess its costs associated with a contested case proceeding resulting in disciplinary action, against a licensee upon motion by the executive secretary. If requesting the assessment of costs, the

executive secretary shall present a statement of costs to the board or hearing examiner at the time it submits proposed findings of fact and conclusions of law.

Source: 38 SDR 127, effective February 7, 2012.

General Authority: SDCL 36-4-35, 36-4A-42, 36-4B-35, 36-9B-7, 36-10-36, 36-10B-3, 36-29-17, 36-31-13, 36-36-12.

Law Implemented: SDCL 1-26-29.1.

CHAPTER 20:84

MEDICAL ASSISTANTS

20:84:01 Definitions

20:84:02 Contents of application.

20:84:03 Qualifications of applicants.

20:84:04 Approval of education programs.

20:84:05 Renewal of registration.

20:84:01 Definitions

20:84:01:01. Definitions. Terms defined in SDCL chapter 36-9B have the same meaning when used in this article. In addition, terms used in this article mean:

- (1) “Boards,” the South Dakota Board of Nursing and the South Dakota Board of Medical and Osteopathic Examiners;
- (2) “Direct supervision,” the physician, physician assistant, certified nurse practitioner, or certified nurse midwife are physically present or available by means of electronic communication.

General Authority: SDCL 36-9B-7

Law Implemented: SDCL 36-9B-1; 36-9B-4

20:84:02 Contents of application.

20:84:02:01. Contents of application. An applicant for medical assistant registration shall apply for registration on a form approved by the boards.

General Authority: SDCL 36-9B-7

Law Implemented: SDCL 36-9B-4

20:84:02:02. Medical assistant supervision. A registered medical assistant shall submit with the application a supervision registration form. The supervision registration form shall be submitted on a form approved by the boards.

General Authority: SDCL 36-9B-7

Law Implemented: SDCL 36-9B-1; 36-9B-2

20:84:03 Qualifications of applicants

20:84:03:01. Qualifications of applicants. An applicant for registration shall provide:

- (1) Proof of graduation from a medical assistant program approved by the boards;
- (2) Proof of good moral character;
- (3) Proof the applicant has graduated from high school or passed a standard equivalency test;
- (4) Documentation showing the applicant is at least 18 years of age; and
- (5) Proof of having passed a national certifying exam approved by the boards.

General Authority: SDCL 36-9B-7

Law Implemented: SDCL 36-9B-4

20:84:04 Approved education programs

20:84:04:01. Approved education programs. An applicant for registration shall have graduated from a medical assistant program that is approved by the boards or accredited by the Commission on Accreditation of Allied Health Education Programs (CAAHEP), or a similar accrediting institution approved by the United States Department of Education. Approved programs must provide classroom, laboratory, and clinical learning experiences that provide for student attainment of entry level competence as a registered medical assistant.

General Authority: SDCL 36-9B-7

Law Implemented: SDCL 36-9B-5

20:84:05 Registration renewal

20:84:05:01. Medical assistant registration renewal. A registered medical assistant shall renew the registration biennially on an application form approved by the boards. The application shall be accompanied by the registration renewal fee. If a registered medical assistant does not submit a registration renewal form by December 31 of the year of the registration's expiration, the registration is lapsed.

General Authority: SDCL 36-9B-7

Law Implemented: SDCL 36-9B-4

20:84:05:02. Reinstatement of lapsed registration. Any person whose registration has lapsed may have it reinstated by making written application on a form approved by the boards and paying the biennial renewal fee.

General Authority: SDCL 36-9B-7

Law Implemented: SDCL 36-9B-4