

## CHAPTER 20:48:01

### DEFINITIONS

#### Section

20:48:01:01 Definitions.

**20:48:01:01. Definitions.** Terms defined in SDCL chapter 36-9 have the same meaning when used in this article. In addition, terms used in this article mean:

- (1) "Adolescent," a person at least 12 years of age but not yet 18;
- (2) "Applicant," a person applying to the board for any purpose relating to that person's licensure or certification by the board;
- (3) "Client," a consumer of nursing care;
- (4) "Clinical enrichment program," any program designed to provide supervised clinical experience based on the nursing process and offered by an employing institution or agency to nursing students outside a formal educational program;
- (5) "Complex nursing situation," a situation in which the client's clinical and behavioral state is not predictable and rapid change in that state is reasonably anticipated;
- (6) "Controlling institution," an educational institution or general hospital under whose auspices a school is organized and operated;
- (7) "Cooperating agency," an institution or agency other than a controlling institution which provides learning resources to a school;
- (8) "Delegation," transferring to a trained individual the authority to perform a specific nursing task in a specific situation;
- (9) "Direct supervision," supervision given by a registered nurse or licensed physician who is physically present in the immediate area where the client is being provided nursing service;

(10) "Equivalent" or "equivalency," the completion, in a school that is not approved by the board or in a school of another kind, of a program that is substantially equal to the preparation received in an approved school of practical nursing;

(11) "Licensee," a person who holds a license issued by the board as either a registered or licensed practical nurse, certified registered nurse anesthetist, or clinical nurse specialist;

(12) "Minimal supervision," supervision given by a registered nurse, licensed physician, or dentist who is physically on the premises where the client is being cared for or readily available by telephone;

(13) "School," a school that conducts a course of study for the preparation of registered nurses, licensed practical nurses, or certified registered nurse anesthetists;

(14) "Stable nursing situation," a situation in which the client's clinical and behavioral state is known and predictable and no rapid change in that state is reasonably anticipated;

(15) "Unlicensed assistive personnel," ~~individuals~~ persons not licensed as a nurse under SDCL chapter 36-9 who are trained to assist a licensed nurse in the provision of nursing care to a client as delegated by the nurse and authorized by chapter 20:48:04.01-;

(16) "Registrant," any person who meets the definition of unlicensed assistive personnel and who is registered by the board.

**Source:** SL 1975, ch 16, § 1; 3 SDR 35, effective November 11, 1976; 4 SDR 26, effective November 1, 1977; 6 SDR 88, effective March 3, 1980; 12 SDR 109, effective January 9, 1986; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 13 SDR 175, effective May 28, 1987; 21 SDR 13, effective August 7, 1994; 26 SDR 174, effective July 4, 2000; 41 SDR 12, effective July 31, 2014.

**General Authority:** SDCL 36-9-21 (5).

**Law Implemented:** SDCL 36-9-21 (5).

## CHAPTER 20:48:08

### DISCIPLINARY PROCEEDINGS

#### Section

|             |                                                                        |
|-------------|------------------------------------------------------------------------|
| 20:48:08:01 | Repealed.                                                              |
| 20:48:08:02 | Repealed.                                                              |
| 20:48:08:03 | Repealed.                                                              |
| 20:48:08:04 | Repealed.                                                              |
| 20:48:08:05 | Repealed.                                                              |
| 20:48:08:06 | Repealed.                                                              |
| 20:48:08:07 | Repealed.                                                              |
| 20:48:08:08 | Notification to board of claimed misconduct.                           |
| 20:48:08:09 | Dismissal of claim of misconduct.                                      |
| 20:48:08:10 | <del>Informal proceeding.</del> <u>Action by staff representative.</u> |
| 20:48:08:11 | Investigation.                                                         |
| 20:48:08:12 | Board action following informal proceeding.                            |
| 20:48:08:13 | Repealed.                                                              |
| 20:48:08:14 | Answer.                                                                |
| 20:48:08:15 | Publication of board actions.                                          |

**Cross-References:** Procedure to follow in licensing matters, SDCL 1-26-16 to 1-26-19.1.

**20:48:08:08. Notification to board of claimed misconduct.** Any person claiming that a holder of or applicant for a license or ~~certificate~~ registration has engaged or is engaging in misconduct constituting grounds for disciplinary or corrective action ~~as provided in SDCL 36-9-49~~ may contact the board office either verbally or in writing stating that person's name and address, the name and address of the applicant, licensee, or ~~certificate holder~~ registrant claimed to be guilty of misconduct, and full details of the claimed misconduct. The board's staff

representative assigned to handle such matters may require the person claiming misconduct to file with the board office a written complaint, verified on oath, providing the information referred to above.

**Source:** 6 SDR 88, effective March 3, 1980; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

**General Authority:** SDCL 36-9-21.

**Law Implemented:** SDCL 36-9-49.

**Declaratory Ruling:** If a licensee of the Board of Nursing who is reported under ARSD 44:20:02:08 to have a communicable disease, such as HIV or hepatitis B, fails to follow universal precautions as set forth by the Centers for Disease Control and Prevention (CDC) and adopted by the South Dakota Department of Health, the Board of Nursing could discipline the licensee under SDCL 36-9-49(5) upon proof that the licensee has negligently, willfully, or intentionally acted in a manner inconsistent with the health or safety of persons entrusted to the nurse's care or under SDCL 36-9-49(10) upon proof that the licensee has been guilty of gross incompetence or unprofessional or dishonorable conduct. The board must investigate and decide each case individually and judge the case on its facts and circumstances. Violation of the guidelines would be evidence of a possible violation of the statutes cited but would not create an irrebuttable presumption of the violation or cause automatic disciplinary action. Testimony would have to establish whether a violation of SDCL 36-9-49(5) or (10) occurred because of the violation of the guidelines, and the licensee could raise defenses on mitigating evidence. **(Editor's Note:** The Department of Health adopted guidelines for universal precautions and required health care workers to comply with them effective January 26, 1995.)South Dakota Board of Nursing Declaratory Ruling 94-4.

**20:48:08:09. Dismissal of claim of misconduct.** If the board's staff representative determines that the misconduct charged is frivolous, would not constitute grounds for

disciplinary action, is outside the jurisdiction of the board, or is otherwise inappropriate for board action, the representative shall advise in writing the person claiming the misconduct and the affected applicant, licensee, or ~~certificate holder~~ registrant that the board will not pursue the matter, stating the grounds for the decision.

**Source:** 6 SDR 88, effective March 3, 1980; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

**General Authority:** SDCL 36-9-21.

**Law Implemented:** SDCL 36-9-51.2.

**20:48:08:10. Informal proceeding. Action by staff representative.** ~~If the board's staff representative determines that the misconduct charged, if proved to be true, could constitute grounds for disciplinary action by the board, the representative shall notify in writing the applicant, licensee, or certificate holder claimed to be guilty of misconduct of the time and place for an informal meeting as provided by SDCL 1-26-16.1 or 1-26-29. The informal meeting may be conducted by a staff representative or by one or more designated members of the board who shall report fully to the board regarding the meeting for further board action pursuant to § 20:48:08:12.~~ Upon notice of claimed misconduct, the board's staff representative shall provide written notice to the applicant, licensee or registrant of the claimed misconduct. The notice shall also advise the applicant, licensee, or registrant of an opportunity to attend an informal meeting with the board's staff representative to discuss the claimed misconduct, at which the applicant, licensee, or registrant may be represented by counsel. Regardless of whether an informal meeting occurs, if the board's staff representative determines that the claimed misconduct constitutes grounds for corrective or disciplinary action, the board's staff representative shall then notify the board of the claimed misconduct for further action.

**Source:** 6 SDR 88, effective March 3, 1980; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

**General Authority:** SDCL 36-9-21.

**Law Implemented:** SDCL 36-9-49, 36-9-51.2.

**20:48:08:11. Investigation.** The board's staff representative, or any other person designated by the board, may conduct an investigation of the claimed misconduct either before or after the informal ~~proceeding~~ meeting.

**Source:** 6 SDR 88, effective March 3, 1980; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

**General Authority:** SDCL 36-9-21.

**Law Implemented:** SDCL 36-9-49, 36-9-51.2.

**20:48:08:12. Board action following ~~informal proceeding~~ notification of misconduct.**  
~~After the informal proceeding~~ When notified by the board's staff representative of claimed misconduct under § 20:48:08:10, the board shall may in its discretion take one of the following actions:

(1) Notify in writing the person claiming misconduct, the applicant, licensee, or ~~certificate holder~~ registrant claimed to be guilty of misconduct, and all other interested or affected parties that the board will not pursue the matter further, stating the grounds for the decision;

(2) Without a hearing take any non-disciplinary or ~~or~~ corrective action the board determines is appropriate other than a letter of reprimand, probation, or denial, revocation, suspension, annulment, withdrawal, or amendment of any application, license, or ~~certificate registration~~; or

(3) ~~Serve~~ For those actions constituting discipline under SDCL § 36-9-49, including a letter of reprimand or probation, serve by mail to the last known address, upon the applicant, licensee, or ~~certificate holder~~ registrant claimed to be guilty of misconduct and all other interested or affected parties a formal complaint together with a notice of hearing issued pursuant

to SDCL 1-26. The applicant, licensee or registrant may waive a hearing or enter into a settlement agreement with the board without a hearing.

**Source:** 6 SDR 88, effective March 3, 1980; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

**General Authority:** SDCL 36-9-21.

**Law Implemented:** SDCL 36-9-49, 36-9-51.2.

**Cross-Reference:** Contents of notice of hearing, SDCL 1-26-17.

**20:48:08:14. Answer.** The applicant, licensee, or ~~certificate holder~~ registrant may file before or submit at the time of the hearing an answer admitting, denying, qualifying, or explaining any of the matters contained in the complaint or notice of hearing.

**Source:** 6 SDR 88, effective March 3, 1980; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

**General Authority:** SDCL 36-9-21.

**Law Implemented:** SDCL 36-9-51.2.

## **CHAPTER 20:48:16**

### **Registration of Unlicensed Assistive Personnel**

#### **Section**

**20:48:16:01**    **Operation of registry.**

**20:48:16:02**    **Application for registration.**

**20:48:16:03**    **Renewal or reactivation of registration.**

**20:48:16:04**    **Denial or removal from registry.**

**20:48:16:01. Operation of registry.** The board is accountable for the operation of the unlicensed assistive personnel registry. The registry contains the following information for each person who has gained registry status:

- (1) Full name of the registrant, including maiden name and any surnames used;
- (2) Last known home address;
- (3) Registration number;
- (4) Date the registry status expires;
- (5) Date of birth;
- (6) Most recent employment;
- (7) Date of successful completion of the board approved examination; and
- (8) Disciplinary proceedings against the registrant.

#### **Source:**

**General Authority:** SDCL 36-9-21 (5).

**Law Implemented:** SDCL 36-9-21 (5).

**20:48:16:02. Application for registration.** A person seeking initial registration shall:

- (1) Apply on the form provided by the board;
- (2) Hold a high school diploma or equivalent;
- (3) Successfully complete a board approved training program in accordance with § 20:48:04.01:13, § 20:48:04.01:16, or § 20:48:04.02:07. An individual seeking registration who completed education that was not approved by the board shall make a request for an equivalency determination on a form provided by the board; and
- (4) Provide evidence of having passed a board approved examination.

**Source:**

**General Authority:** SDCL 36-9-21 (5).

**Law Implemented:** SDCL 36-9-21 (5).

20:48:16:03. Renewal or reinstatement of registration. A registrant shall renew the registration biennially. A notice for renewal shall be sent by the board to the last known address of each current registrant at least 90 days prior to the registrant's expiration date. Failure to receive the notice for renewal does not relieve the registrant of the responsibility for renewing within the prescribed time. Any renewal received by the board after the filing date indicated in the notice shall be listed as lapsed on the registry.

The board shall renew or reinstate a registrant if the registrant:

- (1) Applies on the form provided by the board;
- (2) Provides a verified statement that indicates whether the applicant has been convicted of a crime during the period of time since becoming registered or renewing registration;
- (3) Provides a verified statement that indicates whether the applicant has been employed for a minimum of 12 hours of employment in the registrant's role as an unlicensed diabetes aide, medication aide, or dialysis technician during the preceding 24 months. Applicants who do not meet the employment requirement must repeat the training program and examination requirements listed in 20:48:16:02; and

(4) For any unlicensed dialysis technician, maintains current certification as a dialysis technician with a national certification body approved by the board.

**Source:**

**General Authority:** SDCL 36-9-21 (5).

**Law Implemented:** SDCL 36-9-21 (5).

**20:48:16:04. Denial or removal from registry.** The board, in compliance with SDCL Chapter 1-26, may deny an applicant or remove a registrant pursuant to § 36-9-49 to 36-9-57 inclusive and § 20:48:08.

**Source:**

**General Authority:** SDCL 36-9-21 (6).

**Law Implemented:** SDCL 36-9-21 (6), SDCL 36-9-49, SDCL 36-9-49.1, SDCL 36-9-51.1, SDCL 36-9-51.2, SDCL 36-9-51.3, SDCL 36-9-51.4, SDCL 36-9-57.