

ARTICLE 20:48

NURSES

Chapter

20:48:01	Definitions.
20:48:02	General rules affecting board.
20:48:03	Licensing and licenses.
20:48:03.01	Licensure of clinical nurse specialists.
20:48:04	The practice of nursing.
20:48:04.01	Delegation of nursing tasks.
20:48:04.02	Delegation of nursing tasks to dialysis technicians.
20:48:05	Licensure of nurse anesthetists.
20:48:06	Fees required of licensees.
20:48:07	Approval of nursing education programs.
20:48:07.01	Clinical enrichment programs.
20:48:08	Disciplinary proceedings, <u>Repealed</u> .
20:48:09	Declaratory rulings, <u>Repealed</u> .
20:48:10	Rules: initiation, repeal, amendment.
20:48:11	Contested cases, <u>Repealed</u> .
20:48:12	Continuing education, Repealed.
20:48:13	Nurse education assistance scholarship program.
20:48:14	Nursing corporations <u>and health care corporation certificates of registration</u> .
20:48:15	Nurse licensure compact, Repealed.
20:48:16	Registration of unlicensed assistive personnel.
<u>20:48:17</u>	<u>Health professionals assistance program.</u>

CHAPTER 20:48:03.01

LICENSURE OF CLINICAL NURSE SPECIALISTS

Section

20:48:03.01:01 ~~Approved education programs~~ Application for licensure.

20:48:03.01:02 Renewal of licensure.

20:48:03.01:03 Other rules affecting licensure.

20:48:03.01:04 ~~Criteria for approval of examinations~~ Repealed.

20:48:03.01:01. ~~Approved education programs~~ Application for licensure. An applicant for licensure as a clinical nurse specialist shall file with the board a written application that contains evidence that the applicant has completed a graduate program in nursing that is accredited by a nationally recognized accrediting agency approved by the United States Department of Education. The education program must specifically prepare the nurse to function in the clinical nurse specialist role and include a clinical practicum that provides for integration of the functions of the clinical nurse specialist referred to in SDCL subdivision 36-9-87(1). Each applicant for licensure as a clinical nurse specialist must submit a set of fingerprints on a standard card provided by the board for the purpose of obtaining a state and federal criminal background check through the Division of Criminal Investigation. An authorization and release form must be signed by the applicant authorizing the release of the criminal history record to the board. The fingerprint card, authorization and release form, and fee for the criminal background check must accompany the application for licensure.

~~Any person whose education does not meet the requirements of this section before November 1, 1996, must show evidence of a graduate degree in nursing with a clinical~~

~~component and evidence of clinical practice of at least 520 hours in a 12-month period or an accumulation of at least 1,040 hours during the 3-year period preceding licensure.:~~

(1) Evidence that the applicant has completed an advanced practice program in nursing that awards or confers a graduate degree, post-graduate degree, or post-graduate certificate, with a major in the role and population-focus area of clinical nurse specialist, and is accredited by a nationally recognized nursing accrediting agency approved by the United States Department of Education. An applicant who does not meet the requirement but holds an active, unencumbered license as a clinical nurse specialist in another state, may request review of educational qualifications to meet licensure qualifications in this state;

(2) Evidence that the applicant has passed a board-approved, nationally recognized certification examination that is specific to the applicant's advanced practice registered nurse role and educational preparation, and maintains current certification;

(3) Evidence that the applicant holds an unencumbered South Dakota registered nurse license or privilege to practice; and

(4) A set of fingerprints on a standard card provided by the board for the purpose of obtaining a state and federal criminal background check through the Division of Criminal Investigation. An authorization and release form must be signed by the applicant authorizing the release of the criminal history record to the board. The fingerprint card, authorization and release form, and fee for the criminal background check must accompany the application for licensure. A permanent license may not be issued until the criminal background check is complete.

The application must be accompanied by the fee required in § 20:48:06:01.

Source: 22 SDR 61, effective November 7, 1995; 26 SDR 174, effective July 4, 2000; 33 SDR 43, effective September 12, 2006; 41 SDR 12, effective July 31, 2014.

General Authority: SDCL 36-9-21(1), 36-9-86.

Law Implemented: SDCL 36-9-29, 36-9-86, 36-9-97.

20:48:03.01:04. Criteria for approval of examinations. ~~The criteria to be used by the board to approve the licensure examinations include:~~

- ~~(1) The examination is national in the scope of its credentialing;~~
- ~~(2) The examination is based on job analysis or role delineation studies and the examination content is specified in a test plan that is available to the board and examinees;~~
- ~~(3) Examination items are reviewed for content validity, cultural sensitivity, and correct scoring;~~
- ~~(4) Examinations are evaluated for psychometric performance and the passing standard is established;~~
- ~~(5) Examination security is maintained;~~
- ~~(6) The eligibility requirements for the examination include a master's degree in nursing;~~
- ~~and~~
- ~~(7) A program for certification renewal is established.~~

~~If an examination is not available which includes eligibility requirements for a master's degree, the applicant may petition the board for exception to subdivision (6) of this section~~
Repealed.

Source: 22 SDR 61, effective November 7, 1995.

General Authority: SDCL ~~36-9-21~~, ~~36-9-86~~.

Law Implemented: SDCL ~~36-9-86~~.

20:48:05:01. Licensure of registered nurse anesthetist. An applicant for licensure as a certified registered nurse anesthetist shall ~~apply on the form provided by the board. The applicant shall provide written evidence that the applicant has completed an approved program of nurse~~

~~anesthesia accredited by the Council on Accreditation of Nurse Anesthesia Educational Programs. The applicant shall provide written evidence that the applicant has passed a board-approved examination that has been validated and scored in accordance with generally accepted testing procedures. Applicants who have taken the qualifying examinations from January 1, 1983, to November 30, 1987, inclusive, shall provide written evidence that the applicant has passed, with a score of at least 175, a board-approved examination that has been validated in accordance with generally accepted testing procedures. Those applicants who have taken the qualifying examinations prior to 1983 must show proof of passing the examination and evidence of meeting recertification requirements. The examination shall cover the areas of anatomy, physiology, chemistry, pharmacology, and methods. The application shall be accompanied by the fee required in chapter 20:48:06. Each applicant for licensure as a certified registered nurse anesthetist must submit a set of fingerprints on a standard card provided by the board for the purpose of obtaining a state and federal criminal background check through the Division of Criminal Investigation. An authorization and release form must be signed by the applicant authorizing the release of the criminal history record to the board. The fingerprint card, authorization and release form, and fee for the criminal background check must accompany the application for licensure. file with the board an application that contains:~~

(1) Evidence that the applicant has completed an advanced practice program in nurse anesthesia that awards or confers a graduate degree, post-graduate degree, or post-graduate certificate, and is accredited by a nationally recognized nursing accrediting agency approved by the United States Department of Education. If the program does not have national accreditation, the program must be board-approved in order to meet licensure requirements. An applicant who does not meet the requirement but holds an active, unencumbered license as a nurse anesthetist in

another state, may request review of educational qualifications to meet licensure qualifications in this state;

(2) Evidence that the applicant has passed a board-approved, nationally recognized certification examination that is specific to nurse anesthesia, and maintains current certification;

(3) Evidence of holding an unencumbered South Dakota registered nurse license or privilege to practice; and

(4) A set of fingerprints on a standard card provided by the board for the purpose of obtaining a state and federal criminal background check through the Division of Criminal Investigation. An authorization and release form must be signed by the applicant authorizing the release of the criminal history record to the board. The fingerprint card, authorization and release form, and fee for the criminal background check must accompany the application for licensure. A permanent license may not be issued until the criminal background check is complete.

The application must be accompanied by the fee required in § 20:48:06:01.

Source: 3 SDR 35, effective November 11, 1976; 6 SDR 88, effective March 3, 1980; 9 SDR 151, effective May 30, 1983; 12 SDR 109, effective January 9, 1986; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 14 SDR 118, effective March 22, 1988; 33 SDR 43, effective September 12, 2006; 41 SDR 12, effective July 31, 2014.

General Authority: SDCL 36-9-21(1).

Law Implemented: SDCL 36-9-29, 36-9-30.1, ~~36-9-35~~, 36-9-97.

References:

~~Accredited Nurse Anesthesia Programs, Council on Accreditation of Nurse Anesthesia Educational Programs, May 2006. Copies may be obtained from the Council on Accreditation of Nurse Anesthesia Educational Programs, 222 S. Prospect Ave., #Suite 304, Park Ridge, Illinois~~

60068. No cost. Program accreditation status may be retrieved from Website,
http://www.aana.com/Accredited_Programs/accreditedprograms.asp?State=all.

[American Educational Research Association, American Psychological Association, and
the National Council on Measurement in Education.] **Standards for Educational and
Psychological Testing**, 1999 edition. Copies may be obtained from Test Standards, P.O. Box
465, Hanover, PA 17331. Cost: \$31.95.

CHAPTER 20:48:08

DISCIPLINARY PROCEEDINGS

(Repealed)

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—Action by staff representative.

20:48:08:11—Investigation.

20:48:08:12—Board action following notification of misconduct.

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 registration has engaged or is engaging in misconduct constituting grounds for disciplinary or corrective action 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 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~~ Repealed.

Source: 6 SDR 88, effective March 3, 1980; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 44 SDR 81, effective November 6, 2017.

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 registrant that the board will not pursue the matter, stating the grounds for the decision Repealed.~~

Source: 6 SDR 88, effective March 3, 1980; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 44 SDR 81, effective November 6, 2017.

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

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

20:48:08:10. Action by staff representative. ~~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 Repealed.

Source: 6 SDR 88, effective March 3, 1980; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 44 SDR 81, effective November 6, 2017.

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 meeting~~ Repealed.

Source: 6 SDR 88, effective March 3, 1980; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 44 SDR 81, effective November 6, 2017.

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

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

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

(1) ~~Notify in writing the person claiming misconduct, the applicant, licensee, or 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 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 registration; or~~

(3) ~~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 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 Repealed.~~

Source: 6 SDR 88, effective March 3, 1980; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 44 SDR 81, effective November 6, 2017.

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 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 Repealed.~~

Source: 6 SDR 88, effective March 3, 1980; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 44 SDR 81, effective November 6, 2017.

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

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

20:48:08:15. Publication of board actions. ~~The board shall publish at least biannually the final actions of all disciplinary proceedings with the exception of dismissed claims of misconduct as outlined in §§ 20:48:08:09 and 20:48:08:12(1) Repealed.~~

Source: 19 SDR 181, effective May 31, 1993.

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

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

CHAPTER 20:48:09

DECLARATORY RULINGS

(Repealed)

Section

~~20:48:09:01 — Petition for declaratory ruling.~~

~~20:48:09:02 — Board action on petition.~~

20:48:09:01. Petition for declaratory ruling. ~~Any person wishing the board to issue its ruling as to the applicability to that person of any statutory provision or rule or order of the board may file with the board a petition in substantially the following form:~~

~~State of South Dakota~~

~~Board of Nursing~~

~~Petition For Declaratory Ruling~~

~~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 South Dakota board of nursing for its declaratory ruling in regard to the following:~~

~~1. The state statute or board of nursing rule or order in question is: (here identify and quote the pertinent statute, rule or order).~~

~~2. The facts and circumstances which give rise to the issue to be answered by the board's declaratory ruling are:~~

~~3. The precise issue to be answered by the board's declaratory ruling is:~~

~~Dated at (city and state), this ____ day of _____ 19__.~~

~~(Signature of petitioner) Repealed.~~

Source: SL 1975, ch 16, § 1; 3 SDR 35, effective November 11, 1976; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

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

Law Implemented: ~~SDCL 1-26-15.~~

20:48:09:02. Board action on petition. Upon receipt of the petition, the board may request from the petitioner such other or further information as may be required by it for the issuance of its ruling. Within 30 days following the receipt of the petition, or within 30 days following receipt of such further requested information, the board shall issue its declaratory ruling and serve a copy of same by mail upon the petitioner Repealed.

Source: SL 1975, ch 16, § 1; 3 SDR 35, effective November 11, 1976; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

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

Law Implemented: ~~SDCL 1-26-15.~~

CHAPTER 20:48:11

CONTESTED CASES

(Repealed)

Section

~~20:48:11:01 — Petition for hearing.~~

~~20:48:11:02 — Notice of hearing.~~

~~20:48:11:03 — Briefs.~~

~~20:48:11:04 — Decision.~~

~~20:48:11:05 — Petition for review.~~

~~20:48:11:06 — Judicial review.~~

~~**Cross References:** Procedure to follow in contested cases, SDCL 1-26-16 to 1-26-29.~~

20:48:11:01. Petition for hearing. In a contested case, as defined in subdivision (2) of SDCL 1-26-1, including disciplinary proceedings, a person aggrieved by an action of the board taken without a hearing may, within 30 days following the date of the board action, petition the

~~board for a hearing which shall be held not later than 60 days following receipt of the petition~~
Repealed.

Source: 3 SDR 35, effective November 11, 1976; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

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

Law Implemented: ~~SDCL 1-26-16, 1-26-18.~~

20:48:11:02. Notice of hearing. ~~Not less than 20 nor more than 30 days before the date set by the board for hearing in a contested case, the board shall serve by mail upon all interested or affected parties a copy of the notice of hearing pursuant to SDCL 1-26-17~~ Repealed.

Source: 3 SDR 35, effective November 11, 1976; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

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

Law Implemented: ~~SDCL 1-26-17.~~

20:48:11:03. Briefs. ~~Any party to the hearing, upon request made before the close of the hearing, may file a written brief with the board, or with the hearing examiner if one has been appointed to conduct the hearing, within a reasonable time as fixed by the board for its filing. The board or hearing examiner may also direct the submission of written briefs and set a reasonable time for their filing~~ Repealed.

Source: 3 SDR 35, effective November 11, 1976; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

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

Law Implemented: ~~SDCL 1-26-18.~~

20:48:11:04. Decision. ~~Except as otherwise provided in SDCL 1-26-30.1, the board shall make and enter its decision within 30 days following the hearing or the filing of briefs if they~~

~~have been submitted. If a hearing examiner has conducted the hearing, the findings of fact, conclusions of law, and proposed decision of the hearing examiner shall either be accepted by the board and entered by it in its name or the board shall enter its own decision rejecting or modifying that of the examiner~~ Repealed.

Source: 3 SDR 35, effective November 11, 1976; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

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

Law Implemented: ~~SDCL 1-26-18.1, 1-26-25.~~

20:48:11:05. Petition for review. ~~Within 10 days after receipt of the board's decision, a party to the hearing may file with the board a petition for review of its decision. The board, in its discretion, may deny the petition, order a rehearing, or direct any other proceedings it considers appropriate. Upon rehearing or other proceedings, the board may affirm, reverse, or modify its earlier decision. Notice of the board's decision on the petition to review shall be served by mail upon the petitioner and any other affected parties within 10 days following the board's receipt of the petition. The failure to petition for review shall not be considered a failure to exhaust administrative remedies~~ Repealed.

Source: 3 SDR 35, effective November 11, 1976; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

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

Law Implemented: ~~SDCL 1-26-18.~~

20:48:11:06. Judicial review. ~~A party aggrieved by a decision of the board made and entered pursuant to this chapter may seek judicial review in accordance with SDCL 1-26-30, et seq., whether or not a petition for review has been filed~~ Repealed.

Source: 3 SDR 35, effective November 11, 1976; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

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

Law Implemented: ~~SDCL 1-26-30.~~

Cross References: ~~Appeals from administrative agencies, SDCL 1-26-30 to 1-26-37.~~

CHAPTER 20:48:14

NURSING CORPORATIONS AND HEALTH CARE CORPORATION CERTIFICATES **OF REGISTRATION**

Section

20:48:14:01 ~~Application for registration~~ Initial application.

20:48:14:02 Approval of application ~~for registration.~~

20:48:14:03 Annual renewal ~~of registration.~~

20:48:14:04 Denial of registration or ~~renewal~~ certificate.

20:48:14:01. ~~Application for registration~~ Initial application. An application for registration as a nursing corporation or for a certificate of registration for a health care corporation must be filed with and approved by the board before that corporation conducts the practice of nursing in South Dakota ~~for any of the purposes listed in SDCL 47-11E-1.~~ The initial application ~~for registration as a nursing corporation shall include the following~~ must include:

- (1) ~~Name~~ The name of the corporation applying for registration;
- (2) The business address of the main office of the corporation;
- (3) The purpose of the corporation;
- (4) A A copy of the articles of incorporation of the corporation, certified by the Secretary of State, along with a certified copy of all amendments to them;

~~(4)~~ (5) A copy of the minutes of the corporation's organizational meeting;

~~(5) A sworn statement from an officer of the corporation providing the name of the professional liability insurance carrier and the policy number of insurance meeting the minimum standards contained in SDCL 47-11E-9 to 47-11E-12, inclusive. A sworn statement is not required if the articles of incorporation provide that all shareholders agree to joint and several liability as provided in SDCL 47-11E-8;~~

(6) A written list that includes the names, business addresses, and nursing license numbers of all officers, directors, and shareholders of the corporation and of other employees of the corporation who are authorized to practice nursing;

(7) A sworn statement from an officer of the corporation stating that the corporation will not hold itself out to the public as possessing any skills or expertise not possessed by nurses in noncorporate practice and that the corporation will not do anything ~~which if done by a nurse employed by it~~ that would violate the standards of professional conduct established for ~~such a~~ nurse pursuant to SDCL chapter 36-9 or 36-9A, and this article or article 20:62;

(8) An initial registration fee of \$100-; and

(9) For an application for a certificate of registration for a health care corporation:

(A) A written list that includes the names, business addresses, and license numbers of all other health care professional officers, directors, and shareholders authorized to practice in South Dakota or licensed under SDCL title 36;

(B) A sworn statement from an officer of the corporation stating that the corporation's shareholders, members, or partners may only be professional persons licensed to render the kind of professional service that fit the purpose of the health care corporation, limited liability company, or limited liability partnership; and

(C) A sworn statement from an officer of the corporation stating that the corporation's officers, directors, governors, managers, or partners must be professional persons licensed to render the kind of professional services that fit the purpose of the health care corporation, limited liability company, or limited liability partnership.

Source: 23 SDR 106, effective January 1, 1997.

General Authority: SDCL 47-11E-20, 47-11F-18.

Law Implemented: SDCL 47-11E-1, ~~47-11E-20~~, 47-11F-4, 47-11F-10.

20:48:14:02. Approval of application ~~for registration~~. The board shall approve an application for registration of a nursing corporation or a certificate of registration for a health care corporation after confirming the following:

- (1) The application required by § 20:48:14:01 is complete;
- (2) The registration fee required by subdivision 20:48:14:01(8) has been paid;
- (3) All officers, directors, shareholders, and other employees of the corporation who ~~are authorized to practice nursing have active licenses issued~~ are authorized to practice pursuant to SDCL chapter 36-9 or 36-9A; and
- (4) No disciplinary action is pending before the board against any of the officers, directors, shareholders, or other employees of the corporation who are authorized to practice nursing.

~~The initial registration is effective January 1 following the date of issuance.~~

Source: 23 SDR 106, effective January 1, 1997.

General Authority: SDCL 47-11E-20, 47-11F-18.

Law Implemented: SDCL 47-11E-1, ~~47-11E-20~~ 47-11F-5.

20:48:14:03. Annual renewal ~~of registration~~. By November 1 of each year, each approved nursing corporation or health care corporation shall apply in writing to the board for renewal of its registration or certificate of registration for the following calendar year. ~~The~~

~~nursing corporation~~ and shall provide in writing any changes to the initial application or previous renewal. The application ~~shall~~ must include a renewal fee of \$25. The board shall review and approve the renewal application after confirmation that the application meets the requirements of ~~§ 20:48:14:02~~ subdivisions 20:48:14:02(3) and (4).

Source: 23 SDR 106, effective January 1, 1997.

General Authority: SDCL 47-11E-20, 47-11F-18.

Law Implemented: SDCL 47-11E-1, ~~47-11E-20~~, 47-11F-5.

20:48:14:04. Denial of registration or renewal certificate. The board may deny the ~~initial~~ application for registration ~~or renewal of registration~~ of a nursing corporation or a certificate of registration for a health care corporation upon proof that:

- (1) The initial application or the application for renewal does not comply with §§ 20:48:14:01 and 20:48:14:03, ~~as applicable respectively;~~
- (2) The nursing corporation or health care corporation committed fraud, deceit, or misrepresentation in its initial or renewal application ~~for registration or renewal of registration;~~
- (3) The nursing corporation or health care corporation engaged in the practice of nursing before approval of its initial application pursuant to § 20:48:14:02 or after expiration and before renewal of its registration pursuant to § 20:48:14:03; or
- (4) ~~The nursing corporation, or any of its~~ Any officers, directors, shareholders, or employees authorized to practice nursing, ~~is in violation of SDCL 47-11E-17~~ have violated a relevant provision of law.

Source: 23 SDR 106, effective January 1, 1997.

General Authority: SDCL 47-11E-20, 47-11F-18.

Law Implemented: SDCL 47-11E-1, 47-11E-16, 47-11E-17, ~~47-11E-20~~, 47-11F-5, 47-11F-8.

CHAPTER 20:48:17

HEALTH PROFESSIONALS ASSISTANCE PROGRAM

Section

- 20:48:17:01 Program personnel qualifications and duties.
- 20:48:17:02 Evaluation committee qualifications and duties.
- 20:48:17:03 Standards for approval of treatment programs and health professionals.
- 20:48:17:04 Voluntary enrollment.
- 20:48:17:05 Board-ordered enrollment.
- 20:48:17:06 Application and admission to program.
- 20:48:17:07 Program participation.
- 20:48:17:08 Return to practice requirements.
- 20:48:17:09 Toxicology screening.
- 20:48:17:10 Failure to comply with program requirements -- Refrain-from-practice
agreement.
- 20:48:17:11 Leave of absence.
- 20:48:17:12 Discharge criteria.
- 20:48:17:13 Participant records.
- 20:48:17:14 Reporting requirements.
- 20:48:17:15 Program participation fees.

Section

20:48:17:01. Program personnel qualifications and duties. The board may employ or contract with individuals to serve as program personnel. The board's executive director may appoint a program director who is licensed, or has a privilege to practice, in South Dakota as a health care professional, and possesses knowledge in mental health and substance-use disorders.

The program director shall report to the executive director of the board. Program personnel duties include:

- (1) Coordinating the evaluation committee;
- (2) Facilitating the application and intake process;
- (3) Developing participation agreements;
- (4) Case managing and coordinating a participant's compliance and continuing care with a qualified provider;
- (5) Evaluating substance use and mental health treatment programs and health care providers for use by participants;
- (6) Providing written reports to the board; and
- (7) Maintaining participant records pursuant to § 20:48:17:13.

Source:

General Authority: SDCL 36-2A-14.

Law Implemented: SDCL 36-2A-2, 36-9-15, 36-9-16.

20:48:17:02. Evaluation committee qualifications and duties. The board shall appoint an evaluation committee comprised of at least three members. Committee members shall hold licensure as health care providers with expertise in treating substance use or mental health disorders. Each committee member shall serve a term of three years. No member may be appointed to more than three consecutive terms. If a vacancy occurs, the board shall appoint a person to fill the unexpired term. The appointment of a person to an unexpired term is not considered a full term. No committee member may serve on a licensing board or as an officer in a professional organization. Action taken by the committee pursuant to this chapter may be performed by a majority of members. The committee shall maintain the confidentiality of

participant records and meet the requirements of SDCL chapter 1-25. The program director shall convene the committee as often as needed to:

- (1) Provide recommendations on the development of program policies;
- (2) Approve substance use and mental health treatment programs or health care providers for use by participants;
- (3) Provide recommendations on an applicant's eligibility to enroll in the program;
- (4) Approve individualized program participation agreements and return to work requirements;
- (5) Evaluate a participant's progress and recommend changes as needed;
- (6) Evaluate and make recommendations on a participant's toxicology results; and
- (7) Provide recommendations on reporting an applicant or participant to the board.

Source:

General Authority: SDCL 36-2A-14

Law Implemented: SDCL 36-2A-2.

20:48:17:03. Standards for approval of treatment programs and health professionals.

Program personnel shall maintain a list of approved mental health or substance use disorder treatment programs and qualified health professionals for use by participants. Qualified treatment programs must hold state or national accreditation and be in good standing. Qualified health professionals must be licensed or certified in South Dakota, or have a privilege to practice in the state, be in good standing, and be authorized to provide treatment or services for substance use or mental health disorders. Approved health professionals shall:

- (1) Perform a comprehensive substance use or mental health assessment and forensic evaluation on a participant;
- (2) Use standardized psychological tests and questionnaires;

(3) Provide recommendations to program personnel on a participant's ability to safely return to practice; and

(4) Report to program personnel that a participant has a positive drug screen, exacerbated psychiatric symptoms, threatens to leave treatment against medical advice, or there are other non-compliance concerns.

Source:

General Authority: SDCL 36-2A-14.

Law Implemented: SDCL 36-2A-2, 36-2A-9.

20:48:17:04. Voluntary enrollment. An individual may be voluntarily enrolled in the program upon meeting the application requirements in § 20:48:17:06 and if the applicant:

(1) Does not have a history of nursing practice involving significant harm or death to a patient;

(2) Has not engaged in the diversion of drugs or substances for the purpose of sale or distribution to others;

(3) Has not engaged in behavior that has a high potential to cause patient harm;

(4) Has not fraudulently written a prescription;

(5) Has not been convicted of crimes involving sexual misconduct; and

(6) Does not have a history of disciplinary action that would prohibit licensure in South Dakota and is not under investigation that may result in discipline leading to probation, suspension, or revocation of license.

Program personnel shall maintain the confidentiality of participants and not publicly share participant information. Participants accepted into the program will be issued a single state nursing license. Participants who fail to comply with the terms of the program or participation agreement may be denied admission or terminated from the program and reported to the board.

Source:

General Authority: SDCL 36-2A-14.

Law Implemented: SDCL 36-2A-1.1, 36-2A-2, 36-2A-7, 36-2A-8.

20:48:17:05. Board-ordered enrollment. An individual who is required under a board of nursing order to participate in the program, is pending board action, or does not meet the requirements for voluntary enrollment, and who completes the requirements in § 20:48:17:06, shall be enrolled in the program by program personnel. Participants accepted into the program will be issued a single state nursing license. Participants who fail to comply with the terms of the program or participation agreement may be terminated from the program and reported to the board.

Source:

General Authority: SDCL 36-2A-14.

Law Implemented: SDCL 36-2A-2, 36-2A-7, 36-2A-8.

20:48:17:06. Application and admission to program. Applicants for admission to the program shall:

(1) Provide a written application to program personnel containing evidence the applicant holds a nursing license in South Dakota, may apply for a South Dakota nursing license and is eligible for licensure, or is enrolled as a nursing student in an education program located in South Dakota;

(2) Agree to complete an admission interview with program personnel and provide documentation from an approved health care provider of:

- (A) The applicant's current condition or diagnosis;
- (B) A treatment plan identifying the applicant has a mental health or substance use related issue; and

(C) The completion, or confirmed start date, of treatment for substance use or mental health disorder at an approved treatment facility;

(3) Agree to provide written authorization to allow program personnel access to any medical records from health care providers or treatment facilities;

(4) Sign a participation agreement that meets the requirements in § 20:48:17:07 and complete toxicology screening within ten business days of application to the program;

(5) Agree to meet with program personnel on a quarterly basis to review progress and compliance in the program; and

(6) Agree to pay costs or fees associated with the program.

Program personnel may recommend or refer participants to approved treatment programs or health care providers. An applicant who refuses to cooperate with the admission process may be reported to the board.

Source:

General Authority: SDCL 36-2A-14

Law Implemented: SDCL 36-2A-2, 36-2A-6, 36-2A-7.

20:48:17:07. Program participation. Participants must have on file a signed participation agreement developed by program personnel and approved by the evaluation committee. Program personnel may provide a copy of the agreement to the participant, the participant's medical provider, or the work site monitor. Program personnel shall provide a copy of the agreement to the board for individuals required under a board of nursing order to participate in the program. The agreement must outline standard and individualized conditions based on symptoms and a participant's practice setting. A participation agreement must include:

(1) Treatment and continuing care;

(2) Return to practice conditions or limitations, such as restrictions on workplace settings, hours or shifts worked, access to medications, training personnel;

(3) Employment status;

(4) Work site monitoring;

(5) Medication use;

(6) Toxicology screening;

(7) Support group participation; and

(8) Filing of reports.

Source:

General Authority: SDCL 36-2A-14

Law Implemented: SDCL 36-2A-2, 36-2A-6, 36-2A-9.

20:48:17:08. Return to practice requirements. A participant, who has agreed to refrain from practice, may return to nursing practice upon submitting evidence of:

(1) Compliance with the signed participation agreement;

(2) Identification and approval by program personnel of a worksite monitor. The worksite monitor must hold an unencumbered license or privilege to practice in South Dakota as a health care professional and be in a supervisory role or capable of observing the participant's work performance;

(3) Receipt by program personnel of a signed release of information from the participant to allow program personnel to communicate with the worksite monitor and access employment information; and

(4) Receipt by program personnel of a signed agreement from the worksite monitor or employer agreeing to:

(A) Supervise the participant according to requirements listed in the participation agreement; and

(B) Submit evaluations of the participant's work performance to program personnel upon request.

Source:

General Authority: SDCL 36-2A-14.

Law Implemented: SDCL 36-2A-9.

20:48:17:09. Toxicology screening. Participants enrolled for substance use issues shall submit lab specimens for baseline toxicology screening within the first ten days of enrollment in the program to the program's approved testing vendors in the manner required by the testing vendor. Thereafter, a participant shall submit specimens according to the conditions listed in the participation agreement.

Program personnel shall evaluate positive or abnormal toxicology results and may seek review of the results by the evaluation committee or a participant's approved treatment provider. Failure by a participant to submit specimens as required, or obtaining an abnormal or positive toxicology result, may result in the participant being reported to the board.

Source:

General Authority: SDCL 36-2A-14.

Law Implemented: SDCL 36-2A-9.

20:48:17:10. Failure to comply with program requirements -- Refrain-from-practice agreement. A participant who fails to comply may be reported to the board. Failure-to-comply incidences include:

- (1) A positive toxicology screen;
- (2) An unexcused, missed, tampered with, or abnormal drug screen;

- (3) Failure to follow prescribed medical treatment;
- (4) A violation of the participation agreement;
- (5) Employment or practice concerns that have a high potential to cause patient harm; or
- (6) An arrest or violation of law related to the participant's substance use or mental health issue.

Program personnel may request a participant who fails to comply with program requirements to sign a refrain-from-practice agreement and to extend the length of the participation agreement. A participant who fails to sign a refrain-from-practice agreement must be reported to the board and may be terminated from the program.

Source:

General Authority: SDCL 36-2A-14.

Law Implemented: SDCL 36-2A-9.

20:48:17:11. Leave of absence. Participants may apply for a leave of absence from the program. The program director or evaluation committee may approve a leave of absence request from a participant. A participant who completes a leave of absence may return to the program after meeting eligibility requirements established by program personnel or the evaluation committee. The participant's participation agreement may be amended or lengthened as a condition of returning. A participant who fails to meet requirements to return to the program must be reported to the board.

Source:

General Authority: SDCL 36-2A-14.

Law Implemented: SDCL 36-2A-2, 36-2A-8, 36-2A-9.

20:48:17:12. Discharge criteria. A participant who completes the terms of a participation agreement and applicable board order, may apply for discharge from the program. A participant's request may be approved by the program director upon receipt of the participant's application and:

- (1) The participant's written plan for continued wellness or recovery;
- (2) A recommendation from the participant's worksite monitor or employer supporting discharge;
- (3) A recommendation from the participant's approved treatment provider supporting discharge;
- (4) A recommendation by the evaluation committee supporting discharge; and
- (5) A period of negative toxicology screens, as defined in the participation agreement, for a participant enrolled with substance use issues.

Source:

General Authority: SDCL 36-2A-14.

Law Implemented: SDCL 36-2A-2.

20:48:17:13. Participant records. Program personnel shall maintain applicant and participant records including name, license number, referral information, board orders, intake information, signed and dated participation agreement, authorizations for release of confidential information, treatment reports, case management notes, correspondence, compliance and monitoring documentation, and quarterly reports.

Program personnel shall maintain the confidentiality of participant records, and of an individual or entity who refers a participant to the program, according to federal and state laws. Participant records must be stored in a secured format and provided in a confidential manner to the evaluation committee, medical providers in an emergency situation, law enforcement upon threats to commit a crime, state or local authorities for suspected child or elder abuse or neglect,

or other parties upon the participant's voluntary written release of the information. Following discharge from the program, program personnel shall maintain a participant's records according to the state records and retention schedule.

Source:

General Authority: SDCL 36-2A-14

Law Implemented: SDCL 36-2A-12.

20:48:17:14. Reporting requirements. Program personnel shall report and provide participant or applicant records to the board on an applicant or participant that:

- (1) Refuses to complete admission requirements into the program when the applicant is found to have an issue or disorder that affects the applicant's ability to practice safely;
- (2) Is denied admission or terminated from the program for diverting controlled substances for other than personal use, engaging in sexual misconduct, or being deemed by program personnel to be too great a risk to the public;
- (3) Fails to maintain on file a signed participation agreement; or
- (4) Fails to comply with the terms of the participation agreement.

Program personnel shall provide the board quarterly reports on mandated program participants including the participant's name, enrollment date, progress and compliance in the program, and evaluation committee recommendations. The program director shall provide an annual report of activities summarizing program and participant statistics to the board.

Source:

General Authority: SDCL 36-2A-14.

Law Implemented: SDCL 36-2A-2, 36-2A-12.

20:48:17:15. Program participation fees. The costs incurred through participation in the program are the responsibility of the participant. Failure to pay may be cause for termination from the program or reporting to the board.

Source:

General Authority: SDCL 36-2A-14.

Law Implemented: SDCL 36-2A-2.

ARTICLE 20:62
NURSE PRACTITIONERS AND MIDWIVES

Chapter

20:62:01	General rules affecting board.
20:62:02	Licensure and licenses.
20:62:03	Practice.
20:62:04	Prescriptive authority, Repealed.
20:62:05	Declaratory rulings, <u>Repealed</u> .
20:62:06	Disciplinary proceedings, Repealed.

CHAPTER 20:62:05
DECLARATORY RULINGS

(Repealed)

Section

20:62:05:01	Petition for declaratory ruling.
20:62:05:02	Action by board on petition.

20:62:05:01. Petition for declaratory ruling. ~~A person wishing the board to issue the board's rulings as to the applicability to the person of statutory provision or rule or order of the board may file with the board a petition in substantially the following form:~~

~~**State of South Dakota**~~

~~**Board of Nursing**~~

~~**Petition for Declaratory Ruling**~~

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 South Dakota Board of Nursing for their declaratory ruling in regard to the following:

1. ~~The state statute, rule, or order in question is as follows: (here identify and quote the pertinent statute, rule, or order).~~

2. ~~The facts and circumstances which give rise to the issue to be answered by the board's declaratory ruling are as follows: (here set forth the facts).~~

3. ~~The precise issue to be answered by the board's declaratory ruling is as follows: (here state the question to be answered).~~

Dated at ~~(city and state)~~, this _____ day of _____, 19____.

~~(signature of petitioner)~~ Repealed.

Source: 9 SDR 126, effective April 13, 1983; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 45 SDR 9, effective July 30, 2018.

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

Law Implemented: ~~SDCL 1-26-15.~~

20:62:05:02. Action by board on petition. ~~Upon receipt of the petition, the board may request from the petitioner any other information they may require for the issuance of their ruling. Within 90 days following the receipt of the petition or within 90 days following receipt of the requested information, the board shall issue their declaratory ruling and serve a copy of it by mail upon the petitioner~~ Repealed.

Source: 9 SDR 126, effective April 13, 1983; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 45 SDR 9, effective July 30, 2018.

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

Law Implemented: ~~SDCL 1-26-15.~~