

## ARTICLE 20:85

### CERTIFIED PROFESSIONAL MIDWIVES

#### Chapter

- 20:85:01 Definitions.
- 20:85:02 Licensing.
- 20:85:03 The practice of certified professional midwifery.
- 20:85:04 Fees.
- 20:85:05 Disciplinary procedures.

#### ARTICLE 20:85:01

##### DEFINITIONS

#### Section

- 20:85:01:01 Definitions.

**20:85:01:01. Definitions.** Terms defined in SDCL chapter 36-9C have the same meaning when used in this article. In addition, the terms used in this chapter mean:

- (a) “Consultation” the process where the client is seen face-to-face in a healthcare setting by a licensed medical doctor or doctor of osteopath. The consultation and any recommendation(s) shall be documented in the client’s health record and acknowledged in writing by both client and Certified Professional Midwife (CPM);
- (b) “Facility” a health care facility licensed pursuant to SDCL 34-12;
- (c) “Physician” a medical doctor (M.D.) or doctor of osteopath (D.O.) licensed in good standing;
- (d) “Postpartum” occurring in approximately the six (6) week period after childbirth; and
- (e) “Preceptor” a maternity care provider currently practicing and licensed under SDCL 36-4, 36-9A, or 36-9C who is registered as a preceptor with the North American Registry of

Midwives (NARM) and provides instruction, training, and supervision to a student midwife licensed by the board.

**Source:**

**General Authority:** SDCL 36-9C-32.

**Law Implemented:** SDCL 36-9C-4.

**ARTICLE 20:85:02**

**LICENSING**

Section

- 20:85:02:01 Qualifications for licensure.
- 20:85:02:02 Licensure by reciprocity.
- 20:85:02:03 Background check required.
- 20:85:02:04 Issuance of license.
- 20:85:02:05 Renewal of license.
- 20:85:02:06 Relicensure.
- 20:85:02:07 Inactive status and reactivation of license.

**20:85:02:01. Qualifications for licensure.** No person may be licensed to practice as a certified professional midwife in this state unless the person has completed the requirements set forth in SDCL 36-9C-4. In addition, each applicant shall ensure that the board receives all documentation necessary to prove to the Board's satisfaction that the applicant meets all the requirements for licensure. Every applicant shall provide:

- (a) Completed application and fee;
- (b) Evidence they have not been convicted of a crime which in the judgment of the board renders the person unfit to practice midwifery;
- (c) Fingerprints and other information necessary for a criminal history check;

(d) Applicant may be required to appear for a personal interview with the Board if deemed appropriate by the board.

**Source:**

**General Authority:** SDCL 36-9C-32.

**Law Implemented:** SDCL 36-9C-4; 36-9C-12.

**20:85:02:02. Application for license by reciprocity.** An applicant may seek licensure by reciprocity if they hold a license in good standing to engage in the practice of midwifery under the laws of another state provided:

- (a) The applicant is currently licensed or certified by any state with requirements at least as stringent as South Dakota; and
- (b) The applicant has not been sanctioned in another state without resolution satisfactory to the Board.

**Source:**

**General Authority:** SDCL 36-9C-32.

**Law Implemented:** SDCL 36-9C-4.

**20:85:02:03. Background check required.** Upon application for licensure, each applicant in this state shall submit to a state and federal criminal background investigation by means of fingerprint checks by the Division of Criminal Investigation and the Federal Bureau of Investigation. Failure to submit or cooperate with the criminal background investigation is grounds for denial of an application. The applicant shall pay for any fees charged for the cost of fingerprinting or the criminal background investigation.

**Source:**

**General Authority:** SDCL 36-9C-32.

**Implemented Law:** SDCL 36-9C-12.

**20:85:03:04. Issuance of license.** Licenses will be renewed biennially on October 30<sup>th</sup>.

**Source:**

**General Authority:** SDCL 36-9C-32

**Law Implemented:** SDCL 36-9C-11

**20:85:02:05. Renewal of license.** A notice for renewal of license shall be sent by the board to the last known address of each current licensee. Address may either be physical or electronic. Within the time provided in the notice, the following shall be submitted to the Board. Failure to receive the notice for renewal of license does not relieve the licensee of the responsibility for renewing the license and paying the renewal fee within the prescribed time. Any fee for renewal of license delivered in person to the board or postmarked after the filing date indicated in the notice shall not be accepted, and the license shall lapse. A lapsed license may be reinstated only in accordance with the provisions of SDCL 36-9C-17.

**Source:**

**General Authority:** SDCL 36-9C-32.

**Implemented Law:** SDCL 36-9C-15, 36-9C-16.

**20:85:02:06. Relicensure.** An applicant may seek relicensure if the applicant has been licensed in this state and either failed to timely renew or is seeking to return to active clinical practice. The following must be submitted at the time of reapplication:

- (a) a completed application and payment of fee;
- (b) a current CPM certification from NARM;
- (c) satisfactory explanation for such failure to renew; and
- (d) evidence of employment status during the preceding six years as described in SDCL 36-9C-16.

**Source:**

**General Authority:** SDCL 36-9C-32.

**Implemented Law:** SDCL 36-9C-16, 36-9C-17, 36-9C-18.

**20:85:02:07. Inactive status.** Upon filing with the board a written statement requesting inactive status and paying the fee prescribed by chapter 20:48:04, the licensee shall be placed on inactive status and issued an inactive status card. Reinstatement of an inactive license shall

follow the requirements set forth in 20:85:02:06. Any individual who holds inactive licensure status is prohibited from practicing as a certified professional midwife.

**Source:**

**General Authority:** SDCL 36-9C-32.

**Implemented Law:** SDCL 36-9C-18.

**ARTICLE 20:85:03**

**THE PRACTICE OF CERTIFIED PROFESSIONAL MIDWIFERY**

Section

- 20:85:03:01 Scope and practice standards.
- 20:85:03:02 Conditions where physician involvement is required.
- 20:85:03:03 Conditions where physician involvement shall be recommended.
- 20:85:03:04 Conditions where maternal transfer to hospital shall be facilitated.
- 20:85:03:05 Conditions where newborn transfer to hospital shall be facilitated.
- 20:85:03:06 Emergency transport and transfer plan.
- 20:85:03:07 Record keeping.
- 20:85:03:08 Newborn care.
- 20:85:03:09 Medical waste.
- 20:85:03:10 Professional standards.

**20:85:03:01. Scope and practice standards.** A licensed certified professional midwife shall adhere to the following scope and practice standards when providing antepartum, intrapartum, postpartum, and newborn care.

- (1) The following conditions for which a licensed professional midwife may not provide care for a client:

- (a) A current or unresolved previous history of any of the following disorders, diagnoses, conditions, or symptoms:
- (1) Placental abnormality:
    - i. Confirmed central placenta previa at term;
    - ii. Signs indicative of placental abruption;
    - iii. Placenta located over previous uterine scar;
  - (2) Regular alcohol use or drug use, abuse, or dependency;
  - (3) Cardiac disease;
  - (4) Insulin dependent diabetes mellitus;
  - (5) Noncephalic presentation at the onset of labor or rupture of membranes, whichever occurs first, unless birth is imminent;
  - (6) Birth under thirty-seven (37) weeks or after forty-two (42) weeks gestational age;
  - (7) Current renal disease;
  - (8) Current liver disease;
  - (9) Pulmonary disease
  - (10) Active tuberculosis;
  - (11) Severe uncontrolled asthma;
  - (12) Seizure disorder requiring medication;
  - (13) Systemic lupus or scleroderma;
  - (14) Acute or chronic hepatitis;
  - (15) Congenital defects of the reproductive organs that would interfere with the birthing process;

- (16) Chronic/essential hypertension;
  - (17) Gestational hypertension or pre-eclampsia
  - (18) Rh negative disease as indicated by positive titers;
  - (19) Failure to document the following:
    - a) basic prenatal lab work (blood group type, RH antibody screening, hemoglobin around 28 weeks gestation), or
    - b) signed refusal;
  - (20) Active TORCH infection during the first trimester;
  - (21) HIV positive;
  - (22) Suspected or diagnosed congenital fetal anomaly that may require immediate medical care after birth;
  - (23) Hemoglobin less than 10 at 36 weeks;
  - (24) Premature labor: less than 37 weeks;
  - (25) Serious viral/bacterial infection at term;
  - (26) Diagnosed intrauterine growth restriction;
- (b) A past history of any of the following disorders, diagnoses, conditions, or symptoms;
- (1) More than one (1) prior cesarean section with no history of a vaginal birth, a cesarean section within eighteen (18) months of the current delivery, or any cesarean section that was surgically closed with a classical or vertical uterine incision;
  - (2) Rh or other blood group or platelet sensitization, hematological or coagulation disorders;

- (c) Unwillingness to accept midwife's limitations, prohibitions, and responsibilities for safe practice;
- (d) Unresolved fearfulness regarding home birth or midwife care, or otherwise desires transfer of care; or
- (e) Any other condition which may preclude the possibility of a normal birth, at the midwife's discretion.

**Source:**

**General Authority:** SDCL 36-9C-32.

**Implemented Law:** SDCL 36-9C-13.

**20:85:03:02. Conditions where consultation is required.** A certified professional midwife may not provide care for a client with a current history of disorders, diagnoses, conditions, or symptoms listed herein unless such disorders, diagnoses, conditions or symptoms are being treated, monitored or managed by a licensed physician. Before providing care to such a client, the licensed midwife shall notify the client in writing that the client shall obtain the described physician care as a condition to the client's eligibility to obtain maternity care from the certified professional midwife. The certified professional midwife shall, additionally, obtain the client's signed acknowledgement that the client has received the written notice. The disorders, diagnoses, condition, and symptoms are:

- (1) Previous cesarean section;
- (2) Diabetes requiring medication or not controlled by diet;
- (3) Cervical insufficiency;
- (4) Thyroid disease;
- (5) Epilepsy;
- (6) Hypertension;
- (7) Cardiac disease;
- (8) Pulmonary disease;
- (9) Renal disease;



- (10) Previous major surgery of the pulmonary system, cardiovascular system, urinary tract or gastrointestinal tract;
- (11) Inactive hepatitis;
- (12) Unresolved vaginal or urinary tract infection;
- (13) Suspected size/dates discrepancies as defined by plus or minus 2 centimeters fundal height relational to week's gestation for two (2) consecutive prenatal visits;
- (14) Observed maternal cardiac irregularities;
- (15) Suspected pyelonephritis;
- (16) Abnormal vaginal bleeding before onset of labor;
- (17) Suspect thromboembolism or thrombophlebitis;
- (18) Abnormal fetal heart tones detected prenatally;
- (19) Marked decrease or cessation of fetal movement;
- (20) Suspected or known postdates pregnancy beyond 42 weeks gestation;
- (21) Non-reactive fetal stress test (NFT) after 28 weeks;
- (22) Medically significant newborn anomaly;
- (23) Newborn cardiac irregularity;
- (24) 2 vessel cord;
- (25) Jaundice within the first 24 hours;
- (26) Failure to pass urine within the first 24 hours or failure to pass meconium within first 48 hours;
- (27) Signs of umbilical infection unresponsive to treatment;
- (28) Unresolved bleeding in excess of normal lochia flow;
- (29) Subinvolution;

- (30) Failure of laceration to heal properly or signs of infection unresponsive to treatment;
- (31) Signs of serious postpartum depression or psychosis;
- (32) Significant hematological disorders in the mother or newborn;
- (33) Significant uterine or vaginal anomalies;
- (34) Isoimmunization with an antibody known to cause hemolytic disease in the mother or the newborn;
- (35) Suspected decreased amniotic fluid levels or an amniotic fluid index less than 5 centimeters in four quadrants or less than 2 centimeters in largest vertical pocket on ultrasound;
- (36) Maternal or fetal skeletal abnormalities that would interfere with the birth process;
- (37) Loss of greater than ten (10) percent birth weight in infant;
- (38) Abnormal newborn screening;
- (39) Primary outbreak of genital herpes during prenatal care; or
- (40) The client or midwife requests such consultation.

**Source:**

**General Authority:** SDCL 36-9C-32.

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

**20:85:03:03. Conditions where consultation shall be recommended.** Before providing care for a client with a history of any of the disorders, diagnoses, conditions or symptoms listed, a certified professional midwife shall provide written notice to the client that the client is advised to see a licensed physician during the client's pregnancy. Additionally, the certified professional midwife shall obtain the client's signed acknowledgment that the client has received the written notice. The disorders, diagnoses, condition, and symptoms are:

- (1) Previous complicated pregnancy;
- (2) Diabetes controlled by diet;

- (3) Previous pregnancy loss in second or third trimester;
- (4) Previous spontaneous premature labor;
- (5) Previous preterm rupture of membranes;
- (6) Previous preeclampsia;
- (7) Previous hypertensive disease of pregnancy;
- (8) Prior infection with parvo virus, toxoplasmosis, cytomegalovirus or herpes simplex virus;
- (9) Previous newborn group B streptococcus infection;
- (10) A body mass index of forty-five (45.0) or greater at the time of conception;
- (11) Underlying family genetic disorders with potential for transmission;
- (12) Psychiatric illness; or
- (13) Maternal age under 16 years or over 42 years.

**Source:**

**General Authority:** SDCL 36-9C-32.

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

**20:85:03:04. Conditions where maternal transfer to hospital shall be facilitated.** A certified professional midwife shall facilitate the immediate transfer of a client to a hospital for emergency care if the client has any of the following disorders, diagnosis, conditions or symptoms:

- (1) Infection during labor or immediately postpartum where maternal temperature is above 100.8 degrees Fahrenheit for two consecutive readings in one hour and foul smelling amniotic fluid, shaking, chills, or elevated pulse are present;
- (2) Suggestion of fetal jeopardy, such as any abnormal bleeding (with or without abdominal pain), evidence of placental abruption, thick meconium , or abnormal fetal heart tones with non-reassuring patterns where birth is not imminent;

- (3) Inability to obtain fetal heart tones after twenty (20) weeks gestation or anytime later in pregnancy;
- (4) Noncephalic presentation at the onset of labor or rupture of membranes, whichever occurs first, unless birth is imminent;
- (5) Second stage labor after three (3) hours without adequate progress, and third stage labor after one (1) hour without adequate progress;
- (6) Current spontaneous premature labor;
- (7) Current preterm premature rupture of membranes;
- (8) Signs of pre-eclampsia or eclampsia;
- (9) Current hypertensive disease of pregnancy;
- (10) Continuous uncontrolled bleeding;
- (11) Suspected placenta accreta;
- (12) Hemorrhage not responsive to treatment;
- (13) Unresolved maternal shock;
- (14) Cord prolapse;
- (15) Active herpes during labor;
- (16) Transverse in labor;
- (17) Excessive antepartum and intrapartum painless vaginal bleeding;
- (18) Cardiac arrest;
- (19) Delivery injuries to the bladder or bowel including third and fourth degree lacerations;
- (20) Seizures;
- (21) Uncontrolled vomiting;
- (22) Coughing or vomiting of blood;

- (23) Severe chest pain or cardiac irregularities;
- (24) Apnea;
- (25) Persistent uterine atony;
- (26) Uterine inversion;
- (27) Indications of infection in the immediate postpartum;
- (28) Tremors, hyperactivity, or seizures;
- (29) Declining O2 stats or tachypnea unable to be resolved; or
- (30) Client desires transport for herself or her newborn.

**Source:**

**General Authority:** SDCL 36-9C-32.

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

**20:85:03:05. Conditions where newborn transfer to hospital shall be facilitated.** A certified professional midwife shall facilitate the immediate transfer of any newborn to the nearest hospital or pediatric care provider if the newborn has any of the following disorders, diagnosis, conditions or symptoms:

- (1) Apgar score of 6 or less at 10 minutes of age and not improving;
- (2) Significant medical anomaly requiring immediate medical attention;
- (3) Birth weight of less than 5 pounds;
- (4) Tremors, hyperactivity, or seizures;
- (5) Abnormal color in newborn, persistent central cyanosis;
- (6) Unresolved abnormal cry in newborn;
- (7) Obvious or suspected birth injury;
- (8) Newborn cannot maintain body temperature;
- (9) Inability of newborn to feed well due to lethargy;
- (10) Newborn temperature of 100.8 two consecutive readings ten (10) minutes apart;

- (11) Signs of respiratory distress including respiratory rate over eight (80) per minute, poor color, grunting , nasal flaring or retractions unable to be resolved with usual interventions within one (1) hour postpartum ;
- (12) Need for oxygen for more than twenty (20) minutes, or after one (1) hour following the birth;
- (13) Fontanel full and bulging;
- (14) Cardiac irregularities including heart rate that is consistently below eighty (80) beats per minute or greater than one hundred sixty (160) beats per minute and poor capillary refilling greater than three (3) seconds;
- (15) Jaundice at less than twenty-four (24) hours; or
- (16) Client desires transport for newborn.

**Source:**

**General Authority:** SDCL 36-9C-32.

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

**20:85:03:06. Emergency transport and transfer plan.** When facilitating a transfer, the certified professional midwife shall notify the hospital when the transfer is initiated, accompany the client to the hospital if feasible, or communicate by telephone with the hospital if the certified professional midwife is unable to be present. The certified professional midwife shall also ensure that the transfer of care is accompanied by the client's medical record, which shall include:

- (1) The client's name, address, and next of kin contact information;
- (2) A list of diagnosed medical conditions;
- (3) A list of prescription or over the counter medications regularly taken;
- (4) A history of previous allergic reactions to medications; and
- (5) Required transfer form.

**Source:**

**General Authority:** SDCL 36-9C-32.

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

**20:85:03:07. Record keeping.** Each client record shall be retained for a minimum of ten (10) years after the birth during which time reasonable efforts are to be made to advise clients of closure of practice or change in record location.

**Source:**

**General Authority:** SDCL 36-9C-32.

**Law Implemented:** SDCL 36-9C-13.

**20:85:03:08. Newborn care.** Certified professional midwives shall adhere to the following requirements:

- (1) Shall carry the equipment necessary for resuscitation of the newborn; and
- (2) All certified professional midwives shall comply with all newborn screenings required by state law and administrative rule.

**Source:**

**General Authority:** SDCL 36-9C-32.

**Implemented Law:** SDCL 36-9C-13, 36-9C-35, 36-9C-37.

**20:85:03:09. Medical waste.** Medical waste removed from a private residence shall be disposed of according to local, state, and federal regulations.

**Source:**

**General Authority:** SDCL 36-9C-32.

**Implemented Law:** SDCL 36-9C-13.

**20:85:03:10. Professional standards.** Persons licensed by the board shall:

- (1) Use the term “Certified Professional Midwife” and/or the initials “CPM;”

- (2) Practice in a manner that is in the best interest of the public and does not endanger the public health, safety or welfare;
- (3) Render services to clients, as necessary, for routine perinatal care, or diagnostic or therapeutic purposes;
- (4) Practice only within the competency areas for which they are trained and experienced.  
The licensee shall be able to demonstrate to the board competency, training, and/or expertise;
- (5) The licensee shall provide to the client written informed consent documents in accordance with SDCL 36-9C-33.
- (6) Report to the board outcomes of all clients for which they have provided services at any point during labor or delivery within thirty (30) days after each birth;
- (7) Report to the board known or suspected violations of the laws and regulations governing the practice of licensed professionals;
- (8) The licensee shall make provisions for the retention and/or release of client records. If the licensee is unable to do so, such provision shall include the naming of a qualified person who will retain the client records and properly release the client records upon request;
- (9) Clearly state the person's licensure status by the use of a title or initials such as "certified professional midwife (CPM)" or a statement such as "licensed by the South Dakota Board of Certified Professional Midwives" in any advertising, public directory or solicitation, including telephone directory listings;
- (10) Respond to all requests for information and all other correspondence from the board;
- (11) Not permit, condone or facilitate unlicensed practice or any activity which is a violation of these rules and regulations;



- (12) Not use vacuum extraction or forceps as an aid in the delivery of a newborn; and
- (13) Not perform abortions.

**Source:**

**General Authority:** SDCL 36-9C-32.

**Implemented Law:** SDCL 36-9C-13.

## **ARTICLE 20:85:04**

### **FEES**

#### Section

- 20:85:04:01 Initial licensure.
- 20:85:04:02 Biennial renewal.
- 20:85:04:03 Lapsed license.
- 20:85:04:04 Initial student license.
- 20:85:04:05 Inactive license status.
- 20:85:04:06 Other fees.
- 20:85:04:07 Birth delivery fee.

**20:85:04:01. Initial licensure.** Each person licensed to practice in this state shall, or who holds an endorsement from another state, shall pay an initial licensure fee of \$1,000.

**Source:**

**General Authority:** SDCL 36-9C-32

**Implemented Law:** SDCL 36-9C-19

**20:85:04:02. Biennial renewal.** Each person licensed to practice within this state shall renew the license biennially on October 31<sup>st</sup>. The renewal fee is \$1,500. Failure to secure a renewal certificate shall result in a lapse. A lapsed license may be reinstated in accordance with 20:85:03:06.

**Source:**

**General Authority:** SDCL 36-9C-32.

**Implemented Law:** SDCL 36-9C-19.

**20:85:04:03. Lapsed license.** For reinstatement of a lapsed license, the lapsed license holder shall pay the current renewal fee plus five hundred dollars.

**Source:**

**General Authority:** SDCL 36-9C-32.

**Implemented Law:** SDCL 36-9C-19.

**20:85:04:04. Student license.** Each certified professional midwife student who seeks licensure while completing certification requirements shall pay a one-time fee of \$500.

**General Authority:** SDCL 36-9C-32.

**Implemented Law:** SDCL 36-9C-19.

**20:85:04:05. Inactive license status.** Any licensed certified professional midwife who is licensed in this state and who wishes to change the status of their license to inactive shall pay a fee of \$100.

**Source:**

**General Authority:** SDCL 36-9C-32.

**Implemented Law:** SDCL 36-9C-19.

**20:85:04:06. Other fees.** Any person licensed in this state and who has the following requests shall pay the stated fee:

- (a) For providing a transcript, \$25;
- (b) For a name change on a record of the license holder, \$100;

(c) For issuance of a duplicate license, \$100;

(d) For endorsement to another state, territory or foreign country, \$150;

**Source:**

**General Authority:** SDCL 36-9C-32.

**Implemented Law:** SDCL 36-9C-19.

**20:85:04:07. Birth delivery fee.** The certified professional midwife shall pay a birth delivery fee of \$100 accompanied by the birth reporting form, within 30 days of delivery.

**Source:**

**General Authority:** SDCL 36-9C-32.

**Implemented Law:** SDCL 36-9C-19.

**ARTICLE 20:85:05**

**DISCIPLINARY PROCEDURES**

Section

- 20:85:05:01 Board action in general.
- 20:85:05:02 Grounds for denial, revocation, or suspension.
- 20:85:05:03 Unprofessional conduct.
- 20:85:05:04 Reissuance of revoked or suspended license.
- 20:85:05:05 Disciplinary complaints.
- 20:85:05:06 Actions which may warrant sanctions.
- 20:85:05:07 Disciplinary procedures.
- 20:85:05:08 Procedures referred for formal hearing.
- 20:85:05:09 Sanctions.

- 20:85:05:10 Judicial declaration of incompetence or involuntary commitment.
- 20:85:05:11 Petition by board.
- 20:85:05:12 Burden of proof.
- 20:85:05:13 Respondent's claim of illness or infirmity.
- 20:85:05:14 Doctor-patient privilege – Waiver.
- 20:85:05:15 Judicial declaration of competence.
- 20:85:05:16 Suspension and probation.
- 20:85:05:17 Formal reprimands and hearings.
- 20:85:05:18 Board hearings – Procedure.
- 20:85:05:19 Appeal from board rulings or decisions.

**20:85:05:01. Board action in general.** The board, through a designated investigator shall promptly investigate all complaints filed in writing with the board or the disciplinary committee and violations which come to the attention of one or more board members.

**Source:**

**General Authority:** SDCL 36-9C-32.

**Implemented Law:** SDCL 36-9C-23, 36-9C-22, 36-9C-27, 36-9C-5.

**20:85:05:02. Grounds for denial, revocation, or suspension.** The board may deny, revoke, or suspend any license or application for licensure to practice as a certified professional midwife or certified professional midwife student in this state, and may take other disciplinary or corrective action upon a showing that the license holder or applicant has committed or violated any of the provisions set forth in 36-9C-22.

**Source:**

**General Authority:** SDCL 36-9C-32.

**Implemented Law:** SDCL 36-9C-22, 36-9C-5.

**20:85:05:03. Unprofessional conduct.** Willfully practicing beyond the scope of practice, violating the terms of suspension or probation ordered by the board or following a course of conduct or practice in violation of SDCL 36-9C or in violation of this article constitutes unprofessional conduct.

**Source:**

**General Authority:** SDCL 36-9C-32.

**Implemented Law:** SDCL 36-9C-22, 36-9C-27, 36-9C-5.

**20:85:05:04. Reissuance of a revoked or suspended license.** A person whose license has been suspended, revoked, surrendered, restricted, conditioned, or otherwise disciplined under the provisions of 20:85:05, may apply for reinstatement once a year or at such shorter intervals as the board may direct in the order of suspension or any modification thereof. Upon receipt of an application for reinstatement, the board may take or direct any action necessary to determine whether the person's disability has been removed, including the examination of the person by a qualified medical expert designated by the board. The person may be directed to pay the expense of the examination. The application for reinstatement shall be granted by the board upon determination that the person's disability has been removed and he or she is fit to resume the practice of certified professional midwifery. The following application reinstatement requirements shall apply:

- (a) Submit a completed reinstatement application and payment of fee;
- (b) Submit evidence of complying with any requirements of a previous Board order;
- (c) Submit evidence that the applicant has corrected the conduct that formed the basis of the discipline of applicant's license and the applicant is able to safely, skillfully, and competently practice; and
- (d) Submit evidence demonstrating just cause for reinstatement.

The Board may request that the applicant appear before the Board if deemed necessary by the Board.

**Source:**

**General Authority:** SDCL 36-9C-32.

**Implemented Law:** SDCL 36-9C-26, 36-9C-5.

**20:85:05:05. Disciplinary complaints.** The board, through its investigator shall promptly investigate any complaints of misconduct or violations filed in writing and signed by a complaining party. The board shall impose appropriate sanctions as established under this chapter to protect the public health, safety, and welfare of the state of South Dakota. The board may also by resolution initiate disciplinary proceedings.

**Source:**

**General Authority:** SDCL 36-9C-32.

**Implemented Law:** SDCL 36-9C-5.

**20:85:05:06. Actions which may warrant sanctions.** The board may impose sanctions based upon any of the following:

(1) Engaging in conduct outside the scope of certified professional midwifery practice including any conduct or practice contrary to recognized standard of ethics of the certified professional midwifery profession or any conduct or practice which does or might constitute a danger to the health or safety of a patient or the public or any conduct, practice, or condition which does or might impair a certified professional midwife's ability to safely and skillfully practice professional midwifery;

(2) Failure to continue professional education or failure to participate in the required continuing education courses as provided under the provisions of chapter 20:85(will add in when education chapter is written);

(3) Failure to maintain current knowledge of statutes, rules, and regulations regarding the practice of professional midwifery;

(4) Failure to cooperate with and respond in writing within 15 days after personal receipt of any board inquiry or investigation;

(5) Failure to maintain proper patient records on each patient. Patient records must be clear and legible and include:

(a) A description of the patient's complaint;

(b) A history;

(c) A record of diagnostic and therapeutic procedures; and

(d) A record of daily documentation which must include subjective data, objective data, assessment, and plan for the patient's care;

(6) Failure to properly train and supervise staff engaged in patient care;

(7) Conviction of a felony or misdemeanor involving moral turpitude. A copy of the record of conviction certified to by the clerk of the court entering the conviction is conclusive evidence of the conviction;

(8) Fraud, misrepresentation, or deception include the following:

(a) Practicing or attempting to practice professional midwifery under a false or assumed name;

(b) Aiding, assisting, or advising another in the unlicensed practice of professional midwifery;

(c) Fraud or deceit in obtaining a license to practice professional midwifery;

(d) Making false or misleading statements or withholding relevant information regarding the qualifications of any individual in order to attempt to obtain a license or engage in the practice of professional midwifery;

(e) Failing to report past, present, or pending disciplinary action by another licensing board or current status of final administrative disposition of a matter. A licensee is required to report any compromise or settlement of disciplinary action, whether voluntary or involuntary, which results in encumbrance of licensure;

(f) Making or filing a report which the licensee knows to be false, intentionally or negligently failing to file a report or record required by state or federal law, or willfully impeding or obstructing another person to do so; or

(g) Submitting to any insurer or third-party payor a claim for a service or treatment which was not actually provided to a patient;

(9) Habitual intemperance in the use of intoxicants or controlled substances to such an extent as to incapacitate the person from the performance of professional duties;

(10) Exercising influence on the patient or client for the purpose of financial gain of the licensee or a third party;

(11) Improperly interfering with an investigation or inspection authorized by statute or under the provisions of article 20:85 or with any disciplinary proceeding;

(12) Repeated violations of this chapter;

(13) Receiving three or more negative peer reviews within any twelve-month period.

**Source:**

**General Authority:** SDCL 36-9C-32.

**Implemented Law:** SDCL 36-9C-22, 36-9C-23, 36-9C-27, 36-9C-5.

**20:85:05:07. Disciplinary procedures.** Disciplinary procedures shall be initiated by submission of a written complaint or by resolution of the board. Disciplinary procedures shall be conducted as follows:

(1) Each written complaint or board resolution for disciplinary investigation shall be given to the board investigator. The investigator shall investigate and prepare a report to be presented to the board;

(2) The investigator shall acknowledge receipt of the complaint;

(3) The investigator shall notify the certified professional midwife that a complaint has been received and request a response within 15 days to be mailed to the investigator. The notice shall include the basis for the complaint, including the name of the complaining party, and the name of the investigator assigned to investigate the complaint. A copy of these rules of procedure shall accompany the notice. The certified professional midwife shall promptly and appropriately respond to any request of the investigator;

(4) The investigator shall notify the complainant that the certified professional midwife has been notified of the allegations and requested to respond within 15 days and that the response shall be forwarded to the complainant;

(5) The investigator shall prepare a report to present to the board. The report shall include the identity of the complainant, the allegations which form the basis of the complaint, the position of the certified professional midwife against whom the complaint is lodged, and the proposed action, if any, that should be taken with regards to the complaint;

(6) Upon presentation of the report to the board, the board shall review the report and act upon the information before it, in one of the following manners, to-wit:

(a) Dismiss the complaint if frivolous or clearly unfounded in fact; or

(b) Initiate an informal inquiry or take such further action as the board deems appropriate;

(7) If the board dismisses the complaint, the investigator shall give notice to the complainant and the certified professional midwife that the complaint has been reviewed with the determination that no board action is warranted;

(8) If the board finds the complaint to have merit, the committee shall afford the certified professional midwife complained against a reasonable opportunity to state the certified professional midwife's position with respect to the allegations against the professional. The



hearing shall take the form of an informal conference between the board and the certified professional midwife complained against; and

(9) After an informal inquiry, the board may dismiss or, if the complaint has merit, refer for a formal hearing. In lieu of referral for hearing, the board and the certified professional midwife may enter a remedial stipulation satisfactory to both the certified professional midwife and the board. If a remedial stipulation is entered, the referral may not take place if the terms of the remedial stipulation are successfully completed and the board shall notify the complainant that the matter has been resolved in this manner. The complainant is not entitled to a copy of the remedial stipulation.

**Source:**

**General Authority:** SDCL 36-9C-32.

**Implemented Law:** SDCL 36-9C-23, 36-9C-5.

**20:85:05:08. Procedures referred for formal hearing.** A formal hearing may be conducted by the board, or a hearing examiner, pursuant to SDCL chapter 1-26.

**Source:**

**General Authority:** SDCL 36-9C-32.

**Implemented Law:** SDCL 36-9C-23, 36-9C-5.

**20:85:05:09. Sanctions.** The board may impose any of the following sanctions or a combination thereof:

- (1) Formal reprimand;
  - (2) Probation of license to practice professional midwifery in the state of South Dakota;
  - (3) Suspension of license to practice professional midwifery in the state of South Dakota;
  - (4) Revocation of license to practice professional midwifery in the state of South Dakota;
- or
- (5) Restitution and payment of all expenses of the investigation and proceedings.

**Source:**

**General Authority:** SDCL 36-9C-32.

**Implemented Law:** SDCL 36-9C-23, 36-9C-5.

**20:85:05:10. Judicial declaration of incompetence or involuntary commitment.** If a person licensed or certified by this board has been judicially declared incompetent or involuntarily committed to a mental hospital or treatment center, the board of certified professional midwives, upon proof of the fact, shall enter an order either placing the person on inactive status or suspending the person from the practice of professional midwifery for an indefinite period until further order of the board. A copy of the order shall be served upon the person, the person's guardian, and the director of the mental hospital by certified mail, return receipt requested.

**Source:**

**General Authority:** SDCL 36-9C-32.

**Implemented Law:** SDCL 36-9C-29, 36-9C-23, 36-9C-5.

**20:85:05:11. Petition by board.** If any interested person petitions the board or the disciplinary committee to determine whether a person licensed or certified by this board is incapacitated by reason of mental infirmity or illness or because of addiction to drugs or intoxicants, the board may take action to determine whether the person is so incapacitated, including the examination of the person by such qualified medical experts as the board designates. If the board concludes that the person is incapacitated from continuing to practice professional midwifery, it shall enter an order either placing the person on inactive status or suspending the person on the ground of the disability for an indefinite period until further order of the board. Any pending disciplinary proceeding against the person shall be held in abeyance. The board shall provide notice to the respondent of proceedings in the matter in accordance with SDCL chapter 1-26 and may appoint an attorney to represent the respondent if the person is without representation.

**Source:**

**General Authority:** SDCL 36-9C-32.

**Implemented Law:** SDCL 36-9C-23, 36-9C-24, 36-9C-29, 36-9C-5.

**20:85:05:12. Burden of proof.** In a proceeding seeking an order of inactive status, probation, or suspension based upon the reasons set forth under 20:85:05:11 or 20:85:05:12, the burden of proof shall rest with the party filing the complaint. In a proceeding seeking an order terminating inactive status or suspension, the burden of proof shall rest with the person who is inactive or suspended.

**Source:**

**General Authority:** SDCL 36-9C-32.

**Implemented Law:** SDCL 36-9C-23, 36-9C-5.

**20:85:05:13. Respondent's claim of illness or infirmity.** If, during the course of a disciplinary proceeding, the respondent contends that he is suffering from a disability by reason of mental or physical infirmity or illness or addiction to drugs or intoxicants, which makes it impossible for the respondent to present an adequate defense, the board shall enter an order immediately suspending the respondent from continuing to practice professional midwifery until a determination is made of the respondent's capacity to continue to practice in a proceeding instituted in accordance with the provisions of 20:85:05:13. If the board determines that the respondent is not incapacitated from practicing, it shall take such action as it deems advisable, including a direction for the resumption of the disciplinary proceeding against the respondent.

**Source:**

**General Authority:** SDCL 36-9C-32.

**Implemented Law:** SDCL 36-9C-23, 36-9C-24, 36-9C-5.

**20:85:05:14. Doctor-patient privilege -- Waiver.** The filing of an application for reinstatement by a person placed on inactive status or suspended for disability constitutes a waiver of any doctor-patient privilege with respect to any treatment of the person during the period of disability. The person shall disclose the name of every psychologist, physician, and hospital by whom or in which the person has been examined or treated since being placed on inactive status or suspension. The person shall furnish to the board written consent to each to divulge the information and records requested by board-appointed medical experts.

**Source:**

**General Authority:** SDCL 36-9C-32.

**Implemented Law:** SDCL 36-9C-23, 36-9C-5.

**20:85:05:15. Judicial declaration of competence.** If a person has been suspended by an order in accordance with the provisions of 20:85:05:11 or 20:85:05:12, and has thereafter been judicially declared to be competent, the board may dispense with further evidence showing the disability has been removed and may direct reinstatement.

**Source:**

**General Authority:** SDCL 36-9C-32.

**Implemented Law:** SDCL 36-9C-23, 36-9C-5.

**20:85:05:16. Suspension and probation.** The period of probation or suspension ordered pursuant to § 20:85:05:11 or 20:85:05:12 may not exceed five years. The conditions of probation may include one or more of the following:

- (1) Additional mandatory continuing education;
- (2) Restitution;
- (3) Payment of all expenses of the investigation and proceedings; and
- (4) Mental health or alcoholism treatment.

**Source:**

**General Authority:** SDCL 36-9C-32.

**Implemented Law:** SDCL 36-9C-23, 36-9C-5.

**20:85:05:17. Formal reprimands and files.** The board shall keep a permanent file of all complaints made to or by the board which result in an inquiry being directed to a licensee and a permanent file of board action taken, including formal reprimands. In considering action in a case, the board shall take into consideration at the hearing the past actions of the licensee or holder of a certificate, extending an opportunity to the person to rebut or explain such past actions and files. The files are confidential except to board members acting within the scope of their duties and to the person or person's attorney or representative desiring to see the person's file.

**Source:**

**General Authority:** SDCL 36-9C-32.

**Implemented Law:** SDCL 36-9C-23, 36-9C-5.

**20:85:05:18. Board hearings -- Procedure.** Those portions of the rules of practice in trial courts of record and those portions of SDCL 15 and 1-26 that are consistent with SDCL 36-5 or this article apply to the procedure for hearings held by the board. A record of the hearing in a contested case shall be taken by court reporter or recording equipment. If a transcript is requested, the board may require the person requesting it to pay the reasonable cost of preparing the transcript.

**Source:**

**General Authority:** SDCL 36-9C-32.

**Implemented Law:** SDCL 36-9C-23, 36-9C-5.

**20:85:05:19. Appeal from board rulings or decisions.** Any party feeling aggrieved by any acts, ruling or decision of the board relating to the refusal to grant, suspend or revoke a license shall have the right to appeal pursuant to chapter 1-26.

**Source:**

**General Authority:** SDCL 36-9C-32.

**Implemented Law:** SDCL 36-9C-25.

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