



SOUTH DAKOTA BOARD OF CERTIFIED PROFESSIONAL MIDWIVES

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**UNIFORM COMPLAINT PROCEDURE
SDCL ch. 36-1C**

- I. Receipt of Complaint by the Executive Secretary
 - a. Content/form of Complaint
 - i. Complaint must be in writing [SDCL 36-1C-2]
 - ii. Complaint must state name of applicant or licensee [SDCL 36-1C-2]
 - iii. Complaint must set out “in full detail” the conduct alleged [SDCL 36-1C-2]
 - b. Executive Director must request additional information if the complaint does not state a claim within jurisdiction of the Board [SDCL 36-1C-2]
 - c. Complaint may be dismissed if Complainant fails to comply with any of these requirements. [SDCL 36-1C-2]

- II. Notice of Complaint to Applicant or Licensee
 - a. Executive Secretary must serve a copy of the complaint upon applicant or licensee [SDCL 36-1C-3]
 - i. Service can be via mail or email [SDCL 36-1C-3]
 - b. Applicant or Licensee must send a response to the complaint within 20 business days after service [SDCL 36-1C-3]
 - i. This can be extended “for good cause” [SDCL 36-1C-3]
 - ii. Failure to respond to the complaint can be grounds for disciplinary action [SDCL 36-1C-3]
 - c. Upon receipt of response (or expiration of time to respond) complaint forwarded to investigative committee [SDCL 36-1C-3]

- III. Investigative Committee
 - a. Comprised of those individuals responsible for review and investigation of complaints [SDCL 36-1C-1(4)]
 - i. Usually the Executive Secretary and a reviewing board member
 - ii. Must include the Board’s prosecuting legal counsel [SDCL 36-1C-4]

- b. Failure of applicant or licensee to comply with investigation is grounds for denial of application or further disciplinary action [SDCL 36-1C-4]
- IV. Investigative Committee Action
- a. Recommend to the Board that complaint
 - i. Be dismissed for lack of probable cause
 - ii. Resolved via informal disposition (i.e. settlement or consent agreement)
 - iii. Proceed to formal contested hearing [SDCL 36-1C-4]
- V. Dismissal
- a. The Board may dismiss based on recommendation of investigative committee
 - b. The Board may authorize the investigative committee to dismiss a complaint [SDCL 36-1C-4]
 - i. Dismissal by the investigative committee must be reported to the Board within 30 days [SDCL 36-1C-4]
- VI. Informal Disposition
- a. Usually negotiated by prosecuting counsel with applicant or licensee
 - b. May impose conditions upon an applicant or a license
 - i. For example: continuing education hours, fitness to practice evaluations, mental or physical examinations, administrative fines (SDCL 36-1C-5), supervised practice, suspension of license etc.
 - c. Informal Disposition must be in writing (Settlement Agreement or Consent Agreement) [36-1C-6]
 - d. The informal disposition must be accepted by the Board [36-1C-6]
 - i. It is final and formal Board action on the file
 - e. Complainant must be notified in writing of the results of any formal disposition [36-1C-6]
- VII. Formal Contested Hearing
- a. Board must first determine that probable cause for disciplinary action exists [SDCL 36-1C-7]
 - b. Formal Complaint
 - i. Commenced by service of Formal Complaint upon applicant or licensee [SDCL 36-1C-7]
 - 1. Formal Complaint drafted by Prosecuting Legal Counsel [SDCL 36-1C-7]

- ii. Formal Complaint may be served via mail or email [SDCL 36-1C-7]
 - iii. Formal Complaint must include name of applicant or licensee and a statement of facts setting forth the nature of the allegations [SDCL 36-1C-7]
- c. Response to Formal Complaint
 - i. Applicant or licensee must file an answer to the Formal Complaint within 20 calendar days [SDCL 36-1C-8]
 - ii. Answer must admit, deny, or qualify, or explain all facts alleged in the formal complaint [SDCL 36-1C-8]
 - iii. Answer must include all defenses and mitigating factors [SDCL 36-1C-8]
- d. Notice of Hearing
 - i. Filed pursuant to SDCL 1-26-16 & -17
 - ii. Filed after receipt of response required from applicant or licensee [SDCL 36-1C-9]
 - iii. Must conform to requirements of SDCL 1-26-17
 - iv. Must give reasonable notice to applicant or licensee of date of hearing, but no later than 20 days before hearing date [SDCL 1-26-16]
 - v. Hearing date may be continued as necessary [SDCL 36-1C-9]
- e. Formal Hearing
 - i. Applicant or licensee must appear personally unless waived by Board [SDCL 36-1C-10]
 - ii. Hearing conducted pursuant to provisions of SDCL ch. 1-26
 - iii. Office of Hearing Examiners may be used but final decision making authority rests with the Board [SDCL 1-26-18.3]
 - iv. Board may take action to revoke, suspend, or otherwise limit or condition an applicant or licensee's practice or license
 - v. Action must be based on violation of practice act, administrative rule, or adopted ethical code of conduct