

State of South Dakota

EIGHTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2013

400U0250

SENATE BILL NO. 118

Introduced by: The Committee on State Affairs at the request of the Office of the Governor

1 FOR AN ACT ENTITLED, An Act to provide for the issuance of a resident medical license and
2 to repeal certain resident training permits issued by the Board of Medical and Osteopathic
3 Examiners.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That § 36-4-20.6 be amended to read as follows:

6 36-4-20.6. A resident ~~certificate~~ license is a ~~certificate~~ license allowing the holder to practice
7 medicine in this state for a limited period of time subject to the requirements and conditions set
8 forth in the ~~certificate~~ license.

9 Section 2. That § 36-4-20.7 be amended to read as follows:

10 36-4-20.7. The Board of Examiners may issue a resident ~~certificate~~ license to an applicant
11 who ~~has satisfied all the requirements for licensure set forth in § 36-4-11, except having~~
12 ~~successfully completed a program as an intern or resident, and has successfully completed the~~
13 ~~first year of a~~ is currently enrolled in an accredited residency program. The applicant shall ~~make~~
14 ~~application for the resident certificate to the board on forms provided~~ apply using forms
15 prescribed by the board. The application shall be accompanied by an application fee set by the



1 board, by rule promulgated pursuant to chapter 1-26, not to exceed fifty dollars.

2 Section 3. That § 36-4-20.8 be amended to read as follows:

3 36-4-20.8. Any resident ~~certificate~~ license is valid for a period not exceeding one year from
4 the ~~issuance thereof, if the certificate holder successfully continues in an approved~~ issue date.
5 The resident license holder shall continue in good standing in an accredited residency program
6 during the one-year period. The resident certificate shall allow the holder to practice medicine
7 in this state in all functions involved in his residency program; to provide emergency room
8 medical coverage on an irregular basis; and to provide short-term medical care to patients in the
9 absence of their regularly licensed physician by agreement with the physician or the resident
10 license is forfeit. No holder of a resident license may engage in providing medical services
11 outside the established residency program until the holder has successfully completed one year
12 of residency training.

13 Section 4. That § 36-4-20.9 be repealed.

14 ~~— 36-4-20.9. A resident training permit is a permit allowing the holder to practice medicine~~
15 ~~in this state for a limited period of time subject to the requirements and conditions set forth in~~
16 ~~the permit.~~

17 Section 5. That § 36-4-20.10 be repealed.

18 ~~— 36-4-20.10. The Board of Examiners may issue a resident training permit to an applicant~~
19 ~~who is enrolled in a medical residency program approved by the board. The applicant shall make~~
20 ~~application for the resident training permit to the board on forms provided by the board.~~

21 Section 6. That § 36-4-20.11 be repealed.

22 ~~— 36-4-20.11. Any resident training permit is valid for a period not exceeding one year from~~
23 ~~the issuance thereof, if the permit holder successfully continues in an approved residency~~
24 ~~program during the period. The resident training permit allows the holder to practice medicine~~

1 in this state in all functions involved in the residency program. No holder of a resident training
2 permit may engage in providing medical services outside the established residency program.

3 Section 7. That § 36-4-20.12 be amended to read as follows:

4 36-4-20.12. Each person receiving a resident ~~certificate or resident training permit~~ license
5 under the provisions of this chapter shall apply, on a form ~~approved by the Board of Examiners~~
6 prescribed by the board, for a renewal of the resident ~~certificate or resident training permit~~
7 license.

8 Section 8. That § 36-4-20.13 be amended to read as follows:

9 36-4-20.13. Failure of a person to renew the resident ~~certificate or resident training permit~~
10 license on or before June thirtieth of each year constitutes a forfeiture of the resident ~~certificate~~
11 ~~or resident training permit~~ license held by the person. However, the resident ~~certificate or~~
12 ~~resident training permit~~ license may be renewed at the discretion of the Board of Examiners
13 upon making application on a form ~~approved~~ prescribed by the board.

14 Section 9. That § 36-4-28 be amended to read as follows:

15 36-4-28. The Board of Examiners may, in compliance with chapter 1-26, refuse to grant a
16 license, resident license, or certificate, ~~or permit~~ under this chapter because of unprofessional,
17 immoral, or dishonorable conduct on the part of the applicant.

18 Section 10. That § 36-4-29 be amended to read as follows:

19 36-4-29. The Board of Examiners may cancel, revoke, suspend, or limit the license, resident
20 license, or certificate, ~~or permit~~ of any physician, ~~surgeon, or osteopathic physician~~ or surgeon
21 issued under this chapter upon satisfactory proof by a preponderance of the evidence in
22 compliance with chapter 1-26 of such a licensee's, resident licensee's, or certificate holder's, ~~or~~
23 ~~permit holder's~~ professional incompetence, or unprofessional or dishonorable conduct, or proof
24 of a violation of this chapter in any respect. However, the board may not base a finding of

1 unprofessional or dishonorable conduct solely on the basis that a licensee, resident licensee, or
2 certificate holder, ~~or permit holder~~ practices chelation therapy.

3 For the purposes of this section, professional incompetence is a deviation from the statewide
4 standard of competence, which is that minimum degree of skill and knowledge necessary for
5 the performance of characteristic tasks of a physician or surgeon in at least a reasonably
6 effective way.

7 Section 11. That § 36-4-29.1 be amended to read as follows:

8 36-4-29.1. If the Board of Examiners finds that public health, safety, or welfare imperatively
9 require emergency action, and incorporates a finding to that effect in its order, or has
10 information filed with the board that a holder of a license, resident license, or certificate, ~~or~~
11 ~~permit~~ improperly obtained a license, resident license, or certificate, ~~or permit~~ from the board,
12 summary suspension of a license, resident license, or certificate, ~~or permit~~ may be ordered
13 pending final action by the Board of Examiners. The Board of Examiners shall convene a
14 hearing which shall be promptly instituted and determined and take action as provided in § 36-
15 4-29.

16 Section 12. That § 36-4-31 be amended to read as follows:

17 36-4-31. The proceedings for cancellation, revocation, or suspension of a license, resident
18 license, or certificate, ~~or permit~~ shall be conducted in compliance with chapter 1-26. However,
19 the Board of Examiners may dispense with the requirement of prior notice and an informal
20 meeting set forth in § 1-26-29 if the board finds that the public health, interest, or safety require
21 otherwise or that willful acts have been alleged.

22 Section 13. That § 36-4-31.4 be amended to read as follows:

23 36-4-31.4. Upon application, the Board of Examiners may reissue a license, resident license,
24 or certificate, ~~or resident training permit~~ to practice to any person whose license, resident

1 ~~license, or certificate, or resident training permit~~ has been canceled, suspended, or revoked. No
2 reissuance of a license, resident license, or certificate,~~or resident training permit~~ which has been
3 canceled or revoked may be made prior to one year after the cancellation or revocation. The
4 reissuance of any license, resident license, or certificate,~~or resident training permit~~ may be made
5 in such manner and form and under conditions as the board may require.

6 Section 14. That § 36-4-31.5 be amended to read as follows:

7 36-4-31.5. Testimony of a witness or documentary evidence of any kind on cancellation,
8 revocation, suspension, or limitation proceedings are not subject to discovery or disclosure
9 under chapter 15-6 or any other provision of law, and are not admissible as evidence in any
10 action of any kind in any court or arbitration forum, except as hereinafter provided. No person
11 in attendance at any hearing of the Board of Examiners considering cancellation, revocation,
12 suspension, or limitation of a license, resident license, or certificate,~~or permit~~ issued by it may
13 be required to testify as to what transpired at such meeting. The prohibition relating to discovery
14 of evidence does not apply to deny a physician access to or use of information upon which a
15 decision regarding the physician's staff privileges was based. The prohibition relating to
16 discovery of evidence does not apply to any person or the person's counsel in the defense of an
17 action against the person's access to the materials covered under this section.

18 Section 15. That § 36-4-31.6 be amended to read as follows:

19 36-4-31.6. If the grant, denial, or renewal of a license, resident license, or certificate,~~or~~
20 ~~permit~~ to practice ~~medicine~~ allopathic or osteopathic medicine was previously treated as a
21 contested case resulting in a final decision, the provisions of chapter 1-26 concerning contested
22 cases do not apply unless the Board of Examiners determines that there has been a substantial
23 change of circumstance since the proceedings in the prior contested case.

24 Section 16. That § 36-4-32 be amended to read as follows:

1 36-4-32. In case any person holding a license, resident license, or certificate, ~~or permit~~ to
2 practice ~~medicine~~ allopathic or osteopathic medicine, surgery and obstetrics shall by any final
3 order or adjudication of any court of competent jurisdiction be adjudged to be mentally
4 incompetent or insane, the license, resident license, or certificate, ~~or permit~~ shall be suspended
5 by the board after proceedings in compliance with chapter 1-26, and anything in this chapter to
6 the contrary notwithstanding, such suspension shall continue until the licensee, resident licensee,
7 ~~or certificate holder, or permit holder~~ is found or adjudged by such court to be restored to reason
8 or until the holder of the license, resident license, or certificate, ~~or permit~~ is duly discharged as
9 restored to reason in any other manner provided by law and has appeared before the board at a
10 regular or special meeting of the board to apply for such reinstatement. The board may, ~~in its~~
11 ~~discretion~~, establish such probationary conditions as it deems necessary for the best interests of
12 licensee, resident licensee, or certificate holder, ~~or permit holder~~.

13 Section 17. That § 36-4-34 be amended to read as follows:

14 36-4-34. If it appears from evidence satisfactory to the Board of Examiners that any person
15 has violated the provisions of this chapter or that any licensee, resident licensee, or certificate
16 holder, ~~or permit holder~~ under this chapter has been guilty of unprofessional or dishonorable
17 conduct or is incompetent, the board may apply for an injunction in any court of competent
18 jurisdiction to restrain the person or licensee, resident licensee, or certificate holder, ~~or permit~~
19 ~~holder~~ from continuing to practice allopathic or osteopathic medicine, ~~osteopathy~~, surgery, or
20 obstetrics in any of their branches in this state. Application for an injunction is an alternate to
21 criminal proceedings, and the commencement of one proceeding by the board constitutes an
22 election.