

# State of South Dakota

EIGHTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 2009

400Q0071

## HOUSE BILL NO. 1041

Introduced by: The Committee on Health and Human Services at the request of the Board of  
Medical and Osteopathic Examiners

1 FOR AN ACT ENTITLED, An Act to provide physicians with a limited permit to practice  
2 medicine within a residency program and to revise certain provisions regarding the Board  
3 of Examiners authority to administer resident certificates and resident training permits.

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

5 Section 1. That § 36-4-8 be amended to read as follows:

6 36-4-8. Any person who practices medicine, ~~or~~ osteopathy, or any of the branches thereof  
7 without a license, certificate, or permit issued by the board is guilty of a Class 1 misdemeanor.

8 Section 2. That chapter 36-4 be amended by adding thereto a NEW SECTION to read as  
9 follows:

10 A resident training permit is a permit allowing the holder to practice medicine in this state  
11 for a limited period of time subject to the requirements and conditions set forth in the permit.

12 Section 3. That chapter 36-4 be amended by adding thereto a NEW SECTION to read as  
13 follows:

14 The Board of Examiners may issue a resident training permit to an applicant who is enrolled  
15 in a medical residency program approved by the board. The applicant shall make application for



1 the resident training permit to the board on forms provided by the board.

2 Section 4. That chapter 36-4 be amended by adding thereto a NEW SECTION to read as  
3 follows:

4 Any resident training permit is valid for a period not exceeding one year from the issuance  
5 thereof, if the permit holder successfully continues in an approved residency program during the  
6 period. The resident training permit allows the holder to practice medicine in this state in all  
7 functions involved in the residency program. No holder of a resident training permit may engage  
8 in providing medical services outside the established residency program.

9 Section 5. That chapter 36-4 be amended by adding thereto a NEW SECTION to read as  
10 follows:

11 Each person receiving a resident certificate or resident training permit under the provisions  
12 of this chapter shall apply, on a form approved by the Board of Examiners, for a renewal of the  
13 resident certificate or resident training permit.

14 Section 6. That chapter 36-4 be amended by adding thereto a NEW SECTION to read as  
15 follows:

16 Failure of a person to renew the resident certificate or resident training permit on or before  
17 June thirtieth of each year constitutes a forfeiture of the resident certificate or resident training  
18 permit held by the person. However, the resident certificate or resident training permit may be  
19 renewed at the discretion of the Board of Examiners upon making application on a form  
20 approved by the board.

21 Section 7. That § 36-4-24.3 be amended to read as follows:

22 36-4-24.3. No person required to be licensed, certificated, or permitted under the provisions  
23 of this chapter shall practice ~~his~~ the person's profession in the State of South Dakota without  
24 such active license, certificate, or permit and renewal pursuant to the provisions ~~herein~~ of this

1 chapter except those specifically excepted from the provisions of this chapter. A violation of this  
2 section is a Class 1 misdemeanor.

3 Section 8. That § 36-4-28 be amended to read as follows:

4 36-4-28. The Board of Examiners ~~shall have power~~ may, in compliance with chapter 1-26,  
5 ~~to~~ refuse to grant a license, certificate, or permit under this chapter ~~for~~ because of  
6 unprofessional, immoral, or dishonorable conduct on the part of the applicant.

7 Section 9. That § 36-4-29 be amended to read as follows:

8 36-4-29. The ~~South Dakota State Board of Medical and Osteopathic Examiners~~ Board of  
9 Examiners may cancel, revoke, suspend, or limit the license, certificate, or permit of any  
10 physician, surgeon, or osteopathic physician or surgeon issued under this chapter upon  
11 satisfactory proof by a preponderance of the evidence in compliance with chapter 1-26 of such  
12 a licensee's, certificate holder's, or permit holder's professional incompetence, or unprofessional  
13 or dishonorable conduct, or proof of a violation of this chapter in any respect. However, the  
14 board may not base a finding of unprofessional or dishonorable conduct solely on the basis that  
15 a licensee, certificate holder, or permit holder practices chelation therapy.

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

20 Section 10. That § 36-4-29.1 be amended to read as follows:

21 36-4-29.1. If the ~~State Board of Medical and Osteopathic Examiners~~ Board of Examiners  
22 finds that public health, safety, or welfare imperatively require emergency action, and  
23 incorporates a finding to that effect in its order, or has information filed with the board that a  
24 ~~licensee~~ holder of a license, certificate, or permit improperly obtained a license, certificate, or

1 permit from the board, summary suspension of a license, certificate, or permit may be ordered  
2 pending final action by the Board of Examiners. The Board of Examiners shall convene a  
3 hearing ~~within fifteen days of the effective date of the summary suspension~~ which shall be  
4 promptly instituted and determined and take action as provided in § 36-4-29.

5 Section 11. That § 36-4-31 be amended to read as follows:

6 36-4-31. The proceedings for cancellation, revocation, or suspension of a license, certificate,  
7 or permit shall be conducted in compliance with chapter 1-26. However, the ~~Board of Medical~~  
8 ~~and Osteopathic Examiners~~ Board of Examiners may dispense with the requirement of prior  
9 notice and an informal meeting set forth in § 1-26-29 if the board finds that the public health,  
10 interest, or safety require otherwise or that willful acts ~~are~~ have been alleged.

11 Section 12. That § 36-4-31.4 be amended to read as follows:

12 36-4-31.4. Upon application, the Board of Examiners may reissue a license, resident  
13 certificate, or resident training permit to practice to any person whose license, resident  
14 certificate, or resident training permit has been canceled, suspended, or revoked. ~~A~~ No  
15 reissuance of a license, resident certificate, or resident training permit which has been canceled  
16 or revoked ~~shall not~~ may be made prior to one year after ~~said~~ the cancellation or; revocation ~~and~~  
17 ~~the.~~ The reissuance of any license, resident certificate, or resident training permit may be made  
18 in such manner and form and under conditions as the board may require.

19 Section 13. That § 36-4-31.5 be amended to read as follows:

20 36-4-31.5. Testimony of a witness or documentary evidence of any kind on cancellation,  
21 revocation, suspension, or limitation proceedings are not subject to discovery or disclosure  
22 under chapter 15-6 or any other provision of law, and are not admissible as evidence in any  
23 action of any kind in any court or arbitration forum, except as hereinafter provided. No person  
24 in attendance at any hearing of the ~~Board of Medical and Osteopathic Examiners~~ Board of

1 Examiners considering cancellation, revocation, suspension, or limitation of a license,  
2 certificate, or permit issued by it may be required to testify as to what transpired at such  
3 meeting. The prohibition relating to discovery of evidence does not apply to deny a physician  
4 access to or use of information upon which a decision regarding ~~his~~ the physician's staff  
5 privileges was based. The prohibition relating to discovery of evidence does not apply to any  
6 person or ~~his~~ the person's counsel in the defense of an action against ~~his~~ the person's access to  
7 the materials covered under this section.

8 Section 14. That § 36-4-31.6 be amended to read as follows:

9 36-4-31.6. If the grant, denial, or renewal of a license, certificate, or permit to practice  
10 medicine or osteopathic medicine was previously treated as a contested case resulting in a final  
11 decision, the provisions of chapter 1-26 concerning contested cases do not apply unless the  
12 ~~Board of Medical and Osteopathic Examiners~~ Board of Examiners determines that there has  
13 been a substantial change of circumstance since the proceedings in the prior contested case.

14 Section 15. That § 36-4-32 be amended to read as follows:

15 36-4-32. In case any person holding a license, certificate, or permit to practice medicine or  
16 osteopathic medicine, surgery and obstetrics shall by any final order or adjudication of any court  
17 of competent jurisdiction be adjudged to be mentally incompetent or insane, ~~his~~ the license,  
18 certificate, or permit shall be suspended by the board after proceedings in compliance with  
19 chapter 1-26, and anything in this chapter to the contrary notwithstanding, such suspension shall  
20 continue until the licensee, certificate holder, or permit holder is found or adjudged by such  
21 court to be restored to reason or until ~~he~~ the holder of the license, certificate, or permit is duly  
22 discharged as restored to reason in any other manner provided by law and has appeared before  
23 the board at a regular or special meeting of the board to apply for such reinstatement. The board  
24 may, in its discretion, establish such probationary conditions as it deems necessary for the best

1 interests of licensee, certificate holder, or permit holder.

2 Section 16. That § 36-4-34 be amended to read as follows:

3 36-4-34. If it appears from evidence satisfactory to the Board of Examiners that any person  
4 has violated the provisions of this chapter or that any licensee, certificate holder, or permit  
5 holder under this chapter has been guilty of unprofessional or dishonorable conduct or is  
6 incompetent, the board may apply for an injunction in any court of competent jurisdiction to  
7 restrain the person or licensee, certificate holder, or permit holder from continuing to practice  
8 medicine, osteopathy, surgery, or obstetrics in any of their branches in this state. Application  
9 for an injunction is an alternate to criminal proceedings, and the commencement of one  
10 proceeding by the board constitutes an election.