

AN ACT

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

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

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

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

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

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

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

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

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

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

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

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

certificate or resident training permit.

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

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

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

36-4-24.3. No person required to be licensed, certificated, or permitted under the provisions of this chapter shall practice the person's profession in the State of South Dakota without such active license, certificate, or permit and renewal pursuant to the provisions of this chapter except those specifically excepted from the provisions of this chapter. A violation of this section is a Class 1 misdemeanor.

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

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

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

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

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

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

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

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

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

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

36-4-31.4. Upon application, the Board of Examiners may reissue a license, resident certificate, or resident training permit to practice to any person whose license, resident certificate, or resident training permit has been canceled, suspended, or revoked. No reissuance of a license, resident certificate, or resident training permit which has been canceled or revoked may be made prior to one year after the cancellation or revocation. The reissuance of any license, resident certificate, or resident training permit may be made in such manner and form and under conditions as the board may require.

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

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

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

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

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

36-4-32. In case any person holding a license, certificate, or permit to practice medicine or osteopathic medicine, surgery and obstetrics shall by any final order or adjudication of any court of competent jurisdiction be adjudged to be mentally incompetent or insane, the license, certificate, or permit shall be suspended by the board after proceedings in compliance with chapter 1-26, and anything in this chapter to the contrary notwithstanding, such suspension shall continue until the licensee, certificate holder, or permit holder is found or adjudged by such court to be restored to

reason or until the holder of the license, certificate, or permit is duly discharged as restored to reason in any other manner provided by law and has appeared before the board at a regular or special meeting of the board to apply for such reinstatement. The board may, in its discretion, establish such probationary conditions as it deems necessary for the best interests of licensee, certificate holder, or permit holder.

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

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

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I certify that the attached Act
originated in the

HOUSE as Bill No. 1041

Chief Clerk
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Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1041
File No. _____
Chapter No. _____

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Received at this Executive Office
this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor
=====

The attached Act is hereby
approved this _____ day of
_____, A.D., 20____

Governor
=====

STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____, 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State