**20:76:04:03.  Informal proceedings.** If the board considers an alleged violation to have merit constituting grounds for disciplinary action, the board, at its sole discretion, with the consent of the licensee, may proceed with informal proceedings and stay formal proceedings pending the outcome of the informal proceedings. The board may conduct informal proceedings with the affected parties to resolve the matter without a formal hearing.

Informal proceedings do not preclude the board from reinstating formal proceedings. An applicant or licensee, prior to accepting a final disposition through an informal proceeding, can reject or decline informal proceedings and elect to proceed with a formal hearing. An applicant or licensee consenting to an informal proceeding waives all rights to disqualify a board member from participating in a subsequent formal hearing by reason of the board member's participation in the informal proceeding consented to by the applicant or licensee.

The board may accept an assurance of voluntary compliance or a consent order regarding a violation of SDCL chapter 36-35. The assurance or consent order shall be in writing and is subject to the approval of the board. The assurance or consent order may include a statement that the applicant or licensee will not engage in such act or practice in the future and one of the following:

(1) Stipulation for voluntary payment of any fine or cost, or both, of the investigation; and

(2)  Stipulation for the voluntary payment necessary to restore to any person money or property which may have been acquired by the alleged violator.

The assurance of voluntary compliance may not be considered an admission to a violation for any purpose. The consent of the licensee to a consent order in informal proceedings constitutes an admission of a violation for any purpose. Proof of the failure to comply with an assurance of voluntary compliance or a consent order entitles the board to institute or reinstitute formal proceedings.

The board shall notify in writing any complaining party, the applicant or licensee complained against, and any other affected parties of the results of the informal proceedings and the action taken, if any. The final disposition of an informal proceeding is a public record.

**Source:** 33 SDR 50, effective September 21, 2006.

**General Authority:** SDCL 36-35-24(4).

**Law Implemented:** SDCL 36-35-22.