

AN ACT

ENTITLED, An Act to revise certain provisions pertaining to the Certification Board for Alcohol and Drug Professionals and to increase certain fees.

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

Section 1. That § 36-34-1 be amended to read as follows:

36-34-1. Terms used in this chapter mean:

- (1) "Board," the South Dakota Board of Addiction and Prevention Professionals; and
- (2) "Practitioner," a person certified, licensed, or recognized under this chapter in the practice of addiction counseling or prevention services who holds oneself out to the public by any title or description of services which uses the words certified addiction counselor, licensed addiction counselor, addiction counselor trainee, certified prevention specialist, prevention specialist trainee, or any derivatives thereof.

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

36-34-2. The South Dakota Board of Addiction and Prevention Professionals consists of nine members, three of whom shall be lay members and six of whom shall be professionals certified or licensed pursuant to this chapter. Each professional member shall be actively engaged in addiction counseling or prevention services and broadly represent a cross section of the profession.

Section 3. That § 36-34-5 be amended to read as follows:

36-34-5. The board shall annually elect a president, vice president, and a secretary-treasurer from its members. The board shall meet at least once a year at a place and time determined by the president. However, a majority of the board may call a meeting without the assent of the president.

Section 4. That § 36-34-8 be amended to read as follows:

36-34-8. The board is within the Department of Social Services. The department shall provide all administrative functions other than those of the board member serving as secretary. The board

shall submit an annual report and such records, information, and reports in the form and at such times as required by the secretary of social services.

Section 5. That § 36-34-9 be amended to read as follows:

36-34-9. The board may accept any funds which may be made available to it from any source. All funds received by the board shall be paid to the state treasurer weekly or as prescribed by the state treasurer. The state treasurer shall keep the money in a separate account for the board. The money in that account is continuously appropriated to the board for administering and enforcing this chapter. No expense incurred may exceed the total money collected by the board under the provisions of this chapter.

Section 6. That § 36-34-10 be amended to read as follows:

36-34-10. The board members shall be paid per diem compensation and allowable expenses pursuant to § 4-7-10.4 for their services on the board.

Section 7. That § 36-34-11 be amended to read as follows:

36-34-11. The board, its members, and its agents are immune from personal liability for actions taken in good faith in the discharge of the board's responsibilities, and the state shall hold the board, its members, and its agents harmless from all costs, damages, and attorney fees arising from claims and suits against them with respect to matters to which such immunity applies.

Section 8. That § 36-34-12 be amended to read as follows:

36-34-12. The board shall:

- (1) Promulgate rules that set standards for professional practice of addiction counseling and prevention services and other rules as necessary for the administration of this chapter. All rules shall be promulgated pursuant to chapter 1-26;
- (2) Be responsible for all disciplinary proceedings under this chapter;
- (3) Establish, by rules promulgated pursuant to chapter 1-26, education, training and

competency, continuing education, and ethical standards governing the examination and practice of practitioners under this chapter;

- (4) Examine, or cause to be examined, for competency, eligible applicants, for certification or licensure to practice addiction counseling and prevention services. Examinations shall be held at least semiannually;
- (5) Issue certificates and licenses to those applicants who successfully complete the certification or licensing requirements and renew the certifications and licenses of those practitioners who continue to meet the standards of this chapter;
- (6) Maintain a record of all practitioners which includes the practitioner's status, certificate or license number, date the certification or licensure was granted, renewal date, and any public record of discipline; and
- (7) Establish and collect, pursuant to rules promulgated pursuant to chapter 1-26, fees for applications, recognition, certification, licensure, dual credentials, examination, upgrades, reciprocity, continuing education, renewal, reinstatement, and all services authorized by this chapter.

Section 9. That § 36-34-13 be amended to read as follows:

36-34-13. The board may promulgate rules, pursuant to chapter 1-26, to provide fees for all services and charges authorized by this chapter. The fees may not exceed the following maximums:

- (1) Application materials or portfolio reviews, twenty-five dollars;
- (2) Certified addiction counselor, certified prevention specialist, or licensed addiction counselor application and examination fee, two hundred fifty dollars;
- (3) Certified addiction counselor, certified prevention specialist, or licensed addiction counselor retest fee, two hundred dollars;
- (4) Certified addiction counselor, certified prevention specialist, or licensed addiction

- counselor renewal fee, two hundred dollars;
- (5) Certified addiction counselor, certified prevention specialist, or licensed addiction counselor reinstatement fee, one hundred fifty dollars;
  - (6) Status upgrade fee, one hundred fifty dollars;
  - (7) Addiction counselor trainee, prevention specialist trainee, certified addiction counselor, certified prevention specialist, or licensed addiction counselor replacement or duplicate certificate, fifteen dollars;
  - (8) Certified addiction counselor, certified prevention specialist, or licensed addiction counselor replacement identification card, five dollars;
  - (9) Addiction counselor trainee or prevention specialist trainee recognition fee, one hundred fifty dollars;
  - (10) Addiction counselor trainee or prevention specialist trainee renewal fee, one hundred fifty dollars;
  - (11) Addiction counselor trainee or prevention specialist trainee reinstatement fee, one hundred fifty dollars;
  - (12) International certificate fee, twenty dollars;
  - (13) Certified addiction counselor, certified prevention specialist, or licensed addiction counselor retirement status practitioner fee, one hundred dollars;
  - (14) Dual credential renewal fee, three hundred dollars;
  - (15) Examination cancellation or rescheduling fee, twenty-five dollars;
  - (16) Examination late cancellation or nonattendance fee, one hundred twenty-five dollars;
  - (17) Registration as a continuing education service provider, twenty-five dollars; and
  - (18) Mailing labels charge, one hundred dollars.

Section 10. That chapter 36-34 be amended by adding thereto a NEW SECTION to read as

follows:

Any applicant seeking recognition, certification, or licensure shall disclose to the board whether the applicant has been convicted of, plead guilty to, or plead no contest to any felony in any state, federal, foreign jurisdiction, tribal, or military court. Failure to disclose this information may result in denial, revocation, suspension, or refusal of recognition, certification, or licensure.

Section 11. That § 36-34-13.1 be amended to read as follows:

36-34-13.1. No person may represent oneself as a licensed or certified addiction counselor, addiction counselor trainee, certified prevention specialist, prevention specialist trainee, or any other title that includes such words unless the person is certified or licensed under this chapter.

Section 12. That § 36-34-14 be repealed.

Section 13. That § 36-34-15 be repealed.

Section 14. That chapter 36-34 be amended by adding thereto a NEW SECTION to read as follows:

Any certificate or license issued by the board shall be renewed annually by payment of a fee to be set by the board in rules promulgated pursuant to chapter 1-26. The failure of a practitioner to renew the certificate or license by the last day of the practitioner's birth month each year constitutes a forfeiture of status. However, any person who has forfeited one's status may have it restored by requesting reinstatement and paying the reinstatement fee and the renewal fee within fifteen days of the forfeiture. Any person who fails to have the status restored within fifteen days shall take the examination as prescribed for an applicant to become certified or licensed and comply with all the provisions applicable to any applicant for certification or licensure.

Section 15. That chapter 36-34 be amended by adding thereto a NEW SECTION to read as follows:

Each certificate or license shall be conspicuously displayed at the primary place of practice

within thirty days after issuance of such certificate or license.

Section 16. That chapter 36-34 be amended by adding thereto a NEW SECTION to read as follows:

The board may grant a certificate to any person who, at the time of application, is certified in another state or territory of the United States that imposes substantially the same requirements as this chapter, has taken and passed an examination similar to that required under this chapter, and has not been convicted of a felony within five years of the date of application, and if convicted of a felony, has completed all sentencing requirements prior to the date of application.

Section 17. That § 36-34-16 be amended to read as follows:

36-34-16. The board may use its own staff or employ certified or licensed addiction counselors, certified prevention specialists, agents, or investigators to assist in the enforcement of this chapter or any rule promulgated by the board. Any person violating the provisions of this chapter may be enjoined from further violations by an action brought by the state's attorney of the county where the violations occurred or by an action brought by any citizen in the state. The attorney general, the board, or the state's attorney may apply to the circuit court for the county in which a violation of this chapter is alleged to have occurred for an order enjoining or restraining the commission or continuance of the acts. The board may authorize a hearing examiner to conduct the hearing required to determine a violation of this chapter.

Section 18. That § 36-34-18 be amended to read as follows:

36-34-18. The board shall receive complaints concerning a practitioner's professional practices. Each complaint received shall be logged by the secretary-treasurer, or the board's designee, recording the practitioner's name, name of the complaining party, date of the complaint, a brief statement of the complaint, and its ultimate disposition. The board shall investigate each alleged violation of this chapter. All disciplinary proceedings held under the authority of this chapter shall be conducted in

accordance with chapter 1-26.

Section 19. That § 36-34-19 be amended to read as follows:

36-34-19. The decision of the board to cancel, suspend, or revoke a certification or licensure or to reissue a cancelled, suspended, or revoked certification or licensure requires a majority vote of all the board members.

Section 20. That § 36-34-20 be amended to read as follows:

36-34-20. If the board determines that any complaint is frivolous or clearly unfounded in fact, the board may dismiss the complaint and, by a separate and unanimous vote of the board, may expunge the complaint from the record of the practitioner.

Section 21. That § 36-34-21 be amended to read as follows:

36-34-21. Any practitioner subject to this chapter shall practice in accordance with the standards established by the board and is subject to the exercise of the disciplinary sanctions enumerated in § 36-34-23 if, after a hearing in the manner provided in chapter 1-26, the board finds that:

- (1) A practitioner has employed or knowingly cooperated in fraud or material deception in order to obtain a certificate or license to practice the profession, or has engaged in fraud or material deception in the course of professional services or activities;
- (2) A practitioner has been convicted in any court of a felony;
- (3) A practitioner has engaged in or permitted the performance of unacceptable patient care by the practitioner or by auxiliaries working under the practitioner's supervision due to any deliberate or negligent act or failure to act;
- (4) A practitioner has knowingly violated any provision of this chapter or board rules;
- (5) A practitioner has continued to practice although the practitioner has become unfit to practice due to professional incompetence, failure to keep abreast of current professional theory or practice, physical or mental disability, or addiction or severe dependency upon

or use of alcohol or other drugs which endanger the public by impairing a practitioner's ability to practice safely;

- (6) A practitioner has engaged in lewd or immoral conduct in connection with the delivery of addiction counseling or prevention services to consumers;
- (7) A practitioner has or is employing or assisting an uncertified or unlicensed person to hold himself or herself out as a certified or licensed addiction counselor or certified prevention specialist;
- (8) A practitioner submitted false, misleading, or inaccurate information to the board in obtaining issuance or renewal of recognition, certification, or licensure; or
- (9) A practitioner has failed to provide information or documents requested by the board in the investigation or prosecution of a professional or ethical complaint filed with the board.

Each legally required notice shall be sent via ordinary first-class mail to the most recent address that the practitioner has reported to the board. The practitioner has the duty to maintain an accurate and current mailing address with the board.

Section 22. That § 36-34-23 be amended to read as follows:

36-34-23. The board may impose any of the following sanctions, singly or in combination, if the board finds that a practitioner has violated any part of § 36-34-21:

- (1) Revoke a practitioner's certification or license to practice for an indefinite length of time;
- (2) Suspend a practitioner's certification or license for a specific or indefinite length of time;
- (3) Censure a practitioner;
- (4) Issue a letter of reprimand;
- (5) Place a practitioner on probationary status and require the practitioner to report regularly to the board on the matters which are the basis for probation;
- (6) Limit the practitioner's practice to areas prescribed by the board and continue to renew

professional education until a satisfactory degree of skill has been attained in those areas which are the basis of the probation;

- (7) Require the practitioner to reimburse the board in an amount equal to the costs incurred for the investigation and disciplinary hearing including the amount paid by the board for legal expenses, attorney fees, court reporters, and any mediator or hearing officer, provided there is clear and convincing evidence of wrongdoing on the part of the practitioner.

The board may withdraw the probation if the board finds the deficiencies that resulted in disciplinary action have been remedied.

Certification or licensure shall remain in effect during the pendency of an appeal unless suspended under § 36-34-24.

Section 23. That § 36-34-24 be amended to read as follows:

36-34-24. The board may summarily suspend a practitioner's recognition, certification, or licensure in advance of a final adjudication or during the appeals process if the board finds that a practitioner would represent a clear and immediate danger to the public health and safety if the practitioner were allowed to continue to practice. A practitioner whose recognition, certification, or licensure is suspended under this section is entitled to a hearing before the board within twenty days after the effective date of the suspension. The practitioner may subsequently appeal the suspension to circuit court in accordance with chapter 1-26.

Section 24. That § 36-34-25 be amended to read as follows:

36-34-25. Any practitioner whose recognition, certification, or license to practice has been suspended or revoked may be reinstated or a new recognition, certification, or license may be issued, as the case may be, if in the discretion of the board, such action is warranted. The board may require the applicant to pay all costs of the proceedings resulting in the applicant's suspension or revocation

including the amount paid by the board for legal expenses and attorney fees.

Section 25. That § 36-34-26 be amended to read as follows:

36-34-26. In the prosecution of any person for violation of this chapter, it is not necessary to allege or prove lack of valid recognition, certification, or licensure. Proof of recognition, certification, or licensure is a matter of defense to be established by the defendant.

Section 26. That § 36-34-27 be amended to read as follows:

36-34-27. Nothing in this chapter may be construed to limit the ongoing recognition, certification, or licensure of any person at the level of recognition, certification, or licensure and for the time period established under the former South Dakota Chemical Dependency Counselor Certification Board or the Certification Board for Alcohol and Drug Professionals.

An Act to revise certain provisions pertaining to the Certification Board for Alcohol and Drug Professionals and to increase certain fees.

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I certify that the attached Act originated in the

SENATE as Bill No. 23

\_\_\_\_\_  
Secretary of the Senate

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\_\_\_\_\_  
President of the Senate

Attest:

\_\_\_\_\_  
Secretary of the Senate

\_\_\_\_\_  
Speaker of the House

Attest:

\_\_\_\_\_  
Chief Clerk

Senate Bill No. 23  
File No. \_\_\_\_\_  
Chapter No. \_\_\_\_\_

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Received at this Executive Office this \_\_\_\_\_ day of \_\_\_\_\_ ,

20\_\_\_\_ at \_\_\_\_\_ M.

By \_\_\_\_\_  
for the Governor

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The attached Act is hereby approved this \_\_\_\_\_ day of \_\_\_\_\_ , A.D., 20\_\_\_\_

\_\_\_\_\_  
Governor

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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