

ARTICLE 20:42

COSMETOLOGISTS, ESTHETICIANS, AND NAIL TECHNICIANS

Chapter

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CHAPTER 20:42:01

DEFINITIONS

Section

20:42:01:01	Definitions.
20:42:01:02	Repealed

20:42:01:01. Definitions. Terms defined in SDCL 36-15-1 have the same meaning when used in this article. In addition, terms used in this article mean:

- (1) "Body wraps," body treatments utilizing products or equipment to enhance and maintain the texture, contour, integrity, and promote the beauty of the skin and body;

(2) "Chemical exfoliation," a resurfacing procedure performed with a chemical solution or product for the purpose of removing superficial layers of the epidermis to a point no deeper than the stratum corneum;

(3) "Clean," "cleaned," or "cleaning," the rendering free of dust and foreign material by first removing the foreign material and then, as appropriate, washing with hot water and soap;

(4) "Dermaplane," the use of a scalpel or sharp, bladed instrument ~~by a physician~~ to remove the upper layers of the stratum corneum;

(5) "Direct supervision," the physical presence in the salon or school where services requiring licensure are being performed by a licensee or student. Direct supervision requires on-site communication, direction, and observation on a consistent basis;

(6) "Disinfect," "disinfected," or "disinfecting," a chemical process using designated disinfectants, that destroys organisms (bacteria, virus, fungus) specified on the manufacturers label when performed in accordance with label instructions. Disinfection is exclusive to non-porous surfaces (glass, metal or plastic) and to be effective, items/surface must be cleaned prior to disinfection and contact time (as listed on label) must be strictly adhered to;

(7) "Disinfectant," an Environmental Protection Agency (EPA) registered, hospital grade chemical agent of adequate strength that destroys most bactericidal, fungicidal, and virucidal activity when mixed and used in accordance with manufacturer's label;

(8) "Epidermis," the outermost layer of skin;

(9) "Eyelash extension application," applying individual artificial eyelashes with adhesive to the upper or lower eyelids;

(10) "Infection control," the processes and protocols that are designed to reduce the risk of spreading pathogens in an environment. These protocols include consideration of all possible modes of transmission within a specified environment and can include, but not limited to, cleaning, disinfection, sterilization, air quality, laundering, and hand washing;

(11) "Manipulating" or "manipulation," applying a light pressure by the hands for cosmetic purposes only and not for the treatment of disease or physical or mental ailments;

(12) "Massaging," applying massage movements by the hands or a machine for cosmetic purposes rather than therapeutic purposes;

(13) "Microdermabrasion," a gentle, progressive, superficial, mechanical exfoliation of the uppermost layers of the stratum corneum using a closed-loop vacuum system;

(14) "Multi-use item" an implement or tool that can be cleaned, disinfected, and reused;

~~(14)~~ (15) "Non-invasive," confined to the nonliving cells of the epidermis, specifically the stratum corneum layer;

~~(15)~~ (16) "Pedicure," cutting, trimming, polishing, coloring, tinting, cleaning, or otherwise beautifying a person's toenails, applying artificial toenails, exfoliating dead skin through non-invasive means, and massaging and cleaning a person's legs and feet; ~~and~~

~~(16)~~ (17) "Pedicure foot-spa station," any basin using circulating or still water.;

(18) "Single-use item" is an implement or tool that cannot be cleaned and properly disinfected and must be thrown away after one use; and

(19) "Work station," a work area that includes all necessary equipment for a licensee to perform services on a client.

Source: SL 1975, ch 16, § 1; repealed, 6 SDR 10, effective August 12, 1979; readopted, 29 SDR 176, effective July 1, 2003; 39 SDR 129, effective January 28, 2013; 43 SDR 176, effective July 3, 2017.

General Authority: SDCL 36-15-13.

Law Implemented: SDCL 36-15-1.

CHAPTER 20:42:03 LICENSURE AND LICENSURE RENEWAL

Section

20:42:03:01

Application required.

20:42:03:02	Repealed.
20:42:03:03	(Effective through December 31, 2019) Fees (Effective January 1, 2020, including renewals expiring after December 31, 2019).
20:42:03:04	Requirements for individual licensure applicants.
20:42:03:05	Repealed.
20:42:03:06	License specific requirements for individual licensure applicants.
20:42:03:06.01	Applicant for licensure by reciprocity allowed credit for work experience.
20:42:03:06.02	Transferred.
20:42:03:06.03	Foreign-educated applicants for licensure.
20:42:03:07	Salon or booth license.
20:42:03:07.01	Repealed.
20:42:03:08	Limited cosmetology salon or booth license.
20:42:03:09	School or branch school license.
20:42:03:10 and 20:42:03:11	Repealed.
20:42:03:12	Renewal requirements and renewal dates of licenses.
20:42:03:13	Requirements for renewal of a lapsed license--overrun period.
<u>20:42:03:14</u>	<u>Waiver of exam for reciprocity applicants.</u>

20:42:03:04. Requirements for individual licensure applicants. All applicants for initial individual licensure shall submit the following in English:

(1) A certified copy of the person's birth certificate, United States certificate of naturalization, current United States Permanent Resident Card, current United States passport, or a current driver license issued by a state or provincial government of the United States or Canada;

(2) A high school diploma, high school transcript, or official GED (general education development) certificate showing passage , or a signed, notarized statement attesting to the fact that the licensee did complete a high school education;

(3) A personal photograph of the applicant taken within the last year; ~~and~~

(4) Proof in writing, on forms furnished by the commission, that the person possesses the necessary qualifications for the license sought; and

(5) An applicant who received an education in cosmetology, esthetics, or nail technology in another state must provide proof of education by requesting a transcript from the school attended or requesting a certification of education from the other state's cosmetology licensing agency. The transcript or certification must be transmitted directly to the commission by the school or state's cosmetology licensing agency. The executive director may reject an application that does not contain education recognized by a home state's cosmetology licensing agency.

Source: SL 1975, ch 16, § 1; 6 SDR 10, effective August 12, 1979; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 26 SDR 18, effective August 15, 1999; 29 SDR 176, effective July 1, 2003; 33 SDR 226, effective July 1, 2007; 39 SDR 129, effective January 28, 2013; 43 SDR 176, effective July 3, 2017.

General Authority: SDCL 36-15-13(1).

Law Implemented: SDCL 36-15-15.

20:42:03:14. Waiver of exam for reciprocity applicants. The examination requirement under SDCL § 36-15-19.1, 36-15-19.3, or 36-15-19.5 is waived for an applicant who has successfully passed a state-administered or authorized theory and hands-on practical examination in another state. If the applicant comes from a state that did not administer a hands-on practical examination at the time the applicant was originally licensed, the applicant will be required to take the hands-on practical examination unless the applicant has more than one year of experience.

Source:

General Authority: SDCL 36-15-13(1)(2), 36-15-19.2.

Law Implemented: SDCL 36-15-19.2.

CHAPTER 20:42:04

SALON AND BOOTH REQUIREMENTS

Section

20:42:04:01	Salon and booth requirements.
20:42:04:01.01	Salon in licensed nursing facility or assisted living center.
<u>20:42:04:01.02</u>	<u>Salon responsible for licensees in salon.</u>
20:42:04:02	Salon in private residence.
20:42:04:02.01	Sharing premises with barbers.
20:42:04:03	Repealed.
20:42:04:04	Salon and booth equipment requirements.
20:42:04:04.01	Electric file or drill requirements.
20:42:04:04.02	Microdermabrasion machine requirements.
20:42:04:04.03	Prohibited equipment and procedures.
20:42:04:05	Repealed.
20:42:04:05.01	Infection control and safety procedures <u>Transferred.</u>
20:42:04:06	Care and use of capes.
20:42:04:07	Procedure for handling wigs and hairpieces.
20:42:04:08	Storage for harmful supplies.
20:42:04:08.01	Prohibited products.
20:42:04:09	Display of licenses.
20:42:04:09.01	Display of educational certification.
20:42:04:10	Display of health, safety, and infection control rules.

- 20:42:04:10.01 Display of blood exposure rules.
- 20:42:04:10.02 Display of unregulated services sign in salons.
- 20:42:04:11 to 20:42:04:18 Transferred.

20:42:04:01.02. Salon responsible for licensees in salon. A salon is responsible for ensuring that any individual providing licensed services in the salon has the required booth or individual license or both.

Source: _____

General Authority: 36-15-13(4)(6).

Law Implemented: SDCL 36-15-2, 36-15-2.2, 36-15-17.1, 36-15-51, 36-15-56(7)

20:42:04:04. Salon and booth equipment requirements. Each salon or booth must have the following equipment available at all times:

- (1) A first aid kit readily accessible to all persons working in the salon. The kit must contain small adhesive bandages, disposable latex or hypo-allergenic gloves, gauze, and antiseptic;
- (2) A 5-pound ABC fire extinguisher or its equivalent for each 1,500 square feet of space occupied by the salon. Extinguishers must be located in a convenient location and must always be in a condition for use;
- (3) A sufficient number of electric outlets so that no cord or other electrical connection constitutes an obstacle or fire hazard to the clients or to persons working in the salon or booth;
- (4) ~~Sufficient combs and brushes for each working cosmetologist so that a clean comb or brush is used on each client;~~ Clean, disinfected combs and brushes available for use on each client;
- (5) ~~Sufficient towels or linens so that a~~ A clean towel or linen is available to be used on each client;
- (6) Separate closed containers labeled for clean or soiled towels or linens;
- (7) Separate closed containers labeled for used or contaminated implements

(8) A station for each working licensee with its own clean closed labeled container for storage of all clean and disinfected implements used in direct contact with clients;

(9) For each licensee practicing nail technology on a client:

(a) One nail table with a lamp;

(b) One manicure chair;

(c) One pedicure station with chairs for the client and licensee;

(d) One covered waste container that is emptied at least daily; and

(e) A nail applicator brush ~~and sufficient assorted buffers and files so that an unused buffer or file is used on each client;~~ clean and disinfected buffers and files must be used on each client; and

(10) For each licensee practicing esthetics on a client:

(a) One facial chair;

(b) One additional chair; and

(c) ~~Sufficient esthetics tools and implements so that a clean and disinfected item is used on each client.~~ Clean and disinfected esthetics tools and implements must be used on each client.

Source: SL 1975, ch 16, § 1; 6 SDR 10, effective August 12, 1979; 9 SDR 96, effective January 30, 1983; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 14 SDR 64, effective November 2, 1987; 23 SDR 25, effective August 26, 1996; 24 SDR 2, effective July 23, 1997; 26 SDR 18, effective August 15, 1999; 28 SDR 24, effective August 28, 2001; 29 SDR 176, effective July 1, 2003; 39 SDR 129, effective January 28, 2013; 43 SDR 176, effective July 3, 2017.

General Authority: SDCL 36-15-13(4)(5).

Law Implemented: SDCL 36-15-13(4)(5).

20:42:04:04.02. Microdermabrasion machine requirements. The requirements for a microdermabrasion machine are as follows:

(1) The machine shall be specifically manufactured and labeled for use in esthetic services;

(2) The machine may not be modified;

~~(3) The machine shall include a closed loop vacuum system that uses a tissue retention device; A~~
machine that uses a crystal or corundum product shall include a closed-loop vacuum system that uses a tissue retention device or a built in canister with filter;

(4) The machine shall be kept in a clean, disinfected, and safe manner; and

(5) The machine may only be used in accordance with specific manufacturer directions that do not result in the removal of the epidermis beyond the stratum corneum.

Source: 29 SDR 176, effective July 1, 2003; 32 SDR 32, effective August 29, 2005; 39 SDR 129, effective January 28, 2013.

General Authority: SDCL 36-15-13(4)(5).

Law Implemented: SDCL 36-15-13(4)(5).

20:42:04:04.03. Prohibited equipment and procedures. The following equipment and procedures are prohibited:

~~(1) Blades, Knives, razors, or unguarded blades may razor type callus shavers, credo blades, rasps, graters, or any other implements used to remove corns or calluses capable of cutting below the stratum corneum layer of the skin, except for lancets used specifically for extraction of impurities;~~

(2) Razor-type callus shavers, credo blades, rasps, graters, or any other implements used to remove corns or calluses capable of cutting below the stratum corenum layer of the skin;

~~(3)~~ (3) Dermaplane procedures, dermabrasion procedures, ultrasound equipment;

~~(3) Any procedure in which human tissue is cut or altered by any FDA Class 3 or above mechanical or energy devices; and~~

(4) UV sterilizers or light boxes are prohibited as infection control devices.

Source: 29 SDR 176, effective July 1, 2003; 39 SDR 129, effective January 28, 2013; 43 SDR 176, effective July 3, 2017.

General Authority: SDCL 36-15-13(4)(5).

Law Implemented: SDCL 36-15-13(4)(5).

20:42:04:05.01. Infection control and safety procedures. The following procedures must be used for infection control and safety:

—— (1) All fluids, semifluids, creams, and powders must be kept in clean, closed, and properly labeled containers and dispensed with a disinfected spatula, shaker, pump, or spray dispenser;

—— (2) Electrical equipment must be cleaned and disinfected;

—— (3) Clean and disinfected electrical equipment must be stored in a separate, clean place such as a hook or stand. When a bucket is used, it must be disinfected with a wipe or spray daily;

—— (4) Clean and disinfected nonelectrical implements must be stored in a separate, clean, closed container;

—— (5) Disinfectants must be available in the working area for immediate use at all times;

—— (6) Single use articles, such as emery boards, cosmetic sponges, and orangewood sticks, must be disposed of immediately after use in a closed waste container;

—— (7) Multi use articles must be thoroughly washed in soap and hot water, rinsed with clean warm water, and completely immersed in a commission approved disinfectant of proper strength and for the necessary time period according to manufacturer instructions. Contact points of all non immersable equipment and metal implements must be disinfected by wiping or spraying with a commission approved disinfectant. After being disinfected the multi use articles must be stored in clean, closed containers between use. Any multi use article, tool, or product which cannot be cleaned and disinfected is prohibited;

—— (8) If a blood exposure should occur involving a client or licensee, the following steps must be followed:

—— (a) Client is bleeding: Stop service; put gloves on; if appropriate, assist client to sink and rinse the injured area under running water; pat dry with a new, clean, disposable towel; offer or apply antiseptic and adhesive bandage; place all single use items in a bag and place in a trash receptacle; remove all implements from station and properly clean and disinfect; clean and disinfect work area; remove and dispose of gloves; wash hands; return to service;

~~———— (b) Licensee is bleeding: Stop service; explain the situation and excuse yourself from the service; if appropriate, rinse injured area under running water; pat dry with a new, clean, disposable towel; apply antiseptic and adhesive bandage; put gloves on; place all single use items in a bag and place in a trash receptacle; remove all implements from the work area and properly clean and disinfect; clean and disinfect work area; remove and dispose of gloves; wash hands; if necessary cover injured area with a protective finger cot or new glove; return to service;~~

~~———— (9) All waste must be removed from the salon or booth at least daily or as needed so a container is not overflowing;~~

~~———— (10) The floors in a work area must be made free of hair and other debris after each client;~~

~~———— (11) For esthetics the headrest of chairs and treatment tables must be covered with a clean sheet of examination paper or linen for each client;~~

~~———— (12) Only commercially available products for the exfoliation of skin for the purpose of beautification may be used. Mixing or combining skin removal products is prohibited except as it is required by manufacturer;~~

~~———— (13) Sanding bands used on electric file mandrels are for single use purposes and must be discarded after each use. Metal bits for electric files shall be properly disinfected after each client and stored in a clean, closed container until use;~~

~~———— (14) All nail files are single use items unless made of metal, glass, or crystal. Ceramic nail files are single use items unless completely sealed by a glaze;~~

~~———— (15) When using any microdermabrasion machine:~~

~~———— (a) Any crystals used in a microdermabrasion machine may not be recycled or reused. Crystals or approved corundum are for single use purposes and must be discarded after each use;~~

~~———— (b) Tips must be disinfected after each client and disposed of if any wear is shown; and~~

~~———— (c) The exterior must be kept clean of crystal dust, and the filters changed as necessary;~~

~~———— (16) Pedicure foot spa stations must be cleaned and disinfected:~~

~~———— (a) At the end of each client service:~~

~~_____ (i) Drain all water and remove all debris from the spa basin;~~

~~_____ (ii) Clean the spa basin with soap or detergent and water;~~

~~_____ (iii) Disinfect the spa basin with a disinfectant; and~~

~~_____ (iv) Wipe the spa basin with a clean towel until dry;~~

~~_____ (b) At the end of each day, clean and disinfect each whirlpool foot spa basin in the following manner:~~

~~_____ (i) Remove the screen, and clean all debris trapped behind the screen;~~

~~_____ (ii) Wash the screen with soap or detergent and water;~~

~~_____ (iii) Immerse the screen completely in disinfectant;~~

~~_____ (iv) Flush the spa system with low sudsing soap and warm water for 10 minutes or more;~~

~~and~~

~~_____ (v) Rinse and drain the spa;~~

~~_____ (c) At least once a week after being cleaned and disinfected, each whirlpool foot spa must be cleaned and disinfected in the following manner:~~

~~_____ (i) Fill the spa basin completely with water and add one teaspoon of 5.25 percent bleach (or recommended whirlpool disinfectant) for each gallon of water. Use according to the manufacturer's instructions;~~

~~_____ (ii) Flush the spa or bath system with bleach (or recommended whirlpool disinfectant) and water solution for 5 to 10 minutes;~~

~~_____ (iii) Soak for 6 to 10 hours; and~~

~~_____ (iv) Drain and flush the spa with water before use for a client;~~

~~_____ (17) Waxing services: Equipment used for waxing hair removal services must be kept clean and disinfected at all times:~~

~~_____ (a) A clean spatula must be used each time any wax is distributed to the client;~~

~~_____ (b) Wax pots must be kept covered and the exterior cleaned daily;~~

~~———— (c) If debris is found in the wax pot, or if the wax has been contaminated by contact with skin, unclean applicators, or double dipping, the wax pot must be emptied, the wax discarded, and the pot must be disinfected;~~

~~———— (d) Each end of a disposable spatula or wooden stick may be dipped in the wax only once and then discarded;~~

~~———— (e) Applicators may be dipped only once into the wax unless the wax is a single service item and unused wax is discarded after each service;~~

~~———— (f) Any surface touched by a used wax stick must be disinfected immediately after the service;~~

~~———— (g) Paraffin warmers must be kept covered, the exterior cleaned daily, and the wax must be debris free; and~~

~~———— (h) Paraffin wax removed from a client's skin must not be reused and must be discarded. The client's hands and feet must be washed in soap and water before being immersed in a paraffin wax warmer unit;~~

~~———— (18) Chemical exfoliation in salons or booths must comply with the following practices:~~

~~———— (a) Salons or booths, within the scope of their practice, may use chemicals or products, natural or synthetic, which act on or affect the epidermis layer of the skin;~~

~~———— (b) All exfoliant products or formulations shall be used in accordance with the manufacturer's recommendations;~~

~~———— (c) Cosmetic use alpha hydroxy acid (AHA glycolic and lactic acids) exfoliation preparations that do not exceed a 35 percent concentration with a pH value not lower than pH 3.0 may be used;~~

~~———— (d) Jessner's solutions of 14 percent salicylic acid, lactic acid, and 2 percent resorcinol may be used;~~

~~———— (e) Trichloroacetic acid (TCA) with levels less than 20 percent may be used;~~

~~———— (f) Twenty percent beta hydroxy acid (BHA) which includes salicylic acid with a pH of 3.0 or higher may be used; and~~

~~(g) A licensee may not apply any exfoliating acid to a client's skin that has undergone microdermabrasion within the previous seven days. Transferred to Chapter 20:42:05.~~

~~Source: 23 SDR 25, effective August 26, 1996; 24 SDR 2, effective July 23, 1997; 26 SDR 18, effective August 15, 1999; 28 SDR 24, effective August 24, 2001; 29 SDR 176, effective July 1, 2003; 31 SDR 62, effective November 4, 2004; 32 SDR 32, effective August 29, 2005; 39 SDR 129, effective January 28, 2013; 43 SDR 176, effective July 3, 2017.~~

~~General Authority: SDCL 36-15-13(5)~~

~~Law Implemented: SDCL 36-15-13(5).~~

CHAPTER 20:42:05

INDIVIDUAL LICENSEE INFECTION CONTROL REQUIREMENTS

Section

20:42:05:01 General Infection control requirements for licensees.

20:42:05:02 and 20:42:05:03 Repealed.

~~20:42:05:04 Clothing requirements.~~

20:42:05:05 Repealed.

20:42:05:06 Blood exposure.

20:42:05:07 Pedicure foot spas.

20:42:05:08 Microdermabrasion machines.

20:42:05:09 Waxing Services.

20:42:05:10 Paraffin Wax.

20:42:05:11 Chemical exfoliation.

20:42:05:01. General Infection infection control requirements for licensees. In addition to complying with all other rules of this article and SDCL chapter 36-15, individual licensees must comply with the following requirements for infection control:

- (1) Deposit all used towels, robes, or linens in a covered container;

- (2) Use clean linens on each client;
- (3) Use disinfected equipment or instruments on each client;
- (4) Use the disinfectant as required in all salons, booths, and schools;
- (5) Use clean, closed containers for storage of all clean linens and clean and disinfected implements used in direct contact with clients; ~~and~~
- (6) Before providing any services on a client, wash hands with soap and water or any equally effective cleansing solution;
- (7) All fluids, semifluids, creams, and powders;
 - (a) Must be kept in clean, closed and properly labeled containers; and
 - (b) Must be dispensed with a disinfected spatula, shaker, pump, or spray dispenser, or single-use item;
- (8) Electrical equipment must be cleaned and disinfected after each service;
- (9) Clean and disinfected electrical equipment must be stored in a separate, clean place such as a hook or stand. When a bucket is used, it must be disinfected with a wipe or spray daily;
- (10) When a basin or caddy is used to store electrical equipment, it must be disinfected with a wipe or spray daily.
- (11) Clean and disinfected nonelectrical implements must be stored in a separate, clean, closed labeled container;
- (12) Disinfectants must be available in the working area for immediate use at all times;
- (13) Single-use items, such as emery boards, cosmetic sponges, and orangewood sticks, must be disposed of immediately after use in a closed waste container;
- (14) Multi-use items must be thoroughly washed in soap and hot water, rinsed with clean warm water, and disinfected according to disinfectant manufacturer instructions. Contact points of all non-immersable equipment and metal implements must be disinfected by wiping or spraying with a commission-approved disinfectant. After being disinfected the multi-use items must be stored in clean,

closed labeled containers between use. Any multi-use article, tool, or product which cannot be cleaned and disinfected is prohibited;

(15) All waste containers must be closed and labeled and must be emptied as needed during business hours and emptied at time of closing.

(16) The floors in a work station and surrounding area must be made free of hair and other debris after the completion of each service;

(17) For esthetics the headrest of chairs and treatment tables must be covered with a clean sheet of examination paper or clean linen for each client;

(18) Only commercially-available products for the exfoliation of skin for the purpose of beautification may be used. Mixing or combining skin removal products is prohibited except as it is required by manufacturer;

(19) Sanding bands used on electric file mandrels are for single use purposes and must be discarded immediately after each service. Metal bits for electric files shall be properly disinfected after each service and stored in a clean, closed labeled container until use; and

(20) All nail files are single use items unless made of metal, glass, or crystal. Ceramic nail files are single use items unless completely sealed by a glaze;

Source: SL 1975, ch 16, § 1; 6 SDR 10, effective August 12, 1979; 9 SDR 96, effective January 30, 1983; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 23 SDR 25, effective August 26, 1996; 24 SDR 2, effective July 23, 1997; 29 SDR 176, effective July 1, 2003; 39 SDR 129, effective January 28, 2013.

General Authority: SDCL 36-15-13(4)(5)(6).

Law Implemented: SDCL 36-15-13(4)(5)(6).

~~**20:42:05:04. Clothing requirements.** Each licensee shall be neat and clean in person and attire, and wear clean clothing and footwear.~~

~~**Source:** SL 1975, ch 16, § 1; 6 SDR 10, effective August 12, 1979; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 14 SDR 64, effective November 2, 1987; 29 SDR 176, effective July 1, 2003.~~

~~**General Authority:** SDCL 36-15-13(6).~~

~~**Law Implemented:** SDCL 36-15-13(6).~~

20:42:05:06. Blood exposure. If a blood exposure should occur involving a client or licensee, the following steps must be followed:

(1) Client is bleeding: Stop service; put gloves on; if appropriate, assist client to sink and rinse the injured area under running water; pat dry with a new, clean, disposable towel; offer or apply antiseptic and adhesive bandage; place all single use items in a bag and place in a trash receptacle; remove all implements from station and properly clean and disinfect; clean and disinfect work area; remove and dispose of gloves; wash hands; return to service;

(2) Licensee is bleeding: Stop service; explain the situation and excuse yourself from the service; if appropriate, rinse injured area under running water; pat dry with a new, clean, disposable towel; apply antiseptic and adhesive bandage; put gloves on; place all single use items in a bag and place in a trash receptacle; remove all implements from the work area and properly clean and disinfect; clean and disinfect work area; remove and dispose of gloves; wash hands; if necessary cover injured area with a protective finger cot or new glove; return to service;

Source:

General Authority: SDCL 36-15-13(5)

Law Implemented: SDCL 36-15-13(5).

20:42:05:07. Microdermabrasion machines. When using any microdermabrasion machine:

(1) Any crystals used in a microdermabrasion machine may not be recycled or reused. Crystals or approved corundum are for single use purposes only;

(2) Tips must be cleaned and disinfected after each client and disposed of if any wear is shown; and

(3) The exterior must be kept clean of crystal dust, and the filters changed as necessary.

Source:

General Authority: SDCL 36-15-13(5)(13)

Law Implemented: SDCL 36-15-13(5).

20:42:05:08. Pedicure foot-spa stations. Pedicure foot-spa stations must be cleaned and disinfected after each client, including the outside surfaces of the pedicure foot-spa.

Additional procedures must be observed as follows:

(1) At the end of each client service:

(a) Drain all water and remove all debris from the spa basin;

(b) Clean the spa basin with soap or detergent and water;

(c) Disinfect the spa basin with a disinfectant; and

(d) Wipe the spa basin with a clean towel until dry;

(2) At the end of each day, clean and disinfect each whirlpool foot spa basin in the following manner:

(a) Remove the screen, and clean all debris trapped behind the screen;

(b) Wash the screen with soap or detergent and water;

(c) Immerse the screen completely in disinfectant;

(d) Flush the spa system with low sudsing soap and warm water for 10 minutes or more; and

(e) Rinse and drain the spa;

(3) At least once a week, each whirlpool foot spa must be cleaned and disinfected in the following manner:

(a) Fill the spa basin completely with water and add one teaspoon of 5.25 percent bleach (or recommended whirlpool disinfectant) for each gallon of water. Use according to the manufacturer's instructions;

(b) Flush the spa or bath system with bleach (or recommended whirlpool disinfectant) and water solution for 10 minutes;

(c) Soak for 6 hours; and

(d) Drain and flush the spa with water before use for a client;

Source:

General Authority: SDCL 36-15-13(5)

Law Implemented: SDCL 36-15-13(5).

20:42:05:09. Waxing services. Waxing services: Equipment used for waxing hair removal services must be kept clean and disinfected at all times:

(1) A clean spatula must be used each time any wax is distributed to the client;

(2) Wax pots must be kept covered and the exterior cleaned daily;

(3) If debris is found in the wax pot, or if the wax has been contaminated by contact with skin, unclean applicators, or double-dipping, the wax pot must be emptied, the wax discarded, and the pot must be disinfected;

(4) Each end of a disposable spatula or wooden stick may be dipped in the wax only once and then discarded;

(5) Applicators may be dipped only once into the wax unless the wax is a single-service item and unused wax is discarded after each service;

(6) Any surface touched by a used wax stick must be disinfected immediately after the service;

20:42:05:10. Paraffin wax. Equipment used for paraffin hydrating services must be kept clean and disinfected at all times:

(1) Paraffin warmers must be kept covered, the exterior cleaned daily, and the wax must be debris free;

(2) A clean scoop or ladle must be used any time paraffin wax is distributed to the client;

(3) Paraffin wax removed from a client's skin must not be reused and must be discarded immediately;
and

(4) Human tissue cannot be dipped directly into the paraffin wax warmer at any time.

20:42:05:11. Chemical exfoliation. Chemical exfoliation in salons or booths must comply with the following practices:

(1) Salons or booths, within the scope of their practice, may use chemicals or products, natural or synthetic, which act on or affect the epidermis layer of the skin;

(2) All exfoliant products or formulations shall be professional grade and used in accordance with the manufacturer's recommendations;

(3) Any exfoliation preparation used must not remove tissue below the stratum corneum of the epidermis.

Source:

General Authority: SDCL 36-15-13(5)

Law Implemented: SDCL 36-15-13(5).

CHAPTER 20:42:06
SCHOOL REQUIREMENTS

Section

20:42:06:01	Required basic equipment and educational supplies for all schools.
20:42:06:01.01	Required minimum equipment and educational supplies for a cosmetology course.
20:42:06:01.02	Required minimum equipment and educational supplies for an esthetics course.
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20:42:06:01.04	Branch school exception.
20:42:06:02	Classrooms.
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20:42:06:05	Approved textbooks for basic course of study.
20:42:06:06	Requirements for classroom education.

20:42:06:07	Student services to be checked.
20:42:06:08	Identification of instructors.
20:42:06:08.01	Demonstrators in a classroom.
20:42:06:09	Required minimum curriculum for cosmetology course.
20:42:06:09.01	Required minimum curriculum for nail course.
20:42:06:09.02	Required minimum curriculum for esthetics course.
20:42:06:09.03	Branch school curriculum requirement for a partial program.
20:42:06:10	Minimum number of instructors.
20:42:06:11	Restrictions on instructor's services.
20:42:06:12	Required records and reports.
20:42:06:13	Repealed.
20:42:06:14	School records.
20:42:06:15	Repealed.
20:42:06:16	Transfer of student from out-of-state.
20:42:06:17	Field trips.
20:42:06:18	General safety requirements for all schools <u>Repealed.</u>
20:42:06:19	School minimum requirements for premises and facilities.
20:42:06:20	School equipment requirements.
20:42:06:21	Electric nail file or drill requirements.
20:42:06:21.01	Microdermabrasion machine requirements.
20:42:06:22	Prohibited equipment and procedures.
20:42:06:23	Repealed.
20:42:06:24	Required school infection control and safety procedures.
20:42:06:25	Care of capes and towels in schools.
20:42:06:26	Procedure for handling wigs and hairpieces in cosmetology schools.
20:42:06:27	Storage for harmful supplies.

20:42:06:28	Prohibited products.
20:42:06:29	Display of licenses.
20:42:06:30	Display of student prices.
20:42:06:31	Display of health, safety, and infection control rules.
20:42:06:32	Display of blood exposure rules.
20:42:06:33	Display of unregulated services sign in school clinics.
<u>20:42:06:34</u>	<u>School responsible for students.</u>
<u>20:42:06:35</u>	<u>Terminated students who restart education</u>

20:42:06:01. Required basic equipment and educational supplies for all schools. Each school must have the following ~~basic~~ minimum equipment and educational supplies on hand and in good working condition at all times:

- (1) One current South Dakota Cosmetology Commission law and rule book for each enrolled student;
- (2) One textbook, as applicable, for each enrolled student;
- (3) ~~Sufficient lockers~~ One closed storage area for required equipment for all each enrolled students student;
- (4) One time clock or time-keeping software for student hours;
- (5) One or more covered labeled containers for all clean and disinfected tools and implements;
- (6) One or more covered labeled containers for all soiled tools and implements;
- (5) (7) One large wet disinfectant container for use by all students or separate wet disinfectant containers for each student to disinfect implements.; ~~and~~
- (6) (8) A covered labeled container for soiled towels and linens; and
- (9) A covered labeled waste receptacle for every five students.

Source: SL 1975, ch 16, § 1; 6 SDR 10, effective August 12, 1979; 9 SDR 96, effective January 30, 1983; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 14 SDR 64, effective November 2, 1987; 23 SDR

25, effective August 26, 1996; 24 SDR 2, effective July 23, 1997; 29 SDR 176, effective July 1, 2003; 39 SDR 129, effective January 28, 2013.

General Authority: SDCL 36-15-13(4)(10).

Law Implemented: SDCL 36-15-13(4)(10), 36-15-46.

20:42:06:01.01. Required minimum equipment and educational supplies for a cosmetology course. In addition to the equipment required in § 20:42:06:01, each school that offers a cosmetology course must have the following:

- (1) Work station for each student working on clients that includes:
 - (a) A mirror;
 - (b) A table top or counter;
 - (c) A client chair; ~~and~~
 - (d) A clean, covered labeled container to store clean tools and implements; and
 - (e) A clean, covered labeled container to store used or soiled tools and implements;
- ~~(2) Chemical wave rods;~~
- ~~— (3) Sufficient combs and brushes per student working on clients;~~
- ~~— (4) Simulated human heads with real or synthetic hair;~~
- ~~— (5) One shampoo bowl per five working students;~~
- ~~— (6) One stationary hooded hair dryer per five working students;~~
- ~~— (7) One marcel iron for each student working on clients;~~
- ~~— (8) One hand held hair dryer for each student working on clients;~~
- ~~— (9) Required equipment in § 20:42:06:01.02 for esthetics instruction;~~
- ~~— (10) Required equipment in § 20:42:06:01.03 for nail technology instruction; and~~
- ~~— (11) For hair removal instruction: sufficient equipment and supplies for waxing and chemical and physical depilatories.~~

(2) Cosmetology student kit requirements:

- (a) Simulated human head with real or synthetic hair;
- (b) One marcel iron;
- (c) One hand-held hair dryer;

(3) General equipment requirements:

- (a) Chemical wave rods;
- (b) One properly functioning shampoo bowl per five working students;
- (c) One hooded hair dryer per fifteen working students;
- (d) Required equipment in § 20:42:06:01.02 for esthetics instruction;
- (e) Required equipment in § 20:42:06:01.03 for nail technology instruction; and
- (f) Combs and brushes so that clean, disinfected combs and brushes are used on each client.

Source: 29 SDR 176, effective July 1, 2003; 39 SDR 129, effective January 28, 2013.

General Authority: SDCL 36-15-13(4)(10).

Law Implemented: SDCL 36-15-13(4)(10), 36-15-46.

20:42:06:01.02. Required minimum equipment and educational supplies for an esthetics course. In addition to the basic school equipment required in § 20:42:06:01, each school that offers an esthetics course must have the following:

(1) ~~Work station for each student working on clients that includes:~~ Each work station where esthetics services are performed must include:

- (a) A ~~facial~~ client chair or massage table;
- (b) A table top or counter; and
- (c) A mirror;
- (d) A clean covered ~~waste receptacle~~ labeled container to store soiled or used tools and implements; and
- (e) A clean covered labeled container to store clean tools and implements;

- (2) At least one steamer; ~~vaporizer, or pulverizer machine;~~
- ~~(3) At least one galvanic current machine;~~
- ~~(4) At least one suction or vacuum machine;~~
- ~~(5) At least one high frequency Tesla or violet ray unit and a facial electrode;~~
- (6) ~~(3)~~ At least one magnifying lamp or dermascope;
- ~~(7) At least one therapeutic lamp;~~
- (8) ~~(4)~~ Simulated human head forms;
- ~~(9) Make up station with lighted mirror for each student working on clients; and~~
- (10) ~~(5)~~ For hair removal instruction: ~~sufficient~~ a wax pot ~~equipment~~ and supplies for waxing and chemical and physical depilatories; and
- (6) At least one working microdermabrasion machine that meets the requirements of 20:42:04:04.02 for each school offering microdermabrasion instruction.

Source: 29 SDR 176, effective July 1, 2003; 39 SDR 129, effective January 28, 2013.

General Authority: SDCL 36-15-13(4)(10).

Law Implemented: SDCL 36-15-13(4)(10), 36-15-46.

20:42:06:01.03. Required minimum equipment and educational supplies for a nail technology course. In addition to the equipment required in § 20:42:06:01, each school that offers a nail technology course must have the following minimum equipment:

- (1) Work station for each student working on clients that includes:
 - (a) A nail technology table;
 - (b) A client chair;
 - (c) A chair for the student;
 - (d) An adjustable light for the table; and
 - (e) ~~A covered waste container; and~~
 - (f) A clean, covered labeled container to store disinfected tools and implements; and

(f) A clean, covered labeled container to store used or soiled tools and implements;

(2) Simulated human hands ~~with stands;~~

(3) Pedicure foot-spas ~~station for each student working on a client~~ that includes a foot bath large enough to completely immerse both feet of the client;

(4) At least one electric file or drill with appropriate attachments. that meets the requirements of 20:42:04:04.01.

Source: 29 SDR 176, effective July 1, 2003; 31 SDR 62, effective November 4, 2004; 32 SDR 32, effective August 29, 2005; 39 SDR 129, effective January 28, 2013.

General Authority: SDCL 36-15-13(4)(10).

Law Implemented: SDCL 36-15-13(4)(10), 36-15-46.

20:42:06:02. Classrooms. In each school, classrooms for the teaching of theory and for classroom demonstrations must be separate from areas used by the general public. Each classroom must contain:

(1) An instruction board or chalkboard;

(2) ~~Sufficient tables~~ Tables or desks and chairs to meet the instructional needs of scheduled students;
and,

~~(3) Sufficient reference materials relating to the subjects taught;~~

~~(4) (3) Lesson plans relating to the subjects taught; and,~~

~~(5) Audiovisual equipment and aids relating to the subject taught.~~

Source: SL 1975, ch 16, § 1; 6 SDR 10, effective August 12, 1979; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 14 SDR 64, effective November 2, 1987; 29 SDR 176, effective July 1, 2003.

General Authority: SDCL 36-15-13(4)(10)

Law Implemented: SDCL 36-15-46.

20:42:06:05. Approved textbooks for basic course of study. The school shall use one or more of the following textbooks for a basic course of study: Textbooks to be used to teach students must be listed in the school application and renewal application each year for approval by the commission.

—— ~~(1) Milady Standard Cosmetology, 13th Edition, Milady Publishing Corporation, Copyright 2016;~~

—— ~~(2) Milady Standard Nail Technology, 7th Edition, Milady Publishing Corporation, Copyright 2015;~~

—— ~~(3) Salon Fundamentals Cosmetology: 3rd Edition, 5th Printing January 2017, copyright 2000, 2010, 2014 Pivot Point International;~~

—— ~~(4) Milady Standard Esthetics, 11th Edition, Milady Publishing Corporation, Copyright 2013;~~

—— ~~(5) Salon Fundamentals Esthetics: 2nd Edition, 16th Printing, August 2016, copyright 2004, 2007 Pivot Point International;~~

—— ~~(6) Salon Fundamentals Nails: 2nd Edition, 15th Printing, August 2016, copyright 2007 Pivot Point International;~~

—— ~~(7) Cosmetology Fundamentals, A Designer's Approach: 3rd Edition, 7th Printing, June 2016, copyright 2009, 2010, 2013 Pivot Point International; or~~

—— ~~(8) Pivot Point Fundamentals, 1st Edition, 1st Printing 2016, copyright 2016 Pivot Point International.~~

Other materials and books may be used to supplement these textbooks.

Source: SL 1975, ch 16, § 1; 6 SDR 10, effective August 12, 1979; 9 SDR 96, effective January 30, 1983; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 14 SDR 64, effective November 2, 1987; 24 SDR 2, effective July 23, 1997; 26 SDR 18, effective August 15, 1999; 28 SDR 24, effective August 28, 2001; 29 SDR 176, effective July 1, 2003; 31 SDR 62, effective November 4, 2004; 33 SDR 226, effective July 1, 2007; 39 SDR 129, effective January 28, 2013; 43 SDR 176, effective July 3, 2017.

General Authority: SDCL 36-15-13(10).

Law Implemented: SDCL 36-15-46.

20:42:06:10. Minimum number of instructors. ~~A school shall have on-site one instructor for each 15 students.~~ All students must be under direct supervision of an instructor while earning clock hours. Each instructor may supervise a maximum of 15 students at any one time, except one instructor may teach any number of students in the theory classroom.

Source: SL 1975, ch 16, § 1; 6 SDR 10, effective August 12, 1979; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 29 SDR 176, effective July 1, 2003; 39 SDR 129, effective January 28, 2013; 45 SDR 31, effective September 10, 2018.

General Authority: SDCL 36-15-13(4).

Law Implemented: SDCL 36-15-13(4).

20:42:06:16. Transfer of student from out-of-state. A student transferring to a South Dakota school from a school outside South Dakota may transfer credits or hours earned in the foreign state to any South Dakota school. The transferred hours shall be credited toward the ~~2,400~~ 1500 hours for cosmetology, 600 hours for esthetics, or 400 hours for nail technology, as applicable, required to be completed in South Dakota if the course of study in the foreign school is substantially equivalent to the course of study in South Dakota schools. The school shall evaluate and determine the subjects, hours, and practice services of the transfer student's prior course of education which conforms to the curriculum requirements in chapter 20:42:06 and shall give the students credit for those subjects, hours, and practice services.

Source: SL 1975, ch 16, § 1; 6 SDR 10, effective August 12, 1979; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 24 SDR 2, effective July 23, 1997; 29 SDR 176, effective July 1, 2003; 33 SDR 226, effective July 1, 2007; 39 SDR 129, effective January 28, 2013.

General Authority: SDCL 36-15-13(9), 36-15-34.

Law Implemented: SDCL 36-15-34.

~~**20:42:06:18. General safety requirements for all schools.** All licensed schools must meet the following safety requirements:~~

~~— (1) Provide a safe and clean place for any of the practices of cosmetology and equip it to give service in a manner that will protect the health and safety of employees, students, and clients; and~~

~~— (2) Each item of equipment used on a client shall be clean and disinfected at the time of use. After an item is soiled or used, it shall be kept in a separate, closed container to prevent its reuse until cleaned.~~

~~— **Source:** 29 SDR 176, effective July 1, 2003; 39 SDR 129, effective January 28, 2013.~~

~~— **General Authority:** SDCL 36-15-13(4)(5).~~

~~— **Law Implemented:** SDCL 36-15-13(5).~~

20:42:06:24. Required school infection control and safety procedures. All licensed schools must comply with the infection control and safety procedures of § 20:42:04:05.01.

Source: 24 SDR 2, effective July 23, 1997; transferred from § 20:42:04:13.01, 29 SDR 176, effective July 1, 2003; 39 SDR 129, effective January 28, 2013.

General Authority: SDCL 36-15-13(4)(5).

Law Implemented: SDCL 36-15-13(4).

20:42:06:29. Display of licenses. The school license shall be prominently displayed in the school during all working hours. ~~The cosmetologist, nail technician, or esthetician, as applicable, and the instructor license and cosmetologist, nail technician, or esthetician license, as applicable, of each person instructing students or performing licensed services in the school shall be prominently displayed.~~

Student licenses must be displayed at his or her primary work station.

Source: SL 1975, ch 16, § 1; 6 SDR 10, effective August 12, 1979; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:42:04:17, 29 SDR 176, effective July 1, 2003; 33 SDR 266, effective July 1, 2007.

General Authority: SDCL 36-15-13(4).

Law Implemented: SDCL 36-15-13(4).

20:42:06:34. School responsible for students. A school is responsible for conduct of students.

Source:

General Authority: SDCL 36-15-13(5).

Law Implemented: SDCL 36-15-13(5).

20:42:06:35. Terminated students who restart education. A former student who wishes to reapply to complete an education or a former student who completed an education but did not obtain a license will receive the following credit from the last date of previous enrollment as follows:

(1) 100 percent credit of hours if less than three years have passed;

(2) 50 percent credit of hours if more than three but less than seven years have passed;

No credit for hours will be allowed if more than seven years have passed from the last date of education.

Source:

General Authority: SDCL 36-15-11(6), 36-15-13(1)(16).

Law Implemented: SDCL 36-15-13(13), 36-15-17, 36-15-17.1.

CHAPTER 20:42:09

INSPECTIONS

Section

20:42:09:01 Salon or booth inspections

20:42:09:02 School inspections

20:42:09:03 Student inspections

20:42:09:04 Failed inspections

20:42:09:05 Re-inspections

20:42:09:01. Salon or booth inspections. Salon or booths shall be inspected approximately once per year and shall be unannounced. Re-inspections and inspections pursuant to consent agreements do not count towards the annual inspection amount.

Source:

General Authority: SDCL 36-15-13(15)

Law Implemented: SDCL 36-15-11(1), 36-15-13(15).

20:42:09:02. School Inspections. School inspections shall occur approximately two times per calendar year and shall be unannounced.

Source:

General Authority: SDCL 36-15-13(15)

Law Implemented: SDCL 36-15-11(1), 36-15-13(15).

20:42:09:03. Student Inspections. Student inspections will take place during the inspection of the student's school. If four or more students receive a "no" on the same task line, the school will receive a "no" on its inspection report for that line item.

Source:

General Authority: SDCL 36-15-13(15)

Law Implemented: SDCL 36-15-11(1), 36-15-13(15)

20:42:09:04. Failed inspections. Items bolded on the inspection report constitute an automatic failure if marked no. Failing two consecutive inspections is grounds for disciplinary action.

A school receiving four or more "no" marks on the school inspection report is a failed inspection by the school. Multiple violations of a law or rule are counted as separate violations.

Any student receiving four or more “no” marks on the student inspection report is a failed inspection. Failed inspection by a student will require the inspector and/or school representative to review the inspection report with the student.

A salon or booth receiving four or more “no” marks on the inspection report is a failed inspection.

Source:

General Authority: SDCL 36-15-13(15)

Law Implemented: SDCL 36-15-11(1), 36-15-13(15).

Cross Reference: ARSD chapter 20:42:10.

20:42:09:05. Re-inspections. A school, salon, or booth that receives a failed rating on its inspection shall be re-inspected within three weeks of the failed inspection. A re-inspection does not count as a consecutive inspection as referenced in § 20:42:09:05.

Failing a re-inspection is grounds for disciplinary action.

Source:

General Authority: SDCL 36-15-13(15)

Law Implemented: SDCL 36-15-13(15)

Cross References: Fees § 20:42:03:03(14), Disciplinary Proceedings chapter 20:42:10.

CHAPTER 20:42:10

DISCIPLINARY PROCEEDINGS

Section

20:42:10:01 Complaints authorized -- Procedure following filing -- Electronic filing.

20:42:10:02 Commission staff to investigate complaints.

20:42:10:03 Dismissal of complaint.

20:42:10:04 Informal disposition.

20:42:10:05 Assurance of voluntary compliance or consent order.

20:42:10:06 Formal proceedings.

20:42:10:07 Answer.

20:42:10:08 Disqualification.

20:42:10:09 Final action by commission.

20:42:10:10. Petition for declaratory ruling.

20:42:10:11. Commission action on petition.

20:42:10:12. Adverse ruling.

20:42:10:01. Complaints authorized -- Procedure following filing -- Electronic filing. Any person, including commission members and staff, may file with the executive director of the commission a written complaint claiming that a licensee has engaged or is engaging in conduct constituting grounds for disciplinary action. The complaint shall be verified on oath, stating the name and address of the licensee complained against and fully detailing the conduct against which the complaint is made. Upon receipt of the complaint, the executive director or commission staff assigned to the complaint may request more information from the person filing the complaint. If sufficient information is received to allege grounds for disciplinary action the executive director shall serve a copy of the complaint by mail on the licensee complained against and on any other affected party. The licensee complained against shall have 20 days to answer the complaint after its service. The licensee shall serve an answer to the complaint on the executive director.

The executive director may reject the complaint if it is not in proper form or if it fails to allege grounds for disciplinary action.

The person serving an answer under this section shall serve an original on the executive director. However, the executive director may accept a complaint or answer in an electronic format if it is readily accessible by the commission and in a format that can be downloaded, printed, or otherwise maintained as

a record for future reference. Any person filing a complaint or an answer electronically shall submit one copy of the original.

Source:

General Authority: SDCL 36-15-13(16).

Law Implemented: SDCL 1-26-29, 36-15-55.2, 36-15-58.

20:42:10:02. Commission staff to investigate complaints. The commission staff is responsible for reviewing and investigating disciplinary cases before the commission. At any time after the receipt of a complaint the executive director may appoint a commission member to assist staff in reviewing and investigating complaints.

Source:

General Authority: 36-15-13(16).

Law Implemented: SDCL 36-15-11(4), 36-15-13 (16), 36-15-55.2.

20:42:10:03. Dismissal of complaint. After receipt of the answer to the complaint specified in § 20:42:10:01 or after the time has expired for the licensee complained against to answer, the executive director shall submit the complaint and any answer to the commission staff. The commission staff shall examine the complaint and answer to determine whether disciplinary action is necessary.

If the commission staff determines that the complaint does not charge conduct constituting grounds for disciplinary action, the commission staff shall inform the commission of the intent to dismiss the complaint and notify the complainant in writing, stating the reasons for dismissal.

If the commission disagrees with commission staff's intent to dismiss the complaint, the commission shall assign one of its members to assist in the resolution of the complaint.

Source:

General Authority: SDCL 36-15-13(16).

Law Implemented: SDCL 1-26-29, 36-15-55.2, 36-15-58.

20:42:10:04. Informal disposition. If the commission staff determines the complaint constitutes grounds for disciplinary action, the commission staff may, at their discretion, negotiate an assurance of voluntary compliance or a consent agreement in an effort to resolve the matter satisfactorily without a formal hearing.

Any informal disposition negotiated by commission staff is subject to commission approval.

Source:

General Authority: SDCL 36-15-13(16).

Law Implemented: SDCL 1-26-20, 1-26-29.

20:42:10:05 Assurance of voluntary compliance or consent agreement. In the enforcement of this chapter, the commission may accept an assurance of voluntary compliance or a consent agreement regarding any act or practice alleged to violate this article or SDCL chapter 36-15 from a person who has engaged in, is engaging in, or is about to engage in such an act or practice.

The assurance or consent agreement must be in writing and is subject to the approval of the commission.

Proof of failure to comply with the assurance of voluntary compliance or consent agreement is prima facie evidence of a violation of this chapter.

Source:

General Authority: SDCL 36-15-13(16).

Law Implemented: SDCL 1-26-20, 1-26-24, 36-15-55.2.

20:42:10:06. Formal proceedings. If the commission staff decides to conduct a formal hearing after a complaint has been filed, the commission staff shall mail a formal complaint issued in the commission's

name and a notice of hearing to the licensee complained against, the person making the complaint, and any other affected party.

A formal complaint shall contain any information required by SDCL 1-26-17.

Source:

General Authority: SDCL 36-15-13(16).

Law Implemented: SDCL 1-26-29, 36-15-58.

20:42:10:07. Answer. The licensee shall file an answer admitting, denying, qualifying, or explaining any fact contained in the formal complaint. The answer shall be filed within 20 days following receipt of the formal complaint. The person serving an answer under this section shall serve an original on the executive director.

Source:

General Authority: SDCL 36-15-13(16).

Law Implemented: SDCL 1-26-17, 36-15-58.

20:42:10:08. Disqualification. If the complaint referred to in § 20:42:10:01 was filed or investigated by a commission member, that commission member is disqualified from sitting at the hearing as a commission member and from participating in the decision made by the commission. The commission member may appear as a witness and give advice as to procedure.

Source:

General Authority: SDCL 36-15-13(16).

Law Implemented: SDCL 1-26-26, 36-15-55.2.

20:42:10:09. Final action by commission. After hearing the evidence and arriving at a decision that grounds for disciplinary action has been proved, the commission may assess its actual expenses for the proceeding to the licensee, revoke the license, suspend the license or take a combination of these actions.

If grounds for disciplinary action has not been proved, the commission shall dismiss the complaint or the parts of the complaint not proved. This section does not prevent the commission from compromising a formal hearing and the commission may also allow an assurance of voluntary compliance as prescribed by § 20:42:10:05.

Source:

General Authority: SDCL 36-15-55.2

Law Implemented: SDCL 1-26-25, 1-26-29, 36-15-55.2.

20:42:10:10. Petition for declaratory ruling. A person seeking a ruling as to the applicability to that person of a statutory provision or rule or order of the board may file with the board a Petition for Declaratory Ruling in substantially the following form:

Pursuant to the provisions of SDCL 1-26-15, I, (name of petitioner), of (address of petitioner), am (title or capacity of petitioner), and do hereby petition the Cosmetology Commission for its declaratory ruling in regard to the following:

(1) The statute or rule or order in question is: (here identify and quote the pertinent statute, rule, or order.)

(2) The facts and circumstances that give rise to the issue to be answered by the board's declaratory ruling:

(3) The precise issue to be answered by the board's declaratory ruling:

Dated at (city and state), this _____ day of _____, _____.

(Signature of Petitioner)

Source:

General Authority: SDCL 1-26-15.

Law Implemented: SDCL 1-26-15.

20:42:10:11. Commission action on petition. Upon receipt of the petition, the board may request from the petitioner any information that may be required for the issuance of its ruling. Within 30 days following the receipt of the petition, or within 30 days following receipt of requested information, the commission shall issue its declaratory ruling and serve a copy of it by mail upon the petitioner.

Source:

General Authority: SDCL 1-26-15.

Law Implemented: SDCL 1-26-15.

20:42:10:12. Adverse ruling. Any person seeking a declaratory ruling hereunder, is deemed to be aggrieved, in an issue that constitutes a contested case as defined in SDCL 1-26-1(2) made within 30 days of the commission's declaratory ruling requests the commission for a formal hearing, which hearing shall be held at the earliest convenience of the commission following the receipt of the request.

Source:

General Authority: SDCL 1-26-15.

Law Implemented: SDCL 1-26-15, 1-26-16.