

AZ Genetic Counselor
Licensure
Sunrise Application

October 28, 2019

The Honorable Representative Russell Bowers
Speaker of the House
Arizona House of Representatives
1700 West Washington
Phoenix, Arizona 85007

RE: Arizona Licensure of Genetic Counselors

Dear Speaker Bowers,

We request that you consider requiring Arizona Licensure of Genetic Counselors. My name is Shannon Kieran and I am a member of the National Society of Genetic Counselors, as well as a committee member of a group of Certified Genetic Counselors (CGC) working to obtain Arizona Licensure for Genetic Counselors in Arizona.

In accordance with A.R.S. § 32 – 3105 for health professionals, I am delivering to you a notebook containing the required Sunrise Application for Arizona Licensure of Genetic Counselors (See Tab 2). I am also submitting the following background information:

- Tab 1 – Map of States Issuing Licenses for Genetic Counselors and States in the Rulemaking Process
- Tab 1 – State of Arizona Genetic Counselor Licensure Fact Sheet
- Tab 1 – Draft Genetic Counselor Licensure Template
- Tab 1 – Contact information for our Arizona Genetic Counselors Licensure Committee members and for the National Society of Genetic Counselors Director for Policy and Government Relations
- Tab 3 – Current Bi-Partisan Federal Efforts for Medicare Coverage for Genetic Counselors, including a synopsis of Federal legislation and a copy of HR 3235
- Tab 4 – Organizational Support Letter Signatories for HR 3235. (N.B. We will submit specific Letters of Support for Arizona Genetic Counselor Licensure from appropriate Arizona Organizations and their National Signatories for HR 3235. These support letters will be added to Tab 1 as soon as they are compiled.)
- Tab 5 – Copies of Laws from several States Issuing Genetic Counselor Licenses
 - Utah (including Administrative Code)
 - Iowa, Idaho, New Mexico and Ohio (Other states available upon request)

I ask that you assign this Sunrise Application for Arizona Licensure of Genetic Counselors to the Health and Human Services Committees of the Senate and House, or their respective successor committees.

We also request that the Senate and House Health and Human Services Committees hold timely hearings on our Sunrise Application for Arizona Licensure of Genetic Counselors and, hopefully, submit a favorable report of their recommendations to the Governor, President of the Senate, Speaker of the House and the Arizona Department of Health and Human Services.

We would further request that the Chairs of the Senate and House Health and Human Services Committees consider sponsoring the appropriate legislation to require Arizona Licensure of Genetic Counselors. We pledge our assistance to the development of such legislation.

Should the Senate and House decide not to hold informational hearings, our committee wishes to request informational hearings to allow public comment and will seek to find sponsors for legislation to require Arizona Licensure of Genetic Counselors in the upcoming 2nd Regular Session of the 54th Legislature.

Thank you for your attention and consideration of our Sunrise Application for Arizona Licensure of Genetic Counselors. Should additional information prove helpful, please feel free to contact me.

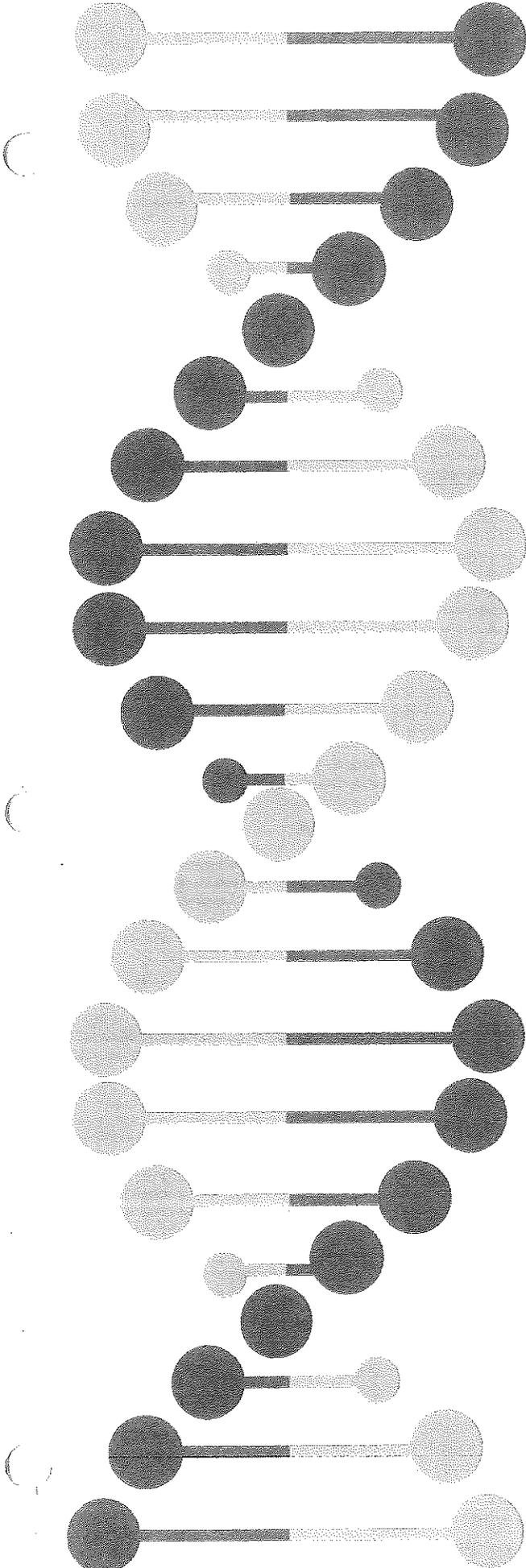
In the coming days, we will contact your office to set up a short meeting with you or your assigned staff or legislative analyst to discuss our application and answer any questions you may have.

We truly appreciate all the work that you do on behalf of Arizona citizens.

Sincerely,

A handwritten signature in black ink, appearing to read 'SMK', written in a cursive style.

Shannon Kieran, MS, CGC, MBA
Arizona Genetic Counselors Licensure Committee



Arizona Genetic Counselor Licensure

Sunrise Application 2020

submitted for
consideration by the

54th Legislature
2nd Regular
Session

October 28th, 2019

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SPEAKER'S OFFICE

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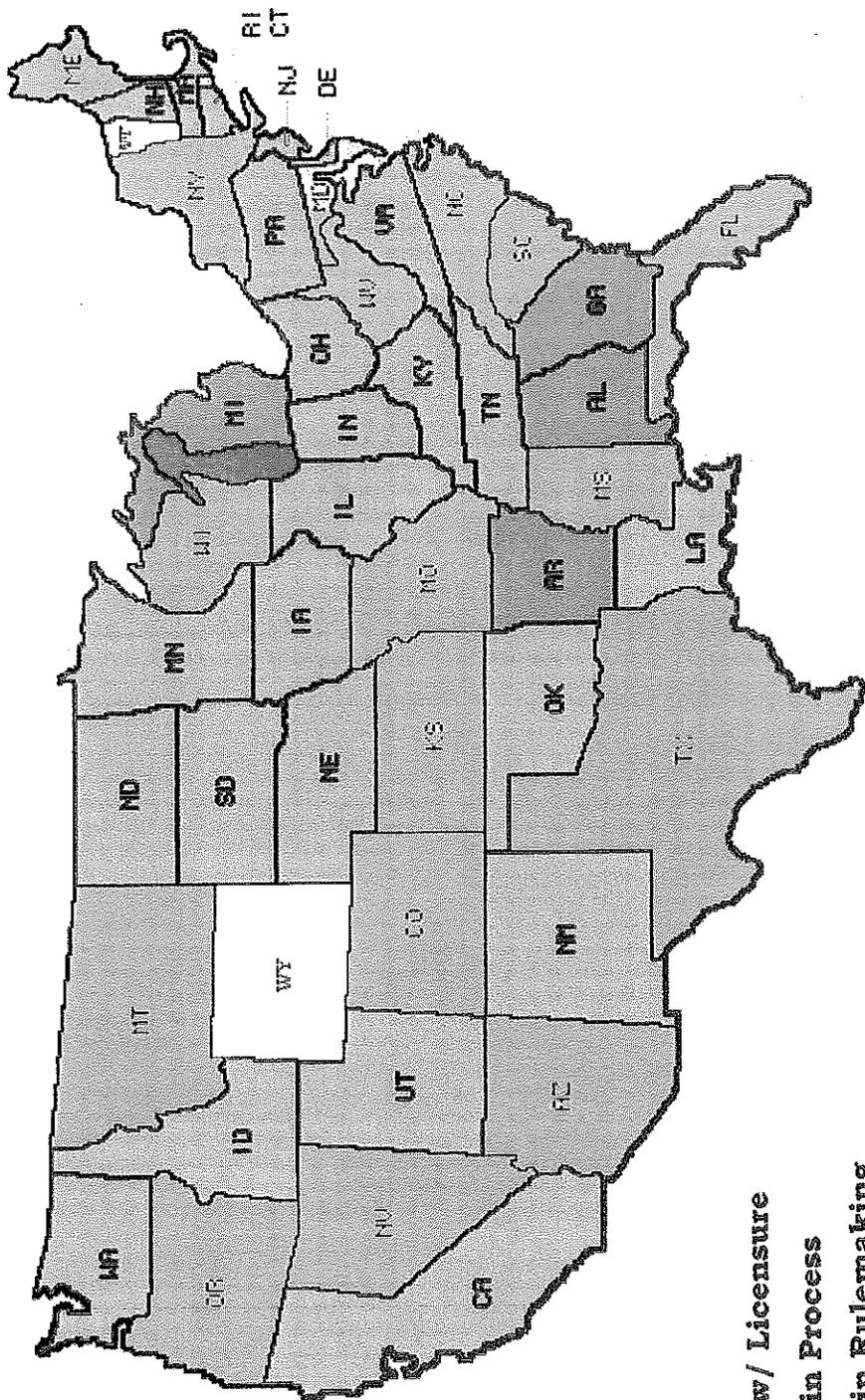
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Supporters

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State Laws
&
Rulemaking

States Issuing Licenses for Genetic Counselors



- States w/ Licensure
- States in Process
- States in Rulemaking

Arizona Fact Sheet

State of Arizona Genetic Counselor Licensure Fact Sheet

Who are genetic counselors?

Genetic counselors are health care professionals that help families and/or individuals that may have a particular genetic condition or health concern. Genetic counselors work in a variety of settings such as hospital clinics, diagnostic and research laboratories, advocacy organizations, government and industry.

What is genetic counseling?

Genetic counseling is defined by the National Society of Genetic Counselors (NSGC) as an interactive process of helping people understand and adapt to the medical, psychological and familial implications of genetic contributions to disease.¹ This process includes:

- Evaluating the patient's needs and expectations
- Interpreting family and medical histories to assess the chance of disease
- Educating about inheritance, testing, management, prevention, resources, and research
- Counseling to promote informed choices and healthy adaptation to a specific risk or condition

As defined by the NSGC Scope of Practice, the responsibilities of a genetic counselor are:

- To provide expertise in clinical genetics
- To counsel and communicate with patients on matters of clinical genetics
- To provide genetic counseling services in accordance with professional ethics and values

What training do genetic counselors have?

Genetic counselors have specialized graduate training in medical genetics and counseling through programs that are accredited by the Accreditation Council for Genetic Counseling (ACGC). The terminal degree for genetic counseling is a Master's degree. The University of Arizona recently opened a Genetic Counseling Graduate Program that is accredited with New Program Status by the ACGC.

Genetic counselors are certified by the American Board of Genetic Counseling (ABGC). The CGC® credential indicates a genetic counselor is ABGC certified.

How do genetic counselors help patients and families?

- Studies have demonstrated genetic counseling leads to increased patient satisfaction; adherence to medical management recommendations, cancer screening, preventive surgery, and cardiovascular screening; and reduction in psychological distress.²⁻⁵
- Patients report fewer barriers to obtaining preventive screening such as mammogram following genetic counseling.⁵

How do genetic counselors help health care providers?

- Working as part of the health care team to provide education, support, and patient management
- Providing clinical care and coordination, research study coordination, and laboratory support
- Preventing inappropriate or unnecessary ordering of costly genetic tests
- Preventing misinformation regarding genetic risk of disease or lack thereof
- Preventing misunderstandings about the implications of genetic test results which may otherwise result in:
 - Unnecessary medical treatment and/or procedures
 - Failure to provide potentially lifesaving treatment, screening, and prevention strategies
 - Irreversible decisions regarding childbearing and pregnancy

Workforce Growth and Demand

- The Bureau of Labor Statistics projects 29% growth in the number of genetic counseling jobs nationwide from 2016 – 2026, compared to an average of 7% growth for other professions.⁶
- The University of Arizona recently opened an accredited Master's degree program in genetic counseling which is expected to fuel growth of the profession in the state.
- There are currently 31 board-certified or board-eligible genetic counselors in Arizona working in hospital clinics, industry and laboratories.

Draft
Genetic Counselor
Licensure Template

Definitions

"**ABGC**" means the American Board of Genetic Counseling, its successor or equivalent.

"**ABMG**" means the American Board of Medical Genetics and Genomics, its successor or equivalent.

"**ACGC**" means the Accreditation Council for Genetic Counseling, its successor or equivalent.

"**Active Candidate Status**" (ACS) means a person who has met the requirements established by the ABGC to take the ABGC certification examination in general genetics and genetic counseling and has been granted this designation by ABGC.

"**Board**" means the Arizona Advisory Board of Genetic Counselors

"**CEU**" means continuing education unit as defined by the NSGC.

"**Department**" means the Arizona Department of Health Services

"**Examination for licensure**" means the ABGC or ABMG certification exam.

"**Genetic counseling**" means the provision of services by an individual who qualifies for a license under this Act.

"**Genetic counselor**" means an individual, who is licensed under this Act, to engage in the competent practice of genetic counseling.

"**Genetic counseling intern**" means a student enrolled in a genetic counseling program accredited by ABGC or ABMG.

"**NSGC**" means the National Society of Genetic Counselors, its successor or equivalent.

"**Provisional/Temporary licensed genetic counselor**" means a genetic counselor with a provisional/temporary license.

"**Qualified Supervisor**" means any person who is a licensed genetic counselor, as defined by this act, or a physician licensed to practice medicine in all its branches, or a nurse practitioner.

"**Reciprocity**" means the issuance of a license by the Board under this Act to a person who has been granted a license under the laws of another state, territory or jurisdiction of the United States, which in the opinion of the Board imposes substantially the same licensing requirements as this Act.

"Supervisee" means a genetic counselor with a temporary license.

"Supervision" means a qualified supervisor who has the overall responsibility to assess the work of the supervisee, including regular meetings and chart review; provided that an annual supervision contract signed by the supervisor and supervisee be on file with both parties. The supervisor's presence is not required during the performance of the service.

1. Genetic Counselor Scope of Practice:

- a. obtain and evaluate individual, family, and medical histories to determine genetic risk for genetic/medical conditions and diseases in a patient, his/her offspring, and other family members;
- b. discuss the features, natural history, means of diagnosis, genetic and environmental factors, and management of risk for genetic/medical conditions and diseases;
- c. identify, order, coordinate and disclose genetic laboratory tests and results, and other diagnostic studies as appropriate for the genetic assessment;
- d. integrate genetic laboratory test results and other diagnostic studies with personal and family medical history to assess and communicate risk factors for genetic/medical conditions and diseases;
- e. explain the clinical implications of genetic laboratory tests and other diagnostic studies and their results;
- f. evaluate the client's or family's responses to the condition or risk of recurrence and provide client-centered counseling and anticipatory guidance;
- g. identify and utilize community resources that provide medical, educational, financial, and psychosocial support and advocacy; and
- h. provide written documentation of medical, genetic, and counseling information for families and health care professionals.

2. Qualifications for Licensure

- a. The Department shall issue a license to applicants that meet the following minimum requirements for Genetic Counseling Licensure. Each applicant under this act shall:
 - i. Submit an application prescribed by the board
 - ii. Pay a fee determined by the board
 - iii. Provide satisfactory evidence of having certification as a:

1. genetic counselor by the ABGC or ABMG

OR

2. PhD geneticist by the ABMG

- b. A provisional or temporary license may be issued to an applicant who meets all of the requirements for licensure except for the certification component and has been granted ACS.

An applicant who satisfies the Board that the applicant is licensed or registered under the laws of another state, territory or jurisdiction of the United States, which in the opinion of the board imposes substantially the same licensing requirements as this act may be licensed pursuant to this act.

- c. An individual may apply to the Board for licensure who does not qualify for licensure under this Act but who has been practicing genetic counseling in Arizona prior to the enactment of these provisions and has worked as a genetic counselor for a minimum of 8 years preceding the enactment of these provisions and who provides documentation of the following:

- i. has a Master's or higher degree in medical genetics, genetic counseling, or related field of genetic study

AND

- ii. submits 3 letters of recommendation from a physician or genetic counselor with at least one from a genetic counselor who qualifies for licensure under this Act or a clinical or medical geneticist certified by ABMG. All individuals submitting letters of recommendation must have worked with the applicant in an employment setting during the last 10 years and can attest to the applicant's competency in providing genetic counseling services.

AND

- iii. can provide documentation of attending NSGC/ABGC approved CEU programs within the last 5 years.

3. Licensure Required

A license is required to engage in the practice of genetic counseling within 6 months of it becoming available.

- a. Except in the case of a provisional or temporary license issued pursuant to section XXX of this act, all licenses shall be issued for a two-year period upon the payment of the licensing fee prescribed by the Department

Secretary), and shall be renewed upon the filing of a renewal application and the payment of the licensing renewal fee.

- b. A genetic counselor whose license is suspended or revoked or whose surrender of license with or without prejudice has been accepted by the Department, shall promptly deliver the license to the Department.

4. Provisional/Temporary Licensed Genetic Counselor

- a. The Department may grant a person who has been granted ACS a temporary/provisional genetic counselor license for that person to practice genetic counseling upon filing an approved application with the and payment of a fee to be determined by the board (Secretary of Health etc.). Such license shall be valid for 1 year from the date of its issue and may be renewed for an additional 1 year if an applicant fails the first sitting of the ABGC or ABMG certification exam. Such provisional license shall expire automatically

upon the earliest of the following:

- i. issuance of a full license;
- ii. 30 days after the applicant fails to pass the next available complete certification examination; or
- iii. the date printed on the temporary license.

- b. An application for extension of the temporary/provisional license shall be signed by a supervisor. A provisional/temporary licensed genetic counselor shall work under the general supervision of a licensed genetic counselor or a licensed physician at all times during which the provisional/temporary licensed genetic counselor performs genetic counseling.

5. Title Protection - Restricted Use of "Genetic Counselor"

- a. No person shall hold themselves out as a genetic counselor unless he/she is licensed in accordance with this Act. No person, who is not so licensed, may use in connection with his/her name or place of business, the title "genetic counselor", "licensed genetic counselor", "gene counselor", "genetic consultant", "genetic associate" or any words, letters, abbreviations or insignia indicating or implying a person holds a genetic counseling license.

6. Certain Exemptions from Licensure

- a. The provisions of this act shall not apply to:
 - i. any person licensed by the State as a physician or to practice in a profession other than that of a genetic counselor when acting

within the scope of the person's profession and doing work of a nature consistent with the person's training. The person cannot not hold himself out to the public as a genetic counselor;

- ii. any person employed as a genetic counselor by the federal government or an agency thereof if such person provides genetic counseling services solely under the direction and control of the organization by which he/she is employed
 - iii. a student or intern enrolled in an ACGC accredited genetic counseling educational program if genetic counseling services performed by the student are an integral part of the student's course of study and are performed under the direct supervision of a licensed genetic counselor assigned to supervise the student and who is on duty and available in the assigned patient care area and if the person is designated by a title "genetic counseling intern;"
- b. Visiting ABGC or ABMG certified genetic counselors from outside the state performing activities and services for a period of less than thirty (30) days each year. Visiting genetic counselors must be licensed if available in their home state.

7. Continuing Education Requirements

Each applicant shall present satisfactory evidence when seeking license renewal that in the period since the license was issued or last renewed the applicant has completed 30 of NSGC or ABMG continuing education units and/or other means as approved by NSGC for re-certification by NSGC or ABMG, prorated for the length of the license.

The Department shall make exceptions for licensees from the continuing education requirements including waiver of all or a portion of these requirements or the granting of an extension of time in which to complete these requirements upon a finding of good cause following receipt of a written request for exception based upon emergency or hardship. Emergency or hardship cases are those: 1) involving long term personal illness or illness involving a close relative or person for whom the licensee has care-giving responsibilities; 2) where the licensee can demonstrate that the required course(s) are not reasonably available; and 3) other demonstrated economic, technological or legal hardships that substantially relate to the ability to perform or complete the continuing education requirements.

8. Genetic Counselor Advisory Board; appointment; qualifications; terms; compensation; immunity; training

- a. There is hereby established under the Department the Advisory Board of Genetic Counselors ("Board"). The Board consisting of the following members, in consultation with the Department, shall promulgate rules that are necessary to regulate genetic counselors:

- i. The advisory board shall consist of the following professional members:
- ii. Four (4) members who are fully licensed genetic counselors.
- iii. Each genetic counselor member of the board shall:
- iv. Except for the initial appointments, be currently licensed and in good standing to engage in the practice of genetic counseling in this state. The initial genetic counselor members of the board must meet the qualifications for licensure under this act.
- v. At the time of appointment have been actively engaged in the practice of genetic counseling for at least one (1) year of the last five (5) years; and
- vi. Be certified by the ABGC.
- vii. One (1) member who is a fully licensed physician
- viii. Initial appointments shall waive licensure requirements and professional members shall initially serve for the following terms: one (1) genetic counselor member shall serve a term of one (1) year; one (1) genetic counselor member shall serve a term of two (2) years; and the physician member shall serve a term of three (3) years. Thereafter, the term of office for each professional member of the board shall be three (3) years.
- ix. All board members shall be residents of this state for not less than one year before appointment.
- x. Board members shall be appointed by the Department.
- xi. In the event of the death, resignation or removal of any board member before the expiration of the term to which the member is appointed, the vacancy shall be filled for the unexpired portion of the term in the same manner as the original appointment
- xii. The board shall meet annually and at such times as deemed necessary and advisable by the chairman, or by a majority of its members, or by the Department. Notice of all meetings shall be given in the manner prescribed by rule. A majority of the board shall constitute a quorum at any meeting or hearing.
- xiii. The Board shall assist the Department in any investigation involving unlawful and unprofessional conduct complaints that involve a licensed genetic counselor.
- xiv. Members of the board shall be reimbursed for expenses.

9. Unlawful and unprofessional conduct.

The Department may deny or refuse to renew a license or, after a hearing pursuant to section XXX of this act, revoke, suspend or cancel the license or place on probation, reprimand, censure or otherwise discipline a licensee upon proof satisfactory to a majority of the board that the person has:

- a. obtained or attempted to obtain a license by fraud or deception;
- b. been convicted of a felony under state or federal law or committed any other offense involving moral turpitude;

- c. been adjudged mentally ill or incompetent by a court of competent jurisdiction;
- d. used illicit drugs or intoxicating liquors to the extent which adversely affects his or her practice;
- e. engaged in unethical or unprofessional conduct including, but not limited to, willful acts, negligence or incompetence in the course of professional practice;
- f. violated any lawful order, rule or regulation rendered or adopted by the board; or
- g. been refused issuance or been disciplined in connection with a license issued by any other state or country.

Contact Information
for
Arizona Genetic
Counselors
Licensure Committee
and

National Society of
Genetic Counselors

Arizona Genetic Counselors Licensure Committee
Contact Information

N.B. Committee members are volunteering their time. While supportive, they have not yet asked for permission to list their employers

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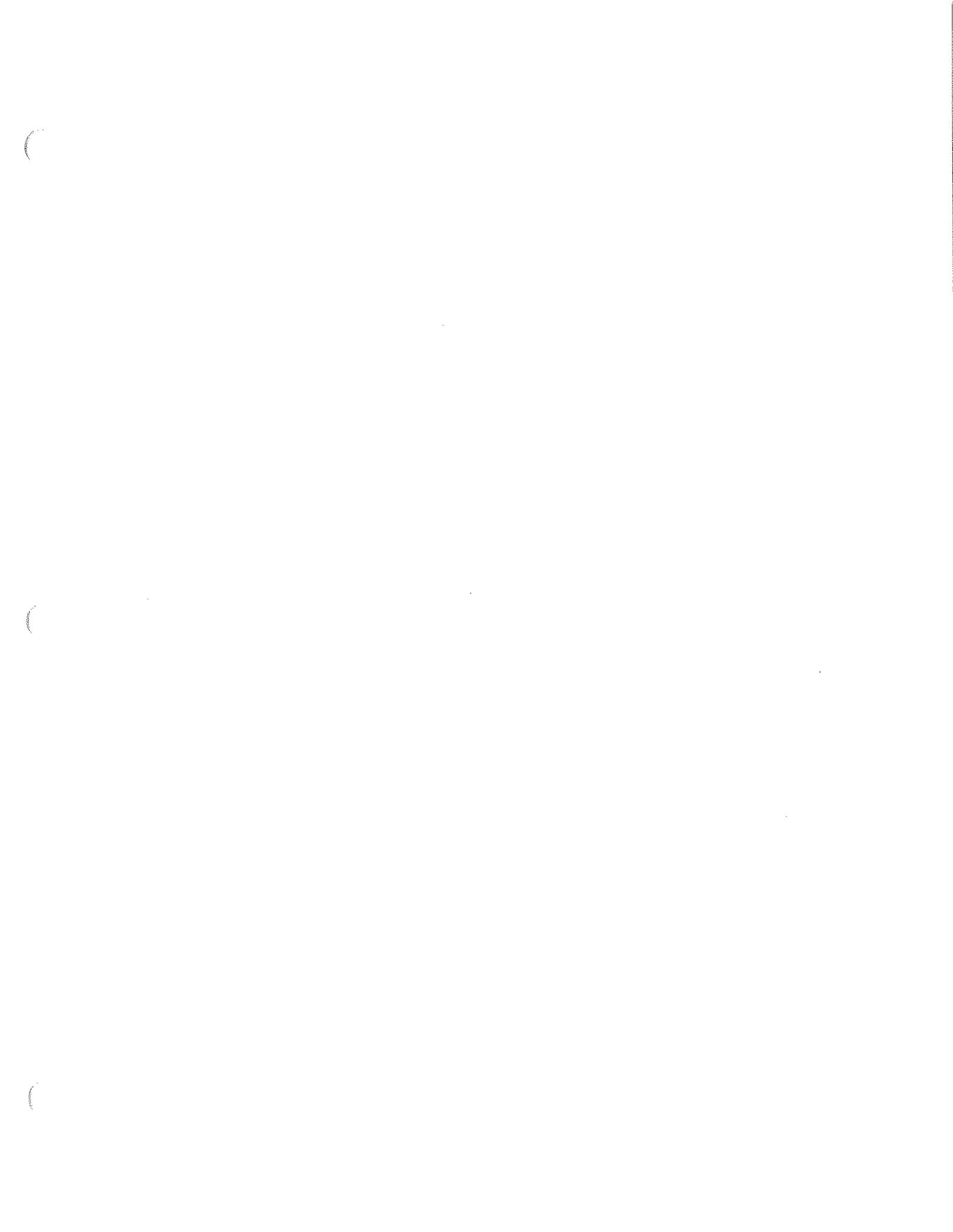
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Sunrise Application for Genetic Counselor Regulation

54th Legislature 2nd Regular Session 2020

Pursuant to Arizona Revised Statutes section 32-3103 this is a Sunrise Application for licensing regulation for Genetic Counselors. Contained in this application is information for the professional role of a genetic counselor addressing the factors set forth in Arizona Revised Statutes section 32-3105.

Background:

Genetic Counselors are healthcare professionals who help people understand and adapt to the medical, psychological and familial implications of genetic contributions to disease. Genetic counselors are instrumental in the healthcare setting in assisting in determining whether a patient (or a family) is at risk of contracting or developing a health condition based on their genetics. This is done through a variety of procedures, including but not limited to genetic testing and reviewing a patient's medical records and family history.

Genetic testing is done by analyzing small samples of blood, saliva or body tissues to determine whether a patient carries genes for certain inherited disorders.

There are several types of specializations within the genetic counseling profession, including but not limited to: Cancer, Cardiovascular, Neurological, Prenatal, General Adult and Pediatric.

Cancer genetic counselors evaluate family history and talk about risks for inherited cancer, as well as screening and management for those at increased risk. Cancer genetic counselors may also perform genetic testing in cancer patients to assist in determining which therapeutic treatment options may be most effective. In Arizona, the greatest percentage of genetic counselors (46 percent) work as cancer genetic counselors.

General genetic counselors serve children, adults and families with known or suspected genetic conditions and birth defects. In certain instances, families start out in general genetic counselors' clinics and, if a diagnosis can be made, they may then be referred to a specialty clinic.

Pediatric genetic counselors focus on genetic conditions affecting the pediatric and adolescent population. In Arizona, the second highest percentage of genetic counselors (19 percent) work as pediatric genetic counselors.

Prenatal genetic counselors work with individuals, couples or families who have an increased chance of having a child with a birth defect or genetic condition. Those who are pregnant or considering having a child can meet with a prenatal genetic counselor to learn more about a condition, understand their risks more clearly and discuss options for prenatal screening, testing

and/or assisted reproduction techniques. In Arizona, 7 percent of genetic counselors practice as prenatal genetic counselors.

Currently, 23 states issue licenses for genetic counselors. An additional 6 have bills passed or in rulemaking.

For additional quick reference background information, please refer to the following:

- State of Arizona Genetic Counselor Licensure Fact Sheet – See Tab 1
- Map of States Issuing Licenses for Genetic Counseling – See Tab 1 or Back Notebook Cover
- Alphabetical List of States Currently Licensing Genetic Counselors – See Tab 5
- Draft Genetic Counselor Licensure Template – See Tab 1

1. Why regulation is necessary:

(a) The nature of the potential harm to the public if the health profession is not regulated and the extent to which there is a threat to public health and safety.

The main responsibility of most genetic counselors is to provide direct patient care. As with any healthcare profession, inappropriate or inaccurate medical care, administered by an inadequately trained and unregulated individual, could potentially harm patients. Harm may also occur secondary to the patient receiving the services from a non-genetics healthcare provider. Studies have shown that clinical errors are more likely in situations in which providers had less extensive knowledge, training, or certification in genetics.

Below are some examples of harm to clients that may occur if genetic counseling services are provided inappropriately, erroneously, or incompetently. This includes cases from across the country as well as cases from Arizona (as noted).

Incomplete Risk Assessment

- Harm may occur if practitioners do not take the time to elicit complete family history information. Recently in Arizona, a client with a family history of pancreatic cancer and pheochromocytoma was considered at increased risk for hereditary breast/ovarian cancer syndrome by a non-genetics provider who had training for genetic testing by a commercial genetic testing laboratory. The client was tested for genetic changes related to an increased risk of breast, ovarian, colon, gastric, melanoma, pancreatic, prostate and endometrial cancers. A genetic counselor, who as standard practice reviews hereditary cancer family histories for such manifestations and identifies client medical information relevant to risk-assessment and consideration of differential diagnoses, noted the family history of pheochromocytoma. Approximately 40% of

pheochromocytomas occur as part of a familial disorder. Inappropriate genetic testing was ordered by the non-genetics practitioner, as no genes associated with pheochromocytoma were included in the testing. Increased screening protocols, surgical prevention, and familial testing may be recommended should an individual have a genetic mutation associated with pheochromocytoma.

Insurance companies often cover the cost of genetic testing once for an individual patient. In this scenario, the client had to pay out of pocket for appropriate genetic testing as the non-genetics provider had already used the patient's insurance for testing.

- In Arizona, a woman with a family history of ovarian cancer had genetic testing by a non-genetics provider which only included 5 genes associated with Lynch syndrome. Although Lynch syndrome has been associated with ovarian cancer, ovarian cancer is more likely to be associated with mutations in the BRCA1 or BRCA2 genes. BRCA testing was then initiated by an appropriately trained genetic counselor.

Had the patient not seen a genetic counselor, comprehensive testing would not have been ordered and the patient could have incorrectly assumed their risks for cancer were lower than they are. Additionally, the patient would not have taken advantage of screening/prevention techniques made available through a correct diagnosis.

- A non-genetics provider diagnosed a patient with vision loss and muscle problems as having a mitochondrial disorder. This diagnosis remained with the patient for years. When the patient presented for genetic counseling, the genetic counselor took a detailed family history and determined that the patient was incorrectly diagnosed. The patient instead had an autosomal dominant-vision condition and his muscle problems were not believed to be of genetic etiology.

This impacts the prognosis for his children, who all inherited their father's vision condition and were fearful of developing muscle problems as well. This case demonstrates that a lack of complete family history, which genetic counselors provide as part of routine genetic counseling, can lead to a misdiagnosis. In this case, misdiagnosis led to incorrect risk assessment for this patient's children, causing unnecessary emotional distress.

The children also underwent medical consultations related to the muscle problems and incurred associated financial costs that were likely not necessary given the non-hereditary nature of their father's symptoms.

- A primary care provider referred a pregnant patient to a certified genetic counselor because of an incidental finding on an ultrasound that is not associated with increased risk for adverse pregnancy outcome. In reviewing her records prior to the consultation appointment, the genetic counselor found that the patient was a carrier of a chromosomal change that may place her pregnancy at increased risk for an unbalanced chromosome make-up.

In light of this finding, the patient's physician should have referred her for genetic counseling and offered the option of prenatal genetic testing. However, the primary care provider had not reviewed the records of the infertility specialist who had ordered the testing before the patient became pregnant. Although the laboratory report recommended genetic counseling, the infertility specialist had also not referred her for genetic counseling. This case attests to the critical importance of genetic counselors' specific training in medical records review and family history intake that leads to comprehensive evaluation and greater depth of information for the patient. Potential harm to the patient occurs when he/she is not correctly counseled for his/her risks.

Inaccurate Test Interpretation

- In Arizona, a patient with a family history of an identified cancer gene mutation requested genetic testing of the BRCA gene through a primary care office. The patient's insurance required genetic counseling and the test was placed on hold. After meeting with a genetic counselor, it was identified that the primary care office ordered an inappropriate test, given there was a known mutation in the patient's sister. The appropriate documentation, including the sister's mutation report, and steps to correct the order were sent to the ordering provider's office.

Unfamiliar with the mutation report, the provider informed the patient she was BRCA positive and that she should consider bilateral mastectomy and have her ovaries removed. Upon meeting with another genetic counselor, it was identified that the patient's test was never initiated and the non-genetics provider was reading the patient's sister's report. Upon testing, the patient was negative for BRCA. She was not at an increased risk for cancer. She experienced anxiety and stress throughout this process, and had this not been caught by the genetic counselor she might have undergone unnecessary prophylactic surgeries

- In Arizona, a young woman had BRCA genetic testing performed through a non-genetics provider. This individual was unfamiliar with genetic testing and the process for receiving results. After a year of not hearing about her testing, the patient requested records from her provider's office and discovered that she has a BRCA mutation, at which point she made an appointment with a genetic counselor. She had not had appropriate cancer screenings or prophylactic surgery during that year, which are recommended by various national organizations.
- In Arizona, a young woman with a family history of breast cancer had genetic testing performed by a non-genetics provider. A variant of uncertain significance (VUS) was identified in the APC gene, which is associated with familial adenomatous polyposis, a disorder associated with colon cancer. There was no history of colon cancer or polyps in the family. The patient was directed to have a colonoscopy right away due to her high risk of colon cancer.

A VUS is a common occurrence in genetic testing, and most recent data suggests 90-95% of these findings are reclassified in the future as benign. Because of this, no medical action is indicated when a VUS is discovered. This patient underwent unnecessary stress and a colonoscopy before meeting with a genetic counselor.

- Three case series examined the most common errors in cancer genetic counseling and testing. These cases fell into three common themes:
 - The wrong test was ordered resulting in inaccurate medical management recommendations, unnecessary testing, and/or misuse of healthcare dollars;
 - Test results were misinterpreted leading to inaccurate assignment of risk, inappropriate medical management, or unnecessary preventative surgeries; and
 - Inadequate genetic counseling was provided leading to inappropriate medical management and lack of informed consent.
 - Brierley et al., *Connecticut Medicine*, 2010, 74(7): 413-423; Brierley et al., *Cancer Journal*, 2012, 18(4): 303-09; Bonadies et al., *Cancer Journal*, 2014), 20(4), 246-53.
- In 1997, *The New England Journal of Medicine* published several examples of incorrect genetic counseling and test interpretation (Giardiello et al., *NEJM*, 1997, 336 (12):823-7). The authors reviewed 177 cases for individuals undergoing predisposition genetic testing for familial adenomatous polyposis (FAP), an inherited condition that leads to colon cancer at an unusually early age. This cancer can be prevented with appropriate surgical intervention, making accurate test-interpretation critical.

Eighteen percent of the patients underwent genetic counseling prior to genetic testing and received accurate interpretations of their genetic test results. Thirty percent of the remaining patients who did not receive genetic counseling received the wrong test interpretation. In these cases, healthcare providers incorrectly interpreted inconclusive test results to mean that the patients did not have FAP mutations. The consequences of this misinterpretation are potentially devastating since these individuals would likely stop endoscopic screening because they were told that they were no longer at an elevated risk for colon cancer.

- A woman requested genetic counseling after her pregnant sister underwent carrier testing for cystic fibrosis (CF) and was found to carry the 5T allele, a harmless genetic variant in the gene responsible for CF. Although the patient's sister was told that the 5T allele is harmless, she did not receive adequate genetic counseling. This caused the family unnecessary alarm. Fortunately, this woman sought genetic counseling to completely discuss the implications of this genetic finding, but other patients may be stranded with incomplete or inaccurate information.
- A physician referred a patient to a certified genetic counselor to help interpret a genetic test result. The client has a family history of Huntington disease (HD), a terminal, adult-onset neurological condition that affects movement, behavior, and thinking. When the patient mentioned her family history to her primary care

physician, he ordered the HD genetic test without providing pretest counseling or obtaining adequate informed consent.

The physician was unaware of the well-established HD pre-symptomatic testing protocol, which includes genetic counseling, psychiatrist and neurologist evaluations. The genetic test results were indeterminate, which the primary care physician had not discussed as a possibility with the client—and he could not interpret the results. The client experienced heightened anxiety and regretted that she had undergone genetic testing.

- A physician referred a pregnant woman to a certified genetic counselor because her nephew was affected with Duchenne muscular dystrophy (DMD), an X-linked genetic condition affecting males and results in early death. Based on her family history, she was at risk to be a carrier—and at risk to have an affected child. She reported having had prenatal testing (amniocentesis) in a prior pregnancy that showed that the baby did not inherit DMD. As is customary, the genetic counselor requested records from the previous care provider. Records showed that an amniocentesis had been performed and chromosomes revealed a male fetus. Records did not show that a fetal sample had been sent to a reference laboratory for testing. Further investigation revealed that carrier testing on the patient had been uninformative, i.e. it could not be confirmed or denied that she is a carrier of DMD.

Because her carrier status could not be determined, the prior pregnancy could not have been tested. The patient reported that the provider performing the amniocentesis told her that the testing indicated she would have an unaffected male child, although the testing on the pregnancy had not occurred. No genetic counselor was involved in her case. This exemplifies the misinformation that a patient can receive when a provider does not understand complex genetic information—and the provider's neglect for not referring the patient to a qualified genetic professional.

- A physician referred a pregnant patient who was older than 35 (advanced maternal age) to a certified genetic counselor to discuss prenatal testing. The patient's history revealed a prior miscarriage that had been diagnosed as having Turner syndrome, a chromosomal condition caused by a missing sex (X) chromosome. The records indicated that a physician had ordered chromosomal studies for both the patient and her husband. However, in this situation, chromosome studies of the parents were not indicated and provided no information regarding risks for future pregnancy.

Turner syndrome has a low risk for recurrence and was not caused by a chromosomal problem in a patient or her partner. The patient had been falsely reassured that she had no risk of a chromosomally abnormal pregnancy reoccurring because her husband's and her test results were normal. However, her age placed her pregnancy at increased risk for other types of chromosomal anomalies. A genetic counselor gave her correct information regarding her risks that enabled her to make an informed decision about prenatal testing options.

Psychological and Financial Issues

- In Arizona, a patient had genetic testing for “BRCA” ordered by a non-genetics provider. The patient disclosed that there was another cancer syndrome gene, TP53, in the family which she did not want testing for. Her provider ordered a breast cancer panel, which included the agreed upon BRCA testing as well as the declined TP53 gene. A genetic counselor was asked to review results with the patient. She was understandably upset as she did not anticipate or want the information for the TP53 gene.
- There are unique ethical and psychosocial issues associated with genetic testing. Genetic evaluations and detailed family histories may reveal information about family members and patients. Diagnosis may lead to psychological burdens such as guilt, blame, fear for the future, fear of being unable to cope, or anxiety regarding reproductive decisions. A genetic diagnosis may cause economic burdens, such as the cost of a chronic illness, as well as questions and concerns about employment and health insurance discrimination. Graduates of genetic counseling training programs are uniquely qualified to counsel on these issues.
- Most medical professionals do not provide the non-directive counseling that genetic counselors are trained to provide. Genetic counselors have extensive training and experience in this realm, which facilitates patient autonomy. Genetic testing can have far-reaching impacts- results can affect family and personal relationships, psychological well-being, and future health.

For example, a client told her certified genetic counselor that a family member was pressuring her to undergo genetic testing by offering to pay for \$2,700 genetic testing for cancer predisposition. The genetic counselor asked about the client's reasons for testing and her feelings of coercion from the family member. The client decided to delay testing until she was ready to receive results, at a time when the results would benefit to her, and when she was ready to take action to reduce her risks. Non-directive counseling facilitated her autonomy.

- A couple underwent infertility treatment for 10 years. During this period, their physician neither referred them to a genetic counselor, nor took a family history, which would have revealed that the husband's sister had mental retardation. After taking a course in genetics, the wife realized the significance of her husband's family history. Several years later, a simple genetic test revealed that the husband carried a genetic rearrangement called a balanced translocation, which explained their infertility. Prior to learning this, the wife underwent years of unnecessary surgical and hormonal treatments in an attempt to remedy the infertility. These treatments emotionally and financially drained the couple.

Genetic counselors are trained to obtain detailed family histories (pedigrees) that assess for chromosomal and other genetic causes of infertility to guide appropriate diagnostic work-up, prevent inappropriate testing and treatment, and provide

counseling to couples regarding technologies such as IVF and preimplantation genetic diagnosis that may enable them to achieve a successful and healthy pregnancy.

- A physician referred a woman for genetic counseling and detailed ultrasonography because of some concerns regarding the position and movements of her baby on her routine mid-trimester ultrasound. Amniocentesis was performed to rule out a chromosomal anomaly and chromosomal studies were normal. As the pregnancy progressed, serial ultrasound findings suggested arthrogryposis, a rare condition causing joints immobility.

After the baby's birth, the genetic counselor involved with the case visited the newborn nursery to see the mother and baby. A neonatologist was present and examining the newborn. He told the genetic counselor that blood had been drawn and would be sent for chromosomes. When the genetic counselor explained that the amniocentesis results were normal, he insisted that he wanted to check for a specific chromosome finding found in the Hispanic population. However, the previous study already ruled out this possibility. Additionally, the clinical findings did not match the chromosomal condition to which he was referring. His lack of correct genetic knowledge resulted in inappropriate tests that increased the cost to the family and third-party payer.

Inadequate Training Specializing in Genetics

- Most medical professionals have very little training in medical genetics. A number of studies document that general practitioners are inadequately prepared in genetics. One survey of department of medicine chairs found that **only 48 percent and 31 percent, respectively, agreed or strongly agreed that their internists or internal medicine subspecialists had enough knowledge about genetics to make accurate diagnoses and enough knowledge to provide appropriate genetic counseling.** (Taylor, Genetics in Medicine, 2003, 5(4):328-331.)

Another survey of general practice providers reported that 25 percent of internists and 31 percent of family practitioners had referred a patient for genetic services in the previous year. One in six of the surveyed internists was unaware of the genetic services in their geographic area and saw no need to know this information. (Hayflick et al., Genetics in Medicine, 1998, 1(1): 13-21)

The various responses that surveyed physicians provided to basic genetics-related questions identified significant knowledge gaps. Over half of those surveyed did not recognize that family history of breast cancer on the paternal side increases a patient's risk. Most stated that they would provide the counseling rather than referring to a genetics provider.

- A study assessed the adequacy of genetic risk- assessment among primary care providers. This study found that in **35 percent of the 378 cases studied, significant genetic risk was identified in a subsequent genetic consultation that the referring**

physician missed. The authors reviewed the family history and the genetic consultation report and found that additional genetic testing and screening was indicated in approximately 10 percent of these patients.

The authors concluded that providers should offer genetic counseling and risk assessment to all women considering prenatal genetic testing. Knowledge of risks ensures a patient access to genetic consultation, education, psychosocial support, and testing. Failure to identify significant genetic risks may lead to psychological distress, physical injury, or death. Genetic counselors involved with these cases understand the intricacies of genetic risk factors to provide education and psychosocial support, testing and test interpretation to avoid these mistakes and ensure that patients receive the most complete care. (Cohn et al., *Journal of Perinatology*, 1996, 16(5): 352-7)

- Allied-health professionals often provide genetic counseling, although they have little or no genetics education within their training programs. Six allied health professions for whom genetic counseling is not considered within their typical scope of practice were surveyed regarding genetics in their practices. Seventy (70) percent of surveyed dietitians, occupational therapists, physical therapists, psychologists, speech-language-hearing specialists, and social workers reported discussing the genetic component of their clients' problems with their clients. Thirty percent said that they had provided counseling about genetics to at least a few of their clients. Less than 10 percent of the health professionals reported having a high level of confidence in their ability to provide these services. (Lapham et al., *Genetics in Medicine*, 2000, 2(4): 226-31.

Licensure of genetic counselors in Arizona may help promote increased awareness and encourage allied health professionals to refer patients to genetic counseling services, which would help ensure that patients receive the most appropriate risk assessment and genetic information from qualified providers.

- Commercial laboratory-developed genetic tests are increasingly marketed to non-genetics healthcare providers and to the general public. One laboratory used Denver and Atlanta as marketing test sites to evaluate the impact of direct-to-consumer marketing. The Colorado Department of Public Health and Environment and the Centers for Disease Control (CDC) studied the impact of such marketing and found that providers perceived an impact on their practice, but felt that they lacked the knowledge to advise patients about appropriate genetic counseling and testing. Their findings emphasize the need to educate providers and the public regarding appropriate use of genetic testing to maximize the public health benefit from genetic testing. (Centers for Disease Control and Prevention, *MMWR Morbidity and Mortality Weekly Report*, 2004, 53(27):603-6.
- Collecting complete histories, pedigrees, and genetic risk-assessment, as well as providing genetic counseling regarding genetic concepts, risks, testing options, informed consent, and related psychosocial concerns is time consuming. It is more

cost-effective for a qualified genetic counselor to administer these duties rather than a physician. Primary care physicians in a busy practice do not have the time required to provide the complex patient education and in-depth counseling that patients most need. One study assessing the discussions between obstetrics providers and pregnant woman concluded that the information the providers give about genetic testing does not adequately ensure informed autonomous decision-making.

Title Misuse

- Northern Arizona Health describes the process of meeting with a genetic counselor as part of their breast health program at <https://nahealth.com/breast-health-program/genetic-counseling-and-testing>. The website specifically states a “genetic counselor will discuss risk”. However, upon inquiry, no genetic counselor is on staff and a registered nurse is performing their genetic counseling.
- In Arizona, a nurse within a pediatric clinic was providing genetic counseling after a few weeks of training. Without proper genetics training, this provision of services is a misrepresentation of this individual’s skills and training that can easily harm the consumers. This exposes patients to the potential of harm via inaccurate or incomplete information and incomplete psychosocial assessment and management.
- In May 1996, a Denver Post article about the misuse of genetic information quoted Jane Arfa, a self-declared genetic counselor: “‘Cancer fear is very real’ said Jane Arfa, a genetic counselor for Columbia Health One.”

Jane Arfa has a Master’s degree in Public Health and no previous clinical experience. She was the tumor registrar for Columbia Health One and attended a one-day training course offered by OncorMed, a commercial genetics laboratory, and began practicing clinical cancer risk-assessment. She has not attended a graduate program in genetics, nor is she board-certified in genetics. This public misuse of the title genetic counselor is a misrepresentation of her skills and training and can easily lead to harm to consumers.

- In Wisconsin (currently pursuing licensure), a physician assistant advertised himself as a genetic counselor. Although discussing some genetic information may be considered within physician assistants’ profession scope of practice, physician assistants’ training in genetics is significantly limited compared to that of genetic counselors. Their training does not qualify them to practice as genetic counselors or misrepresent themselves to the public as genetic counselors. Genetic counselor licensure in Arizona would protect the “genetic counselor” title and prevent public misrepresentation by those who lack appropriate training and credentials.

(b) The extent to which consumers need and will benefit from a method of regulation, identifying competent practitioners and indicating typical employers, if any, of practitioners in the health profession.

As noted above, consumers can avoid harm with the involvement of a genetic counselor. Errors can occur when genetic counseling is applied inappropriately. Genetic counselor licensure requiring that genetic counselors maintain their certification through continuing education would reduce these types of errors. Additionally, licensure would allow action to be taken against a licensed genetic counselor who violates standard of practice. Lastly, genetic counselor licensure would allow consumers to identify competent genetic counselors and eliminate the potential of title misuse.

Typical employers of genetic counselors include hospital systems, private medical groups, as well as commercial laboratories. The majority of genetic counselors in Arizona are in direct patient care roles.

(c) The extent of autonomy a practitioner has, as indicated by the following:

Genetic counselors may work individually or as part of a team that includes physicians who practice in genetics, obstetrics, oncology, neurology, psychiatry or other sub-specialties. Supervision is not required for routine completion of responsibilities. Because of their unique combination of specialized knowledge and skill sets, genetic counselors often function as the "genetics expert" on multidisciplinary healthcare teams. Physicians do not supervise, but work collaboratively with genetic counselors to provide coordinated patient care that coincides with the responsibilities determined by their respective scopes of practice and the complexity of each patient's clinical presentation. Often, genetic counselors are members of healthcare specialty teams within an academic medical center, community hospital, or other clinical or laboratory settings. These counselors work alongside other medical personnel and are accountable to their institutional administrators.

2. The efforts made to address the problem:

(a) Voluntary efforts, if any, by members of the health profession to either:

(i) Establish a code of ethics.

The National Society of Genetic Counselors has an established Code of Ethics which is based upon the distinct relationships genetic counselors have with 1) themselves, 2) their clients, 3) their colleagues, and 4) society. Each section of this code begins with an explanation of the relevant relationship, along with the key values and characteristics of that relationship. These values are drawn from the ethical principles of autonomy, beneficence, nonmaleficence, and justice, and they include the professional principles of fidelity, veracity, integrity, dignity and accountability. The entire code of ethics can be seen in appendix article I.

(ii) Help resolve disputes between health practitioners and consumers.

To our knowledge no disputes have arisen between genetic counselors and consumers. Issues arising between consumers and non-qualified practitioners are often only detected once a genetic counselor has been involved in a case.

(b) Recourse to and the extent of use of applicable law and whether it could be amended to control the problem.

There currently is no specific regulation of the genetic counselor occupational group at the federal level. Perhaps the most recent federal legislation relevant to the provision of genetic testing and counseling is *H.R. 493 (110th): The Genetic Information Nondiscrimination Act of 2008, (GINA)*. As a component of their training and competency for practice, genetic counselors must be familiar with GINA, its protections, and its limitations as it relates to clients and their families. GINA prohibits health insurers from using genetic information for enrollment, premium/contribution determinations, underwriting, and preexisting condition exclusions. GINA also prohibits an employer, employment agency, labor organization, or joint labor-management committee from discriminating against, limiting, segregating, classifying or otherwise adversely affecting an individual's status as an employee, individual, or family member because of genetic information.

Such entities also are prohibited from requesting, requiring, or purchasing an employee's genetic information, except for certain purposes. In these instances, entities must maintain such information in separate files and treat such information as a confidential medical record, and not disclose such genetic information except in specific circumstances. GINA establishes penalties for those who violate the above tenets.

The Affordable Care Act (ACA) requires health insurance plans to cover genetic counseling as a preventive service with no copay or deductible for women whose family history suggests an increased risk of mutations in BRCA1 or BRCA2. The ACA applies to genetic counseling but does not extend to genetic testing.

Arizona does not specifically regulate the genetic counselor occupational group. However, the Arizona Medical Board and Arizona State Board of Nursing has jurisdiction over other healthcare professionals who are licensed and may provide some types of genetic consultation within their scope. The regulatory boards that license these practitioners can investigate cases in which these professionals are accused of harming the public by providing inappropriate genetic consultation and/or practicing outside their scope, and can determine whether disciplinary action should be imposed.

As with GINA, genetic counselors are expected to be familiar with state laws pertaining to genetic nondiscrimination, their protections, and their limitations as they relate to clients and their families. Genetic counselors should also be familiar with other state statutes pertaining to genetics practice, including but not limited to, newborn screening,

employment nondiscrimination, and informed consent laws. A database of relevant laws is available at <https://www.genome.gov/policyethics/legdatabase/pubsearch.cfm>.

3. The alternatives considered:

(a) Regulation of business employers or practitioners rather than employee practitioners.

Local credentialing (*e.g.*, by employers) potentially could have a favorable effect on the quality of genetic counseling, but on an *ad hoc* basis. Some employers might require graduation from an accredited training program and certification by a national board, while others might not. Employers also may be motivated by cost considerations to hire an untrained or insufficiently trained provider and call him/her a genetic counselor. Without regulation, there is also no prohibition against an individual setting up a private practice as a genetic counselor. Without statutory licensure, a uniform scope of practice, and enforceable continuing education requirements, the public's interest cannot be adequately protected.

(b) Regulation of the program or service rather than the individual practitioners.

A protected title presumably would identify practitioners who have graduated from an approved course of training, but would not require that they become board certified or maintain their skills and knowledge base through continuing education. This also would afford little protection to the public, given the rapid evolution of the genetic counseling field. This process would be preferable to registration and cost less than licensure, but would not provide the necessary level of oversight.

(c) Registration of all practitioners.

Registration typically imposes baseline criteria for the practice of a skill or profession, but does not: 1) establish foundational training requirements; 2) provide a 'scope of practice;' 3) mandate continuing education; and 4) provide recourse for consumers. Although this alternative is low-cost, it has essentially no value to protecting the public because it does not distinguish capable from incapable practitioners.

(d) Certification of all practitioners.

The American Board of Genetic Counseling (ABGC) establishes and enforces standards for certification and a code of ethics by issuing the "certified genetic counselor" credential to those who have graduated from an ABGC-accredited master's level genetic counseling program, passed the ABGC certification examination, and participated in recertification by examination or continuing examination requirements. However, there

is no law in Arizona that requires genetic counselors to be ABGC- or American Board of Medical Genetics and Genomics-certified or eligible for board certification to practice. Without this requirement, minimum competency based on the national standard is not ensured in Arizona.

Failure to pass boards on multiple attempts over a period of several years does not preclude a genetic counselor from practicing in Arizona, and the public in Arizona currently has no way of identifying such a provider. Additionally, the only censure that ABGC can impose for failing to adhere to accepted practice is certification revocation. Since certification is not required for practice in Arizona, the public in Arizona is unprotected.

(e) Other alternatives.

No other alternatives exist to our knowledge.

(f) Why the use of the alternatives specified in this paragraph would not be adequate to protect the public interest.

See above how each alternative fails to adequately protect the public interest

(g) Why licensing would serve to protect the public interest.

Establishing a Protected Title for the Occupation via State Credentialing

Currently in Arizona, there is no legal standard to determine who can represent themselves as a genetic counselor. Licensure will protect Arizonans by ensuring that genetic counselors practicing in the state have appropriate training in medical genetics and genetic testing. Licensure will create a means for the Arizona to regulate genetic counseling services by defining what genetic counselors can do. Licensure will be able to prevent unqualified individuals from practicing genetic counseling in the state and allow for suspension or revocation of licenses of genetic counselors who cause harm to Arizonans through inadequate genetic counseling.

4. The benefit to the public if regulation is granted:

(a) The extent to which the incidence of specific problems present in the unregulated health profession can reasonably be expected to be reduced by regulation.

Licensure holds genetic counselors accountable for their actions and allows for legal recourse if a genetic counselor provides inappropriate care. With licensure, Arizona's Revised Statutes will define a genetic counselor's specific scope of practice and the standards for professional conduct. If a licensed genetic counselor violates the laws or rules

defined in the legislation, then Arizona has the authority to take disciplinary action. Currently, there are no existing laws in Arizona or at the federal level that provide the public with a mechanism to report a genetic counselor's incompetent, unethical, or unlawful behavior or to sanction a genetic counselor for proven offenses of these claims and/or for operating outside of his/her scope of practice.

Due to the lack of licensure and protection of the title "genetic counselor" in Arizona, any individual may offer genetic counseling without demonstrating minimum qualifications and standards of training, competency, and continuation of their education.

Licensure will increase the likelihood that institutions will credential genetic counselors and, in turn, more hospitals, clinics, and private practices will hire genetic counselors. Lack of access to a qualified genetic counselor can harm the public as individuals with genetic concerns cannot receive expert care from the healthcare practitioner who is most uniquely and specifically qualified to provide clinical genetic information, risk assessment, genetic testing and results discussion, psychosocial assessment, and support resources appropriate to their individual situation and needs. As more healthcare settings employ genetic counselors, the public will have greater access to healthcare providers who are uniquely positioned to do the following:

- i) *Prevent under and overtreatment of diseases, many of which are preventable if the patient's risk is understood at an early age.*

Genetic counselors are trained to recognize the risk factors for genetic disorders and assist in making the diagnosis of this disease by obtaining a complete medical and family history. This enables the patient to receive appropriate monitoring and treatment with medication or prophylactic surgery to reduce the morbidity and mortality associated with their condition.

Additionally, relatives of this patient can then be screened for this inherited disorder to determine whether they should consider preventive measures. Appropriately trained genetic counselors can reduce harm, including death, by taking an adequate family history, appreciating important risk factors, facilitating referrals for diagnostic testing and treatment, and encouraging communication among family members regarding the inherited nature of the disease.

As another example, one study showed that genetic counseling and testing for hereditary breast and ovarian cancer increased surveillance and led to risk-reducing operations. Well-informed clients who appropriately understand test results led in tumors diagnosis at an earlier stage, thus reducing morbidity and mortality as well as overall treatment costs.^{6,7} On the contrary, misinterpreting this type of genetic test result (by the patient and/or the treating physician) could lead an individual to undergo unnecessary prophylactic surgery or falsely reassure a patient that he/she is not at risk for cancer; consequently he/she might forgo cancer screening and subsequently develop an advanced-stage cancer when the cancer could have been identified at a more curable stage.

- ii) ***Ensure that genetic testing is selected and appropriately utilized based on an understanding of the patient's medical and family history, genetic principles, and the specific usefulness of the available testing options.***

This increases the likelihood that third-party payers will cover the cost of the genetic testing for a patient. This reduces out-of-pocket cost for patients, as well as costs for institutions that bill from their own laboratories. It also reduces unnecessary costs for patients, institutions, and private insurers, as well as federal and state programs, such as Medicare and Medicaid. Studies have shown that skilled genetic counselors can reduce costs by using their unique training and experience to critically evaluate the appropriateness and utility of genetic tests in order to reduce unnecessary and/or redundant testing.

Professional organizations recognize the value of genetic counselors and have included them in their guidelines regarding genetic testing. For example, the American Society of Clinical Oncology (ASCO) recommends pre- and post-genetic test counseling for patients with a suspected inherited risk for cancer. The document states "ASCO support efforts to ensure all individuals at significantly increased risk of hereditary cancer have access to appropriate genetic counseling, testing, screening, surveillance, and all related medical and surgical interventions, which should be covered without penalty by public and private third-party payers." (American Society of Clinical Oncology. *J Clin Oncol* 21 (12), 2397-2406. 2003 Apr 11.)

Additional organizations that emphasize the importance of genetic counseling with regard to genetic testing include the American College of Medical Genetics, the American Congress of Obstetricians and Gynecologists, the National Cancer Institute, the U.S. Preventive Services Task Force, and the American Medical Association.

The importance of access to formally-trained genetics professionals including genetic counselors continues to be an overarching concern and/or recommendation in each report that the Secretary's Advisory Committee on Genetics, Health and Society (SACGHS) for the Secretary of Health and Human Services has generated. SACGHS has documented many studies that have shown that genetics professionals are better equipped than primary care providers and other specialists to order appropriate genetic tests and provide genetic counseling before and after testing.

- iii) ***Decrease the possibility of psychological harm related to a genetic diagnosis.*** Individuals affected by genetic conditions often face complex and potentially serious social and psychological challenges. For example, parents may feel guilty or stigmatized when they pass on "defective genes" to their children. Families affected by genetic conditions may assign blame to members for transmitting a genetic trait. Individuals may find that communicating with family members about a genetic diagnosis, risk and/or test result is difficult, even if that information may benefit these family members. Clients and family members may experience grief, depression, and

other responses to a genetic diagnosis in themselves or a family member that requires short-term and/or extended psychological support services. Individuals who are unaware that state and federal laws may provide protection from genetic-based discrimination may avoid potentially beneficial genetic testing.

Informed consent is an important component of genetic testing, as it ensures that patients understand the potential benefits, risks, and limitations of such testing. Despite this, other healthcare providers may not appropriately offer it. An unqualified healthcare professional may provide genetic information in ways that cause social and psychological harm or fail to identify clients' needs regarding a genetic concern.

Genetic counselors are specifically trained to understand psychosocial issues related to genetic conditions and risks, anticipate clients' common emotional or behavioral responses, evaluate the potential impact of psychosocial concerns on decision-making and medical management, and provide short-term client-centered counseling. This training uses this training to develop knowledge of psychological defenses, family dynamics, family theory, coping models, the grief process, reactions to illness and cultural factors. Genetic counselors are trained to identify and provide information to clients about resources and services for support, as well as make referrals for psychotherapy, when appropriate. Finally, genetic counselors facilitate clients' informed consent for clinical and research testing by addressing the technical, psychosocial, and legal aspects of genetic testing.

(b) Whether the public can identify qualified practitioners.

The public in Arizona currently has no way of identifying qualified practitioners outside of the National Society of Genetic Counselor's "Find a Certified Genetic Counselor" tool. (<https://www.findageneticcounselor.com/>)

(c) The extent to which the public can be confident that qualified practitioners are competent, including:

(i) Whether the proposed regulatory entity would be a board composed of members of the profession and public members or a state agency, or both, and, if appropriate, their respective responsibilities in administering the system of registration, certification or licensure, including the composition of the board and the number of public members, if any, the powers and duties of the board or state agency regarding examinations and for cause revocation, suspension and nonrenewal of registrations, certificates or licenses, the adoption of rules and canons of ethics, the conduct of inspections, the receipt of complaints and disciplinary action taken against practitioners and how fees would be levied and collected to pay for the expenses of administering and operating the regulatory system.

The proposed regulatory entity, the Arizona Advisory Board of Genetic Counselors, shall be established by the Arizona Legislature, and thereafter referred to as the "Board", and housed under the state agency Arizona Department of Health Services. Fees levied would include application fees along with renewal fees.

The Board would be responsible for verifying each licensed genetic counselor has completed the necessary requirements for licensure including passing the ABGC certification examination, receiving the necessary continuing education credits to maintain certification or abiding by other requirements established.

Additionally, Board would be responsible for fielding any complaints against a licensed genetic counselor and administering revocation or suspension as deemed necessary.

(N.B. A copy of a draft legislation for genetic counselor licensure is included behind tab 1.)

(ii) If there is a grandfather clause, whether grandfathered practitioners will be required to meet the prerequisite qualifications established by the regulatory entity at a later date.

Grandfathered practitioners would not be required to meet the prerequisite qualifications established by the regulatory entity at a later date.

(iii) The nature of the standards proposed for registration, certification or licensure as compared with the standards of other jurisdictions.

The standards proposed are consistent with the standards of other states with genetic counseling licensure as all states require ABGC certification. States may vary on their specifics for grandfather clauses for genetic counselors without ABGC certification. All require a master's degree or higher in genetics or a related field plus a combination of one or more of the following: 8-10 years of genetic counseling experience, continuing education via NSGC/ABGC approved courses, and/or letters of recommendation attesting to the applicant's competency.

(iv) Whether the regulatory entity would be authorized to enter into reciprocity agreements with other jurisdictions.

Yes, the regulatory entity would be authorized to enter into reciprocity agreements with other jurisdictions.

(v) The nature and duration of any training, including whether the training includes a substantial amount of supervised field experience, whether training programs exist in this state, if there will be an experience requirement, whether the experience must be acquired under a registered,

certified or licensed practitioner, whether there are alternative routes of entry or methods of meeting the prerequisite qualifications, whether all applicants will be required to pass an examination, and if an examination is required, by whom it will be developed and how the costs of development will be met.

The *Standards for Graduate Programs in Genetic Counseling Seeking Accreditation by ACGC* (the Standards) includes a separate section detailing the *Practice-Based Competencies* for entry-level genetic counselors. The Standards require genetic counseling master's degree-granting programs to reside in a graduate degree-granting institution that is accredited by a regional accrediting association recognized by the U.S. Department of Education (or the equivalent provincial authority for Canadian educational institutions). Program duration must be a minimum of 21 months or two academic years. Instructional content must cover established and evolving medical and clinical genetics principles and how genetic counselors apply this knowledge to patient care. This content must be sufficient in breadth and depth to prepare the student for the clinical practice of genetic counseling.

The Standards specify that the curriculum content areas required to develop practice-based competencies in genetic counseling must, at a minimum, include:

- *Principles of Human Genetics* (Mendelian and non-Mendelian inheritance, population and quantitative genetics, human variation and disease susceptibility, family history and pedigree analysis, normal/abnormal human development, human reproduction, personalized genomic medicine).
- *Applicability of Related Sciences to Medical Genetics* (cytogenetics, biochemical genetics, molecular genetics, embryology/developmental genetics, teratology, cancer genetics, adult genetics, cardiovascular genetics, neurogenetics, and pharmacogenetics).
- *Principles and Practice of Clinical/Medical Genetics* (clinical features and natural history of a broad range of genetic and complex diseases and syndromes, the diagnostic process including dysmorphology/syndromology, modalities/methods/applications of cytogenetic, molecular and biochemical tests and new/emerging technologies, risk assessment, and use of genetics literature, databases and other bioinformatics tools).
- *Psychosocial Content* (counseling theories, interviewing techniques, psychosocial development, family dynamics, grief and bereavement dynamics, multicultural sensitivity and competency, disability awareness, and crisis intervention).
- *Social, Ethical, and Legal Issues in Genetics* (facilitating informed-decision making via informed consent, patient and research subject privacy issues [e.g. HIPAA], genetic discrimination and related legislation, health disparities, and the genetic counseling Code of Ethics).
- *Health Care Delivery Systems and Principles of Public Health* (health and social policy, community/ regional/national resources, financial/reimbursement issues,

- population-based screening [e.g. newborn screening, carrier screening], and genetics as a component of public health services).
- *Education* (identification of the genetics educational needs of clients, patients, community and lay groups, students, and health and human service professionals; developing appropriate educational tools and materials for a given audience; and delivering and evaluating educational tools and materials).
 - *Research Methods* (clinical and laboratory research methodologies and protocols using both quantitative and qualitative methods; funding and publication topics including grant writing, data analysis, abstract development, and preparing a manuscript for publication).
 - *Professional Development/Self-Care* (interviewing and job-seeking skills, stress management, ABGC-certification exam readiness, structure and purpose of genetics-related professional societies, and self-care topics to prepare students for the emotional and intellectual challenges of clinical practice).

Substantial clinical training and fieldwork experience is also required to train genetic counseling graduate students. This training provides students with first-hand experience working in a variety of practice settings with individuals and families affected by a broad range of genetic conditions. A minimum of 50 “core cases” is required to develop fundamental genetic counselor skills that they can effectively apply in a wide variety of clinical settings and service-delivery models. An experienced, board-certified geneticist and/or board-certified genetic counselor must directly supervise these cases.

Cases must expose students to a variety of genetic issues throughout the life cycle, including preconception counseling, prenatal counseling, pediatric genetics, and adult and pre-symptomatic genetics. A subset of core cases must include direct work with individuals symptomatic for genetic conditions, as well as experience in conducting family sessions in which multiple family members are evaluated and/or counseled. To further enhance students’ clinical training, the core cases are augmented with additional fieldwork experiences in settings such as diagnostic laboratories, telemedicine clinics, research programs, public health clinics, and healthcare settings that include interacting with non-geneticists (non-geneticist physicians, nurses, nutritionists, etc.).

Because genetic counselors play a significant role in educating patients, other health professionals, students, and the public, graduate programs must include teaching opportunities with a variety of learners for their students. Programs are also required to provide students with instruction, observation, and participation in genetic laboratory activities so that they may become proficient in genetic-testing utilization, learn to choose appropriate clinical and research laboratories to send patient samples, and understand the analytic and clinical validity and clinical utility of various types of genetic testing. Students are also required to conduct research or other scholarly activities through a formal thesis, capstone project, or other independent-research project.

The Standards' *Practice-Based Competencies* recognize that genetic counselors work in various settings and provide services to diverse clients, including patients and their families in healthcare settings, other healthcare professionals, research subjects, and the public. An entry-level genetic counselor must demonstrate the practice-based competencies to successfully practice as a genetic counselor. The didactic and experiential training components of a graduate genetic counseling curriculum must help develop these competencies. The *Competencies* are organized into the following domains, which can be applied in the varied practice settings in which genetic counselors serve their clients: (I) Genetics Expertise and Application; (II) Genetic Counseling Skills; (III) Education; and (IV) Professional Development & Professional Practice. Specific learning objectives accompany each competency and illustrate the skills that reflect achievement of the competency.

Graduates of ACGC-accredited genetic counseling training programs are expected to have achieved these entry-level competencies and are thus eligible to apply for Active Candidate Status (ACS) to sit for the national certification examination that ABGC administers. Current testing fee for the ABGC exam is \$900 and is typically covered by the examinee or may be covered by an employer.

Importantly, certification or ACS is not currently required for employment as a genetic counselor in Arizona. By requiring certification or ACS as a condition of licensure to practice as a genetic counselor in Arizona, a quality standard would be established and a regulatory mechanism would be implemented to report and investigate suspected substandard practice and take disciplinary action, if necessary.

The Genetic Counseling Graduate Program at the University of Arizona began training genetic counselors in Fall 2019. Students completing the program will obtain a Master of Science degree in Genetic Counseling. Students in the program receive their didactic and clinical training from faculty of University of Arizona and other board-certified clinicians at Children's Clinics, Banner Health, Tucson Medical Center, Mayo Clinic, Phoenix Children's Hospital, Dignity Health, HonorHealth and other affiliated institutions providing genetic counseling services in Arizona. The program is Accredited/New Program by the Accreditation Council for Genetic Counseling (ACGC).

(d) Assurance of the public that practitioners have maintained their competence, including:

(i) Whether the registration, certification or licensure will carry an expiration date.

Except in the case of a provisional or temporary license, all licenses shall be issued for a two-year period.

(ii) Whether renewal will be based only on payment of a fee or whether renewal will involve reexamination, peer review or other enforcement.

Renewal will be subject to a continuing education component where each applicant shall present satisfactory evidence, when seeking license renewal, that in the period since the license was issued or last renewed the applicant has completed 30 of NSGC or ABMG continuing education units and/or other means as approved by NSGC for re-certification by NSGC or ABMG, prorated for the length of the license.

5. The extent to which regulation might harm the public, including:

(a) The extent to which regulation will restrict entry into the health profession, including:

(i) Whether the proposed standards are more restrictive than necessary to ensure safe and effective performance.

The proposed standards are not more restrictive than necessary to ensure safe and effective performance.

(ii) Whether the proposed legislation requires registered, certified or licensed practitioners in other jurisdictions who relocate to this state to qualify in the same manner as state applicants for registration, certification and licensure if the other jurisdiction has substantially equivalent requirements for registration, certification or licensure as those in this state.

Proposed legislation allows for reciprocity with other states or jurisdictions with substantially equivalent requirements for registration, certification or licensure as those in Arizona. To date, no other state with genetic counseling licensure has less restrictive qualifications than those proposed in Arizona.

(b) Whether there are professions similar to that of the health professional group that should be included in, or portions of the health professional group that should be excluded from, the proposed legislation.

The provisions of genetic counseling licensure shall not apply to:

- (i) any person licensed by the State as a M.D., D.O., or ANP or to practice in a profession other than that of genetic counseling when acting within the scope of the person's profession and doing work of a nature consistent with the person's training. The person cannot hold himself out to the public as a genetic counselor;
- (ii) any person employed as a genetic counselor by the federal government or an agency thereof if such person provides genetic counseling services solely under the direction and control of the organization by which he/she is employed

(iii) A student or intern enrolled in an ABGC accredited genetic counseling educational program if genetic counseling services performed by the student are an integral part of the student's course of study and are performed under the direct supervision of a licensed genetic counselor assigned to supervise the student and who is on duty and available in the assigned patient care area and if the person is designated by a title "genetic counseling intern;"

(iv) Visiting ABGC or ABMG certified genetic counselors from outside the state performing activities and services for a period of less than thirty (30) days each year. Visiting genetic counselors must be licensed if available in their home state.

6. The maintenance of standards, including:

(a) Whether effective quality assurance standards exist in the health profession, such as legal requirements associated with specific programs that define or enforce standards or a code of ethics.

The American Board of Genetic Counseling (ABGC) establishes and enforces standards for certification and a code of ethics by issuing the "certified genetic counselor" credential to those who have graduated from an ABGC-accredited master's level genetic counseling program, passed the ABGC certification examination, and participated in recertification by examination or continuing examination requirements. However, there is no law in Arizona that requires genetic counselors to be ABGC- or American Board of Medical Genetics and Genomics-certified or eligible for board certification to practice. Without this requirement, minimum competency based on the national standard is not ensured in Arizona.

Failure to pass boards on multiple attempts over a period of several years does not preclude a genetic counselor from practicing in Arizona, and the public in Arizona currently has no way of identifying such a provider. Additionally, the only censure that ABGC can impose for failing to adhere to accepted practice is certification revocation. Since certification is not required for practice in Arizona, the public in Arizona are unprotected.

By requiring certification as a condition of licensure to practice as a genetic counselor in Arizona, a quality standard would be established and a regulatory mechanism would be implemented to report and investigate suspected substandard practice and take disciplinary action, if necessary.

(b) How the proposed legislation will ensure quality, including:

(i) The extent to which a code of ethics, if any, will be adopted.

The National Society of Genetic Counselors has already published a code of ethics by which practicing genetic counselors abide by. (Appendix Article I)

(ii) The grounds for suspension or revocation of registration, certification or licensure.

Proposed legislation allows for the board to deny or refuse to renew a license, revoke, suspend or cancel the license or place on probation, reprimand, censure or otherwise discipline a licensee upon proof satisfactory to a majority of the board that the person has: (a) obtained or attempted to obtain a license by fraud or deception; (b) been convicted of a felony under state or federal law or committed any other offense involving moral turpitude; (c) been adjudged mentally ill or incompetent by a court of competent jurisdiction; (d) used illicit drugs or intoxicating liquors to the extent which adversely affects his practice; (e) engaged in unethical or unprofessional conduct including, but not limited to, willful acts, negligence or incompetence in the course of professional practice; (f) violated any lawful order, rule or regulation rendered or adopted by the board; or (g) been refused issuance or been disciplined in connection with a license issued by any other state or country.

7. A description of the group proposed for regulation, including a list of associations, organizations and other groups representing the practitioners in this state, an estimate of the number of practitioners in each group and whether the groups represent different levels of practice.

Genetic counselors are health care professionals that help families and/or individuals that may have a particular genetic condition or health concern. Genetic counselors work in a variety of settings such as hospital clinics, diagnostic and research laboratories, advocacy organizations, government and industry. There are currently 31 board-certified or board-eligible genetic counselors in Arizona working in hospital clinics, industry and laboratories. There are no varying levels of practice of genetic counselors.

Genetic counselors have specialized graduate training in medical genetics and counseling through programs that are accredited by the Accreditation Council for Genetic Counseling (ACGC). The terminal degree for genetic counseling is a Master's degree. The University of Arizona recently opened a Genetic Counseling Graduate Program that is accredited with New Program Status by the ACGC. Genetic counselors are certified by the American Board of Genetic Counseling (ABGC). The CGC® credential indicates a genetic counselor is ABGC certified.

The following national organizations exist for regulation of genetic counselors:

National Society of Genetic Counselors: (NSGC) – 330 North Wabash Avenue, Suite 2000, Chicago, IL 60611. www.nsgc.org

Phone: 312-321-6834; Fax: 312-673-6972; e-mail: nsgc@nsgc.org

American Board of Genetic Counseling (ABGC) – 4400 College Blvd., Suite 220, Overland Park, KS 66211. www.abgc.net
Phone: 913-222-8661; Fax: 913-222-8606; e-mail: info@abgc.net

American Board of Medical Genetics and Genomics (ABMGG) – 6120 Executive Blvd, Suite 525, Rockville, MD 20852. <http://www.abmgg.org/>
Phone: 301-634-7315; Fax: 301-634-7320; e-mail: abmgg@abmgg.org

Accreditation Council for Genetic Counseling (ACGC) – 7918 Jones Branch Drive, Suite 300, McLean, VA 22102. www.gceducation.org
Phone: 703-506-7667. Fax: 703-506-3266; e-mail: info@gceducation.org

8. The expected costs of regulation, including:

(a) The impact that registration, certification or licensure will have on the costs of the services to the public.

Regulation of the genetic counseling profession in Arizona will likely reduce overall healthcare costs. It will also help to increase the number of genetic counselors employed in Arizona, which will expand patient access to services and ensure that the genetic tests ordered for patients are appropriate and necessary. There were 13 qualified, trained genetic counselors in Utah when the state implemented licensure in 2001. In 2016, over 70 active licensed genetic counselors were practicing in Utah. While the rapid growth of genetics and its integration into clinical practice may account for some of the increase in genetic counselor numbers, Arizona did not experience the same increase in genetic counselors during the same time period.

Licensure may reduce the costs to patients and payers for genetic counseling services. If a genetic counselor's services are billed under the genetic counselor's name, the cost for the same service is less than what a physician would bill for the same service. The lack of licensure for genetic counselors in Arizona often prevents these uniquely trained healthcare providers from being credentialed within a hospital. As a result, many institutions bill "incident to" a physician for the routine genetic counseling services that employed genetic counselors provide. These services are then billed to third-party payers and self-paying clients at a physician rate. Physicians must also spend time directly overseeing these services that credentialed genetic counselors could otherwise provide in a more efficient, independent manner. Alternatively, institutions may bill genetic counseling directly, with patients

Additionally, genetic counseling services often include discussing and/or ordering genetic tests. Hundreds of new genetic tests have been developed over the past few years—sometimes hitting the market daily. These tests are widely available for ordering by clinicians who may not have specific or sufficient training in cytogenetics, biochemical

genetics, molecular genetics, genetic risk assessment, selection of appropriate genetic testing, or genetic-test interpretation. Additionally, genetic testing laboratories have aggressively marketed tests to physicians who do not have the time or expertise to determine the best test for an individual.

Inappropriate and unnecessary genetic testing contributes to increasing societal healthcare costs. Recent evidence-based research demonstrates that genetic counselors provide a net savings when they are involved in the genetic testing process. Examples include:

- Priority Health, a private insurance company in Michigan, mandated the use of genetic counselors prior to the approval of certain genetic tests. This program prevented over \$10 million worth of inappropriate tests and a net savings of \$7.2 million.
- The Department of Veterans Affairs Genomic Medicine Service recently conducted a cursory chart review of their first 100 genetic referrals, in which testing was ordered for 19 patients by a practitioner other than a licensed genetic counselor. These tests would have cost taxpayers \$109,369 and after review by a genetic counselor, only \$18,345 of genetic tests were determined to be medically indicated for a cost savings of \$91,024.
- Licensed genetic counselors at ARUP Laboratories performed a clinical review of all genetic tests over an 11-month period. They cancelled or changed inappropriately ordered genetic tests for an average cost savings of \$36,500 per month, representing approximately 30 percent of all complex genetic tests ordered.

These studies show that genetic counselors ensure the appropriate utilization of genetic tests. Genetic counselors ensure that the right person receives the right test at the right time. They help to confirm that a genetic test is clinically indicated, and can provide the appropriate clinical justification for the test based on their specific knowledge of genetic conditions and how the testing will impact the patient's care. Third-party payers are more likely to cover clinically indicated tests, which leads to less out-of-pocket cost to the patient.

A genetic counselor is trained to identify the correct and most cost-effective test for the patient's clinical indication. For instance, a test seeking a specific gene mutation already identified in another affected family member may cost \$300, while full-sequence analysis of the gene may cost \$3,000. Another provider might order the full-sequence analysis, assuming that it is a "better" test, while a genetic counselor would deem it unnecessary.

This diligence derived from expertise saves patients from spending money on unnecessary genetic tests that third-party payers may not cover. In turn, it saves private third-party payers as well as federal and state programs, such as Medicare and Medicaid, from spending healthcare dollars on inappropriate laboratory tests.

Healthcare institutions also benefit from genetic counselors. By involving them in their genetic testing process, the institution will less likely have to absorb the cost of unnecessary or inappropriate genetic tests that its laboratory sends out and is subsequently not reimbursed.

Two hospital systems in the Denver, Colorado area have incorporated genetic counselors into their pathology departments to help develop policies and protocols for clinically appropriate and cost-effective genetic testing utilization. Licensure will provide genetic counselors the opportunity to be credentialed, which will increase the likelihood that a hospital will staff genetic counselors. As more hospitals employ genetic counselors, more patients, third-party payers, institutions, and state/federal programs will realize the benefits of cost savings related to appropriate genetic testing selection and utilization.

(b) The cost to this state and to the public of implementing the proposed legislation.

This proposed licensure may result in minimal costs to the state and may result in long-term cost-savings to the state. By enabling genetic counselors to serve patients, it is likely to increase access to appropriate health care services. In the case of AHCCCS patients, access to genetic counselors may save the state costs related to inappropriate genetic testing and better adherence to screening recommendations.

Appendix:

Article I: National Society of Genetic Counselors Code of Ethics
(<https://www.nsgc.org/p/cm/ld/fid=12>)

Preamble

Genetic counselors are health professionals with specialized education, training, and experience in medical genetics and counseling. The National Society of Genetic Counselors (NSGC) is the leading voice, authority and advocate for the genetic counseling profession. Through this code of ethics, the NSGC affirms the ethical responsibilities of its members. NSGC members are expected to be aware of the ethical implications of their professional actions and work to uphold and adhere to the guidelines and principles set forth in this code.

Introduction

A code of ethics is a document that attempts to clarify and guide the conduct of a professional so that the goals and values of the profession are best served. The NSGC Code of Ethics is based upon the distinct relationships genetic counselors have with 1) themselves, 2) their clients, 3) their colleagues, and 4) society. Each section of this code begins with an explanation of the relevant relationship, along with the key values and characteristics of that relationship. These values are drawn from the ethical principles of autonomy, beneficence, nonmaleficence and

justice, and they include the professional principles of fidelity, veracity, integrity, dignity and accountability.

No set of guidelines can provide all the assistance needed in every situation, especially when different values appear to conflict. In certain areas, some ambiguity remains, allowing for the judgment of the genetic counselor(s) involved to determine how best to respond to difficult situations.

Section I: Genetic Counselors Themselves

Genetic counselors value professionalism, competence, integrity, objectivity, veracity, dignity, accountability and self-respect in themselves as well as in each other. Therefore, genetic counselors work to:

1. Seek out and acquire balanced, accurate and relevant information required for a given situation.
2. Continue their education and training to keep abreast of relevant guidelines, regulations, position statements, and standards of genetic counseling practice.
3. Work within their scope of professional practice and recognize the limits of their own knowledge, expertise, and competence.
4. Accurately represent their experience, competence, and credentials, including academic degrees, certification, licensure, and relevant training.
5. Identify and adhere to institutional and professional conflict of interest guidelines and develop mechanisms for avoiding or managing real or perceived conflict of interest when it arises
6. Acknowledge and disclose to relevant parties the circumstances that may interfere with or influence professional judgment or objectivity, or may otherwise result in a real or perceived conflict of interest.
7. Assure that institutional or professional privilege is not used for personal gain.
8. Be responsible for their own physical and emotional health as it impacts their professional judgment and performance, including seeking professional support, as needed.

Section II: Genetic Counselors and Their Clients

The counselor-client relationship is based on values of care and respect for the client's autonomy, individuality, welfare, and freedom in clinical and research interactions. Therefore, genetic counselors work to:

1. Provide genetic counseling services to their clients within their scope of practice regardless of personal interests or biases, and refer clients, as needed, to appropriately qualified professionals.

2. Clarify and define their professional role(s) and relationships with clients, disclose any real or perceived conflict of interest, and provide an accurate description of their services.
3. Provide genetic counseling services to their clients regardless of their clients' abilities, age, culture, religion, ethnicity, language, sexual orientation and gender identity.
4. Enable their clients to make informed decisions, free of coercion, by providing or illuminating the necessary facts, and clarifying the alternatives and anticipated consequences.
5. Respect their clients' beliefs, inclinations, circumstances, feelings, family relationships, sexual orientation, religion, gender identity, and cultural traditions.
6. Refer clients to an alternate genetic counselor or other qualified professional when situations arise in which a genetic counselor's personal values, attitudes and beliefs may impede his or her ability to counsel a client.
7. Maintain the privacy and security of their client's confidential information and individually identifiable health information, unless released by the client or disclosure is required by law.
8. Avoid the exploitation of their clients for personal, professional, or institutional advantage, profit or interest.

Section III: Genetic Counselors and Their Colleagues

The genetic counselors' professional relationships with other genetic counselors, trainees, employees, employers and other professionals are based on mutual respect, caring, collaboration, fidelity, veracity and support. Therefore, genetic counselors work to:

1. Share their knowledge and provide mentorship and guidance for the professional development of other genetic counselors, employees, trainees and colleagues.
2. Respect and value the knowledge, perspectives, contributions, and areas of competence of colleagues, trainees and other professionals.
3. Encourage ethical behavior of colleagues.
4. Assure that individuals under their supervision undertake responsibilities that are commensurate with their knowledge, experience and training.
5. Maintain appropriate boundaries to avoid exploitation in their relationships with trainees, employees, employers and colleagues.
6. Take responsibility and credit only for work they have actually performed and to which they have contributed
7. Appropriately acknowledge the work and contributions of others.

8. Make employers aware of genetic counselors' ethical obligations as set forth in the NSGC Code of Ethics.

Section IV: Genetic Counselors and Society

The relationships of genetic counselors with society include interest and participation in activities that have the purpose of promoting the well-being of society and access to genetic services and health care. These relationships are based on the principles of veracity, objectivity and integrity. Therefore, genetic counselors, individually or through their professional organizations, work to:

1. Promote policies that aim to prevent genetic discrimination and oppose the use of genetic information as a basis for discrimination.
2. Serve as a source of reliable information and expert opinion on genetic counseling to employers, policymakers, payers, and public officials. When speaking publically on such matters, a genetic counselor should be careful to separate their personal statements and opinions made as private individuals from statements made on behalf of their employers or professional societies.
3. Participate in educating the public about the development and application of technological and scientific advances in genetics and the potential societal impact of these advances.
4. Promote policies that assure ethically responsible research in the context of genetics.
5. Adhere to applicable laws and regulations. However, when such laws are in conflict with the principles of the profession, genetic counselors work toward change that will benefit the public interest.

Adopted 1/92 by the National Society of Genetic Counselors, Inc.; Revised 12/04, 1/06, 4/17

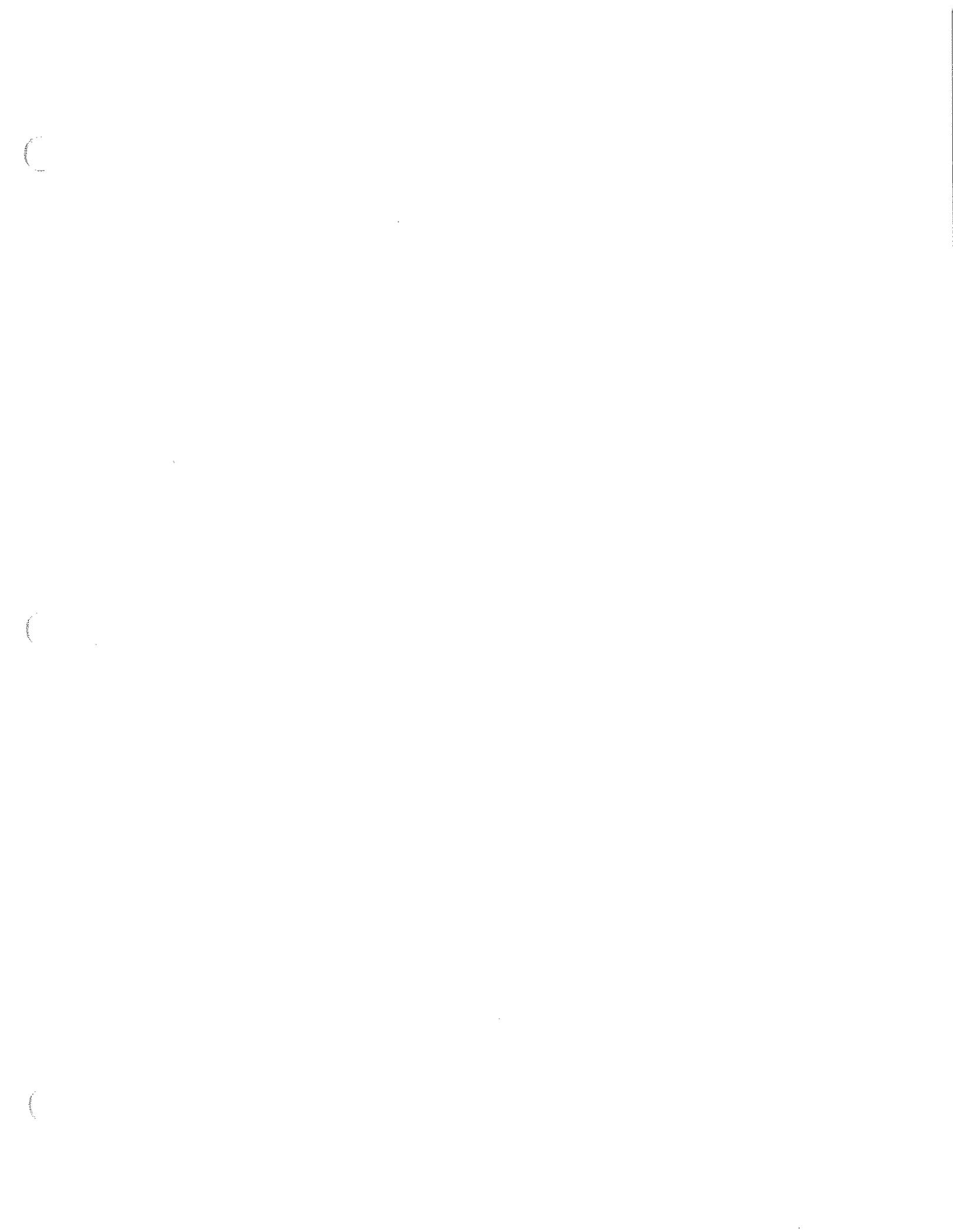
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H.R. 3235, the “Access to Genetic Counselor Services Act of 2019”

- The Act provides coverage of services furnished by genetic counselors under part B of the Medicare program.
- Genetic counselors are those licensed by states as such, or for those in states without licensure, the Secretary of HHS will set criteria through regulation (likely ABGC certification).
- Other practitioners that currently provide the service will not be affected.
- Genetic counselors would be paid at 85 percent of the physician fee schedule.
- If E/M codes are used for billing the service, a CPT code modifier would be used to note the service was done by a genetic counselor.
- Genetic counselors would be able to assign reimbursement to their employer.

HR 3235

116TH CONGRESS
1ST SESSION

H. R. 3235

To amend title XVIII of the Social Security Act to provide for expanded coverage of services furnished by genetic counselors under part B of the Medicare program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 12, 2019

Mr. LOESACK (for himself and Mr. KELLY of Pennsylvania) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title XVIII of the Social Security Act to provide for expanded coverage of services furnished by genetic counselors under part B of the Medicare program, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Access to Genetic
5 Counselor Services Act of 2019".

1 “(A) is licensed as a genetic counselor by the
2 State in which the individual furnishes genetic coun-
3 seling services; or

4 “(B) in the case of an individual practicing in
5 a State that does not license genetic counselors,
6 meets such other criteria as the Secretary estab-
7 lishes.

8 The provisions of this paragraph shall not be construed
9 as preventing other practitioners, including those pro-
10 viding telehealth services, from providing covered genetic
11 counseling services within the scope of their practice.”.

12 (b) PHYSICIANS’ SERVICES.—Section 1848(j)(3) of
13 the Social Security Act (42 U.S.C. 1395w-4(j)(3)) is
14 amended by inserting “(2)(II),” after “(2)(FF) (including
15 administration of the health risk assessment) ,”.

16 (c) PAYMENT.—

17 (1) IN GENERAL.—Section 1833(a)(1) of the
18 Social Security Act (42 U.S.C. 1395l(a)(1)) is
19 amended—

20 (A) by striking “and (CC)” and inserting
21 “(CC)”; and

22 (B) by inserting before the semicolon at
23 the end the following: “, and (DD) with respect
24 to covered genetic counseling services under sec-
25 tion 1861(s)(2)(II), furnished by a genetic

1 counselor, the amount of payment for such
2 service shall be an amount equal to 85 percent
3 of the lesser of the actual charge for the serv-
4 ices or the amount determined under the fee
5 schedule established under section 1848(b) for
6 the same services if furnished by a physician”.

7 (2) MODIFIER.—Section 1834 of the Social Se-
8 curity Act (42 U.S.C. 1395m) is amended by adding
9 at the end the following new subsection:

10 “(x) USE OF MODIFIER WITH RESPECT TO GENETIC
11 COUNSELING SERVICES.—

12 “(1) ESTABLISHMENT.—Not later than Janu-
13 ary 1, 2020, the Secretary shall establish a modifier
14 to be utilized with evaluation and management CPT
15 codes to indicate (in a form and manner specified by
16 the Secretary), in the case of covered genetic coun-
17 seling services under section 1861(s)(2)(II), if such
18 services were furnished by a genetic counselor.

19 “(2) REQUIRED USE.—Each request for pay-
20 ment, or bill submitted using evaluation and man-
21 agement CPT codes, for covered genetic counseling
22 services (as defined in section 1861(kkk)(1)) fur-
23 nished by a genetic counselor (as defined in section
24 1861(kkk)(2)) on or after January 1, 2020, shall in-

1 clude the modifier established under subparagraph
2 (A) for each such service.”.

3 (d) ASSIGNMENT OF PAYMENT.—Section 1833(r) of
4 the Social Security Act (42 U.S.C. 1395l(r)) is amended
5 by adding at the end the following new paragraph:

6 “(3) APPLICATION TO GENETIC COUNSELORS.—
7 The provisions of paragraphs (1) and (2) shall apply
8 with respect to covered genetic counseling services
9 described in section 1861(s)(2)(II) and genetic coun-
10 selors (as defined in section 1861(kkk)(2)) in the
11 same manner as such provisions apply with respect
12 to services described in section 1861(s)(2)(K)(ii) and
13 nurse practitioners.”.

14 (e) CONFORMING AMENDMENT.—Section
15 1862(a)(14) of the Social Security Act (42 U.S.C.
16 1395(y)(a)(14)) is amended by inserting “covered genetic
17 counseling services,” after “qualified psychologist serv-
18 ices,”.

19 (f) EFFECTIVE DATE.—

20 (1) IN GENERAL.—The amendments made by
21 this section shall apply to services furnished on or
22 after January 1, 2020.

23 (2) IMPLEMENTATION.—The Secretary of
24 Health and Human Services may implement the

- 1 amendments made by this section by interim final
- 2 rule with comment period.

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Organization
Support
Letter
Signatures

H.R. 3235 Organization Support Letter Signatories

Current List of letter signatories as of August 2019

- Access to Expanded Carrier Screening Coalition
- Advocate Aurora Health
- AliveAndKickn
- Ambry Genetics
- American Board of Genetic Counseling
- American Neurological Association
- American Society of Colon and Rectal Surgeons
- American Society of Human Genetics
- Amyloidosis Foundation
- ARUP Laboratories
- Association for Utah Genetic Counselors
- Association of Community Cancer Centers
- Association of Creatine Deficiencies
- Augustana University
- AXYS
- Bay Path University
- Baylor College of Medicine
- Baylor College of Medicine Genetic Counseling Program
- BillionToOne
- Boston University Master's Program in Genetic Counseling
- Boston University School of Medicine
- Brandeis University Master's in Genetic Counseling Program
- BRCA Advanced 101 & 102 Journal Club
- Bridge the Gap - SYNGAP Education and Research Foundation
- Brigham and Women's Hospital
- Bright Pink
- CDH International
- Cedars-Sinai
- Charcot Marie Tooth Association
- Child Neurology Foundation
- Children's Hospital Colorado
- Children's Specialty Group
- Choroideremia Research Foundation
- Colon Cancer Coalition
- Colon Cancer Foundation
- Color
- Colorectal Cancer Alliance

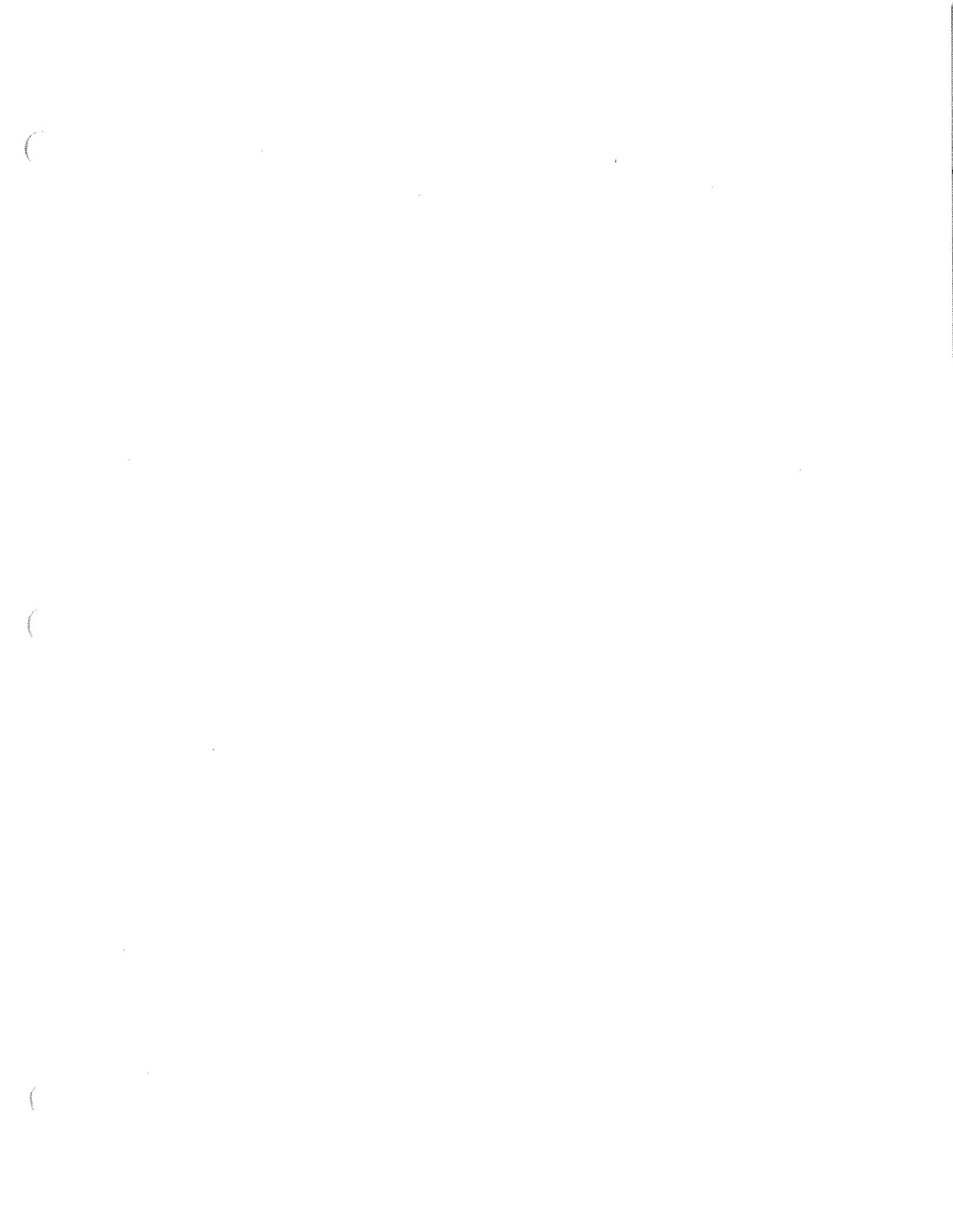
- Columbia University Irving Medical Center
- Concert Genetics
- Coriell Institute for Medical Research
- Coriell Life Sciences
- Csnk2a1 Foundation
- CureDuchenne
- Cure Sanfilippo Foundation
- DCM Foundation
- Digestive Disease and Surgery Institute, Cleveland Clinic
- Down Syndrome Association of Central Ohio
- Down Syndrome Association of Greater Cincinnati
- Dreamsickle Kids Foundation
- Dup15q Alliance
- Eastern Division of Wisconsin of the Hospital Sisters Health System
- Emory School of Medicine
- Emory University
- Empire State Hematology & Oncology Society
- Epilepsy Foundation
- EveryLife Foundation for Rare Diseases
- Exceptional Lives, Inc
- Executive Frameworks, Ltd (aka The Center for Business Models in Healthcare)
- Family Connection of SC
- Fight Colorectal Cancer
- Florida Association of Genetic Counselors
- FOD Family Support Group
- FORCE: Facing Our Risk of Cancer Empowered
- Fulgent Genetics
- Geisinger
- GeneDx, Inc
- GeneMatters
- Genetic Alliance
- Genetic Support Foundation
- Genome Medical
- GenomeSmart Inc
- George Washington University MFA
- Georgia Association of Genetic Counselors
- Global Genes
- Gibbs Cancer Center & Research Institute
- Graduate School of Public Health, University of Pittsburgh
- Greenwood Genetic Center
- Grey Genetics
- Gundersen Health System
- Hawaii Society of Clinical Oncology

- Hawkeye Area Down Syndrome Association (HADSA)
- HCU Network America
- Hearth Rhythm Society
- Hereditary Diffuse Gastric Cancer Advocacy
- Hereditary Neuropathy Foundation
- Hospital Sisters Health System EWD
- Huntington's Disease Society of America
- Huntington's Disease Youth Organization (HDYO)
- Illinois Society of Genetic Professionals
- Illumina
- Indiana Hemophilia and Thrombosis Center
- Indiana Network of Genetic Counselors
- Indiana State University
- InformedDNA
- InherRET, Inc
- Intelliger Consulting
- Intermountain Healthcare- Precision Genomics
- International Foundation for CDKL5 Research
- International Network for Fatty Acid Oxidation Research and Management (INFORM)
- International WAGR Syndrome Association
- Invitae
- Iowa Neurological Association
- IU Health
- Johns Hopkins University
- Jordan's Guardian Angels
- KCNQ2 Cure Alliance
- Keck Graduate Institute
- Kennedy Krieger Institute
- Laboratory Corporation of America Holdings
- Lipodystrophy United
- LIU Post GCGP
- Long Island University
- Long Island University Post
- Lynch Syndrome International
- Maryland and DC Society of Genetic Counselors
- Massachusetts General Hospital
- M-CM Network
- MedAnswers Inc
- Medical College of Wisconsin
- Memorial Care
- Memorial Sloan Kettering Cancer Center
- MercyOne Des Moines Medical Center
- Metis Genetics, LLC

- Miami Valley Down Syndrome Association
- Michigan Association of Genetic Counselors
- Michigan Medicine
- Mickie's Miracles
- Minnesota Genetic Counselors Association
- Missouri Oncology Society
- Moffitt Cancer Center
- My Gene Counsel
- My Gene Team
- National Ataxia Foundation
- National Down Syndrome Society
- National PKU News
- NGLY1.org
- New Hope Fertility Center
- New York State Genetics Task Force
- No Stomach for Cancer
- North Carolina Medical Genetics Association
- Norton & Elaine Sarnoff Center for Jewish Genetics (Jewish United Fund)
- Ohio Association of Genetic Counselors
- OhioHealth
- ORM Fertility
- Osteogenesis Imperfecta Foundation
- Pacific Reproductive Genetic Counseling
- Parents and Researchers Interested in Smith-Magenis Syndrome (PRISMS)
- Parent Project Muscular Dystrophy (PPMD)
- Partners HealthCare
- Pathways for Rare and Orphan Studies
- Penn Medicine Bassett Center
- Penn State Health
- Pennsylvania Association of Genetic Counselors
- Personalized Medicine Coalition
- Phelan-McDermid Syndrome Foundation
- Pheo Para Alliance
- Piedmont Healthcare, Inc.
- PlumeCare, LLC
- Prader-Willi Syndrome Association (USA)
- PreventionGenetics
- Prisma Health Upstate Cancer Institute
- Quest Diagnostics
- Rady Children's Hospital- San Diego
- Rare New England, INC
- Regional Obstetrical Consultants
- Rocky Mountain Cancer Centers

- Rutgers Cancer Institute of New Jersey
- Rutgers, the State University of New Jersey
- Sanford Health
- Sema4
- SERGG
- Sharsheret
- Society for Maternal-Fetal Medicine
- South Carolina Chapter of the American Academy of Pediatrics
- Southern California Genetic Counselors
- South Carolina Oncology Society
- Southeast Nebraska Cancer Center
- Spectrum Health
- Sudden Arrhythmia Death Syndromes (SADS) Foundation
- Swedish Cancer Institute
- Tennessee Genetic Counselor Association
- The Collaborative Group of the Americas on Inherited Gastrointestinal Cancers
- The Familial Hypercholesterolemia Foundation
- The Ohio State University James Cancer Hospital and Solove Institute
- The Ohio State University Genetic Counseling Graduate Program
- The Up Side of Downs of Northeast Ohio
- The University of Arizona Cancer Center at Dignity Health St. Joseph's
- The Women's Hospital
- ThinkGenetic Foundation
- Tuberous Sclerosis Alliance
- UC Davis Comprehensive Cancer Center
- University of Alabama at Birmingham Genetic Counseling Training Program
- University of Arkansas for Medical Science Genetic Counseling Graduate Program
- University of California San Francisco
- University of Iowa Health Care
- University of Kentucky Markey Cancer Center
- University of Maryland School of Medicine
- University of Maryland Master's in Genetic Counseling Program
- University of Miami Miller School of Medicine
- University of Michigan Genetic Counseling Program
- University of Mississippi Medical Center Pediatric Genetics Division
- University of South Florida
- University of Utah Graduate Program in Genetic Counseling
- UW Health
- Vanderbilt University Medical Center
- VHL Alliance
- Virginia Association of Genetic Counselors (VaAGC)
- WakeMed Health & Hospitals
- Watershed DNA, LLC

- Wayne State University School of Medicine
- Whittingham Cancer Center



STATES CURRENTLY ISSUING LICENSES FOR GENETIC COUNSELING

California
Connecticut
Delaware
Idaho
Illinois
Indiana
Kentucky
Louisiana
Massachusetts
Minnesota
Nebraska
New Hampshire
New Jersey
New Mexico
North Dakota
Ohio
Oklahoma
Pennsylvania
South Dakota
Tennessee
Utah
Virginia
Washington

STATES WITH BILLS PASSED/IN RULEMAKING

Alabama
Arkansas
Georgia
Hawaii
Iowa
Michigan

Behind this tab we have included some sample copies of other states legislation and in the case of Utah, their administrative code. Additional states available upon request.

Utah

Utah
Genetic Counselors
Licensing Act
Chapter 75

Chapter 75
Genetic Counselors Licensing Act

Part 1
General Provisions

58-75-101 Title.

This chapter is known as the "Genetic Counselors Licensing Act."

Enacted by Chapter 100, 2001 General Session

58-75-102 Definitions.

In addition to the definitions in Section 58-1-102, as used in this chapter:

- (1) "Board" means the Genetic Counselors Licensing Board created in Section 58-75-201.
- (2) "Genetic counselor" means a person licensed under this chapter to engage in the practice of genetic counseling.
- (3) "Practice of genetic counseling" means the communication process which deals with the human problems associated with the occurrence, or the risk of occurrence, of a genetic disorder in a family, including the provision of services to help an individual or family:
 - (a) comprehend the medical facts, including the diagnosis, probable cause of the disorder, and the available management;
 - (b) appreciate the way heredity contributes to the disorder and the risk of occurrence in specified relatives;
 - (c) understand the alternatives for dealing with the risk of occurrence;
 - (d) choose the course of action which seems appropriate to them in view of their risk, their family goals, and their ethical and religious standards, and to act in accordance with that decision; and
 - (e) make the best possible psychosocial adjustment to the disorder in an affected family member or to the risk of occurrence of that disorder.
- (4) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-75-501.
- (5) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-75-502 and as may be further defined by rule by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Amended by Chapter 382, 2008 General Session

Part 2
Board

58-75-201 Board.

- (1) There is created the Genetic Counselors Licensing Board consisting of four persons licensed in accordance with this chapter and one member of the general public.
- (2) The board shall be appointed and serve in accordance with Section 58-1-201.
- (3) The duties and responsibilities of the board shall be in accordance with Sections 58-1-202 and 58-1-203. In addition, the board may designate one of its members on a permanent or rotating basis to:

- (a) assist the division in reviewing complaints concerning the unlawful or unprofessional conduct of a licensee; and
 - (b) advise the division in its investigation of these complaints.
- (4) A board member who has, under Subsection (3), reviewed a complaint or advised in its investigation may be disqualified from participating with the board when the board serves as a presiding officer of an administrative proceeding concerning the complaint.

Enacted by Chapter 100, 2001 General Session

Part 3 Licensing

58-75-301 Licensure required -- Issuance of licenses -- Effect on insurers.

- (1) Beginning January 1, 2002, and except as provided in Sections 58-1-307 and 58-75-304, a license is required to engage in the practice of genetic counseling.
- (2) The division shall issue to any person who qualifies under this chapter a license to practice genetic counseling.
- (3) Nothing in this chapter shall be construed to require payment from insurers for genetic counseling services.

Enacted by Chapter 100, 2001 General Session

58-75-302 Qualifications for licensure -- Temporary license.

- (1) Except as provided in Subsection (2), each applicant for licensure as a genetic counselor under this chapter shall:
 - (a) submit an application in a form prescribed by the division;
 - (b) pay a fee determined by the department under Section 63J-1-504;
 - (c) be of good moral character;
 - (d) provide satisfactory documentation of having earned:
 - (i) a master's degree from a genetic counseling training program that is accredited by the American Board of Genetic Counseling or an equivalent as determined by the division; or
 - (ii) a doctoral degree from a medical genetics training program that is accredited by the American Board of Medical Genetics or an equivalent as determined by the division; and
 - (e) meet the examination requirement for certification as:
 - (i) a genetic counselor by the American Board of Genetic Counseling or the American Board of Medical Genetics; or
 - (ii) a medical geneticist by the American Board of Medical Genetics.
- (2) The division may issue a temporary license, in accordance with Section 58-1-303 and any other conditions established by rule, to an applicant who meets all of the requirements for licensure except the examination requirement of Subsection (1)(e).

Amended by Chapter 183, 2009 General Session

58-75-303 Term of license -- Expiration -- Renewal.

- (1) The division shall issue each license under this chapter in accordance with a two-year renewal cycle established by rule. The division may by rule extend or shorten a renewal cycle by as much as one year to stagger the renewal cycles it administers.
- (2) Each licensee shall, at the time of applying for renewal, demonstrate compliance with continuing education requirements established by rule by the division in collaboration with the board.
- (3) Each license automatically expires on the expiration date shown on the license unless the licensee renews it in accordance with Section 58-1-308.

Enacted by Chapter 100, 2001 General Session

58-75-304 Exemptions from licensure.

In addition to the exemptions from licensure set forth in Section 58-1-307, the following persons may engage in the practice of genetic counseling subject to the stated circumstances and limitations without being licensed under this chapter:

- (1) an individual licensed as a physician and surgeon or osteopathic physician and surgeon under Chapter 67, Utah Medical Practice Act, and Chapter 68, Utah Osteopathic Medical Practice Act;
- (2) a commissioned physician or surgeon serving in the armed forces of the United States or other federal agency; and
- (3) an individual licensed as a physician assistant under Chapter 70a, Utah Physician Assistant Act.

Amended by Chapter 349, 2019 General Session

**Part 4
License Denial and Discipline**

58-75-401 Grounds for denial of license -- Disciplinary proceedings.

Grounds for refusing to issue a license to an applicant, for refusing to renew the license of a licensee, for revoking, suspending, restricting, or placing on probation the license of a licensee, for issuing a public or private reprimand to a licensee, and for issuing a cease and desist order shall be in accordance with Section 58-1-401.

Enacted by Chapter 100, 2001 General Session

**Part 5
Unlawful and Unprofessional Conduct**

58-75-501 Unlawful conduct.

"Unlawful conduct" includes, in addition to the definition in Section 58-1-501, using the title "genetic counselor" or any other title or designation tending to indicate that the person is a genetic counselor unless that person has a current license as a genetic counselor issued under this chapter.

Enacted by Chapter 100, 2001 General Session

58-75-502 Unprofessional conduct.

"Unprofessional conduct" includes, in addition to the definition in Section 58-1-501 and as may be further defined by rule:

- (1) engaging in any act or practice in a professional capacity which the licensee is not competent to perform through training or experience;
- (2) failing to refer a client to other competent professionals when the licensee is unable or unwilling to adequately support or serve the client;
- (3) failing to maintain the confidentiality of any information received from a client, unless released by the client or otherwise authorized or required by law; and
- (4) exploiting a client for personal advantage, profit, or interest.

Enacted by Chapter 100, 2001 General Session

Utah
Administrative
Code

R156-1
Utah Administrative Code
Issued April 9, 2018

Disclaimer: The statute/rule above is an unofficial version provided for convenience only and may not be identical to the official versions on the Utah State Legislature (www.le.utah.gov) and the Utah Division of Administrative Rules (www.rules.utah.gov) websites.

R156. Commerce, Occupational and Professional Licensing.

R156-1. General Rule of the Division of Occupational and Professional Licensing.

R156-1-101. Title.

This rule is known as the "General Rule of the Division of Occupational and Professional Licensing."

R156-1-102. Definitions.

In addition to the definitions in Title 58, as used in Title 58 or this rule:

(1) "Active and in good standing" means a licensure status which allows the licensee full privileges to engage in the practice of the occupation or profession subject to the scope of the licensee's license classification. A license that has been placed on probation subject to terms and conditions is not active and in good standing.

(2) "Aggravating circumstances" means any consideration or factors that may justify an increase in the severity of an action to be imposed upon an applicant or licensee. Aggravating circumstances include:

(a) prior record of disciplinary action, unlawful conduct, or unprofessional conduct;

(b) dishonest or selfish motive;

(c) pattern of misconduct;

(d) multiple offenses;

(e) obstruction of the disciplinary process by intentionally failing to comply with rules or orders of the Division;

(f) submission of false evidence, false statements or other deceptive practices during the disciplinary process including creating, destroying or altering records after an investigation has begun;

(g) refusal to acknowledge the wrongful nature of the misconduct involved, either to the client or to the Division;

(h) vulnerability of the victim;

(i) lack of good faith to make restitution or to rectify the consequences of the misconduct involved;

(j) illegal conduct, including the use of controlled substances; and

(k) intimidation or threats of withholding clients' records or other detrimental consequences if the client reports or testifies regarding the unprofessional or unlawful conduct.

(3) "Cancel" or "cancellation" means nondisciplinary action by the Division to rescind, repeal, annul, or void a license:

(a) issued to a licensee in error, such as where a license is issued to an applicant:

(i) whose payment of the required application fee is dishonored when presented for payment;

(ii) who has been issued a conditional license pending a criminal background check and the check cannot be completed due to the applicant's failure to resolve an outstanding warrant or to submit acceptable fingerprint cards;

(iii) who has been issued the wrong classification of licensure; or

(iv) due to any other error in issuing a license; or

(b) not issued erroneously, but where subsequently the licensee fails to maintain the ongoing qualifications for licensure, when such failure is not otherwise defined as unprofessional or unlawful conduct.

(4) "Charges" means the acts or omissions alleged to constitute either unprofessional or unlawful conduct or both by a licensee, which serve as the basis to consider a licensee for inclusion in the diversion program authorized in Section 58-1-404.

(5) "Conditional licensure" means an interim non-adverse licensure action, in which a license is issued to an applicant for initial, renewal, or reinstatement of licensure on a conditional basis in accordance with Section R156-1-308f, while an investigation, inspection, or audit is pending.

(6) "Denial of licensure" means action by the Division refusing to issue a license to an applicant for initial licensure, renewal of licensure, reinstatement of licensure or relicensure.

(7) (a) "Disciplinary action" means adverse licensure action by the Division under the authority of Subsections 58-1-401(2) (a) through (2) (b).

(b) "Disciplinary action", as used in Subsection 58-1-401(5), shall not be construed to mean an adverse licensure action taken in response to an application for licensure. Rather, as used in Subsection 58-1-401(5), it shall be construed to mean an adverse action initiated by the Division.

(8) "Diversion agreement" means a formal written agreement between a licensee, the Division, and a diversion committee, outlining the terms and conditions with which a licensee must comply as a condition of entering in and remaining under the diversion program authorized in Section 58-1-404.

(9) "Diversion committees" mean diversion advisory committees authorized by Subsection 58-1-404(2) (a) (i) and created under Subsection R156-1-404a.

(10) "Duplicate license" means a license reissued to replace a license which has been lost, stolen, or mutilated.

(11) "Emergency review committees" mean emergency adjudicative proceedings review committees created by the Division under the authority of Subsection 58-1-108(2).

(12) "Expire" or "expiration" means the automatic termination of a license which occurs:

(a) at the expiration date shown upon a license if the licensee fails to renew the license before the expiration date; or

(b) prior to the expiration date shown on the license:

(i) upon the death of a licensee who is a natural person;

(ii) upon the dissolution of a licensee who is a partnership, corporation, or other business entity; or

(iii) upon the issuance of a new license which supersedes an old license, including a license which:

(A) replaces a temporary license;

(B) replaces a student or other interim license which is limited to one or more renewals or other renewal limitation; or

(C) is issued to a licensee in an upgraded classification permitting the licensee to engage in a broader scope of practice in the licensed occupation or profession.

(13) "Inactive" or "inactivation" means action by the Division to place a license on inactive status in accordance with Sections 58-1-305 and R156-1-305.

(14) "Investigative subpoena authority" means, except as otherwise specified in writing by the director, the Division regulatory and compliance officer, or if the Division regulatory and compliance officer is unable to so serve for any reason, a Department administrative law judge, or if both the Division regulatory and compliance officer and a Department administrative law judge are unable to so serve for any reason, an alternate designated by the director in writing.

(15) "License" means a right or privilege to engage in the practice of a regulated occupation or profession as a licensee.

(16) "Limit" or "limitation" means nondisciplinary action placing either terms and conditions or restrictions or both upon a license:

(a) issued to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure; or

(b) issued to a licensee in place of the licensee's current license or disciplinary status.

(17) "Mitigating circumstances" means any consideration or factors that may justify a reduction in the severity of an action to be imposed upon an applicant or licensee.

(a) Mitigating circumstances include:

(i) absence of prior record of disciplinary action, unlawful conduct or unprofessional conduct;

(ii) personal, mental or emotional problems provided such problems have not posed a risk to the health, safety or welfare of the public or clients served such as drug or alcohol abuse while engaged in work situations or similar situations where the licensee or applicant should know that they should refrain from engaging in activities that may pose such a risk;

(iii) timely and good faith effort to make restitution or rectify the consequences of the misconduct involved;

(iv) full and free disclosure to the client or Division prior to the discovery of any misconduct;

(v) inexperience in the practice of the occupation and profession provided such inexperience is not the result of failure to obtain appropriate education or consultation that the applicant or licensee should have known they should obtain prior to beginning work on a particular matter;

(vi) imposition of other penalties or sanctions if the other penalties and sanctions have alleviated threats to the public health, safety, and welfare; and

(vii) remorse.

(b) The following factors may not be considered as mitigating circumstances:

(i) forced or compelled restitution;

(ii) withdrawal of complaint by client or other affected persons;

(iii) resignation prior to disciplinary proceedings;

(iv) failure of injured client to complain;

(v) complainant's recommendation as to sanction; and

(vi) in an informal disciplinary proceeding brought pursuant to Subsection 58-1-501(2) (c) or (d) or Subsections R156-1-501(1) through (5):

(A) argument that a prior proceeding was conducted unfairly, contrary to law, or in violation of due process or any other procedural safeguard;

(B) argument that a prior finding or sanction was contrary to the evidence or entered without due consideration of relevant evidence;

(C) argument that a respondent was not adequately represented by counsel in a prior proceeding; and

(D) argument or evidence that former statements of a respondent made in conjunction with a plea or settlement agreement are not, in fact, true.

(18) "Nondisciplinary action" means adverse licensure action by the Division under the authority of Subsections 58-1-401(1) or 58-1-401(2) (c) through (2) (d).

(19) "Peer committees" mean advisory peer committees to boards created by the legislature in Title 58 or by the Division under the authority of Subsection 58-1-203(1) (f).

(20) "Probation" means disciplinary action placing terms and conditions upon a license;

(a) issued to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure; or

(b) issued to a licensee in place of the licensee's current license or disciplinary status.

(21) "Public reprimand" means disciplinary action to formally reprove or censure a licensee for unprofessional or unlawful conduct, with the documentation of the action being classified as a public record.

(22) "Regulatory authority" as used in Subsection 58-1-501(2)(d) means any governmental entity who licenses, certifies, registers, or otherwise regulates persons subject to its jurisdiction, or who grants the right to practice before or otherwise do business with the governmental entity.

(23) "Reinstate" or "reinstatement" means to activate an expired license or to restore a license which is restricted, as defined in Subsection (26)(b), or is suspended, or placed on probation, to a lesser restrictive license or an active in good standing license.

(24) "Relicense" or "relicensure" means to license an applicant who has previously been revoked or has previously surrendered a license.

(25) "Remove or modify restrictions" means to remove or modify restrictions, as defined in Subsection (25)(a), placed on a license issued to an applicant for licensure.

(26) "Restrict" or "restriction" means disciplinary action qualifying or limiting the scope of a license:

(a) issued to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure in accordance with Section 58-1-304; or

(b) issued to a licensee in place of the licensee's current license or disciplinary status.

(27) "Revoke" or "revocation" means disciplinary action by the Division extinguishing a license.

(28) "Suspend" or "suspension" means disciplinary action by the Division removing the right to use a license for a period of time or indefinitely as indicated in the disciplinary order, with the possibility of subsequent reinstatement of the right to use the license.

(29) "Surrender" means voluntary action by a licensee giving back or returning to the Division in accordance with Section 58-1-306, all rights and privileges associated with a license issued to the licensee.

(30) "Temporary license" or "temporary licensure" means a license issued by the Division on a temporary basis to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure in accordance with Section 58-1-303.

(31) "Unprofessional conduct" as defined in Title 58 is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-1-501.

(32) "Warning or final disposition letters which do not constitute disciplinary action" as used in Subsection 58-1-108(3) mean letters which do not contain findings of fact or conclusions of law and do not constitute a reprimand, but which may address any or all of the following:

(a) Division concerns;

(b) allegations upon which those concerns are based;

(c) potential for administrative or judicial action; and

(d) disposition of Division concerns.

R156-1-102a. Global Definitions of Levels of Supervision.

(1) Except as otherwise provided by statute or rule, the global definitions of levels of supervision herein shall apply to supervision terminology used in Title 58 and Title R156, and shall be referenced and used, to the extent practicable, in statutes and rules to promote uniformity and consistency.

(2) Except as otherwise provided by statute or rule, all unlicensed personnel specifically allowed to practice a regulated occupation or profession are required to practice under an appropriate level of supervision defined herein, as specified by the licensing act or licensing act rule governing each occupation or profession.

(3) Except as otherwise provided by statute or rule, all license classifications required to practice under supervision shall practice under an

appropriate level of supervision defined herein, as specified by the licensing act or licensing act rule governing each occupation or profession.

(4) Levels of supervision are defined as follows:

(a) "Direct supervision" and "immediate supervision" mean the supervising licensee is present and available for face-to-face communication with the person being supervised when and where occupational or professional services are being provided.

(b) "Indirect supervision" means the supervising licensee:

(i) has given either written or verbal instructions to the person being supervised;

(ii) is present within the facility in which the person being supervised is providing services; and

(iii) is available to provide immediate face-to-face communication with the person being supervised as necessary.

(c) "General supervision" means that the supervising licensee:

(i) has authorized the work to be performed by the person being supervised;

(ii) is available for consultation with the person being supervised by personal face-to-face contact, or direct voice contact by telephone, radio or some other means, without regard to whether the supervising licensee is located on the same premises as the person being supervised; and

(iii) can provide any necessary consultation within a reasonable period of time and personal contact is routine.

(5) "Supervising licensee" means a licensee who has satisfied any requirements to act as a supervisor and has agreed to provide supervision of an unlicensed individual or a licensee in a classification or licensure status that requires supervision in accordance with the provisions of this chapter.

R156-1-103. Authority - Purpose.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58.

R156-1-106. Division - Duties, Functions, and Responsibilities.

(1) In accordance with Subsection 58-1-106(2), the following responses to requests for lists of licensees may include multiple licensees per request and may include home telephone numbers, home addresses, and e-mail addresses, subject to the restriction that the addresses and telephone numbers shall only be used by a requester for purposes for which the requester is properly authorized:

(a) responses to requests from another governmental entity, government-managed corporation, a political subdivision, the federal government, another state, or a not-for-profit regulatory association to which the Division is a member;

(b) responses to requests from an occupational or professional association, private continuing education organizations, trade union, university, or school, for purposes of education programs for licensees;

(c) responses to a party to a prelitigation proceeding convened by the Division under Title 78, Chapter 14;

(d) responses to universities, schools, or research facilities for the purposes of research;

(e) responses to requests from licensed health care facilities or third party credentialing services, for the purpose of verifying licensure status for issuing credentialing or reimbursement purposes; and

(f) responses to requests from a person preparing for, participating in, or responding to:

(i) a national, state or local emergency;

(ii) a public health emergency as defined in Section 26-23b-102; or

(iii) a declaration by the President of the United States or other federal official requesting public health-related activities.

(2) In accordance with Subsection 58-1-106(3) (a) and (b), the Division may deny a request for an address or telephone number of a licensee to an individual who provides proper identification and the reason for the request, in writing, to the Division, if the reason for the request is deemed by the Division to constitute an unwarranted invasion of privacy or a threat to the public health, safety, and welfare.

(3) In accordance with Subsection 58-1-106(3) (c), proper identification of an individual who requests the address or telephone number of a licensee and the reason for the request, in writing, shall consist of the individual's name, mailing address, and daytime number, if available.

R156-1-107. Organization of Rules - Content, Applicability and Relationship of Rules.

(1) The rules and sections in Title R156 shall, to the extent practicable, follow the numbering and organizational scheme of the chapters in Title 58.

(2) Rule R156-1 shall contain general provisions applicable to the administration and enforcement of all occupations and professions regulated in Title 58.

(3) The provisions of the other rules in Title R156 shall contain specific or unique provisions applicable to particular occupations or professions.

(4) Specific rules in Title R156 may supplement or alter Rule R156-1 unless expressly provided otherwise in Rule R156-1.

R156-1-109. Presiding Officers.

In accordance with Subsection 63G-4-103(1) (h), Sections 58-1-104, 58-1-106, 58-1-109, 58-1-202, 58-1-203, 58-55-103, and 58-55-201, except as otherwise specified in writing by the Director, or for Title 58, Chapter 55, the Construction Services Commission, the designation of presiding officers is clarified or established as follows:

(1) The Division Regulatory and Compliance Officer is designated as the presiding officer for issuance of notices of agency action and for issuance of notices of hearing issued concurrently with a notice of agency action or issued in response to a request for agency action, provided that if the Division Regulatory and Compliance Officer is unable to so serve for any reason, a replacement specified by the Director is designated as the alternate presiding officer.

(2) Subsections 58-1-109(2) and 58-1-109(4) are clarified with regard to defaults as follows. Unless otherwise specified in writing by the Director, or with regard to Title 58, Chapter 55, by the Construction Services Commission, a department administrative law judge is designated as the presiding officer for entering an order of default against a party, for conducting any further proceedings necessary to complete the adjudicative proceeding, and for issuing a recommended order to the Director or Commission, respectively, determining the discipline to be imposed, licensure action to be taken, relief to be granted, etc.

(3) Except as provided in Subsection (4) or otherwise specified in writing by the Director, the presiding officer for adjudicative proceedings before the Division are as follows:

(a) Director. The Director shall be the presiding officer for:

(i) formal adjudicative proceedings described in Subsections R156-46b-201(1) (b), and R156-46b-201(2) (a) through (c), however resolved, including stipulated settlements and hearings; and

(ii) informal adjudicative proceedings described in Subsections R156-46b-202(1)(g), (i), (l), (m), (o), (p), and (r), and R156-46b-202(2)(a), (b)(ii), (c), and (d), however resolved, including memoranda of understanding and stipulated settlements.

(b) Bureau Managers or Program Coordinators. Except for Title 58, Chapter 55, the bureau manager or program coordinator over the occupation or profession or program involved shall be the presiding officer for:

(i) formal adjudicative proceedings described in Subsection R156-46b-201(1)(c), for purposes of determining whether a request for a board of appeal is properly filed as set forth in Subsections R156-15A-210(1) through (4); and

(ii) informal adjudicative proceedings described in Subsections R156-46b-202(1)(a) through (d), (f), (h), (j), (n) and R156-46b-202(2)(b)(iii).

(iii) At the direction of a bureau manager or program coordinator, a licensing technician or program technician may sign an informal order in the name of the licensing technician or program technician provided the wording of the order has been approved in advance by the bureau manager or program coordinator and provided the caption "FOR THE BUREAU MANAGER" or "FOR THE PROGRAM COORDINATOR" immediately precedes the licensing technician's or program technician's signature.

(c) Citation Hearing Officer. The Division Regulatory and Compliance Officer or other citation hearing officer designated in writing by the Director shall be the presiding officer for the adjudicative proceeding described in Subsection R156-46b-202(1)(k).

(d) Uniform Building Code Commission. The Uniform Building Code Commission shall be the presiding officer for the adjudicative proceeding described in Subsection R156-46b-202(1)(e) for convening a board of appeal under Subsection 15A-1-207(3), for serving as fact finder at any evidentiary hearing associated with a board of appeal, and for entering the final order associated with a board of appeal. An administrative law judge shall perform the role specified in Subsection 58-1-109(2).

(e) Residence Lien Recovery Fund Advisory Board. The Residence Lien Recovery Fund Advisory Board shall be the presiding officer to serve as the factfinder for formal adjudicative proceedings involving the Residence Lien Recovery Fund.

(f) Residence Lien Recovery Fund Manager. The Residence Lien Recovery Fund manager, bureau manager, or program coordinator designated in writing by the Director shall be the presiding officer for the informal adjudicative proceeding described in Subsection R156-46b-202(1)(q), for approval or denial of an application for a tax credit certificate.

(4) Unless otherwise specified in writing by the Construction Services Commission, the presiding officers and process for adjudicative proceedings under Title 58, Chapter 55, are established or clarified as follows:

(a) Commission.

(i) The Construction Services Commission shall be the presiding officer for all adjudicative proceedings under Title 58, Chapter 55, except as otherwise delegated by the Commission in writing or as otherwise provided in this rule; provided, however, that all orders adopted by the Commission as a presiding officer shall require the concurrence of the Director.

(ii) Unless otherwise specified in writing by the Construction Services Commission, the Commission is designated as the presiding officer:

(A) for informal adjudicative proceedings described in Subsections R156-46b-202(1)(l), (m), (o), (p), and (q), and R156-46b-202(2)(b)(i), (c), and (d), however resolved, including memoranda of understanding and stipulated settlements;

(B) to serve as fact finder and adopt orders in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed under Title 58, Chapter 55; and

(C) to review recommended orders of a board, an administrative law judge, or other designated presiding officer who acted as the fact finder in an evidentiary hearing involving a person licensed or required to be licensed under Title 58, Chapter 55, and to adopt an order of its own. In adopting its order, the Commission may accept, modify or reject the recommended order.

(iii) If the Construction Services Commission is unable for any reason to act as the presiding officer as specified, it shall designate another presiding officer in writing to so act.

(iv) Orders of the Construction Services Commission shall address all issues before the Commission and shall be based upon the record developed in an adjudicative proceeding conducted by the Commission. In cases in which the Commission has designated another presiding officer to conduct an adjudicative proceeding and submit a recommended order, the record to be reviewed by the Commission shall consist of the findings of fact, conclusions of law, and recommended order submitted to the Commission by the presiding officer based upon the evidence presented in the adjudicative proceeding before the presiding officer.

(v) The Construction Services Commission or its designee shall submit adopted orders to the director for the Director's concurrence or rejection within 30 days after it receives a recommended order or adopts an order, whichever is earlier. An adopted order shall be deemed issued and constitute a final order upon the concurrence of the Director.

(vi) In accordance with Subsection 58-55-103(10), if the Director or the Director's designee refuses to concur in an adopted order of the Construction Services Commission or its designee, the Director or the Director's designee shall return the order to the Commission or its designee with the reasons set forth in writing for refusing to concur. The Commission or its designee shall reconsider and resubmit an adopted order, whether or not modified, within 30 days of the date of the initial or subsequent return. The Director or the Director's designee shall consider the Commission's resubmission of an adopted order and either concur rendering the order final, or refuse to concur and issue a final order, within 90 days of the date of the initial recommended order. Provided the time frames in this subsection are followed, this subsection shall not preclude an informal resolution such as an executive session of the Commission or its designee and the Director or the Director's designee to resolve the reasons for the Director's refusal to concur in an adopted order.

(vii) The record of the adjudicative proceeding shall include recommended orders, adopted orders, refusals to concur in adopted orders, and final orders.

(viii) The final order issued by the Construction Services Commission and concurred in by the Director or the Director's designee, or nonconcurred in by the Director or the Director's Designee, and issued by the Director or the Director's designee, may be appealed by filing a request for agency review with the Executive Director or the Director's designee within the Department.

(ix) The content of all orders shall comply with the requirements of Subsection 63G-4-203(1)(i) and Sections 63G-4-208 and 63G-4-209.

(b) Director. The Director or the Director's designee is designated as the presiding officer for the concurrence role, except where the Director or the Director's designee refuses to concur and issues the final order as provided by Subsection (a), on disciplinary proceedings under Subsections R156-46b-202(2)(b)(i), (c), and (d) as required by Subsection 58-55-103(1)(b)(iv).

(c) Administrative Law Judge. Unless otherwise specified in writing by the Construction Services Commission, a Department administrative law judge is designated as the presiding officer to conduct formal adjudicative proceedings before the Commission and its advisory boards, as specified in Subsection 58-1-109(2).

(d) Bureau Manager. Unless otherwise specified in writing by the Construction Services Commission, the responsible bureau manager is designated as the presiding officer for conducting informal adjudicative proceedings specified in Subsections R156-46b-202(1) (a) through (d), (h), and (n).

(e) At the direction of a bureau manager, a licensing technician may sign an informal order in the name of the licensing technician provided the wording of the order has been approved in advance by the bureau manager and provided the caption "FOR THE BUREAU MANAGER" immediately precedes the licensing technician's signature.

(f) Plumbers Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the commission, the Plumbers Licensing Board is designated as the presiding officer to serve as the fact finder and to issue recommended orders to the Construction Services Commission in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed as plumbers.

(g) Electricians Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the commission, the Electricians Licensing Board is designated as the presiding officer to serve as the fact finder and to issue recommended orders to the Construction Services Commission in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed as electricians.

(h) Alarm System Security and Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the Commission, the Alarm System Security and Licensing Board is designated as the presiding officer to serve as the fact finder and to issue recommended orders to the Construction Services Commission in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed as alarm companies or agents.

R156-1-110. Issuance of Investigative Subpoenas.

(1) All requests for subpoenas in conjunction with a Division investigation made pursuant to Subsection 58-1-106(1) (c), shall be made in writing to the investigative subpoena authority and shall be accompanied by an original of the proposed subpoena.

(a) Requests to the investigative subpoena authority shall contain adequate information to enable the subpoena authority to make a finding of sufficient need, including: the factual basis for the request, the relevance and necessity of the particular person, evidence, documents, etc., to the investigation, and an explanation why the subpoena is directed to the particular person upon whom it is to be served.

(b) Approved subpoenas shall be issued under the seal of the Division and the signature of the subpoena authority.

(2) The person who requests an investigative subpoena is responsible for service of the subpoena.

(3) (a) Service may be made:

(i) on a person upon whom a summons may be served pursuant to the Utah Rules of Civil Procedure; and

(ii) personally or on the agent of the person being served.

(b) If a party is represented by an attorney, service shall be made on the attorney.

(4) (a) Service may be accomplished by hand delivery or by mail to the last known address of the intended recipient.

(b) Service by mail is complete upon mailing.

(c) Service may be accomplished by electronic means.

(d) Service by electronic means is complete on transmission if transmission is completed during normal business hours at the place receiving the service; otherwise, service is complete on the next business day.

(5) There shall appear on all investigative subpoenas a certificate of service.

(6) The investigative subpoena authority may quash or modify an investigative subpoena if it is shown to be unreasonable or oppressive.

(a) A motion to quash or modify an investigative subpoena shall be filed with and served upon the subpoena authority no later than ten days after service of the investigative subpoena.

(b) A response by the Division to a motion to quash or modify an investigative subpoena shall be filed with and served upon the subpoena authority no later than five business days after receipt of a motion to quash or modify an investigative subpoena.

(c) No final reply by the recipient of an investigative subpoena who files a motion to quash or modify shall be permitted.

R156-1-111a. Qualifications for Tax Certificate - Definitions.

In addition to the definitions in Title 58, Chapter 1, as used in Title 58, Chapter 1, or in this rule:

(1) "Psychiatrist", as defined under Subsection 58-1-111(1)(d), is further defined to include a licensed physician who is board certified for a psychiatry specialization recognized by the American Board of Medical Specialties (ABMS) or the American Osteopathic Association's Bureau of Osteopathic Specialists (BOS).

(2) Under Subsection 58-1-111(1)(f)(ii), the definition of a "volunteer retired psychiatrist" is further defined to mean a physician or osteopathic physician licensed under Title 58, Chapter 81, Retired Volunteer Health Practitioner Act, who is previously or currently board certified for a psychiatry specialization recognized by the American Board of Medical Specialties (ABMS) or the American Osteopathic Association's Bureau of Osteopathic Specialists (BOS).

R156-1-111b. Qualifications for Tax Certificate - Application Requirements.

An applicant for a tax credit certificate under Section 58-1-111 shall provide to the Division:

(1) the original application made available on the Division's website, containing the signed attestation of compliance; and

(2) any additional documentation that may be required by the Division to verify the applicant's representations made in the application.

R156-1-205. Peer or Advisory Committees - Executive Director to Appoint - Terms of Office - Vacancies in Office - Removal from Office - Quorum Requirements - Appointment of Chairman - Division to Provide Secretary - Compliance with Open and Public Meetings Act - Compliance with Utah Administrative Procedures Act - No Provision for Per Diem and Expenses.

(1) The executive director shall appoint the members of peer or advisory committees established under Title 58 or Title R156.

(2) Except for ad hoc committees whose members shall be appointed on a case-by-case basis, the term of office of peer or advisory committee members shall be for four years. The executive director shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the peer or advisory committee is appointed every two years.

(3) No peer or advisory committee member may serve more than two full terms, and no member who ceases to serve may again serve on the peer or advisory committee until after the expiration of two years from the date of cessation of service.

(4) If a vacancy on a peer or advisory committee occurs, the executive director shall appoint a replacement to fill the unexpired term. After filling

the unexpired term, the replacement may be appointed for only one additional full term.

(5) If a peer or advisory committee member fails or refuses to fulfill the responsibilities and duties of a peer or advisory committee member, including the attendance at peer committee meetings, the executive director may remove the peer or advisory committee member and replace the member in accordance with this section. After filling the unexpired term, the replacement may be appointed for only one additional full term.

(6) Committee meetings shall only be convened with the approval of the appropriate board and the concurrence of the Division.

(7) Unless otherwise approved by the Division, peer or advisory committee meetings shall be held in the building occupied by the Division.

(8) A majority of the peer or advisory committee members shall constitute a quorum and may act in behalf of the peer or advisory committee.

(9) Peer or advisory committees shall annually designate one of their members to serve as peer or advisory committee chairman. The Division shall provide a Division employee to act as committee secretary to take minutes of committee meetings and to prepare committee correspondence.

(10) Peer or advisory committees shall comply with the procedures and requirements of Title 52, Chapter 4, Open and Public Meetings, in their meetings.

(11) Peer or advisory committees shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in their adjudicative proceedings.

(12) Peer or advisory committee members shall perform their duties and responsibilities as public service and shall not receive a per diem allowance, or traveling or accommodations expenses incurred in peer or advisory committees business, except as otherwise provided in Title 58 or Title R156.

R156-1-206. Emergency Adjudicative Proceeding Review Committees - Appointment - Terms - Vacancies - Removal - Quorum - Chairman and Secretary - Open and Public Meetings Act - Utah Administrative Procedures Act - Per Diem and Expenses.

(1) The chairman of the board for the profession of the person against whom an action is proposed may appoint the members of emergency review committees on a case-by-case or period-of-time basis.

(2) With the exception of the appointment and removal of members and filling of vacancies by the chairman of a board, emergency review committees, committees shall serve in accordance with Subsections R156-1-205(7), and (9) through (12).

R156-1-301. Application for Licensure - Filing Date - Applicable Requirements for Licensure - Issuance Date.

(1) The filing date for an application for licensure shall be the postmark date of the application or the date the application is received and date stamped by the Division, whichever is earlier.

(2) Except as otherwise provided by statute, rule or order, the requirements for licensure applicable to an application for licensure shall be the requirements in effect on the filing date of the application.

(3) The issuance date for a license issued to an applicant for licensure shall be as follows:

(a) the date the approval is input into the Division's electronic licensure database for applications submitted and processed manually; or

(b) the date printed on the verification of renewal certificate for renewal applications submitted and processed electronically via the Division's Internet Renewal System.

R156-1-302. Consideration of Good Moral Character, Unlawful Conduct, Unprofessional Conduct, or Other Mental or Physical Condition.

(1) This section applies in circumstances where an applicant or licensee:

(a) is not automatically disqualified from licensure pursuant to a statutory provision; and

(b) (i) has history that reflects negatively on the person's moral character, including past unlawful or unprofessional conduct; or

(ii) has a mental or physical condition that, when considered with the duties and responsibilities of the license held or to be held, demonstrates a threat or potential threat to the public health, safety or welfare.

(2) In a circumstance described in Section (1), the following factors are relevant to a licensing decision:

(a) aggravating circumstances, as defined in Subsection R156-1-102(2);

(b) mitigating circumstances, as defined in Subsection R156-1-102(17);

(c) the degree of risk to the public health, safety or welfare;

(d) the degree of risk that a conduct will be repeated;

(e) the degree of risk that a condition will continue;

(f) the magnitude of the conduct or condition as it relates to the harm or potential harm;

(g) the length of time since the last conduct or condition has occurred;

(h) the current criminal probationary or parole status of the applicant or licensee;

(i) the current administrative status of the applicant or licensee;

(j) results of previously submitted applications, for any regulated profession or occupation;

(k) results from any action, taken by any professional licensing agency, criminal or administrative agency, employer, practice monitoring group, entity or association;

(l) evidence presented indicating that restricting or monitoring an individual's practice, conditions or conduct can protect the public health, safety or welfare;

(m) psychological evaluations; or

(n) any other information the Division or the board reasonably believes may assist in evaluating the degree of threat or potential threat to the public health, safety or welfare.

R156-1-303. Temporary Licenses in Declared Disaster or Emergency.

(1) In accordance with Section 53-2a-1203, persons who provide services under this exemption from licensure, shall within 30 days file a notice with the Division as provided under Subsection 53-2a-1205(1) using forms posted on the Division internet site.

(2) In accordance with Section 53-2a-1205 and Subsection 58-1-303(1), a person who provides services under the exemption from licensure as provided in Section 53-2a-1203 for a declared disaster or emergency shall, after the disaster period ends and before continuing to provide services, meet all the normal requirements for occupational or professional licensure under this title, unless:

(a) prior to practicing after the declared disaster the person is issued a temporary license under the provisions of Subsection 58-1-303(1)(c); or

(b) the person qualifies under another exemption from licensure.

R156-1-305. Inactive Licensure.

(1) In accordance with Section 58-1-305, except as provided in Subsection (2), a licensee may not apply for inactive licensure status.

(2) The following licenses issued under Title 58 that are active in good standing may be placed on inactive licensure status:

- (a) architect;
- (b) audiologist;
- (c) certified public accountant emeritus;
- (d) certified court reporter;
- (e) certified social worker;
- (f) chiropractic physician;
- (g) clinical mental health counselor;
- (h) clinical social worker;
- (i) contractor;
- (j) deception detection examiner;
- (k) deception detection intern;
- (l) dental hygienist;
- (m) dentist;
- (n) dispensing medical practitioner - advanced practice registered nurse;
- (o) dispensing medical practitioner - physician and surgeon;
- (p) dispensing medical practitioner - physician assistant;
- (q) dispensing medical practitioner - osteopathic physician and surgeon;
- (r) dispensing medical practitioner - optometrist;
- (s) dispensing medical practitioner - clinic pharmacy;
- (t) genetic counselor;
- (u) health facility administrator;
- (v) hearing instrument specialist;
- (w) landscape architect;
- (x) licensed advanced substance use disorder counselor;
- (y) marriage and family therapist;
- (z) naturopath/naturopathic physician;
- (aa) optometrist;
- (bb) osteopathic physician and surgeon;
- (cc) pharmacist;
- (dd) pharmacy technician;
- (ee) physician assistant;
- (ff) physician and surgeon;
- (gg) podiatric physician;
- (hh) private probation provider;
- (ii) professional engineer;
- (jj) professional land surveyor;
- (kk) professional structural engineer;
- (ll) psychologist;
- (mm) radiology practical technician;
- (nn) radiologic technologist;
- (oo) security personnel;
- (pp) speech-language pathologist;
- (qq) substance use disorder counselor; and
- (rr) veterinarian.

(3) Applicants for inactive licensure shall apply to the Division in writing upon forms available from the Division. Each completed application shall contain documentation of requirements for inactive licensure, shall be verified by the applicant, and shall be accompanied by the appropriate fee.

(4) If all requirements are met for inactive licensure, the Division shall place the license on inactive status.

(5) A license may remain on inactive status indefinitely except as otherwise provided in Title 58 or rules which implement Title 58.

(6) An inactive license may be activated by requesting activation in writing upon forms available from the Division. Unless otherwise provided in Title 58 or rules which implement Title 58, each reactivation application shall contain documentation that the applicant meets current renewal requirements,

shall be verified by the applicant, and shall be accompanied by the appropriate fee.

(7) An inactive licensee whose license is activated during the last 12 months of a renewal cycle shall, upon payment of the appropriate fees, be licensed for a full renewal cycle plus the period of time remaining until the impending renewal date, rather than being required to immediately renew their activated license.

(8) A Controlled Substance license may be placed on inactive status if attached to a primary license listed in Subsection R156-1-305(2) and the primary license is placed on inactive status.

R156-1-308a. Renewal Dates.

(1) The following standard two-year renewal cycle renewal dates are established by license classification in accordance with the Subsection 58-1-308(1):

TABLE
RENEWAL DATES

Acupuncturist	May 31	even years
Advanced Practice Registered Nurse	January 31	even years
Advanced Practice Registered Nurse-CRNA	January 31	even years
Architect	May 31	even years
Athlete Agent	September 30	even years
Athletic Trainer	May 31	odd years
Audiologist	May 31	odd years
Barber	September 30	odd years
Barber Apprentice	September 30	odd years
Barber School	September 30	odd years
Behavior Analyst and Assistant Behavior Analyst	September 30	even years
Behavior Specialist and Assistant Behavior Specialist	September 30	even years
Building Inspector	November 30	odd years
Burglar Alarm Security	March 31	odd years
C.P.A. Firm	December 31	even years
Certified Court Reporter	May 31	even years
Certified Dietitian	September 30	even years
Certified Medical Language Interpreter	March 31	odd years
Certified Nurse Midwife	January 31	even years
Certified Public Accountant	December 31	even years
Certified Social Worker	September 30	even years
Chiropractic Physician	May 31	even years
Clinical Mental Health Counselor	September 30	even years
Clinical Social Worker	September 30	even years
Construction Trades Instructor	November 30	odd years
Contractor	November 30	odd years
Controlled Substance License	Attached to primary license renewal	
Controlled Substance Precursor	May 31	odd years
Controlled Substance Handler	September 30	odd years
Cosmetologist/Barber	September 30	odd years
Cosmetologist/Barber Apprentice	September 30	odd years
Cosmetology/Barber School	September 30	odd years
Deception Detection	November 30	even years
Deception Detection Examiner, Deception Detection Intern, Deception Detection Administrator		
Dental Hygienist	May 31	even years

Dentist	May 31	even years
Direct-entry Midwife	September 30	odd years
Dispensing Medical Practitioner		
Advanced Practice Registered Nurse,		
Optometrist, Osteopathic Physician		
and Surgeon, Physician and Surgeon,		
Physician Assistant	September 30	odd years
Dispensing Medical Practitioner		
Clinic Pharmacy	September 30	odd years
Electrician		
Apprentice, Journeyman, Master,		
Residential Journeyman,		
Residential Master	November 30	even years
Electrologist	September 30	odd years
Electrology School	September 30	odd years
Elevator Mechanic	November 30	even years
Environmental Health Scientist	May 31	odd years
Esthetician	September 30	odd years
Esthetician Apprentice	September 30	odd years
Esthetics School	September 30	odd years
Factory Built Housing Dealer	September 30	even years
Funeral Service Director	May 31	even years
Funeral Service Establishment	May 31	even years
Genetic Counselor	September 30	even years
Hair Designer	September 30	odd years
Hair Designer Instructor	September 30	odd years
Hair Designer School	September 30	odd years
Health Facility Administrator	May 31	odd years
Hearing Instrument Specialist	September 30	even years
Internet Facilitator	September 30	odd years
Landscape Architect	May 31	even years
Licensed Advanced Substance		
Use Disorder Counselor	May 31	odd years
Licensed Practical Nurse	January 31	even years
Licensed Substance	May 31	odd years
Use Disorder Counselor		
Marriage and Family Therapist	September 30	even years
Massage Apprentice	May 31	odd years
Massage Therapist	May 31	odd years
Master Esthetician	September 30	odd years
Master Esthetician Apprentice	September 30	odd years
Medication Aide Certified	March 31	odd years
Music Therapist	March 31	odd years
Nail Technologist	September 30	odd years
Nail Technologist Apprentice	September 30	odd years
Nail Technology School	September 30	odd years
Naturopath/Naturopathic	May 31	even years
Physician		
Occupational Therapist	May 31	odd years
Occupational Therapy Assistant	May 31	odd years
Optometrist	September 30	even years
Osteopathic Physician and	May 31	even years
Surgeon, Online Prescriber,		
Restricted Associate Osteopathic		
Physician		
Outfitter/Hunting Guide	May 31	even years
Pharmacy Class A-B-C-D-E,	September 30	odd years
Online Contract Pharmacy		
Pharmacist	September 30	odd years
Pharmacy Technician	September 30	odd years
Physical Therapist	May 31	odd years

Physical Therapist Assistant	May 31	odd years
Physician Assistant	May 31	even years
Physician and Surgeon, Online Prescriber, Restricted Associate Physician	January 31	even years
Plumber		
Apprentice, Journeyman, Master; Residential Master, Residential Journeyman	November 30	even years
Podiatric Physician	September 30	even years
Pre Need Funeral Arrangement Sales Agent	May 31	even years
Private Probation Provider	May 31	odd years
Professional Engineer	March 31	odd years
Professional Geologist	March 31	odd years
Professional Land Surveyor	March 31	odd years
Professional Structural Engineer	March 31	odd years
Psychologist	September 30	even years
Radiologic Technologist, Radiology Practical Technician Radiologist Assistant	May 31	odd years
Recreational Therapy Therapeutic Recreation Technician, Therapeutic Recreation Specialist, Master Therapeutic Recreation Specialist	May 31	odd years
Registered Nurse	January 31	odd years
Respiratory Care Practitioner	September 30	even years
Security Personnel	November 30	even years
Social Service Worker	September 30	even years
Speech-Language Pathologist	May 31	odd years
State Certified Commercial Interior Designer	March 31	odd years
Veterinarian	September 30	even years
Vocational Rehabilitation Counselor	March 31	odd years

(2) The following non-standard renewal terms and renewal or extension cycles are established by license classification in accordance with Subsection 58-1-308(1) and in accordance with specific requirements of the license:

(a) Associate Clinical Mental Health Counselor licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the Division and the Board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure.

(b) Associate Marriage and Family Therapist licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the Division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(c) Certified Advanced Substance Use Disorder Counselor licenses shall be issued for a period of four years and may be extended if the licensee presents satisfactory evidence to the Division and Board that reasonable progress is being made toward completing the required hours of supervised experience necessary for the next level of licensure.

(d) Certified Advanced Substance Use Disorder Counselor Intern licenses shall be issued for a period of six months or until the examination is passed whichever occurs first.

(e) Certified Medical Language Interpreter Tier 1 and 2 licenses shall be issued for a period of three years and may be renewed. The initial renewal date of March 31, 2017, is established for these license classifications, subject to the provisions of Subsection R156-1-308c(7) to establish the length of the initial license period.

(f) Certified Substance Use Disorder Counselor licenses shall be issued for a period of two years and may be extended if the licensee presents satisfactory evidence to the Division and Board that reasonable progress is being made toward completing the required hours of supervised experience necessary for the next level of licensure.

(g) Certified Social Worker Intern licenses shall be issued for a period of six months or until the examination is passed whichever occurs first.

(h) Certified Substance Use Disorder Counselor Intern licenses shall be issued for a period of six months or until the examination is passed, whichever occurs first.

(i) Funeral Service Intern licenses shall be issued for a two year term and may be extended for an additional two year term if the licensee presents satisfactory evidence to the Division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure.

(j) Hearing Instrument Intern licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the Division and the Board that reasonable progress is being made toward passing the qualifying examination, but a circumstance arose beyond the control of the licensee, to prevent the completion of the examination process.

(k) Pharmacy technician trainee licenses shall be issued for a period of two years and may be extended if the licensee presents satisfactory evidence to the Division and the Board that reasonable progress is being made toward completing the requirements necessary for the next level of licensure.

(l) Psychology Resident licenses shall be issued for a two year term and may be extended if the licensee presents satisfactory evidence to the Division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(m) Type I Foreign Trained Physician-Educator licenses will be issued initially for a one-year term and thereafter renewed every two years following issuance.

(n) Type II Foreign Trained Physician-Educator licenses will be issued initially for an annual basis and thereafter renewed annually up to four times following issuance if the licensee continues to satisfy the requirements described in Subsection 58-67-302.7(3) and completes the required continuing education requirements established under Section 58-67-303.

R156-1-308b. Renewal Periods - Adjustment of Renewal Fees for an Extended or Shortened Renewal Period.

(1) Except as otherwise provided by statute or as required to establish or reestablish a renewal period, each renewal period shall be for a period of two years.

(2) The renewal fee for a renewal period which is extended or shortened by more than one month to establish or reestablish a renewal period shall increased or decreased proportionately.

R156-1-308c. Renewal of Licensure Procedures.

The procedures for renewal of licensure shall be as follows:

(1) The Division shall send a renewal notice to each licensee at least 60 days prior to the expiration date shown on the licensee's license. The notice shall include directions for the licensee to renew the license via the Division's website.

(2) Except as provided in Subsection(4), renewal notices shall be sent by mail deposited in the post office with postage prepaid, addressed to the last mailing address shown on the Division's automated license system.

(3) In accordance with Subsection 58-1-301.7(1), each licensee is required to maintain a current mailing address with the Division. In accordance with Subsection 58-1-301.7(2), mailing to the last mailing address furnished to the Division constitutes legal notice.

(4) If a licensee has authorized the Division to send a renewal notice by email, a renewal notice may be sent by email to the last email address shown on the Division's automated license system. If selected as the exclusive method of receipt of renewal notices, such mailing shall constitute legal notice. It shall be the duty and responsibility of each licensee who authorizes the Division to send a renewal notice by email to maintain a current email address with the Division.

(5) Renewal notices shall provide that the renewal requirements are outlined in the online renewal process and that each licensee is required to document or certify that the licensee meets the renewal requirements prior to renewal.

(6) Renewal notices shall advise each licensee that a license that is not renewed prior to the expiration date shown on the license automatically expires and that any continued practice without a license constitutes a criminal offense under Subsection 58-1-501(1)(a).

(7) Licensees licensed during the last 12 months of a renewal cycle shall be licensed for a full renewal cycle plus the period of time remaining until the impending renewal date, rather than being required to immediately renew their license.

R156-1-308d. Waiver of Continuing Education Requirements - Credit for Volunteer Service.

(1)(a) In accordance with Subsection 58-1-203(1)(g), a licensee may request a waiver of any continuing education requirement established under this title or an extension of time to complete any requirement on the basis that the licensee was unable to complete the requirement due to a medical or related condition, humanitarian or ecclesiastical services, extended presence in a geographical area where continuing education is not available, etc.

(b) A request must be submitted no later than the deadline for completing any continuing education requirement.

(c) A licensee submitting a request has the burden of proof and must document the reason for the request to the satisfaction of the Division.

(d) A request shall include the beginning and ending dates during which the licensee was unable to complete the continuing education requirement and a detailed explanation of the reason why. The explanation shall include the extent and duration of the impediment, extent to which the licensee continued to be engaged in practice of his profession, the nature of the medical condition, the location and nature of the humanitarian services, the geographical area where continuing education is not available, etc.

(e) The Division may require that a specified number of continuing education hours, courses, or both, be obtained prior to reentering the practice of the profession or within a specified period of time after reentering the

practice of the profession, as recommended by the appropriate board, in order to assure competent practice.

(f) While a licensee may receive a waiver from meeting the minimum continuing education requirements, the licensee shall not be exempted from the requirements of Subsection 58-1-501(2)(i), which requires that the licensee provide services within the competency, abilities and education of the licensee. If a licensee cannot competently provide services, the waiver of meeting the continuing education requirements may be conditioned upon the licensee limiting practice to areas in which the licensee has the required competency, abilities and education.

(2)(a) In accordance with Subsection 58-1-203(1)(g) and 58-55-302.5(2)(e)(i), the Division may grant continuing education credit to a licensee for volunteering as a subject-matter expert in the review and development of licensing exams for the licensee's profession.

(b) Subject to specific limitations established by rule by the Division, in collaboration with a licensing board, or the Construction Services Commission, this volunteer continuing education credit shall:

(i) apply to the license period or periods during which the volunteer service was provided;

(ii) be granted on a 1:1 ratio, meaning that for each hour of attendance, the licensee may receive one hour of credit;

(iii) be deemed "core", "classroom", or "live" credit, regardless of whether the licensee attended meetings in person or electronically; and

(iv) at the licensee's discretion, all or part of the credit hours may be counted towards any law or ethics continuing education requirements.

(c) The licensee shall be responsible for maintaining information with respect to the licensee's volunteer services to demonstrate the services meet the requirements of this subsection.

(3) In accordance with Section 58-13-3, a health care professional licensee may fulfill up to 15% of the licensee's continuing education requirements by providing volunteer services at a qualified location, within the scope of the licensee's license, earning one hour of continuing education credit for every four documented hours of volunteer services.

R156-1-308e. Automatic Expiration of Licensure Upon Dissolution of Licensee.

(1) A license that automatically expires prior to the expiration date shown on the license due to the dissolution of the licensee's registration with the Division of Corporations, with the registration thereafter being retroactively reinstated pursuant to Section 16-10a-1422, shall:

(a) upon written application for reinstatement of licensure submitted prior to the expiration date shown on the license, be retroactively reinstated to the date of expiration of licensure; and

(b) upon written application for reinstatement submitted after the expiration date shown on the current license, be reinstated on the effective date of the approval of the application for reinstatement, rather than relating back retroactively to the date of expiration of licensure.

R156-1-308f. Denial of Renewal of Licensure - Classification of Proceedings - Conditional Renewal of Licensure During Adjudicative Proceedings - Conditional Initial, Renewal, or Reinstatement Licensure During Audit or Investigation.

(1) When an initial, renewal or reinstatement applicant under Subsections 58-1-301(2) through (3) or 58-1-308(5) or (6)(b) is selected for audit, is under investigation, or is pending inspection, the Division may conditionally issue an initial license to an applicant for initial licensure, or renew or reinstate the license of an applicant pending the completion of the audit, investigation or inspection.

(2) The undetermined completion of a referenced audit, investigation or inspection, rather than the established expiration date, shall be indicated as the expiration date of a conditionally issued, renewed, or reinstated license.

(3) A conditional issuance, renewal, or reinstatement shall not constitute an adverse licensure action.

(4) Upon completion of the audit, investigation, or inspection, the Division shall notify the initial license, renewal, or reinstatement applicant whether the applicant's license is unconditionally issued, renewed, reinstated, denied, or partially denied or reinstated.

(5) A notice of unconditional denial or partial denial of licensure to an applicant the Division conditionally licensed, renewed, or reinstated shall include the following:

(a) that the applicant's unconditional initial issuance, renewal, or reinstatement of licensure is denied or partially denied and the basis for such action;

(b) the Division's file or other reference number of the audit or investigation; and

(c) that the denial or partial denial of unconditional initial licensure, renewal, or reinstatement of licensure is subject to review and a description of how and when such review may be requested.

R156-1-308g. Reinstatement of Licensure which was Active and in Good Standing at the Time of Expiration of Licensure - Requirements.

The following requirements shall apply to reinstatement of licensure which was active and in good standing at the time of expiration of licensure:

(1) In accordance with Subsection 58-1-308(5), if an application for reinstatement is received by the Division between the date of the expiration of the license and 30 days after the date of the expiration of the license, the applicant shall:

(a) submit a completed renewal form as furnished by the Division demonstrating compliance with requirements and/or conditions of license renewal; and

(b) pay the established license renewal fee and a late fee.

(2) In accordance with Subsection 58-1-308(5), if an application for reinstatement is received by the Division between 31 days after the expiration of the license and two years after the date of the expiration of the license, the applicant shall:

(a) submit a completed renewal form as furnished by the Division demonstrating compliance with requirements and/or conditions of license renewal; and

(b) pay the established license renewal fee and reinstatement fee.

(3) In accordance with Subsection 58-1-308(6)(a), if an application for reinstatement is received by the Division more than two years after the date the license expired and the applicant has not been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States during the time the license was expired, the applicant shall:

(a) submit an application for licensure complete with all supporting documents as is required of an individual making an initial application for license demonstrating the applicant meets all current qualifications for licensure;

(b) provide information requested by the Division and board to clearly demonstrate the applicant is currently competent to engage in the occupation or profession for which reinstatement of licensure is requested; and

(c) pay the established license fee for a new applicant for licensure.

(4) In accordance with Subsection 58-1-308(6)(b), if an application for reinstatement is received by the Division more than two years after the date the license expired but the applicant has been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States shall:

(a) provide documentation that the applicant has continuously, since the expiration of the applicant's license in Utah, been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States;

(b) provide documentation that the applicant has completed or is in compliance with any renewal qualifications;

(c) provide documentation that the applicant's application was submitted within six months after reestablishing domicile within Utah or terminating full-time government service; and

(d) pay the established license renewal fee and the reinstatement fee.

R156-1-308h. Reinstatement of Restricted, Suspended, or Probationary Licensure During Term of Restriction, Suspension, or Probation - Requirements.

(1) Reinstatement of restricted, suspended, or probationary licensure during the term of limitation, suspension, or probation shall be in accordance with the disciplinary order which imposed the discipline.

(2) Unless otherwise specified in a disciplinary order imposing restriction, suspension, or probation of licensure, the disciplined licensee may, at reasonable intervals during the term of the disciplinary order, petition for reinstatement of licensure.

(3) Petitions for reinstatement of licensure during the term of a disciplinary order imposing restriction, suspension, or probation, shall be treated as a request to modify the terms of the disciplinary order, not as an application for licensure.

R156-1-308i. Reinstatement of Restricted, Suspended, or Probationary Licensure After the Specified Term of Suspension of the License or After the Expiration of Licensure in a Restricted, Suspended or Probationary Status - Requirements.

Unless otherwise provided by a disciplinary order, an applicant who applies for reinstatement of a license after the specified term of suspension of the license or after the expiration of the license in a restricted, suspended or probationary status shall:

(1) submit an application for licensure complete with all supporting documents as is required of an individual making an initial application for license demonstrating the applicant meets all current qualifications for licensure and compliance with requirements and conditions of license reinstatement;

(2) pay the established license renewal fee and the reinstatement fee;

(3) provide information requested by the Division and board to clearly demonstrate the applicant is currently competent to be reinstated to engage in the occupation or profession for which the applicant was suspended, restricted, or placed on probation; and

(4) pay any fines or citations owed to the Division prior to the expiration of license.

R156-1-308j. Relicensure Following Revocation of Licensure - Requirements.

An applicant for relicensure following revocation of licensure shall:

(1) submit an application for licensure complete with all supporting documents as is required of an individual making an initial application for

license demonstrating the applicant meets all current qualifications for licensure and compliance with requirements and/or conditions of license reinstatement;

(2) pay the established license fee for a new applicant for licensure; and

(3) provide information requested by the Division and board to clearly demonstrate the applicant is currently competent to be relicensed to engage in the occupation or profession for which the applicant was revoked.

R156-1-308k. Relicensure Following Surrender of Licensure - Requirements.

The following requirements shall apply to relicensure applications following the surrender of licensure:

(1) An applicant who surrendered a license that was active and in good standing at the time it was surrendered shall meet the requirements for licensure listed in Sections R156-1-308a through R156-1-308l.

(2) An applicant who surrendered a license while the license was active but not in good standing as evidenced by the written agreement supporting the surrender of license shall:

(a) submit an application for licensure complete with all supporting documents as is required of an individual making an initial application for licensure demonstrating the applicant meets all current qualifications for licensure and compliance with requirements and/or conditions of license reinstatement;

(b) pay the established license fee for a new applicant for licensure;

(c) provide information requested by the Division and board to clearly demonstrate the applicant is currently competent to be relicensed to engage in the occupation or profession for which the applicant was surrendered;

(d) pay any fines or citations owed to the Division prior to the surrender of license.

R156-1-308l. Reinstatement of Licensure and Relicensure - Term of Licensure.

Except as otherwise governed by the terms of an order issued by the Division, a license issued to an applicant for reinstatement or relicensure issued during the last 12 months of a renewal cycle shall, upon payment of the appropriate fees, be issued for a full renewal cycle plus the period of time remaining until the impending renewal date, rather than requiring the licensee to immediately renew their reinstated or relicensed license.

R156-1-310. Cheating on Examinations.

(1) Policy.

The passing of an examination, when required as a condition of obtaining or maintaining a license issued by the Division, is considered to be a critical indicator that an applicant or licensee meets the minimum qualifications for licensure. Failure to pass an examination is considered to be evidence that an applicant or licensee does not meet the minimum qualifications for licensure. Accordingly, the accuracy of the examination result as a measure of an applicant's or licensee's competency must be assured. Cheating by an applicant or licensee on any examination required as a condition of obtaining a license or maintaining a license shall be considered unprofessional conduct and shall result in imposition of an appropriate penalty against the applicant or licensee.

(2) Cheating Defined.

Cheating is defined as the use of any means or instrumentality by or for the benefit of an examinee to alter the results of an examination in any way to cause the examination results to inaccurately represent the competency of an examinee with respect to the knowledge or skills about which they are examined. Cheating includes:

(a) communication between examinees inside of the examination room or facility during the course of the examination;

(b) communication about the examination with anyone outside of the examination room or facility during the course of the examination;

(c) copying another examinee's answers or looking at another examinee's answers while an examination is in progress;

(d) permitting anyone to copy answers to the examination;

(e) substitution by an applicant or licensee or by others for the benefit of an applicant or licensee of another person as the examinee in place of the applicant or licensee;

(f) use by an applicant or licensee of any written material, audio material, video material or any other mechanism not specifically authorized during the examination for the purpose of assisting an examinee in the examination;

(g) obtaining, using, buying, selling, possession of or having access to a copy of any portion of the examination prior to administration of the examination.

(3) Action Upon Detection of Cheating.

(a) The person responsible for administration of an examination, upon evidence that an examinee is or has been cheating on an examination shall notify the Division of the circumstances in detail and the identity of the examinees involved with an assessment of the degree of involvement of each examinee;

(b) If cheating is detected prior to commencement of the examination, the examinee may be denied the privilege of taking the examination; or if permitted to take the examination, the examinee shall be notified of the evidence of cheating and shall be informed that the Division may consider the examination to have been failed by the applicant or licensee because of the cheating; or

(c) If cheating is detected during the examination, the examinee may be requested to leave the examination facility and in that case the examination results shall be the same as failure of the examination; however, if the person responsible for administration of the examination determines the cheating detected has not yet compromised the integrity of the examination, such steps as are necessary to prevent further cheating shall be taken and the examinee may be permitted to continue with the examination.

(d) If cheating is detected after the examination, the Division shall make appropriate inquiry to determine the facts concerning the cheating and shall thereafter take appropriate action.

(e) Upon determination that an applicant has cheated on an examination, the applicant may be denied the privilege of retaking the examination for a reasonable period of time, and the Division may deny the applicant a license and may establish conditions the applicant must meet to qualify for a license including the earliest date on which the Division will again consider the applicant for licensure.

RI56-1-404a. Diversion Advisory Committees Created.

(1) There are created diversion advisory committees of at least three members for the professions regulated under Title 58. The diversion committees are not required to be impaneled by the director until the need for the diversion committee arises. Diversion committees may be appointed with representatives from like professions providing a multi-disciplinary committee.

(2) Committee members are appointed by and serve at the pleasure of the director.

(3) A majority of the diversion committee members shall constitute a quorum and may act on behalf of the diversion committee.

(4) Diversion committee members shall perform their duties and responsibilities as public service and shall not receive a per diem allowance, or traveling or accommodations expenses incurred in diversion committees business.

R156-1-404b. Diversion Committees Duties.

The duties of diversion committees shall include:

- (1) reviewing the details of the information regarding licensees referred to the diversion committee for possible diversion, interviewing the licensees, and recommending to the director whether the licensees meet the qualifications for diversion and if so whether the licensees should be considered for diversion;
- (2) recommending to the director terms and conditions to be included in diversion agreements;
- (3) supervising compliance with all terms and conditions of diversion agreements;
- (4) advising the director at the conclusion of a licensee's diversion program whether the licensee has completed the terms of the licensee's diversion agreement; and
- (5) establishing and maintaining continuing quality review of the programs of professional associations and/or private organizations to which licensees approved for diversion may enroll for the purpose of education, rehabilitation or any other purpose agreed to in the terms of a diversion agreement.

R156-1-404c. Diversion - Eligible Offenses.

In accordance with Subsection 58-1-404(4), the unprofessional conduct which may be subject to diversion is set forth in Subsections 58-1-501(2)(e) and (f).

R156-1-404d. Diversion - Procedures.

- (1) No later than 60 days following the referral of a licensee to the diversion committee for possible diversion, diversion committees shall complete the duties described in Subsection R156-1-404b(1) and (2).
- (2) Following the completion of diversion committee duties, the Division shall prepare and serve upon the licensee a proposed diversion agreement. The licensee shall have a period of time determined by the Division not to exceed 30 days from the service of the proposed diversion agreement, to negotiate a final diversion agreement with the director. The final diversion agreement shall comply with Subsection 58-1-404.
- (3) If a final diversion agreement is not reached with the director within 30 days from service of the proposed diversion agreement, or if the director finds that the licensee does not meet the qualifications for diversion, the Division shall pursue appropriate disciplinary action against the licensee in accordance with Section 58-1-108.
- (4) In accordance with Subsection 58-1-404(5), a licensee may be represented, at the licensee's discretion and expense, by legal counsel during negotiations for diversion, at the time of execution of the diversion agreement, and at any hearing before the director relating to a diversion program.

R156-1-404e. Diversion - Agreements for Rehabilitation, Education or Other Similar Services or Coordination of Services.

- (1) The Division may enter into agreements with professional or occupational organizations or associations, education institutions or organizations, testing agencies, health care facilities, health care

practitioners, government agencies or other persons or organizations for the purpose of providing rehabilitation, education or any other services necessary to facilitate an effective completion of a diversion program for a licensee.

(2) The Division may enter into agreements with impaired person programs to coordinate efforts in rehabilitating and educating impaired professionals.

(3) Agreements shall be in writing and shall set forth terms and conditions necessary to permit each party to properly fulfill its duties and obligations thereunder. Agreements shall address the circumstances and conditions under which information concerning the impaired licensee will be shared with the Division.

(4) The cost of administering agreements and providing the services thereunder shall be borne by the licensee benefiting from the services. Fees paid by the licensee shall be reasonable and shall be in proportion to the value of the service provided. Payments of fees shall be a condition of completing the program of diversion.

(5) In selecting parties with whom the Division shall enter agreements under this section, the Division shall ensure the parties are competent to provide the required services. The Division may limit the number of parties providing a particular service within the limits or demands for the service to permit the responsible diversion committee to conduct quality review of the programs given the committee's limited resources.

R156-1-501. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) surrendering licensure to any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession while an investigation or inquiry into allegations of unprofessional or unlawful conduct is in progress or after a charging document has been filed against the applicant or licensee alleging unprofessional or unlawful conduct;

(2) practicing a regulated occupation or profession in, through, or with a limited liability company which has omitted the words "limited company," "limited liability company," or the abbreviation "L.C." or "L.L.C." in the commercial use of the name of the limited liability company;

(3) practicing a regulated occupation or profession in, through, or with a limited partnership which has omitted the words "limited partnership," "limited," or the abbreviation "L.P." or "Ltd." in the commercial use of the name of the limited partnership;

(4) practicing a regulated occupation or profession in, through, or with a professional corporation which has omitted the words "professional corporation" or the abbreviation "P.C." in the commercial use of the name of the professional corporation;

(5) using a DBA (doing business as name) which has not been properly registered with the Division of Corporations and with the Division of Occupational and Professional Licensing;

(6) failing, as a prescribing practitioner, to follow the "Model Policy for the Use of Controlled Substances for the Treatment of Pain", 2004, established by the Federation of State Medical Boards, which is hereby adopted and incorporated by reference;

(7) failing, as a prescribing practitioner, to follow the "Model Policy on the Use of Opioid Analgesics in the Treatment of Chronic Pain", July 2013, adopted by the Federation of State Medical Boards, which is incorporated by reference;

(8) violating any term, condition, or requirement contained in a "diversion agreement", as defined in Subsection 58-1-404(6)(a); or

(9) failing, as a health care provider, to follow the health care claims practices of Subsection 31A-26-301.5(4), in violation of Subsection 58-1-508(2).

R156-1-502. Administrative Penalties.

(1) In accordance with Subsection 58-1-401(5) and Section 58-1-502, except as otherwise provided by a specific chapter under Title R156, the following fine schedule shall apply to citations issued under the referenced authority:

TABLE

FINE SCHEDULE

FIRST OFFENSE

Violation	Fine
58-1-501(1) (a)	\$ 500.00
58-1-501(1) (c)	\$ 800.00
58-1-501(2) (o)	\$ 0 - \$250.00
58-1-508(2)	\$ 250.00

SECOND OFFENSE

58-1-501(1) (a)	\$1,000.00
58-1-501(1) (c)	\$1,600.00
58-1-501(2) (o)	\$251.00 - \$500.00
58-1-508(2)	\$ 500.00

THIRD OFFENSE

Double the amount for a second offense with a maximum amount not to exceed the maximum fine allowed under Subsection 58-1-502(2) (j) (iii).

(2) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor.

(3) If multiple offenses are cited on the same citation, the fine shall be determined by evaluating the most serious offense.

(4) An investigative supervisor or chief investigator may authorize a deviation from the fine schedule based upon the aggravating or mitigating circumstances.

(5) The presiding officer for a contested citation shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount imposed by an investigator based upon the evidence reviewed.

R156-1-503. Reporting Disciplinary Action.

The Division may report disciplinary action to other state or federal governmental entities, state and federal data banks, the media, or any other person who is entitled to such information under the Government Records Access and Management Act.

R156-1-506. Supervision of Cosmetic Medical Procedures.

The 80 hours of documented education and experience required under Subsection 58-1-506(2) (f) (iii) to maintain competence to perform nonablative cosmetic medical procedures is defined to include the following:

- (1) the appropriate standards of care for performing nonablative cosmetic medical procedures;
- (2) physiology of the skin;
- (3) skin typing and analysis;
- (4) skin conditions, disorders, and diseases;
- (5) pre and post procedure care;
- (6) infection control;
- (7) laser and light physics training;
- (8) laser technologies and applications;
- (9) safety and maintenance of lasers;
- (10) cosmetic medical procedures an individual is permitted to perform under this title;
- (11) recognition and appropriate management of complications from a procedure; and
- (12) current cardio-pulmonary resuscitation (CPR) certification for health care providers from one of the following organizations:
 - (a) American Heart Association;
 - (b) American Red Cross or its affiliates; or
 - (c) American Safety and Health Institute.

KEY: diversion programs, licensing, supervision, evidentiary restrictions
Date of Enactment or Last Substantive Amendment: April 9, 2018
Notice of Continuation: December 6, 2016
Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-308; 58-1-501(2)

GENERAL RULE OF THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING

Iowa

Iowa
Fact Sheet

State of Iowa Genetic Counselor Licensure Fact Sheet

Who are Genetic Counselors?

Genetic counselors are health care professionals that help families and/or individuals that may have a particular genetic condition or health concern. Genetic counselors work in a variety of settings such as hospital clinics, diagnostic and research laboratories, advocacy organizations, government, and industry.

What is a genetic counseling?

Genetic counseling is defined by the National Society of Genetic Counselors (NSGC) as an interactive process of helping people understand and adapt to the medical, psychological and familial implications of genetic contributions to disease. This process integrates:

- Evaluating the patient's needs and expectations
- Interpreting family and medical histories to assess the chance of disease
- Educating about inheritance, testing, management, prevention, resources, and research
- Counseling to promote informed choices and healthy adaptation to a specific risk or condition¹

As defined by the NSGC Scope of Practice, the responsibilities of a genetic counselor are:

- To provide expertise in clinical genetics
- To counsel and communicate with patients on matters of clinical genetics
- To provide genetic counseling services in accordance with professional ethics and values

What training do genetic counselors have?

Genetic counselors have specialized graduate training in medical genetics and counseling through accredited training programs. Currently, the terminal degree for genetic counseling is a Master's degree. Genetic counselors are certified by the American Board of Genetic Counseling (ABGC). The CGC® credential indicates a genetic counselor is ABGC certified.

How do genetic counselors help patients and families?

- Studies have demonstrated genetic counseling leads to increased patient satisfaction; adherence to medical management recommendations, cancer screening, preventive surgery, and cardiovascular screening; and reduction in psychological distress.²⁻⁵
- Patients report fewer barriers to obtaining preventive screening such as mammogram following genetic counseling.⁵

How do genetic counselors help health care providers?

- Working as part of the health care team to provide education, support, and patient management
- Providing clinical care and coordination, research study coordination, and laboratory support
- Preventing inappropriate or unnecessary ordering of costly genetic tests
- Preventing misinformation regarding genetic risk of disease or lack thereof
- Preventing misunderstandings about the implications of genetic test results which may otherwise result in:
 - Unnecessary medical treatment and/or procedures
 - Failure to provide potentially lifesaving treatment, screening, and prevention strategies
 - Irreversible decisions regarding childbearing and pregnancy

STEM and Genetic Counseling

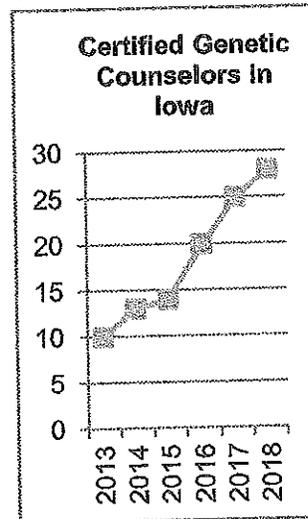
- The Association of Genetic Counseling Program Directors found Iowa led the nation since 2014 in recruiting students to the profession of genetic counseling through STEM workforce activities organized by the Iowa Institute of Human Genetics.
- Currently, students must leave the state to obtain a Master's degree in Genetic Counseling.
- Growth of the Iowa Genetic Counselor Workforce will enable Iowa to establish an accredited training program to keep students in the state.

Workforce Growth

- 75% increase in Certified Genetic Counselors nationwide since 2006.

State of Iowa Genetic Counselor Licensure Fact Sheet

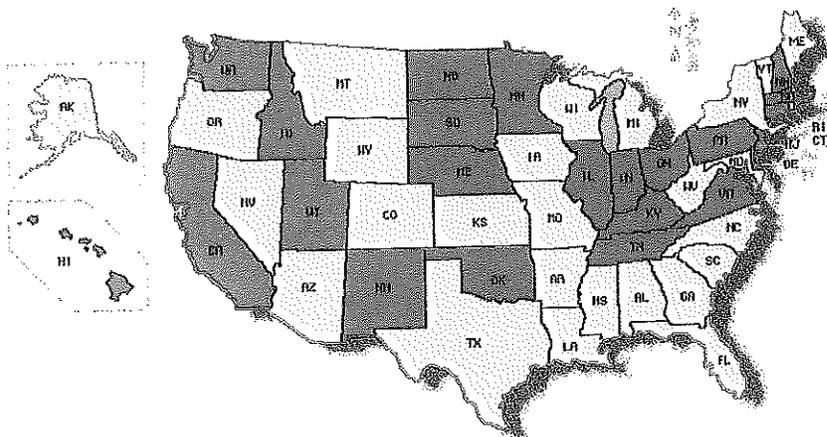
- Bureau of Labor Statistics projects above-average growth in the number of genetic counseling jobs nationwide from 2012 – 2022.
- Between 2013 – 2016, the number of practicing certified genetic counselors in Iowa doubled.
- In 2016 and 2017, the University of Iowa Hospitals and Clinics (UIHC) set national records for the most clinical genetic counselors hired at an academic medical center in a year. UIHC is currently hiring 3 additional genetic counselors.
- Conversations are underway to grow genetic counseling in Des Moines.
- A recent national workforce study recommended 1 FTE certified genetic counselor per 75,000 individuals to meet the demands of the U.S. population.⁸ Based on this recommendation, Iowa needs 41.8 certified genetic counselors working in direct patient care to meet the current needs of 3,134,693 Iowans. These needs are expected to increase with advancements in precision medicine.



States Issuing Licenses for Genetic Counselors⁷

As of June 2017, 23 states license genetic counselors.

- - States w/ Licensure
- States no Licensure



Why should the State of Iowa require licensure for genetic counselors?

- **Safety:** Requiring licensure will ensure that only people with appropriate credentials are providing genetic counseling services and information. Currently, there are no state regulations in place to protect the citizens of Iowa from inappropriate health services being provided by an inadequately trained individual calling him/herself a genetic counselor.
- **Save money:** A recent study demonstrated genetic counselors working in a laboratory can save a hospital **\$48,000 per month** by preventing inappropriate genetic tests from being ordered.⁶
- **Workforce growth:** Licensure will provide hospitals a mechanism to identify appropriately trained individuals to provide genetic counseling to their patients, thereby promoting job growth.

References

1. NSGC. A new definition of Genetic Counseling: NSGC Task Force report. *J Genet Couns* 15, 77-83 (2006).
2. Baars, J. Active approach for breast cancer genetic counseling during radiotherapy: long-term psychosocial and medical impact. *Clin Genet* 85, 524-31 (2014).
3. Kinney, A. Risk reduction behaviors and provider communication following genetic counseling and BRCA1 mutation testing in an African American kindred. *J Genet Couns* 15, 293-305 (2006).
4. Schneider, K. & Schmidtko, J. Patient compliance based on genetic medicine: a literature review. *J Community Genet* 5, 31-48 (2014).
5. Watson, M. Does genetic counseling have any impact on management of breast cancer risk? *Genet Test* 9, 167-74 (2005).
6. Miller C. Genetic counselor review of genetic test orders in a reference laboratory reduces unnecessary testing. *Am J Med Genet A* 164A, 1094-101 (2014).
7. States Issuing Licenses for Genetic Counselors. www.nsgc.org (2017).
8. Dobson DeVanzo & Associates, LLC. "Projecting the Supply and Demand for Certified Genetic Counselors A Workforce Study." (2016)

Iowa
Senate File 2228

Senate File 2228 - Enrolled

Senate File 2228

AN ACT

PROVIDING FOR THE LICENSURE OF GENETIC COUNSELORS, MAKING PENALTIES APPLICABLE, AND INCLUDING EFFECTIVE DATE AND IMPLEMENTATION PROVISIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 147.1, subsections 3 and 6, Code 2018, are amended to read as follows:

3. "*Licensed*" or "*certified*", when applied to a physician and surgeon, podiatric physician, osteopathic physician and surgeon, genetic counselor, physician assistant, psychologist, chiropractor, nurse, dentist, dental hygienist, dental assistant, optometrist, speech pathologist, audiologist, pharmacist, physical therapist, physical therapist assistant, occupational therapist, occupational therapy assistant, orthotist, prosthetist, pedorthist, respiratory care practitioner, practitioner of cosmetology arts and sciences, practitioner of barbering, funeral director, dietitian, marital and family therapist, mental health counselor, respiratory care and polysomnography practitioner, polysomnographic technologist, social worker, massage therapist, athletic trainer, acupuncturist, nursing home administrator, hearing aid specialist, or sign language interpreter or transliterator means a person licensed under this subtitle.

6. "*Profession*" means medicine and surgery, podiatry, osteopathic medicine and surgery, genetic counseling, practice as a physician assistant, psychology, chiropractic, nursing,

dentistry, dental hygiene, dental assisting, optometry, speech pathology, audiology, pharmacy, physical therapy, physical therapist assisting, occupational therapy, occupational therapy assisting, respiratory care, cosmetology arts and sciences, barbering, mortuary science, marital and family therapy, mental health counseling, polysomnography, social work, dietetics, massage therapy, athletic training, acupuncture, nursing home administration, practice as a hearing aid specialist, sign language interpreting or transliterating, orthotics, prosthetics, or pedorthics.

Sec. 2. Section 147.2, subsection 1, Code 2018, is amended to read as follows:

1. A person shall not engage in the practice of medicine and surgery, podiatry, osteopathic medicine and surgery, genetic counseling, psychology, chiropractic, physical therapy, physical therapist assisting, nursing, dentistry, dental hygiene, dental assisting, optometry, speech pathology, audiology, occupational therapy, occupational therapy assisting, orthotics, prosthetics, pedorthics, respiratory care, pharmacy, cosmetology arts and sciences, barbering, social work, dietetics, marital and family therapy or mental health counseling, massage therapy, mortuary science, polysomnography, athletic training, acupuncture, nursing home administration, or sign language interpreting or transliterating, or shall not practice as a physician assistant or a hearing aid specialist, unless the person has obtained a license for that purpose from the board for the profession.

Sec. 3. Section 147.13, subsection 1, Code 2018, is amended to read as follows:

1. For medicine and surgery, osteopathic medicine and surgery, ~~and acupuncture,~~ and genetic counseling, the board of medicine.

Sec. 4. Section 147.74, Code 2018, is amended by adding the following new subsection:

NEW SUBSECTION. 23A. A genetic counselor licensed under chapter 148H may use the words "genetic counselor" or "licensed genetic counselor" or corresponding abbreviations after the person's name.

Sec. 5. NEW SECTION. 148H.1 Definitions.

1. "*Active candidate status*" means a person has met the requirements established by the American board of genetic counseling or its equivalent or successor organization to take the American board of genetic counseling certification examination in general genetics and genetic counseling or its equivalent or successor examination and has been granted this designation by the American board of genetic counseling or its equivalent or successor organization.

2. "*Board*" means the board of medicine.

3. "*Genetic counseling*" means the provision of services by an individual who qualifies for a license under this chapter.

4. "*Genetic counseling intern*" means a student enrolled in a genetic counseling program accredited by the accreditation council for genetic counseling or its equivalent or successor organization, the American board of medical genetics and genomics or its equivalent or successor organization.

5. "*Genetic counselor*" means an individual who is licensed under this chapter to engage in the practice of genetic counseling.

6. "*Qualified supervisor*" means any person who is a genetic counselor licensed under this chapter, a physician licensed under chapter 148, or an advanced registered nurse practitioner licensed under chapter 152.

7. "*Supervision*" means supervision by a qualified supervisor who has the overall responsibility of assessing the work of a provisional licensee, provided that an annual supervision contract signed by the qualified supervisor and the provisional licensee is on file with both parties. "*Supervision*" does not require the qualified supervisor's presence during the performance of services.

Sec. 6. NEW SECTION. 148H.2 Scope of practice.

A person licensed under this chapter may do any of the following:

1. Obtain and evaluate individual, family, and medical histories to determine genetic risk for genetic and medical conditions and diseases in a patient, the patient's offspring, and other family members.

2. Discuss the features, history, means of diagnosis, genetic and environmental factors, and management of risk for

genetic and medical conditions and diseases.

3. Identify, order, and coordinate genetic laboratory tests and other diagnostic studies as appropriate for the genetic assessment of a patient.

4. Refer a patient to a specialty or subspecialty department as necessary for the purpose of collaborating on diagnosis and treatment involving multiple body systems and general medical management.

5. Integrate genetic laboratory test results and other diagnostic studies with personal and family medical history to assess and communicate risk factors for genetic and medical conditions and diseases.

6. Explain the clinical implications of genetic laboratory tests and other diagnostic studies and their results.

7. Evaluate the responses of a patient or patient's family to the condition or risk of recurrence and provide patient-centered genetic counseling and anticipatory guidance.

8. Identify and utilize community resources that provide medical, educational, financial, and psychosocial support and advocacy.

9. Provide written documentation of medical, genetic, and counseling information for families and health care professionals.

Sec. 7. NEW SECTION. 148H.3 Qualifications for licensure — provisional licensure.

1. Each applicant for licensure under this chapter shall:

- a. Submit an application form as prescribed by the board.
- b. Provide satisfactory evidence of certification as a genetic counselor by the American board of genetic counseling or its equivalent or successor organization, the American board of medical genetics and genomics or its equivalent or successor organization, or as a medical geneticist by the American board of medical genetics and genomics or its equivalent or successor organization.

2. A license shall be issued for a two-year period and shall be renewed upon the filing of a renewal application as prescribed by the board.

3. A licensee shall maintain active certification as a genetic counselor by the American board of genetic counseling

or its equivalent or successor organization, the American board of medical genetics and genomics or its equivalent or successor organization, or as a medical geneticist by the American board of medical genetics and genomics, or its equivalent or successor organization.

4. a. The board may issue a provisional license to an applicant who meets all of the requirements for licensure except for the certification component and who has been granted active candidate status by the American board of genetic counseling or its equivalent or successor organization.

b. The applicant shall submit a provisional license application form prescribed by the board as determined by the board.

c. A provisional license shall expire upon the earlier of issuance of a full license by the board or the loss of active candidate status from the American board of genetic counseling or its equivalent or successor organization by the holder of the provisional license.

d. A person with a provisional license shall only practice genetic counseling under the supervision of a qualified supervisor.

Sec. 8. NEW SECTION. 148H.4 Scope of chapter.

This chapter shall not be construed to apply to any of the following:

1. A physician or surgeon or an osteopathic physician or surgeon licensed under chapter 148, a registered nurse or an advanced registered nurse practitioner licensed under chapter 152, a physician assistant licensed under chapter 148C, or other persons licensed under chapter 147 when acting within the scope of the person's profession and doing work of a nature consistent with the person's education and training.

2. A person who is certified by the American board of medical genetics and genomics or its equivalent or successor organization as a doctor of philosophy and is not a genetic counselor licensed pursuant to this chapter.

3. A person employed as a genetic counselor by the federal government or an agency thereof if the person provides genetic counseling services solely under the direction and control of the entity by which the person is employed.

4. A genetic counseling intern.

Sec. 9. NEW SECTION. 148H.5 Continuing education.

An applicant for renewal of a license under this chapter shall submit satisfactory evidence to the board that in the period since the license was issued or last renewed, the applicant has completed thirty hours of national society of genetic counselors or its equivalent or successor organization or American board of medical genetics and genomics or its equivalent or successor organization continuing education units as approved by the board.

Sec. 10. NEW SECTION. 148H.6 Rules — authority of board.

The board shall adopt rules consistent with this chapter and chapters 147 and 148 which are necessary for the performance of its duties under this chapter. The board may consult with genetic counselors during an investigative or disciplinary proceeding as it deems necessary.

Sec. 11. NEW SECTION. 148H.7 Licensee discipline.

1. In addition to the grounds for revocation or suspension referred to in section 147.55 and in accordance with the disciplinary process established for the board by section 148.6, the board may discipline a person licensed under this chapter who is guilty of any of the following acts or offenses:

a. Conviction of a felony under state or federal law or commission of any other offense involving moral turpitude.

b. Having been adjudged mentally ill or incompetent by a court of competent jurisdiction.

c. Engaging in unethical or unprofessional conduct including but not limited to negligence or incompetence in the course of professional practice.

d. Violating any lawful order, rule, or regulation rendered or adopted by the board.

e. Having been refused issuance of or disciplined in connection with a license issued by any other jurisdiction.

2. A genetic counselor whose license is suspended or revoked or whose surrender of license with or without prejudice has been accepted by the board shall promptly deliver the original license to the board.

3. A provisional licensee who loses active candidate status with the American board of genetic counseling or its equivalent

or successor organization shall surrender the provisional license to the board immediately.

Sec. 12. EFFECTIVE DATE AND IMPLEMENTATION. This Act shall take effect January 1, 2019, except that the board of medicine may begin implementation prior to that date, to the extent necessary to fully implement the provisions providing for the licensure of genetic counselors by January 1, 2019.

CHARLES SCHNEIDER
President of the Senate

LINDA UPMEYER
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2228, Eighty-seventh General Assembly.

W. CHARLES SMITHSON
Secretary of the Senate

Approved _____, 2018

KIM REYNOLDS
Governor

Idaho

TITLE 54
PROFESSIONS, VOCATIONS, AND BUSINESSES

CHAPTER 56
GENETIC COUNSELORS

54-5601. SHORT TITLE. This chapter shall be known and may be cited as the "Genetic Counselors Licensing Act."

[54-5601, added 2015, ch. 128, sec. 1, p. 322.]

54-5602. DEFINITIONS. As used in this chapter:

(1) "ABGC" means the American board of genetic counseling, inc., its successor or equivalent.

(2) "ABMG" means the American board of medical genetics, its successor or equivalent.

(3) "ACS" means active candidate status conferred by the American board of genetic counseling.

(4) "Board" means the genetic counselors licensing board.

(5) "Bureau" means the bureau of occupational licenses.

(6) "Certification" means the voluntary process by which a nongovernmental agency grants recognition and use of a credential to individuals who have met predetermined and standardized criteria.

(7) "Certification examination" means the certification examination for genetic counselors administered by a certifying agency approved by the board.

(8) "CEU" means continuing education unit as defined by the board by rule.

(9) "Code of ethics" means the current code of ethics adopted by the board.

(10) "Genetic counseling" means performing acts of a genetic counselor as described in section 54-5603, Idaho Code.

(11) "Genetic counselor" means an individual who is licensed under this chapter to engage in the practice of genetic counseling.

(12) "Licensed physician" means a person holding a license issued under chapter 18, title 54, Idaho Code.

(13) "NSGC" means the national society of genetic counselors, its successor or equivalent.

(14) "Person" means an individual and does not mean an association of individuals or a legal entity.

[54-5602, added 2015, ch. 128, sec. 1, p. 322.]

54-5603. SCOPE OF PRACTICE. A licensed genetic counselor may perform the following acts as a genetic counselor:

(1) Obtain and evaluate individual, family and medical histories to determine genetic risk for genetic or medical conditions and diseases in a patient, his offspring and other family members;

(2) Discuss the features, natural history, means of diagnosis, genetic and environmental factors and management of risk for genetic medical conditions and diseases;

(3) Identify and coordinate genetic laboratory tests and other diagnostic studies as appropriate for the genetic assessment;

(4) Integrate genetic laboratory test results and other diagnostic studies with personal and family medical history to assess and communicate risk factors for genetic medical conditions and diseases;

(5) Explain the clinical implications of genetic laboratory tests, other diagnostic studies and results;

(6) Evaluate the client's or family's responses to the condition or risk of recurrence and provide client-centered counseling and anticipatory guidance;

(7) Identify and utilize community resources that provide medical, educational, financial and psychosocial support and advocacy; and

(8) Provide written documentation of medical, genetic and counseling information for families and health care professionals.

[54-5603, added 2015, ch. 128, sec. 1, p. 323.]

54-5604. EXEMPTIONS FOR LICENSURE. The provisions of this act shall not apply to the following:

(1) Any person who is not a genetic counselor but is licensed under title 54, Idaho Code, acting within the scope of his profession and doing work of a nature consistent with his training, provided that he does not represent himself by any title or practice description prohibited by section 54-5605;

(2) Any person employed as a genetic counselor by the federal government or an agency thereof if such person provides genetic counseling services solely under the direction and control of the organization by which he is employed;

(3) A student enrolled in an ABGC-accredited genetic counseling educational program if genetic counseling services performed by the student are an integral part of the student's course of study and are performed under the direct supervision of a licensed genetic counselor assigned to supervise the student;

(4) An employee of a facility licensed under the provisions of chapter 13, title 39, Idaho Code, who is designated in writing to be responsible for that facility's genetic counseling program and who receives regular consultation from a licensed genetic counselor; and

(5) Any person who holds a license to practice medicine and surgery, osteopathic medicine and surgery, or osteopathic medicine under chapter 18, title 54, Idaho Code, provided that he does not represent himself as a licensed genetic counselor.

[54-5604, added 2015, ch. 128, sec. 1, p. 323.]

54-5605. GENETIC COUNSELOR LICENSE REQUIRED. Effective July 1, 2016, a license shall be required to engage in the practice of genetic counseling. No person shall hold himself out as a genetic counselor unless he is licensed in accordance with the provisions of this chapter. No person who is not so licensed may use in connection with his name or place of business the title genetic counselor, licensed genetic counselor, gene counselor, genetic consultant, genetic associate or any words, letters, abbreviations or insignia indicating or implying that a person holds a genetic counselor license unless such person holds a genetic counselor license.

[54-5605, added 2015, ch. 128, sec. 1, p. 324.]

54-5606. BOARD -- ORGANIZATION AND MEETINGS. (1) There is hereby established in the department of self-governing agencies, bureau of occupational licenses, the genetic counselors licensing board.

(2) The board shall consist of four (4) members, two (2) of whom shall be fully licensed genetic counselors, one (1) of whom shall be a licensed physician and one (1) of whom shall be a member of the public with an interest in the rights of consumers of genetic counseling services. All board members shall be residents of this state.

(3) Initial appointments to the board shall be for the following terms: one (1) genetic counselor member shall serve a term of one (1) year; one (1) genetic counselor member shall serve a term of two (2) years; and the physician member shall serve a term of three (3) years. Thereafter, the term of office for each member of the board shall be three (3) years.

(4) Board members shall be appointed by the governor and shall serve at the pleasure of the governor.

(5) Each genetic counselor member of the board shall:

(a) Except for the initial appointments, be currently licensed and in good standing to engage in the practice of genetic counseling in this state. The initial genetic counselor members of the board must meet the qualifications for licensure under this act;

(b) At the time of appointment have been actively engaged in the practice of genetic counseling for at least one (1) year of the last five (5) years; and

(c) Be certified by the ABGC, ABMG or NSGC.

(6) In the event of the death, resignation or removal of any board member before the expiration of the term to which the member is appointed, the vacancy shall be filled for the unexpired portion of the term in the same manner as the original appointment.

(7) The board shall meet annually and at such times as deemed necessary and advisable by the chairman, or by a majority of its members, or by the governor. Notice of all meetings shall be given in the manner prescribed by rule. A majority of the board shall constitute a quorum at any meeting or hearing.

(8) Members of the board shall be reimbursed for expenses as provided in section 59-509(b), Idaho Code.

[54-5606, added 2015, ch. 128, sec. 1, p. 324; am. 2016, ch. 340, sec. 46, p. 965.]

54-5607. BOARD POWERS. (1) The board shall have the following powers:

(a) To receive applications for licensure, determine the qualifications of persons applying for licensure, provide licenses to applicants qualified under the provisions of this chapter and reinstate and deny licenses;

(b) To establish by rule and collect fees as prescribed by this chapter;

(c) To maintain records necessary to carry out its duties under this chapter;

(d) To pass upon the qualifications and fitness of applicants for licenses and to adopt rules requiring annual continuing education as a condition for the renewal of licenses issued under this chapter;

(e) To prescribe by rule the minimum number of and qualifications for continuing education units (CEUs) to be required of each genetic counselor seeking to obtain or renew a license in the state of Idaho and for the approval of continuing education courses;

(f) To examine for, deny, approve, issue, revoke and suspend licenses pursuant to this chapter and to conduct investigations and hearings in connection with such actions;

(g) Establish requirements for reinstatement and renewal of licenses;

(h) To adopt and revise such rules as may be necessary to carry into effect the provisions of this chapter in compliance with chapter 52, title 67, Idaho Code. The rules shall include, but shall not be limited to, a code of ethics for genetic counselors and licensed genetic counselor standards of practice;

(i) In any proceeding before the board authorized by this chapter, the board or its designee may administer oaths or affirmations to witnesses appearing before it; and

(j) To take such action as may be necessary to enforce the provisions of this chapter and to regulate the practice of genetic counseling.

(2) In a final order, the board may impose a civil penalty not to exceed one thousand dollars (\$1,000) for each violation by a licensee of this chapter or of rules adopted by the board.

(3) The board may authorize, by written agreement, the bureau of occupational licenses as its agent to act in its interest and, in its discretion, to contract with the bureau of occupational licenses for those services deemed necessary for the proper administration of this chapter.

(4) The assessment of costs and attorney's fees incurred in the investigation and prosecution or defense of a licensee under this chapter shall be governed by the provisions of section 12-117(5), Idaho Code.

[54-5607, added 2015, ch. 128, sec. 1, p. 324; am. 2018, ch. 348, sec. 22, p. 818.]

54-5608. REQUIREMENTS FOR ISSUANCE OF A LICENSE. In addition to such other information as the board may require by rule, each applicant under this act shall:

(1) Hold a master's degree or higher in genetics or a related field of study as approved by the board;

(2) Submit an application in the form prescribed by the board;

(3) Pay the fee determined by the board by rule; and

(4) Provide evidence satisfactory to the board of having successfully passed a nationally recognized competency examination approved by the board by rule.

[54-5608, added 2015, ch. 128, sec. 1, p. 325.]

54-5609. ENDORSEMENT LICENSURE. An applicant who satisfies the board that he is licensed or registered under the laws of another state, territory or jurisdiction of the United States, which in the opinion of the board imposes substantially equivalent licensing requirements as this act, may, upon the payment of the required fee and the approval of the application, be licensed by endorsement pursuant to this act.

[54-5609, added 2015, ch. 128, sec. 1, p. 325.]

54-5610. PROVISIONAL LICENSE. (1) The board may grant a person who has been granted ACS a provisional genetic counselor license to practice genetic counseling upon filing an application with the board and payment of the fee established by the board by rule.

(2) The provisional license shall be valid for one (1) year from the date of its issue and may be renewed at the discretion of the board for additional one (1) year periods up to a maximum of four (4) renewals. A provisional license shall expire automatically upon the issuance of a full license.

(3) A provisional licensed genetic counselor shall work under the general supervision of a licensed genetic counselor or a licensed physician at all times during which the provisionally licensed genetic counselor performs genetic counseling. An application for extension of the provisional license shall be signed by the supervisor. General supervision shall not require the physical presence of the provisional licensee's supervisor at the location where such provisional licensee provides genetic counseling services; however, the supervisor shall be readily accessible by telephone or electronically for consultation and assistance whenever such provisional licensee provides such services.

[54-5610, added 2015, ch. 128, sec. 1, p. 325.]

54-5611. LICENSING OF EXISTING GENETIC COUNSELORS. Until July 1, 2016, an individual who does not qualify for licensure under this chapter may apply to the board for licensure, and the board may approve the application if the individual has paid the required fees and:

(1) Has worked as a genetic counselor for a minimum of ten (10) years preceding the enactment of these provisions with at least five (5) of those years being the five (5) years immediately preceding the application for a license;

(2) Holds a master's degree or higher in genetics or a related field of study as approved by the board;

(3) Submits three (3) letters of recommendation from individuals who have worked with the applicant in an employment setting, including at least one (1) letter from a genetic counselor who qualifies for licensure under this chapter and one (1) letter from either a clinical geneticist certified by ABMG or a medical geneticist certified by ABMG; and

(4) Provides documentation satisfactory to the board that he has completed at least two hundred (200) hours of formal training in genetic counseling as determined by the board and has practiced genetic counseling for at least five (5) hours per week on average for at least the five (5) years immediately prior to the date of application.

[54-5611, added 2015, ch. 128, sec. 1, p. 326.]

54-5612. LICENSE RENEWAL. (1) All licenses issued under the provisions of this chapter shall be subject to annual renewal and shall expire on the licensee's birthday unless renewed in the manner prescribed by the board regarding applications for renewal, continuing education and fees and in compliance with section 67-2614, Idaho Code.

(2) In addition to such other requirements as the board may establish by rule, each applicant shall present satisfactory evidence when seeking license renewal that in the period since the license was issued or last renewed the applicant has completed the amount of board-approved continuing education required by the board by rule. The board may waive all or a portion of these requirements or grant an extension of time in which to complete these requirements upon a finding of good cause.

[54-5612, added 2015, ch. 128, sec. 1, p. 326.]

54-5613. FEES. (1) The board shall establish by rule fees for licensure under the provisions of this chapter as follows:

- (a) An application fee not to exceed five hundred dollars (\$500);
- (b) A fee established by rule for an initial full license not to exceed five hundred dollars (\$500);
- (c) A fee established by rule for a provisional license, an endorsement license and for an existing genetic counselor license not to exceed five hundred dollars (\$500);
- (d) The fee established by rule for annual renewal of licenses not to exceed five hundred dollars (\$500); and
- (e) Fees charged pursuant to paragraph (b), (c) or (d) of this subsection shall be in addition to the application fee.

(2) All fees received under the provisions of this chapter shall be non-refundable and shall be deposited in the state treasury to the credit of the occupational license account in the dedicated fund, and all costs and expenses incurred by the board under the provisions of this chapter shall be a charge against and paid from the account for such purposes, and the funds collected hereunder shall be immediately available for the administration of this chapter, the provisions of any other law notwithstanding.

[54-5613, added 2015, ch. 128, sec. 1, p. 326.]

54-5614. DENIAL OF LICENSE AND DISCIPLINARY PROCEEDINGS. (1) The board may refuse to issue, refuse to renew, revoke, suspend or otherwise sanction a licensee upon the following grounds:

- (a) Fraud or deception in procuring or renewing the license;
- (b) Having been found guilty, convicted, or placed on probation; having entered into a guilty plea that is accepted by the court; forfeited bail, bond or collateral deposited to secure a defendant's appearance; or having received a withheld judgment or suspended sentence of a felony by a court of competent jurisdiction;
- (c) Gross incompetence or unprofessional conduct;
- (d) Fraud or deceit in connection with services rendered as a genetic counselor or in establishing qualifications for licensure under this chapter;
- (e) Violation of any of the provisions of this chapter or any of the rules promulgated by the board under the authority of this chapter;
- (f) Failure to comply with a board order;
- (g) Having had a license revoked or suspended or having been otherwise disciplined by the board or the proper authorities of another state, territory or country;
- (h) Habitual drunkenness or addiction to habit-forming drugs, either of which impairs the ability to perform work without danger to himself or the public;
- (i) Aiding or abetting any person not licensed or otherwise authorized under this chapter in the practice of genetic counseling in the state of Idaho;
- (j) Representing himself as a licensed genetic counselor when he is unlicensed;
- (k) Failing to maintain the requirements for a license or failing to achieve the minimum CEUs required for the renewal of a license;

(1) Having a license or certification in a related field revoked or suspended or having been otherwise disciplined in Idaho or any other state; or

(m) Unethical or unprofessional conduct as defined by the rules of the board or the code of ethics established by the rules of the board.

(2) The board may reinstate any revoked or suspended license upon such terms as it may determine.

(3) The board may by rule provide a procedure for an applicant to request an exemption review for a felony or lesser crime conviction. The applicant shall bear the burden and financial responsibility of providing all evidence, documentation and proof of suitability for licensure required by the board for exemption review.

[54-5614, added 2015, ch. 128, sec. 1, p. 327.]

54-5615. CONFIDENTIAL COMMUNICATIONS. No licensee shall disclose any information that he may have acquired from a client consulting him in his professional capacity that was necessary to enable him to render services in his professional capacity to those persons, except:

(1) With the written consent of that client or, in the case of death or disability, the written consent of the client's personal representative, other person or entity authorized to sue, or the beneficiary of an insurance policy on their life, health or physical condition;

(2) That a licensee shall not be required to treat as a confidential communication anything that reveals the contemplation or execution of a crime or harmful act;

(3) When the client is a minor under the laws of this state, and the information acquired by the licensee indicates that the minor was the victim or subject of a crime, the licensee may testify fully in relation to such information upon any examination, trial or other proceeding in which the commission of such a crime is the subject of the inquiry;

(4) When the client waives the privilege by bringing charges or other claims against the licensee; or

(5) To the board or its authorized agent in connection with an investigation or other proceeding by the board or its agent under this chapter.

[54-5615, added 2015, ch. 128, sec. 1, p. 327.]

54-5616. CERTAIN ACTS PROHIBITED. It shall be unlawful and a misdemeanor for any person to engage in any of the following acts:

(1) To practice genetic counseling or to represent himself to be a licensed genetic counselor as defined in this chapter without having at the time of so doing, a valid license issued under this chapter; or

(2) To use in connection with his name or place of business, the title genetic counselor or any words indicating or implying that the person holds a genetic counselor license unless he is licensed in accordance with this chapter.

[54-5616, added 2015, ch. 128, sec. 1, p. 328.]

New Mexico

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 10 MEDICINE AND SURGERY PRACTITIONERS
PART 21 GENETIC COUNSELORS: LICENSURE AND PRACTICE REQUIREMENTS

16.10.21.1 ISSUING AGENCY: New Mexico Medical Board, hereafter called the board.
[16.10.21.1 NMAC - N, 1/1/09]

16.10.21.2 SCOPE: This part applies to genetic counselors.
[16.10.21.2 NMAC - N, 1/1/09]

16.10.21.3 STATUTORY AUTHORITY: This part governs the licensing and practice of genetic counselors in New Mexico and is promulgated pursuant to and in accordance with the Genetic Counseling Act, Sections 61-6A-1 through 61-6A-10 and the Medical Practice Act, Sections 61-6-1 through 61-6-35 NMSA 1978.
[16.10.21.3 NMAC - N, 1/1/09]

16.10.21.4 DURATION: Permanent.
[16.10.21.4 NMAC - N, 1/1/09]

16.10.21.5 EFFECTIVE DATE: January 1, 2009, unless a different date is cited at the end of a section.
[16.10.21.5 NMAC - N, 1/1/09]

16.10.21.6 OBJECTIVE: This part regulates the licensing and practice of genetic counselors.
[16.10.21.6 NMAC - N, 1/1/09]

16.10.21.7 DEFINITIONS:

A. "ABGC" means the American board of genetic counseling, a national agency for certification and recertification of genetic counselors, or its successor agency.

B. "ABMG" means the American board of medical genetics, a national agency for certification and recertification of genetic counselors and geneticists with medical or other doctoral degrees, or its successor agency.

C. "Accreditation" means any of the following definitions.

(1) **Full accreditation** indicates that the program meets the minimum standards established by ABGC to provide a well-rounded and adequate educational and clinical program for students. ABGC full accreditation is typically conferred for a period of six (6) years and reaccreditation is typically conferred for a period of up to eight (8) years, although ABGC reserves the right to provide probationary or shorter-term accreditation.

(2) **Probationary accreditation** indicates that, while the program continues to have accredited status, it does not meet the minimum standards for providing educational and clinical training for students and has generalized problems that appear to interfere with optimal education of the candidates. This program must make public its probationary status.

(3) **Provisional accreditation** applies to a new program that has completed and submitted an application for becoming an accredited program. Such a program must meet the minimum criteria for providing the master's degree in genetic counseling, as established by ABGC. Provisionally accredited programs must apply for full accreditation within three (3) years of matriculating their first class. If the program does not attain full accreditation (or accreditation with restrictions), provisional accreditation will be revoked. Probationary accreditation is not an option for a provisionally accredited program.

D. "Active candidate status" means a graduate who has applied to sit for the ABGC certification examination according to published eligibility requirements in effect for that examination cycle, and who has been approved as a candidate for that examination cycle based on review and approval of his/her credentials by the ABGC credentials committee.

E. "Active status" means a license that is current and authorizes the licensee to engage in the practice of genetic counseling.

F. "Alternate supervising genetic counselor or physician" means a genetic counselor or physician who holds a current unrestricted New Mexico license, is a cosignatory on the notification of supervision, and agrees to act as the supervising genetic counselor or physician in the absence of the designated genetic counselor or physician.

G. "Board" means the New Mexico medical board.

H. "Certification" means successful completion of a comprehensive general genetics examination and genetic counseling specialty examination administered by ABGC or ABMG, or after 2009, successful completion of the ABGC certification examination.

I. "Contact hour" means sixty (60) minutes of actual instructional time. Breaks, meals, evaluations, wrap-up or registration are not included when calculating hours.

J. "Effective supervision" means the oversight, control, and direction of services rendered by a genetic counselor practicing on a temporary license. Supervision shall be provided by a licensed genetic counselor or physician. Elements of effective supervision include:

- (1) on-going availability of direct communication, either face-to-face or by electronic means;
- (2) active, ongoing review of the genetic counselor's services, as appropriate, for quality assurance and professional support;
- (3) delineation of a predetermined plan for emergency situations, including unplanned absence of the primary supervising genetic counselor or physician; and
- (4) identification and registration of an alternate supervising genetic counselor or physician, as appropriate to the practice setting.

K. "Expired" means a license was not renewed by the biennial renewal date of March 1 or at the end of the grace period of May 1, and the licensee is not eligible to practice within the state of New Mexico.

L. "Genetic counseling" means a communication process that may include:

- (1) estimating the likelihood of occurrence or recurrence of any potentially inherited or genetically influenced condition or congenital abnormality. Genetic counseling may involve:
 - (a) obtaining and analyzing the complete health history of an individual and family members;
 - (b) reviewing pertinent medical records;
 - (c) evaluating the risks from exposure to possible mutagens or teratogens; and
 - (d) determining appropriate genetic testing or other evaluations to diagnose a condition or determine the carrier status of one (1) or more family members;
- (2) helping an individual, family or health care provider to:
 - (a) appreciate the medical, psychological and social implications of a disorder, including its features, variability, usual course and management options;
 - (b) learn how genetic factors contribute to a disorder and affect the chance for occurrence of the disorder in other family members;
 - (c) understand available options for coping with, preventing or reducing the chance of occurrence or recurrence of a disorder;
 - (d) select the most appropriate, accurate and cost-effective methods of diagnosis; and
 - (e) understand genetic or prenatal tests, coordinate testing for inherited disorders and interpret complex genetic test results; and
- (3) facilitating an individual's or family's:
 - (a) exploration of the perception of risk and burden associated with a genetic disorder; and
 - (b) adjustment and adaptation to a disorder or the individual's or family's genetic risk by addressing needs for psychological, social and medical support.

M. "Genetic counselor" means a person licensed pursuant to the Genetic Counseling Act to engage in the practice of genetic counseling.

N. "Grace period" means the sixty (60) day period following the renewal date when a genetic counselor may renew a license that was not renewed by the renewal date, by paying the required renewal fee, the late fee and meeting the renewal requirements. A licensee may continue to practice during the grace period.

O. "Grace period status" means the license has not been renewed by the renewal date and has not expired.

P. "Military service member" means a person who is serving in the armed forces of the United States or in a reserve component of the armed forces of the United States, including the national guard.

Q. "NSGC" means the national society of genetic counselors, a professional membership society promoting the genetic counseling profession as an integral part of health care delivery and offering educational programs.

R. "Recent veteran" means a person who has received an honorable discharge or separation from military service within the two (2) years immediately preceding the date the person applies for a genetic counselor license pursuant to section 16.10.21.12. The veteran shall submit a copy of Form DD214, or its equivalent, as part of the application process.

S. "Renew" means to begin again after an interval of time; to make valid again for a further period.

T. "Renewal date" means the deadline date upon which the license shall be made valid again for another period of time without a penalty fee.
[16.10.21.7 NMAC - N, 1/1/09; A, 10/16/13]

16.10.21.8 LICENSURE REQUIREMENTS: The board may issue a license to an applicant who fulfills the following requirements.

A. Completes an application for which the applicant has supplied all information and correspondence requested by the board on forms and in a manner acceptable to the board. Applications are valid for one (1) year from the date of receipt. While an application is pending, the applicant is responsible for providing the board with any changes to the submitted information or to the applicant's oath. Applications shall require the following documentation:

- (1) demographic information of the applicant;
- (2) educational history;
- (3) employment history;
- (4) professional references;
- (5) examination information;
- (6) certification information;
- (7) other state licensure information;
- (8) professional practice questions;
- (9) applicant's oath;
- (10) passport-quality color photograph taken within six (6) months prior to filing the application; approximate size 2 x 2 inches, head and shoulders only, full face, front view, plain white or off-white background, standard photo stock paper; and, scanned or computer-generated photographs should have no visible pixels or dots; and

(11) applicant's signature.

B. Each applicant for licensure as a genetic counselor shall submit the required fees as established in 16.10.9 NMAC.

C. Verification of licensure in all states or territories where the applicant holds or has held a license to engage in the practice of genetic counseling, or other health care profession, shall be sent directly to the board by the other state board(s), and shall include a raised seal, attest to the current status, issue date, license number, and other information requested and contained on the form.

D. Proof of certification from the ABGC, ABMG or as approved by the board, shall be sent directly to the board by the certifying entity. The board may accept hard copy by United States postal service, facsimile or electronic mail.

E. Verification of all work experience in the last five (5) years since graduation, if applicable, provided directly to the board from the employer, by letter or on forms provided by the board.

F. Proof of graduation from a genetic counseling educational program, evidenced by:

- (1) a master's degree from a genetic counseling training program prior to 1997; or
- (2) a master's degree from a genetic counseling training program that is accredited by the ABGC, or an equivalent program as approved by the board; or
- (3) a doctoral degree from a medical genetics training program that is accredited by the ABMG, or an equivalent program as determined by the board.

(4) Proof of graduation means official transcripts from a college or university. The applicant shall make arrangements for official transcripts to be sent directly to the board by the educational institution. If official transcripts are not available due to school closure, destroyed records, etc., the applicant shall provide satisfactory evidence to the board that the required genetic counseling educational program has been met for consideration on a case-by-case basis.

G. **Initial license period.** The applicant who has met all the requirements for licensure shall be issued an initial license for a period of not more than twenty-four (24) months or less than thirteen (13) months, depending on when in the renewal cycle the initial license is issued, in order to schedule the license to renew on March 1.

H. **Initial license expiration.** Genetic counselor licenses shall be renewed biennially on March 1 as established in Section 12 of this part.

I. All applicants for initial licensure as a genetic counselor are subject to a state and national criminal history screening at their expense. All applicants shall submit two (2) full sets of fingerprints, completed fingerprint

certificate form, signed authorization for criminal background screening and background screening fee at the time of application.

(1) Applications for licensure shall not be processed without submission of fingerprints, completed fingerprint certificate form, signed authorization for criminal background screening and fee.

(2) Applications shall be processed pending the completion of the nationwide criminal background screening and may be granted while the screening is still pending.

(3) If the criminal background screening reveals a felony or a violation of the Medical Practice Act, the applicant/licensee shall be notified to submit copies of legal documents and other related information to the board, which shall make the determination if the applicant is eligible for licensure or if disciplinary action will be taken. Questions of felony or misdemeanor convictions involving moral turpitude directly related to employment in the profession need to be resolved satisfactorily. If the prior conviction does not relate to employment in the profession, the board may require proof that the person has been sufficiently rehabilitated to warrant the public trust. Proof of sufficient rehabilitation may include, but not be limited to: certified proof of completion of probation or parole, payment of fees, community service or any other court ordered sanction.
[16.10.21.8 NMAC - N, 1/1/09; A, 10/16/13]

16.10.21.9 TEMPORARY INTERIM LICENSE:

A. The board may issue a temporary license to an applicant who has met all licensure requirements except the certification requirement and has active candidate status conferred by ABGC.

B. The temporary license is valid until the results of the next scheduled ABGC certification examination are available and a license is issued or denied.

C. The temporary license automatically expires three (3) months after the month the ABGC certification examination is offered.

D. A temporary license may be renewed as long as the applicant maintains active candidate status. Individuals with active candidate status must sit for the examination within the first two consecutive exam cycles for which they are eligible following graduation. Individuals who fail to do this will need to apply again as new applicants.

E. The temporary license may be renewed upon a first failure of the certification examination. The temporary license may be renewed a maximum of two (2) consecutive times within a five (5) year period following the first temporary licensure and upon payment of the temporary license renewal fee as established in 16.10.9 NMAC.

F. The temporary licensee may not practice genetic counseling until the temporary license is received and is on file at the principal place of practice.

G. The holder of a temporary license shall work under the effective supervision of a New Mexico licensed genetic counselor or physician. The temporary licensee is responsible to provide the board the following documentation, at the time of application, on forms provided by the board:

- (1) name of the supervising genetic counselor or physician;
- (2) specific program or protocol of work planned;
- (3) address of the sponsoring institution or organization where the work will be performed; and
- (4) an affidavit from the supervising genetic counselor or physician attesting to the qualifications of the temporary licensee and the purpose of the functions the temporary licensee will perform.

[16.10.21.9 NMAC - N, 1/1/09; A, 10/16/13]

16.10.21.10 TEMPORARY TEACHING OR ASSISTING LICENSE: A one (1) year temporary license may be issued to a person providing the following services.

A. The genetic counselor is in New Mexico temporarily to assist a New Mexico resident licensed to practice genetic counseling or to teach. The genetic counselor has met the requirements for New Mexico licensure, or is licensed in another U.S. jurisdiction or country where the requirements were equal to or greater than the requirements for licensure in New Mexico at the time the license was obtained in the other U.S. jurisdiction or country; if the genetic counselor is from a U.S. jurisdiction or country that does not have licensure for genetic counselors, the genetic counselor would need to meet the requirements for a New Mexico license as established in Section 8 of this part.

B. The holder of a temporary license shall work under the effective supervision of a New Mexico licensed genetic counselor or physician.

C. The temporary licensee is responsible to provide the board the following documentation, at the time of application, on forms provided by the board:

(1) completed temporary license application;
(2) temporary teaching or assisting license fee as established in 16.10.9 NMAC;
(3) written justification for a temporary license;
(4) verification of licensure, if licensed, in another U.S. jurisdiction, as established in Subsection 8 of this part;
(5) name of the supervising genetic counselor or physician;
(6) specific program or protocol of work planned;
(7) address of the sponsoring institution or organization where the work will be performed; and
(8) an affidavit from the supervising genetic counselor or physician attesting to the qualifications of the temporary licensee and the purpose of the functions the temporary licensee will perform.
[16.10.21.10 NMAC - N, 1/1/09; A, 10/16/13]

16.10.21.11 ENDORSEMENT: An applicant for licensure as a genetic counselor who is licensed under the laws of another U.S. jurisdiction where the requirements were equal to or greater than the requirements for licensure in New Mexico at the time the license was obtained in the other U.S. jurisdiction, shall file an application as established in Section 8 of this part. An endorsement applicant may also apply for a temporary license as established in Section 10 of this part and not be restricted to teaching or assisting.
[16.10.21.11 NMAC - N, 1/1/09]

16.10.21.12 EXPEDITED MEDICAL LICENSURE FOR MILITARY AND SPOUSES LICENSED IN ANOTHER JURISDICTION. If a military service member, the spouse of a military service member, or a recent veteran submits an application for a medical license and is a qualified applicant pursuant to this part, the board shall expedite the processing of such application and issue the appropriate license as soon as practicable. Any qualified applicant seeking expedited consideration pursuant to this section shall submit a copy of form DD214 with their application.
[16.10.21.12 NMAC - N, 1/1/09; 16.10.21.12 NMAC - N, 10/16/13]

16.10.21.13 LICENSE EXPIRATION AND RENEWAL:

A. Genetic counselor licenses shall be renewed biennially on March 1st. An initial license may be issued for a period of up to two (2) years, depending on when in the renewal cycle the initial license is issued, in order to schedule the license to renew on March 1st.

B. Failure to receive the renewal notice shall not relieve the licensee from the responsibility of renewing the license by the renewal date. The board assumes no responsibility for renewal applications not received by the licensee for any reason. It is the licensee's responsibility to inform the board of accurate address information and to make a timely request for the renewal application if one has not been received prior to March 1st.

C. Renewal applications postmarked or hand-delivered on or prior to March 1 shall require the following documentation:

(1) completion of a renewal application either electronically on-line or on the form provided by the board; the renewal form shall include the following data:

- (a) demographic information of the licensee;
- (b) license number;
- (c) questions regarding practice information since the last renewal; and
- (d) signature of the licensee;

(2) receipt of the renewal fee as established in 16.10.9 NMAC; and
(3) proof of forty (40) NSGC or ABGC approved continuing education contact hours during each biennial renewal cycle.

D. Renewal applications postmarked or hand-delivered after March 1 and prior to May 1 shall require the following documentation:

(1) completion of a renewal application either electronically on-line or on the form provided by the board, including the data as described in Subparagraphs (a)-(d) of Paragraph (1) of Subsection C of 16.10.21.12 NMAC;

(2) receipt of the renewal fee as established in 16.10.9 NMAC;
(3) receipt of the late fee as established in 16.10.9 NMAC; and
(4) proof of forty (40) NSGC or ABGC approved continuing education contact hours during each biennial renewal cycle.

E. March 1 through April 30 is considered the grace period following the renewal date during which a licensee may continue to provide services and renew with a late fee.

F. When renewal applications are received on or after May 1, the license shall have expired, and the licensee shall not be eligible to provide genetic counseling services in New Mexico.
[16.10.21.13 NMAC - Rn & A, 16.10.21.12 NMAC, 10/16/13]

16.10.21.14 REINSTATEMENT: A licensee with an expired license may apply for reinstatement.

A. Requirements for reinstatement of an expired license *within* one (1) year of the renewal date are as follows:

- (1) completion of a reinstatement application;
- (2) receipt of the renewal fee as established in 16.10.9 NMAC;
- (3) receipt of the reinstatement fee as established in 16.10.9 NMAC; and
- (4) proof of forty (40) NSGC or ABGC approved continuing education contact hours within the previous two (2) years.

B. Requirements for reinstatement of an expired license *after* one (1) year of the renewal date are as follows:

- (1) completion of a reinstatement application;
- (2) receipt of the renewal fee as established in 16.10.9 NMAC;
- (3) receipt of the reinstatement fee as established in 16.10.9 NMAC;
- (4) proof of forty (40) NSGC or ABGC approved continuing education contact hours as required for license renewal;
- (5) proof of twenty (20) NSGC or ABGC approved continuing education contact hours for each year the license has been expired; and
- (6) any other proof of competency as may be requested by the board or the board's designee.

Additionally, the board may require the former licensee to reapply as a new applicant.
[16.10.21.14 NMAC - Rn & A, 16.10.21.13 NMAC, 10/16/13]

16.10.21.15 DISCIPLINARY AND COMPLAINT PROCESS: Disciplinary actions and complaints shall be processed as established in 16.10.5 and 16.10.6 NMAC.
[16.10.21.15 NMAC - Rn, 16.10.21.14 NMAC, 10/16/13]

HISTORY of 16.10.21 NMAC: [RESERVED]

Ohio



Ohio Legislative Service Commission

Bill Analysis

Lisa Musielewicz

Sub. H.B. 292

129th General Assembly

(As Reported by S. Health, Human Services and Aging)

Reps. Gonzales, Grossman, Stebelton, Reece, Dovilla, Gardner, Baker, Wachtmann, Fende, Antonio, Carney, Celeste, Duffey, Garland, Yuko, Beck, Blair, Boyd, Cera, Combs, Conditt, Damschroder, DeVitis, Hackett, Johnson, Maag, Milkovich, Pelanda, Ruhl, Sears, Slaby, Stinziano, Weddington, Winburn

Sens. Jones, Tavares

BILL SUMMARY

Licensed genetic counselors

- Creates licensing requirements for the practice of genetic counseling and requires the State Medical Board to implement and administer the licensure process.
- Authorizes a licensed genetic counselor, in general, to (1) provide medical, genetic, and counseling information to patients, their families, and other health care professionals and (2) order genetic or other diagnostic tests under a collaborative agreement with a physician.

Physicians – visiting clinical professional development certificates

- Establishes a visiting clinical professional development certificate, to be issued by the Medical Board, authorizing a physician licensed in another country to practice medicine in Ohio as part of participating in a clinical professional development program.
- Provides that a visiting clinical professional development certificate is valid for up to one year and may not be extended.

State Medical Board

- Makes technical corrections in Medical Board-administered laws.

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CONTENT AND OPERATION

Overview

The bill (1) requires an individual to be licensed by the State Medical Board in order to practice genetic counseling, (2) creates a new certificate for certain physicians called the "visiting clinical professional development certificate," and (3) makes technical corrections in certain existing laws administered by the Board with respect to other health care professionals.

Genetic counselors

The bill requires an individual to be licensed by the State Medical Board in order to practice genetic counseling. The licensure process is to be operated in generally the same way that the Board currently regulates other health care professionals, such as

physicians. Genetic counselors must comply with the licensing requirements beginning one year after the bill's effective date.

Scope of practice

Under the bill, a genetic counselor holding a valid license from the State Medical Board is authorized to engage in all of the following:¹

(1) Obtaining and evaluating the medical histories of a patient and the patient's family members to determine the risk for genetic or medical conditions and diseases in the patient, the patient's offspring, or the patient's family members;

(2) Discussing with a patient and the patient's family the features, natural history, means of diagnosis, genetic and environmental factors, and management of risk for genetic or medical conditions and diseases;

(3) Identifying and coordinating genetic laboratory tests and other diagnostic studies as appropriate for genetic assessment;

(4) Integrating the results of genetic laboratory tests and other diagnostic tests with individual and family medical histories;

(5) Explaining to a patient and the patient's family the clinical implications of the results of genetic laboratory tests and other diagnostic tests;

(6) Evaluating the response of a patient or the patient's family members to one or more genetic conditions or the risk of reoccurrence and providing patient-centered counseling and guidance;

(7) Identifying and using community resources that provide medical, educational, financial, and psychosocial support and advocacy;

(8) Providing medical, genetic, and counseling information to patients, their families, and other health care professionals.

Collaborative agreements with physicians

The bill authorizes a licensed genetic counselor to enter into a collaborative agreement with a physician who agrees to work with and provide medical support to the genetic counselor. Under a collaborative agreement with a collaborating physician,

¹ R.C. 4778.11(A).

a licensed genetic counselor may, in addition to the activities listed above, do both of the following:²

(1) Order genetic or other tests for the purpose of diagnosing a medical condition or inherited disorder or determining the carrier status of one or more of the patient's family members;

(2) Select the most appropriate, accurate, and cost-effective methods of diagnosis.

The collaborative agreement must be in writing, memorialize the relationship between the genetic counselor and the collaborating physician, and establish the criteria governing the performance of these two activities. It may be entered into with a doctor of medicine and surgery or osteopathic medicine and surgery.³

Prohibition against unlicensed practice

Beginning one year after the bill's effective date, a person is prohibited from practicing as a genetic counselor without a valid license issued by the State Medical Board. The bill also prohibits a person from using the title "genetic counselor" or otherwise holding the person out as such without a license to practice as a genetic counselor. A person who violates either prohibition is guilty of a first degree misdemeanor for the first offense and a fifth degree felony for each subsequent offense.⁴

Exemptions

The bill specifies that the prohibitions described above do not apply to either of the following:⁵

(1) An individual who is authorized by another Revised Code provision to perform any of the activities that a genetic counselor is authorized to perform;

(2) A student performing a task as part of a genetic counseling graduate program.

² R.C. 4778.11(B).

³ R.C. 4778.01(H) and 4778.11(B).

⁴ R.C. 4778.02(A), 4778.99, and Section 4.

⁵ R.C. 4778.02(B).

Eligibility for licensure

To be eligible to receive a license as a genetic counselor, the bill requires that an individual meet all of the following requirements:⁶

(1) Be at least 18 years old and of good moral character;

(2) Attain a master's degree or higher from a genetic counseling graduate program accredited by the American Board of Genetic Counseling, its successor, or an equivalent organization recognized by the State Medical Board;⁷

(3) Be a certified genetic counselor, which means that an individual has met the requirements for national certification from either of two organizations specified by the bill, as follows:⁸

(a) The individual possesses the certified genetic counselor credential from the American Board of Genetic Counseling, its successor, or an equivalent organization recognized by the State Medical Board;

(b) The individual is a diplomate of the American Board of Medical Genetics, its successor, or an equivalent organization recognized by the State Medical Board. The American Board of Medical Genetics uses the term "diplomate" to describe an individual who has been certified by the Board. The title is granted when the individual receives passing scores on both a general examination and specialty examination.⁹

(4) Satisfy any other requirements established by the Board in rules.

License application and issuance

A person seeking a genetic counselor's license must file with the State Medical Board an application in a manner prescribed by the Board, pay a nonrefundable and nontransferable application fee of \$200, and submit to a criminal records check. The application must include all the information the Board considers necessary to process

⁶ R.C. 4778.03(B).

⁷ R.C. 4778.01(A).

⁸ R.C. 4778.01(C).

⁹ American Board of Medical Genetics, *ABMG Glossary of Terms* (last visited February 21, 2012), available at <http://www.abmg.org/pages/resources_glossary.shtml>.

the application, including evidence that the applicant meets the bill's licensure eligibility requirements.¹⁰

The Board must review all complete applications within 60 days of receipt. After review, if at least six Board members determine that an applicant meets the requirements for a license to practice genetic counseling, the Board's secretary must issue a license to the applicant. A license is valid for two years and may be renewed.¹¹

License renewal and continuing education

Under the bill, a person seeking to renew a genetic counselor's license must, on or before January 31 of each even-numbered year, apply for license renewal. The State Medical Board must send renewal notices at least one month prior to the license expiration date.¹²

To be eligible for renewal, a genetic counselor must certify to the Board that the counselor has done both of the following:¹³

- (1) Maintained the counselor's status as a certified genetic counselor;
- (2) Completed at least 30 hours of continuing education in genetic counseling that has been approved by the National Society of Genetic Counselors or American Board of Genetic Counseling.

Renewal applications must be submitted to the Board in a manner prescribed by the Board and must be accompanied by a biennial renewal fee of \$150. An applicant must report any criminal offense that constitutes grounds for refusing to issue an initial license and to which the applicant has pleaded guilty to or been found guilty of or for which the applicant has been found eligible for intervention in lieu of conviction, since last signing a license application.¹⁴

If an applicant submits a complete renewal application and qualifies for renewal, the Board must issue to the applicant a renewed license to practice.¹⁵

¹⁰ R.C. 4778.03(A) and 4778.04.

¹¹ R.C. 4778.03(C), 4778.05, and 4778.06.

¹² R.C. 4778.06(A).

¹³ R.C. 4778.06(B).

¹⁴ R.C. 4778.06(A).

¹⁵ R.C. 4778.06(C).

The Board may require a random sample of genetic counselors to submit materials documenting that their status as a certified genetic counselor has been maintained and that the required number of hours of continuing education has been completed.¹⁶

If a genetic counselor certifies that the counselor has completed the number of hours and type of continuing education required for renewal, and the Board finds through the random sample or any other means that the genetic counselor did not complete the required continuing education, the Board is permitted to impose a civil penalty of not more than \$5,000. The Board's finding must be made by an adjudication and by an affirmative vote of at least six Board members. Any civil penalty imposed may be in addition to or in lieu of any other disciplinary action the Board is authorized to take under the bill.¹⁷

License restoration and reinstatement

A license that is not renewed on or before its expiration date is automatically suspended on that date.¹⁸ If a license has been suspended for two years or less, the Board must reinstate it on submission of a complete renewal application, the renewal fee, and a \$25 reinstatement penalty.¹⁹

If the certificate has been suspended for more than two years, it may be restored on submission of a complete restoration application, the renewal fee, a \$50 restoration penalty, and satisfactory completion of a criminal records check.²⁰ The Board is authorized to impose terms and conditions for the restoration, including the following:²¹

- (1) Requiring the applicant to pass an oral or written examination, or both, to determine the applicant's present fitness to resume practice;
- (2) Requiring the applicant to obtain additional training and to pass an examination on completion of such training;
- (3) Restricting or limiting the extent, scope, or type of practice of the applicant.

¹⁶ R.C. 4778.06(D).

¹⁷ R.C. 4778.06(D).

¹⁸ R.C. 4778.07(A).

¹⁹ R.C. 4778.07(B).

²⁰ R.C. 4778.07(C)(1).

²¹ R.C. 4778.07(C)(2).

Supervised practice license

The bill authorizes the State Medical Board to issue a supervised practice license to an applicant who meets the following requirements:²²

(1) Provides evidence of meeting all license eligibility requirements other than being a certified genetic counselor;

(2) Is in active candidate status with the American Board of Genetic Counseling. An individual seeking to take the Board's certification examination must first apply for "active candidate status." Application can be made at any time after graduation from a Board-accredited program. An applicant whose credentials are approved by the Board is given "active candidate status" and permitted to take the examination, which is offered annually during a Board-selected period of approximately 30 days.²³

A supervised practice license allows the license holder to engage in the genetic counseling activities authorized by the bill but only under the general supervision of a licensed genetic counselor or a physician. The bill specifies that general supervision does not require the supervisor to be present while the license holder engages in genetic counseling, but the supervisor is professionally responsible for the license holder and must be readily accessible for professional consultation and assistance.²⁴

A supervised practice license is valid for one year from either the date of issuance or until the Board issues a full genetic counselor's license, whichever is earlier. A supervised practice license cannot be renewed.²⁵

Special activity license

The bill permits the State Medical Board to issue a special activity license to a person from another state seeking to practice genetic counseling associated with a rare disease.²⁶ An applicant for a special activity license must submit all of the following information to the Board and pay a nonrefundable and nontransferable application fee of \$25:²⁷

²² R.C. 4778.08(A).

²³ American Board of Genetic Counseling, *Frequently Asked Questions about Certification and How Do I Qualify for the Exam?* (last visited February 21, 2012), available at <http://www.abgc.net/Resources_Links/FAQs.asp>.

²⁴ R.C. 4778.08(B).

²⁵ R.C. 4778.08(B).

²⁶ R.C. 4778.09(A).

²⁷ R.C. 4778.09(B) and (C).



(1) Evidence that the applicant holds a current, unrestricted genetic counselor's license issued by another state or, if the applicant practices genetic counseling in another state that does not license genetic counselors, evidence that the applicant is a nationally certified genetic counselor;

(2) Evidence that the applicant has actively practiced genetic counseling within two years immediately preceding application;

(3) The name of the applicant's sponsoring institution or organization, a statement of need for genetic counseling from the sponsoring institution or organization, and the name of the rare disease for which the applicant will be practicing genetic counseling in Ohio.

A special activity license holder is authorized to practice genetic counseling only to the extent that it is associated with the rare disease for which the license was issued. The bill prohibits a license holder from billing a patient or any third party payer for genetic counseling provided in Ohio.²⁸

A special activity license is valid for the shorter of 30 days or the duration of the genetic counseling associated with the rare disease for which the license was issued. The license may not be renewed.²⁹

The Board may revoke a special activity license on receiving satisfactory proof that the license holder has practiced outside the scope of the license or that there are grounds for taking disciplinary action against the holder.³⁰

Duplicate license

The bill permits a genetic counselor to apply for a duplicate license to replace one that is missing or damaged, to reflect a name change, or for any other reasonable cause. The counselor must pay a \$35 fee for the duplicate license. On receipt of the application and fee, the State Medical Board must issue the duplicate license.³¹

Disciplinary actions against genetic counselors

Generally, the bill authorizes the State Medical Board to take disciplinary action against a genetic counselor in the same manner, and for the same reasons, as the Board

²⁸ R.C. 4778.09(E).

²⁹ R.C. 4778.09(D).

³⁰ R.C. 4778.09(F).

³¹ R.C. 4778.10.

is currently authorized to take against those health care professionals currently regulated by the Board. However, of the reasons for which the Board may take disciplinary action, two relate specifically to genetic counselors: (1) failure to maintain the individual's status as a certified genetic counselor and (2) failure to comply with the code of ethics of the National Society of Genetic Counselors.³²

Disciplinary actions against physicians

The bill adds to the reasons for which the State Medical Board may take disciplinary action against a physician. The additional reasons relate to genetic counselors: (1) failure to appropriately supervise a genetic counselor holding a supervised practice license and (2) failure to appropriately fulfill the responsibilities of collaboration after entering into a collaborative agreement with a genetic counselor.³³

Existing law extended to genetic counselors

The bill establishes additional procedures for the regulation of genetic counselors that are the same as the procedures that apply to the other health care professionals currently regulated by the State Medical Board, including physicians, physician assistants, anesthesiologist assistants, radiologist assistants, acupuncturists, massage therapists, and cosmetic therapists. The issues addressed in the procedures extended to genetic counselors include the following:

--Board investigations of violations and imposition of sanctions;³⁴

--License suspension or revocation for a licensee who is (1) adjudicated mentally ill or mentally incompetent, (2) in default under a child support order, or (3) found guilty of certain sex or drug offenses;³⁵

--Notifications to be provided to the Board by prosecutors, health care facilities, professional associations or societies, and professional liability insurers regarding actions taken against a genetic counselor;³⁶

--Injunctions against a person engaging in genetic counseling without a license;³⁷

³² R.C. 4778.14.

³³ R.C. 4731.22(B)(45) and (46).

³⁴ R.C. 4778.18.

³⁵ R.C. 4778.15, 4778.16, and 4778.19.

³⁶ R.C. 4731.224.

³⁷ R.C. 4778.21.

--Maintenance of records by the Board of its proceedings and a register of license applicants;³⁸

--Requirements relating to genetic counselors suffering impairment from the use of drugs or alcohol.³⁹

Rulemaking

The bill requires the State Medical Board to adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.) necessary to implement and administer the bill's provisions. The rules must include all of the following:⁴⁰

(1) Any standards and procedures not addressed in the bill that the Board considers necessary for issuing and renewing licenses;

(2) Any standards and procedures the Board considers necessary to govern the practice of genetic counselors, the collaborative agreements between genetic counselors and collaborating physicians, and the supervision of genetic counselors holding supervised practice licenses;

(3) Any other standards and procedures the Board considers necessary for the administration and enforcement of the bill.

Board immunity from liability

In the absence of fraud or bad faith, the bill provides that the State Medical Board, a current or former Board member, an agent of the Board, a person formally requested by the Board to be the Board's representative, or an employee of the Board is not liable in damages to any person as the result of any act, omission, proceeding, conduct, or decision related to official duties undertaken or performed pursuant to the bill's genetic counseling provisions. If any such person asks to be defended by the state against any claim or action arising out of any act, omission, proceeding, conduct, or decision related to the person's official duties, and if the request is made in writing at a reasonable time before trial and the person requesting defense cooperates in good faith in the defense of the claim or action, the bill requires the state to provide and pay for the person's defense and pay any resulting judgment, compromise, or settlement.

³⁸ R.C. 4731.07.

³⁹ R.C. 4731.25.

⁴⁰ R.C. 4778.12.

However, the bill specifies that at no time is the state to pay any part of a claim or judgment that is for punitive or exemplary damages.⁴¹

Board secretary

If the secretary of the State Medical Board has knowledge or notice of a violation of the bill or the rules adopted under it regarding genetic counselors, the bill requires that the secretary investigate the matter. If probable cause appears, the secretary must file a complaint and prosecute the offender. When requested by the secretary, the prosecuting attorney of the proper county is to take charge of and conduct the prosecution.⁴²

Operating Fund

The bill provides that all fees, penalties, and other funds received by the State Medical Board relating to the regulation of genetic counselors are to be deposited in the state treasury to the credit of the existing State Medical Board Operating Fund.⁴³

Physicians – visiting clinical professional development certificate

The bill creates a new certificate for certain physicians – the visiting clinical professional development certificate.⁴⁴ It requires the State Medical Board to issue the certificate, without examination, to an applicant who meets the bill's requirements. The visiting clinical professional development certificate authorizes the practice of medicine and surgery or osteopathic medicine and surgery as part of the certificate holder's participation in a clinical professional development program.⁴⁵

Eligibility for certificate

To be eligible for a visiting clinical professional development certificate, an applicant must pay a fee of \$375⁴⁶ and provide to the Board the following documentation:

- Verification from the school or hospital conducting the clinical professional development program that the applicant has sufficient

⁴¹ R.C. 4778.24.

⁴² R.C. 4778.20.

⁴³ R.C. 4731.24 and 4778.22.

⁴⁴ R.C. 4731.297.

⁴⁵ R.C. 4731.297(A).

⁴⁶ R.C. 4731.297(C).

financial resources to support the applicant and any dependents based on the cost of living in the geographic area of the school or hospital conducting the program, including room, board, transportation, and related living expenses;

- Valid health and evacuation insurance for the duration of the applicant's stay in the United States;
- Professional liability insurance provided by the program or the school or hospital conducting the program for the duration of the applicant's participation in the program;
- Proficiency in spoken English as demonstrated by passing an examination the Board requires;
- A description from the school or hospital conducting the program of the scope of medical or surgical activities permitted during the applicant's participation in the program that includes (1) the type of practice in which the applicant will be involved, (2) the type of patient contact that will occur, (3) the type of supervision the applicant will experience, (4) a list of procedures the applicant will learn, (5) a list of any patient-based research projects in which the applicant will be involved, (6) whether the applicant will act as a consultant to an Ohio physician, and (7) any other details of the applicant's participation in the program;
- A statement from the school or hospital conducting the program regarding why the applicant needs advanced training and the benefits to the applicant's home country of the applicant receiving the training.⁴⁷

The applicant must also provide evidence satisfactory to the Board that the applicant meets all of the following requirements:

- Has been accepted for participation in a clinical professional development program of (a) a medical school or osteopathic medical school in Ohio that is accredited by the Liaison Committee on Medical Education or the American Osteopathic Association or (b) such a program of a teaching hospital affiliated with such a medical school;
- Is an international medical graduate who holds a medical degree from an educational institution listed in the International Medical Education Directory;

⁴⁷ R.C. 4731.297(B)(1).

- Has practiced medicine and surgery or osteopathic medicine and surgery for at least five years after completing graduate medical education, including postgraduate residency and advanced training;
- Has credentials that are primary-source verified by the Educational Commission for Foreign Medical Graduates or the Federation Credentials Verification Service (see COMMENT);
- Holds a current, unrestricted license to practice medicine and surgery or osteopathic medicine and surgery issued in another country;
- Agrees to comply with all state and federal laws regarding health, health care, and patient privacy;
- Agrees to return to the applicant's home state or country at the conclusion of the clinical professional development program.⁴⁸

Validity of certificate

A visiting clinical professional development certificate is valid for the shorter of one year or the duration of the program in which the certificate holder is participating. The certificate ceases to be valid if the certificate holder resigns or is otherwise terminated from the program. It may not be extended.⁴⁹

Scope of practice

The holder of a visiting clinical professional development certificate may practice medicine and surgery or osteopathic medicine and surgery only as part of the clinical professional development program in which the certificate holder participates. The certificate holder's practice must be under the direct supervision of an Ohio physician who is a qualified faculty member of the medical school, osteopathic medical school, or teaching hospital conducting the program.

The program in which the certificate holder participates must ensure that the certificate holder does not do any of the following:

- Write orders or prescribe medication;
- Bill for services performed;

⁴⁸ R.C. 4731.297(B)(2).

⁴⁹ R.C. 4731.297(F).

- Occupy a residency or fellowship position approved by the Accreditation Council for Graduate Medical Education;
- Attempt to have participation in a clinical professional development program counted toward meeting the graduate medical education requirements for a certificate to practice medicine or osteopathic medicine in Ohio.⁵⁰

Authority of the Board

The Board may revoke a clinical professional development certificate on receiving proof that (1) the certificate holder has engaged in practice in Ohio outside the scope of the certificate or (2) there are grounds for disciplinary action against the certificate holder for any of the reasons that an Ohio physician could be disciplined.⁵¹ The Board is required to maintain a register of all persons who hold visiting clinical professional development certificates.⁵² The Board may adopt rules it considers necessary to implement the bill. The rules must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.).⁵³

Visiting medical faculty certificates and training certificates

Current law authorizes two other types of certificates related to medical education. The Board may issue a *visiting medical faculty certificate* to a physician licensed in another state or country who has been appointed to serve in Ohio on the academic staff of a medical school.⁵⁴ The certificate entitles the holder to practice medicine and surgery or osteopathic medicine and surgery only as incidental to the certificate holder's teaching duties at the school or a teaching hospital affiliated with the school. (H.B. 438 and S.B. 297 of the 129th General Assembly propose a number of changes to this certificate, including changing the name to the *clinical research faculty certificate*.) The Board also is authorized to issue a *training certificate*. An individual who wants to pursue an internship, residency, or clinical fellowship program in Ohio, but is not an Ohio physician, must apply for a training certificate, which authorizes the

⁵⁰ R.C. 4731.297(D).

⁵¹ R.C. 4731.297(E).

⁵² R.C. 4731.297(C).

⁵³ R.C. 4731.297(H).

⁵⁴ R.C. 4731.293.

individual to perform acts that are required by or incidental to the individual's internship, residency, or clinical fellowship program.⁵⁵

Other Board-administered laws

Technical corrections

The bill makes technical corrections in certain existing laws administered by the State Medical Board with respect to other health care professionals. The corrections are made in a provision dealing with massage therapy and a provision dealing with the Board's process for restoring or issuing certificates to practice for applicants who have not been in practice for more than two years.⁵⁶

COMMENT

Primary-source verification of credentials

The bill requires that an international medical graduate's credentials be primary-source verified by the Educational Commission for Foreign Medical Graduates (ECFMG) or the Federation Credentials Verification Service (which uses information from ECFMG to perform this service). At this time, the ECFMG does not provide primary-source verification of credentials for those graduates. According to its web site, ECFMG intends to implement such a program (the Electronic Portfolio of International Credentials (EPIC)) in the second half of 2012.⁵⁷

HISTORY

ACTION	DATE
Introduced	07-06-11
Reported, H. Health & Aging	12-07-11
Passed House (97-0)	02-08-12
Reported, S. Health, Human Services and Aging	04-26-12

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⁵⁵ R.C. 4731.291.

⁵⁶ R.C. 4731.19 and 4731.222.

⁵⁷ ECFMG, *Electronic Portfolio of International Credentials: Contact EPIC* (visited March 16, 2012), available at <<http://www.ecfmgepic.org/contact.html>>.



Chapter 4778: GENETIC COUNSELORS

4778.01 Definitions.

used in this chapter:

(A) "American board of genetic counseling" means the organization known by that name, its successor organization, or an equivalent organization recognized by the state medical board.

(B) "American board of medical genetics" means the organization known by that name, its successor organization, or an equivalent organization recognized by the state medical board.

(C) "Certified genetic counselor" means either of the following:

(1) An individual who possesses the certified genetic counselor credential from the American board of genetic counseling;

(2) An individual who is a diplomate of the American board of medical genetics.

(D) "Collaborating physician" means a physician who has entered into a collaborative agreement with a genetic counselor under division (B) of section 4778.11 of the Revised Code.

(E) "Collaborative agreement" means the document that is established under division (B) of section 4778.11 of the Revised Code by a genetic counselor and the genetic counselor's collaborating physician.

(F) "Genetic counselor" means an individual who engages in any of the activities authorized under section 4778.11 of the Revised Code.

(G) "National society of genetic counselors" means the organization known by that name, its successor organization, or an equivalent organization recognized by the state medical board.

(H) "Physician" means an individual authorized under Chapter 4731. of the Revised Code to practice medicine and surgery or osteopathic medicine and surgery.

Added by 129th General Assembly File No.120, HB 292, §1, eff. 9/6/2012.

4778.02 License required.

(A)

(1) Except as provided in division (B) of this section, no person shall practice as a genetic counselor unless the person holds a current, valid license to practice as a genetic counselor issued under this chapter.

(2) No person shall use the title "genetic counselor," or otherwise hold the person out as a genetic counselor, unless the person holds a current, valid license to practice as a genetic counselor issued under this chapter.

(B) Division (A)(1) of this section does not apply to either of the following:

(1) A student performing an activity as part of a genetic counseling graduate program described in division (B)(1) of section 4778.03 of the Revised Code;

(2) A person who is authorized pursuant to another provision of the Revised Code to perform any of the activities at a genetic counselor is authorized to perform.

Amended by 130th General Assembly File No. 25, HB 59, §101.01, eff. 9/29/2013.

Added by 129th General Assembly File No.120, HB 292, §1, eff. 9/6/2013.

4778.03 Application for license.

() An individual seeking a license to practice as a genetic counselor shall file with the state medical board an application in a manner prescribed by the board. The application shall include all the information the board considers necessary to process the application, including evidence satisfactory to the board that the applicant meets the requirements specified in division (B) of this section.

At the time an application is submitted, the applicant shall pay the board an application fee of two hundred dollars. No part of the fee shall be returned to the applicant or transferred for purposes of another application.

(B)

(1) To be eligible to receive a license to practice as a genetic counselor, an applicant shall demonstrate to the board that the applicant meets all of the following requirements:

(a) Is at least eighteen years of age and of good moral character;

(b) Except as provided in division (B)(2) of this section, has attained a master's degree or higher degree from a genetic counseling graduate program accredited by the American board of genetic counseling, inc.;

(c) Is a certified genetic counselor;

(d) Has satisfied any other requirements established by the board in rules adopted under section 4778.12 of the Revised Code.

(2) In the case of an applicant who files an application not later than December 31, 2013, and meets all eligibility requirements other than the requirement specified in division (B)(1)(b) of this section, the applicant is eligible for license to practice as a genetic counselor if the applicant has attained a master's or higher degree in education in a field that the state medical board considers to be closely related to genetic counseling.

(C) The board shall review all applications received under this section. Not later than sixty days after receiving an application it considers complete, the board shall determine whether the applicant meets the requirements for a license to practice as a genetic counselor.

Amended by 133rd General Assembly File No. TBD, HB 166, §101.01, eff. 10/17/2019.

Amended by 130th General Assembly File No. 25, HB 59, §101.01, eff. 9/29/2013.

Added by 129th General Assembly File No.120, HB 292, §1, eff. 9/6/2012.

4778.04 Criminal records check.

In addition to any other eligibility requirement set forth in this chapter, each applicant for a license to practice as a genetic counselor shall comply with sections 4776.01 to 4776.04 of the Revised Code. The state medical board shall not grant to an applicant a license to practice as a genetic counselor unless the board, in its discretion, decides that the results of the criminal records check do not make the applicant ineligible for a license issued pursuant to section 4778.05 of the Revised Code.

Added by 129th General Assembly File No.120, HB 292, §1, eff. 9/6/2012.

4778.05 Issuance, expiration, and renewal of license.

If the state medical board determines under section 4778.03 of the Revised Code that an applicant meets the requirements for a license to practice as a genetic counselor, the secretary of the board shall issue the license to

the applicant. The license shall be valid for a two-year period unless revoked or suspended, shall expire on the date that is two years after the date of issuance, and may be renewed for additional two-year periods in accordance with section 4778.06 of the Revised Code.

Amended by 133rd General Assembly File No. TBD, HB 166, §101.01, eff. 10/17/2019.

Added by 129th General Assembly File No. 120, HB 292, §1, eff. 9/6/2012.

4778.06 Application for renewal.

(A) An individual seeking to renew a license to practice as a genetic counselor shall, on or before the license's expiration date, apply to the state medical board for renewal. The board shall provide renewal notices to license holders at least one month prior to the expiration date.

Renewal applications shall be submitted to the board in a manner prescribed by the board. Each application shall be accompanied by a biennial renewal fee of one hundred fifty dollars.

The applicant shall report any criminal offense to which the applicant has pleaded guilty, of which the applicant has been found guilty, or for which the applicant has been found eligible for intervention in lieu of conviction, since last signing an application for a license to practice as a genetic counselor.

(B) To be eligible for renewal, a genetic counselor shall certify to the board that the counselor has done both of the following:

(1) Maintained the counselor's status as a certified genetic counselor;

(2) Completed at least thirty hours of continuing education in genetic counseling that has been approved by the national society of genetic counselors or American board of genetic counseling.

(C) If an applicant submits a renewal application that the board considers to be complete and qualifies for renewal pursuant to division (B) of this section, the board shall issue to the applicant a renewed license to practice as a genetic counselor.

(D) The board may require a random sample of genetic counselors to submit materials documenting that their status as certified genetic counselors has been maintained and that the number of hours of continuing education required under division (B)(2) of this section has been completed. This division does not limit the board's authority to conduct investigations pursuant to section 4778.14 of the Revised Code.

(E)

(1) If, through a random sample conducted under division (D) of this section or any other means, the board finds that an individual who certified completion of the number of hours and type of continuing education required to renew, reinstate, or restore a license to practice did not complete the requisite continuing education, the board may do either of the following:

(a) Take disciplinary action against the individual under section 4778.14 of the Revised Code, impose a civil penalty, or both;

(b) Permit the individual to agree in writing to complete the continuing education and pay a civil penalty.

(2) The board's finding in any disciplinary action taken under division (E)(1)(a) of this section shall be made pursuant to an adjudication under Chapter 119. of the Revised Code and by an affirmative vote of not fewer than of its members.

(3) A civil penalty imposed under division (E)(1)(a) of this section or paid under division (E)(1)(b) of this section shall be in an amount specified by the board of not more than five thousand dollars. The board shall deposit civil penalties in accordance with section 4731.24 of the Revised Code.

Amended by 133rd General Assembly File No. TBD, HB 166, §101.01, eff. 10/17/2019.

Amended by 131st General Assembly File No. TBD, HB 64, §101.01, eff. 9/29/2015.

Amended by 129th General Assembly File No. 120, HB 292, §1, eff. 9/6/2012.

4778.07 Suspension.

(A) A license to practice as a genetic counselor issued under section 4778.05 of the Revised Code that is not renewed on or before its expiration date is automatically suspended on its expiration date. Continued practice after suspension shall be considered as practicing in violation of section 4778.02 of the Revised Code.

(B) If a license has been suspended pursuant to this section for two years or less, it may be reinstated upon an applicant's submission of a complete renewal application, the biennial renewal fee, and a monetary penalty of twenty-five dollars.

(C) If a license has been suspended pursuant to this section for more than two years, it may be restored. Subject to section 4778.071 of the Revised Code, the board may restore the license upon an applicant's submission of a complete restoration application, the biennial renewal fee, and a monetary penalty of fifty dollars and compliance with sections 4776.01 to 4776.04 of the Revised Code. The board shall not restore a license unless the board, in its discretion, decides that the results of the criminal records check do not make the applicant ineligible for a license issued pursuant to section 4778.05 of the Revised Code.

Amended by 133rd General Assembly File No. TBD, HB 166, §101.01, eff. 10/17/2019.

Amended by 129th General Assembly File No. 120, HB 292, §1, eff. 9/6/2012.

4778.071 Prerequisites for resumption of practice.

(A) This section applies to both of the following:

(1) An applicant seeking restoration of a license issued under this chapter that has been in a suspended or inactive state for any cause for more than two years;

(2) An applicant seeking issuance of a license pursuant to this chapter who for more than two years has not been practicing as a genetic counselor as either of the following:

(a) An active practitioner;

(b) A student in a graduate program as described in section 4778.03 of the Revised Code.

(B) Before issuing a license to an applicant subject to this section or restoring a license to good standing for an applicant subject to this section, the state medical board may impose terms and conditions including any one or more of the following:

(1) Requiring the applicant to pass an oral or written examination, or both, to determine the applicant's present fitness to resume practice;

(2) Requiring the applicant to obtain additional training and to pass an examination upon completion of such training;

Requiring an assessment of the applicant's physical skills for purposes of determining whether the applicant's coordination, fine motor skills, and dexterity are sufficient for performing evaluations and procedures in a manner that meets the minimal standards of care;

(4) Requiring an assessment of the applicant's skills in recognizing and understanding diseases and conditions;

- (5) Requiring the applicant to undergo a comprehensive physical examination, which may include an assessment of physical abilities, evaluation of sensory capabilities, or screening for the presence of neurological disorders;
- (6) Restricting or limiting the extent, scope, or type of practice of the applicant.

The board shall consider the moral background and the activities of the applicant during the period of suspension or inactivity. The board shall not issue or restore a license under this section unless the applicant complies with sections 4776.01 to 4776.04 of the Revised Code.

Added by 133rd General Assembly File No. TBD, HB 166, §101.01, eff. 10/17/2019.

4778.08 Supervised practice license.

(A) The state medical board may issue to an applicant under section 4778.03 of the Revised Code a license to practice as a genetic counselor, designated as a supervised practice license, if both of the following apply:

- (1) The applicant meets the requirements specified in section 4778.03 of the Revised Code other than being a certified genetic counselor;
- (2) The applicant is in active candidate status with the American board of genetic counseling.

(B) A supervised practice license authorizes the holder to engage in the activities authorized by section 4778.11 of the Revised Code while the holder is under the general supervision of a genetic counselor licensed under section 4778.05 of the Revised Code or a physician. General supervision does not require the supervising licensed genetic counselor or physician to be present while the holder engages in such activities, but does require the licensed genetic counselor or physician to have professional responsibility for the holder and be readily accessible to the holder for professional consultation and assistance.

A supervised practice license is valid from the date of issuance until the earlier of one year from that date or the date a license is issued under section 4778.05 of the Revised Code. A supervised practice license may not be renewed.

Added by 129th General Assembly File No.120, HB 292, §1, eff. 9/6/2013.

4778.09 Special activity license.

(A) The state medical board may issue a license to practice as a genetic counselor, designated as a special activity license, to an individual from another state seeking to practice in this state genetic counseling associated with a rare disease.

(B) An applicant for a special activity license shall submit to the board all of the following information:

- (1) Evidence that the applicant holds a current, unrestricted license to practice genetic counseling issued by another state or, if the applicant practices genetic counseling in another state that does not license genetic counselors, evidence that the applicant is a certified genetic counselor;
- (2) Evidence that the applicant has actively practiced genetic counseling within the two-year period immediately preceding application;
- (3) The name of the applicant's sponsoring institution or organization, a statement of need for genetic counseling from the sponsoring institution or organization, and the name of the rare disease for which the applicant will be practicing genetic counseling in this state.

(C) At the time an application is submitted, the applicant shall pay a fee of twenty-five dollars. No part of the fee shall be returned to the applicant or transferred for purposes of another application.

(D) A special activity license is valid for the shorter of thirty days or the duration of the genetic counseling associated with the rare disease for which the license was issued. The license may not be renewed.

(E) The holder of a special activity license may practice genetic counseling only to the extent that it is associated with the rare disease for which the license was issued. The license holder shall not bill a patient or any third party payer for genetic counseling provided in this state.

(F) The board may revoke a special activity license on receiving proof satisfactory to the board that the holder of the license has engaged in practice in this state outside the scope of the license or that there are grounds for action against the license holder under section 4778.14 of the Revised Code.

Added by 129th General Assembly File No.120, HB 292, §1, eff. 9/6/2012.

4778.10 Duplicate license.

On application by the holder of a license to practice as a genetic counselor, the state medical board shall issue a duplicate license to replace one that is missing or damaged, to reflect a name change, or for any other reasonable cause. The fee for a duplicate license is thirty-five dollars.

Added by 129th General Assembly File No.120, HB 292, §1, eff. 9/6/2012.

4778.11 Authorized activities for licensees.

(A) An individual who holds a valid license to practice as a genetic counselor may engage in all of the following activities:

(1) Obtain and evaluate the medical histories of a patient and the patient's family members to determine the risk for genetic or medical conditions and diseases in the patient, the patient's offspring, or the patient's family members;

(2) Discuss with a patient and the patient's family the features, natural history, means of diagnosis, genetic and environmental factors, and management of risk for genetic or medical conditions and diseases;

(3) Identify and coordinate genetic laboratory tests and other diagnostic studies as appropriate for genetic assessment;

(4) Integrate the results of genetic laboratory tests and other diagnostic tests with individual and family medical histories;

(5) Explain to a patient and the patient's family the clinical implications of the results of genetic laboratory tests and other diagnostic tests;

(6) Evaluate the response of a patient or the patient's family members to one or more genetic conditions or the risk of reoccurrence and provide patient-centered counseling and guidance;

(7) Identify and use community resources that provide medical, educational, financial, and psychosocial support and advocacy;

(8) Provide medical, genetic, and counseling information to patients, their families, and other health care professionals;

Pursuant to a collaborative agreement, perform the activities specified in division (B) of this section.

(B) A genetic counselor may enter into a collaborative agreement with a physician who agrees to work with and provide medical support to the genetic counselor. The agreement shall be established as a written, formal

document that memorializes the relationship between the genetic counselor and the physician and establishes the criteria governing the genetic counselor's performance of both of the following:

- (1) Order genetic or other tests for the purpose of diagnosing a medical condition or inherited disorder or determining the carrier status of one or more of the patient's family members;
- (2) Select the most appropriate, accurate, and cost-effective methods of diagnosis.

Added by 129th General Assembly File No.120, HB 292, §1, eff. 9/6/2012.

4778.12 Adoption of rules.

The state medical board shall adopt rules in accordance with Chapter 119. of the Revised Code to implement and administer this chapter. The rules shall include the following:

- (A) Any standards and procedures not addressed in this chapter that the board considers necessary for issuing and renewing licenses under this chapter;
- (B) Any standards and procedures the board considers necessary to govern the practice of genetic counselors, the collaborative agreements between genetic counselors and collaborating physicians, and the supervision of genetic counselors holding supervised practice licenses;
- (C) Any other standards and procedures the board considers necessary for the administration and enforcement of this chapter.

Added by 129th General Assembly File No.120, HB 292, §1, eff. 9/6/2012.

4778.14 Revocation or denial of license.

- (A) The state medical board, by an affirmative vote of not fewer than six members, may revoke or may refuse to grant a license to practice as a genetic counselor to an individual found by the board to have committed fraud, misrepresentation, or deception in applying for or securing the license.
- (B) The board, by an affirmative vote of not fewer than six members, shall, to the extent permitted by law, limit, revoke, or suspend an individual's license to practice as a genetic counselor, refuse to issue a license to an applicant, refuse to renew a license, refuse to reinstate a license, or reprimand or place on probation the holder of a license for any of the following reasons:
 - (1) Permitting the holder's name or license to be used by another person;
 - (2) Failure to comply with the requirements of this chapter, Chapter 4731. of the Revised Code, or any rules adopted by the board;
 - (3) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this chapter, Chapter 4731. of the Revised Code, or the rules adopted by the board;
 - (4) A departure from, or failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances whether or not actual injury to the patient is established;
 - (5) Inability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness, including physical deterioration that adversely affects cognitive, motor, or perceptive skills;
 - (6) Impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice;

(7) Willfully betraying a professional confidence;

(8) Making a false, fraudulent, deceptive, or misleading statement in securing or attempting to secure a license to practice as a genetic counselor.

As used in this division, "false, fraudulent, deceptive, or misleading statement" means a statement that includes a misrepresentation of fact, is likely to mislead or deceive because of a failure to disclose material facts, is intended or is likely to create false or unjustified expectations of favorable results, or includes representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.

(9) The obtaining of, or attempting to obtain, money or a thing of value by fraudulent misrepresentations in the course of practice;

(10) A plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a felony;

(11) Commission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed;

(12) A plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a misdemeanor committed in the course of practice;

(13) A plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a misdemeanor involving moral turpitude;

(14) Commission of an act in the course of practice that constitutes a misdemeanor in this state, regardless of the jurisdiction in which the act was committed;

(15) Commission of an act involving moral turpitude that constitutes a misdemeanor in this state, regardless of the jurisdiction in which the act was committed;

(16) A plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for violating any state or federal law regulating the possession, distribution, or use of any drug, including trafficking in drugs;

(17) Any of the following actions taken by an agency responsible for authorizing, certifying, or regulating an individual to practice a health care occupation or provide health care services in this state or in another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand;

(18) Violation of the conditions placed by the board on a license to practice as a genetic counselor;

(19) Failure to cooperate in an investigation conducted by the board under section 4778.18 of the Revised Code, including failure to comply with a subpoena or order issued by the board or failure to answer truthfully a question presented by the board at a deposition or in written interrogatories, except that failure to cooperate with an investigation shall not constitute grounds for discipline under this section if a court of competent jurisdiction has issued an order that either quashes a subpoena or permits the individual to withhold the testimony or evidence in issue;

(20) Failure to maintain the individual's status as a certified genetic counselor;

(21) Failure to comply with the code of ethics established by the national society of genetic counselors.

(22) Disciplinary actions taken by the board under divisions (A) and (B) of this section shall be taken pursuant to an adjudication under Chapter 119. of the Revised Code, except that in lieu of an adjudication, the board may enter into a consent agreement with a genetic counselor or applicant to resolve an allegation of a violation of this chapter or any rule adopted under it. A consent agreement, when ratified by an affirmative vote of not fewer than

six members of the board, shall constitute the findings and order of the board with respect to the matter addressed in the agreement. If the board refuses to ratify a consent agreement, the admissions and findings contained in the consent agreement shall be of no force or effect.

A telephone conference call may be utilized for ratification of a consent agreement that revokes or suspends an individual's license. The telephone conference call shall be considered a special meeting under division (F) of section 121.22 of the Revised Code.

(D) For purposes of divisions (B)(11), (14), and (15) of this section, the commission of the act may be established by a finding by the board, pursuant to an adjudication under Chapter 119. of the Revised Code, that the applicant or license holder committed the act in question. The board shall have no jurisdiction under these divisions in cases where the trial court renders a final judgment in the license holder's favor and that judgment is based upon an adjudication on the merits. The board shall have jurisdiction under these divisions in cases where the trial court issues an order of dismissal on technical or procedural grounds.

(E) The sealing of conviction records by any court shall have no effect on a prior board order entered under the provisions of this section or on the board's jurisdiction to take action under the provisions of this section if, based upon a plea of guilty, a judicial finding of guilt, or a judicial finding of eligibility for intervention in lieu of conviction, the board issued a notice of opportunity for a hearing or took other formal action under Chapter 119. of the Revised Code prior to the court's order to seal the records. The board shall not be required to seal, destroy, redact, or otherwise modify its records to reflect the court's sealing of conviction records.

(F) For purposes of this division, any individual who holds a license to practice as a genetic counselor, or applies for a license, shall be deemed to have given consent to submit to a mental or physical examination when directed to do so in writing by the board and to have waived all objections to the admissibility of testimony or examination reports that constitute a privileged communication.

(1) In enforcing division (B)(5) of this section, the board, on a showing of a possible violation, may compel any individual who holds a license to practice as a genetic counselor or who has applied for a license to practice as a genetic counselor to submit to a mental or physical examination, or both. A physical examination may include an HIV test. The expense of the examination is the responsibility of the individual compelled to be examined. Failure to submit to a mental or physical examination or consent to an HIV test ordered by the board constitutes an admission of the allegations against the individual unless the failure is due to circumstances beyond the individual's control, and a default and final order may be entered without the taking of testimony or presentation of evidence. If the board finds a genetic counselor unable to practice because of the reasons set forth in division (B)(5) of this section, the board shall require the genetic counselor to submit to care, counseling, or treatment by physicians approved or designated by the board, as a condition for an initial, continued, reinstated, or renewed license to practice. An individual affected by this division shall be afforded an opportunity to demonstrate to the board the ability to resume practicing in compliance with acceptable and prevailing standards of care.

(2) For purposes of division (B)(6) of this section, if the board has reason to believe that any individual who holds a license to practice as a genetic counselor or any applicant for a license suffers such impairment, the board may compel the individual to submit to a mental or physical examination, or both. The expense of the examination is the responsibility of the individual compelled to be examined. Any mental or physical examination required under this division shall be undertaken by a treatment provider or physician qualified to conduct such examination and chosen by the board.

Failure to submit to a mental or physical examination ordered by the board constitutes an admission of the allegations against the individual unless the failure is due to circumstances beyond the individual's control, and a default and final order may be entered without the taking of testimony or presentation of evidence. If the board determines that the individual's ability to practice is impaired, the board shall suspend the individual's license or deny the individual's application and shall require the individual, as a condition for an initial, continued, reinstated, or renewed license, to submit to treatment.

Before being eligible to apply for reinstatement of a license suspended under this division, the genetic counselor shall demonstrate to the board the ability to resume practice in compliance with acceptable and prevailing

standards of care. The demonstration shall include the following:

(a) Certification from a treatment provider approved under section 4731.25 of the Revised Code that the individual has successfully completed any required inpatient treatment;

(b) Evidence of continuing full compliance with an aftercare contract or consent agreement;

(c) Two written reports indicating that the individual's ability to practice has been assessed and that the individual has been found capable of practicing according to acceptable and prevailing standards of care. The reports shall be made by individuals or providers approved by the board for making such assessments and shall describe the basis for their determination.

The board may reinstate a license suspended under this division after such demonstration and after the individual has entered into a written consent agreement.

When the impaired genetic counselor resumes practice, the board shall require continued monitoring of the genetic counselor. The monitoring shall include monitoring of compliance with the written consent agreement entered into before reinstatement or with conditions imposed by board order after a hearing, and, on termination of the consent agreement, submission to the board for at least two years of annual written progress reports made under penalty of falsification stating whether the genetic counselor has maintained sobriety.

(G) If the secretary and supervising member determine both of the following, they may recommend that the board suspend an individual's license to practice without a prior hearing:

(1) That there is clear and convincing evidence that a genetic counselor has violated division (B) of this section;

(2) That the individual's continued practice presents a danger of immediate and serious harm to the public.

Written allegations shall be prepared for consideration by the board. The board, on review of the allegations and an affirmative vote of not fewer than six of its members, excluding the secretary and supervising member, may suspend a license without a prior hearing. A telephone conference call may be utilized for reviewing the allegations and taking the vote on the summary suspension.

The board shall issue a written order of suspension by certified mail or in person in accordance with section 119.07 of the Revised Code. The order shall not be subject to suspension by the court during pendency of any appeal filed under section 119.12 of the Revised Code. If the genetic counselor requests an adjudicatory hearing by the board, the date set for the hearing shall be within fifteen days, but not earlier than seven days, after the genetic counselor requests the hearing, unless otherwise agreed to by both the board and the genetic counselor.

A summary suspension imposed under this division shall remain in effect, unless reversed on appeal, until a final adjudicative order issued by the board pursuant to this section and Chapter 119. of the Revised Code becomes effective. The board shall issue its final adjudicative order within sixty days after completion of its hearing. Failure to issue the order within sixty days shall result in dissolution of the summary suspension order, but shall not invalidate any subsequent, final adjudicative order.

(H) If the board takes action under division (B)(10), (12), or (13) of this section, and the judicial finding of guilt, guilty plea, or judicial finding of eligibility for intervention in lieu of conviction is overturned on appeal, on exhaustion of the criminal appeal, a petition for reconsideration of the order may be filed with the board along with appropriate court documents. On receipt of a petition and supporting court documents, the board shall reinstate the license to practice as a genetic counselor. The board may then hold an adjudication under Chapter 119. of the Revised Code to determine whether the individual committed the act in question. Notice of opportunity for hearing shall be given in accordance with Chapter 119. of the Revised Code. If the board finds, pursuant to an adjudication held under this division, that the individual committed the act, or if no hearing is requested, it may order any of the sanctions specified in division (B) of this section.

(I) The license to practice as a genetic counselor and the counselor's practice in this state are automatically suspended as of the date the genetic counselor pleads guilty to, is found by a judge or jury to be guilty of, or is subject to a judicial finding of eligibility for intervention in lieu of conviction in this state or treatment of

intervention in lieu of conviction in another jurisdiction for any of the following criminal offenses in this state or a substantially equivalent criminal offense in another jurisdiction: aggravated murder, murder, voluntary manslaughter, felonious assault, kidnapping, rape, sexual battery, gross sexual imposition, aggravated arson, aggravated robbery, or aggravated burglary. Continued practice after the suspension shall be considered practicing without a license.

The board shall notify the individual subject to the suspension by certified mail or in person in accordance with section 119.07 of the Revised Code. If an individual whose license is suspended under this division fails to make a timely request for an adjudication under Chapter 119. of the Revised Code, the board shall enter a final order permanently revoking the individual's license to practice.

(J) In any instance in which the board is required by Chapter 119. of the Revised Code to give notice of opportunity for hearing and the individual subject to the notice does not timely request a hearing in accordance with section 119.07 of the Revised Code, the board is not required to hold a hearing, but may adopt, by an affirmative vote of not fewer than six of its members, a final order that contains the board's findings. In the final order, the board may order any of the sanctions identified under division (A) or (B) of this section.

(K) Any action taken by the board under division (B) of this section resulting in a suspension shall be accompanied by a written statement of the conditions under which the license of the genetic counselor may be reinstated. The board shall adopt rules in accordance with Chapter 119. of the Revised Code governing conditions to be imposed for reinstatement. Reinstatement of a license suspended pursuant to division (B) of this section requires an affirmative vote of not fewer than six members of the board.

(L) When the board refuses to grant or issue a license to practice as a genetic counselor to an applicant, revokes an individual's license, refuses to renew an individual's license, or refuses to reinstate an individual's license, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a license to practice as a genetic counselor and the board shall not accept an application for reinstatement of the license or for issuance of a new license.

(M) Notwithstanding any other provision of the Revised Code, all of the following apply:

(1) The surrender of a license to practice as a genetic counselor is not effective unless or until accepted by the board. A telephone conference call may be utilized for acceptance of the surrender of an individual's license. The telephone conference call shall be considered a special meeting under division (F) of section 121.22 of the Revised Code. Reinstatement of a license surrendered to the board requires an affirmative vote of not fewer than six members of the board.

(2) An application made under this chapter for a license to practice may not be withdrawn without approval of the board.

(3) Failure by an individual to renew a license in accordance with section 4778.06 of the Revised Code shall not remove or limit the board's jurisdiction to take disciplinary action under this section against the individual.

Amended by 131st General Assembly File No. TBD, HB 64, §101.01, eff. 9/29/2015.

Added by 129th General Assembly File No.120, HB 292, §1, eff. 9/6/2012.

4778.141 Violation by genetic counselors; civil penalties.

(A)

If a genetic counselor violates any section of this chapter other than section 4778.06 of the Revised Code or violates any rule adopted under this chapter, the state medical board may, pursuant to an adjudication under Chapter 119. of the Revised Code and an affirmative vote of not fewer than six of its members, impose a civil penalty. The amount of the civil penalty shall be determined by the board in accordance with guidelines adopted

under division (A)(2) of this section. The civil penalty may be in addition to any other action the board may take under section 4778.14 of the Revised Code.

(2) The board shall adopt and may amend guidelines regarding the amounts of civil penalties to be imposed under this section. Adoption or amendment of the guidelines requires the approval of not fewer than six board members.

Under the guidelines, no civil penalty amount shall exceed twenty thousand dollars.

(B) Amounts received from payment of civil penalties imposed under this section shall be deposited by the board in accordance with section 4731.24 of the Revised Code. Amounts received from payment of civil penalties imposed for violations of division (B)(6) of section 4778.14 of the Revised Code shall be used by the board solely for investigations, enforcement, and compliance monitoring.

Amended by 131st General Assembly File No. TBD, HB 64, §101.01, eff. 9/29/2015.

4778.15 Notice of default under child support orders.

On receipt of a notice pursuant to section 3123.43 of the Revised Code, the state medical board shall comply with sections 3123.41 to 3123.50 of the Revised Code and any applicable rules adopted under section 3123.63 of the Revised Code with respect to a license issued under this chapter.

Added by 129th General Assembly File No.120, HB 292, §1, eff. 9/6/2012.

4778.16 Mentally incompetent licensees.

If the state medical board has reason to believe that any person who has been granted a license to practice as a genetic counselor under this chapter is mentally ill or mentally incompetent, it may file in the probate court of the county in which the person has a legal residence an affidavit in the form prescribed in section 5122.11 of the Revised Code and signed by the board secretary or a member of the board secretary's staff, whereupon the same proceedings shall be had as provided in Chapter 5122. of the Revised Code. The attorney general may represent the board in any proceeding commenced under this section.

If any person who has been granted a license to practice is adjudged by a probate court to be mentally ill or mentally incompetent, the person's license shall be automatically suspended until the person has filed with the state medical board a certified copy of an adjudication by a probate court of the person's subsequent restoration to competency or has submitted to the board proof, satisfactory to the board, that the person has been discharged as having a restoration to competency in the manner and form provided in section 5122.38 of the Revised Code. The judge of the probate court shall forthwith notify the state medical board of an adjudication of mental illness or mental incompetence, and shall note any suspension of a license in the margin of the court's record of such license.

Added by 129th General Assembly File No.120, HB 292, §1, eff. 9/6/2012.

4778.17 Reporting impairment; liability.

A genetic counselor, professional association or society of genetic counselors, physician, or professional association or society of physicians that believes a violation of division (B) (6) of section 4778.14 of the Revised Code has occurred shall report the information upon which the belief is based to the monitoring organization conducting the program established by the state medical board under section 4731.251 of the Revised Code. If any such report is made to the board, it shall be referred to the monitoring organization unless the board is aware

that the individual who is the subject of the report does not meet the program eligibility requirements of section 4731.252 of the Revised Code.

An individual or entity that reports to the board, reports to the monitoring organization described in section 4731.251 of the Revised Code, or refers an impaired genetic counselor to a treatment provider approved by the board under section 4731.25 of the Revised Code shall not be subject to suit for civil damages as a result of the report, referral, or provision of the information.

In the absence of fraud or bad faith, a professional association or society of genetic counselors that sponsors a committee or program to provide peer assistance to a genetic counselor with substance abuse problems, a representative or agent of such a committee or program, are presentative or agent of the monitoring organization described in section 4731.251 of the Revised Code, and a member of the state medical board shall not be held liable in damages to any person by reason of actions taken to refer a genetic counselor to a treatment provider approved under section 4731.25 of the Revised Code for examination or treatment.

Added by 132nd General Assembly File No. TBD, HB 145, §1, eff. 2/8/2018.

4778.18 Investigations by state medical board.

(A) The state medical board shall investigate evidence that appears to show that any individual has violated this chapter or the rules adopted under it. Any person may report to the board in a signed writing any information the person has that appears to show a violation of this chapter or rules adopted under it. In the absence of bad faith, a person who reports such information or testifies before the board in an adjudication conducted under Chapter 119. of the Revised Code shall not be liable for civil damages as a result of reporting the information or providing testimony. Each complaint or allegation of a violation received by the board shall be assigned a case number and be recorded by the board.

(B) Investigations of alleged violations of this chapter or rules adopted under it shall be supervised by the supervising member elected by the board in accordance with section 4731.02 of the Revised Code and by the board's secretary, pursuant to section 4778.20 of the Revised Code. The board's president may designate another member of the board to supervise the investigation in place of the supervising member. A member of the board who supervises the investigation of a case shall not participate in further adjudication of the case.

(C) In investigating a possible violation of this chapter or the rules adopted under it, the board may administer oaths, order the taking of depositions, inspect and copy any books, accounts, papers, records, or documents, issue subpoenas, and compel the attendance of witnesses and production of books, accounts, papers, records, documents, and testimony, except that a subpoena for patient record information shall not be issued without consultation with the attorney general's office and approval of the secretary and supervising member of the board. Before issuance of a subpoena for patient record information, the secretary and supervising member shall determine whether there is probable cause to believe that the complaint filed alleges a violation of this chapter or the rules adopted under it and that the records sought are relevant to the alleged violation and material to the investigation. The subpoena may apply only to records that cover a reasonable period of time surrounding the alleged violation.

On failure to comply with any subpoena issued by the board and after reasonable notice to the person being subpoenaed, the board may move for an order compelling the production of persons or records pursuant to the Rules of Civil Procedure.

A subpoena issued by the board may be served by a sheriff, the sheriff's deputy, or a board employee designated by the board. Service of a subpoena issued by the board may be made by delivering a copy of the subpoena to the person named therein, reading it to the person, or leaving it at the person's usual place of residence. When the person being served is a genetic counselor, service of the subpoena may be made by certified mail, restricted delivery, return receipt requested, and the subpoena shall be deemed served on the date delivery is made or the date the person refuses to accept delivery.

A sheriff's deputy who serves a subpoena shall receive the same fees as a sheriff. Each witness who appears before the board in obedience to a subpoena shall receive the fees and mileage provided for witnesses in civil cases in the courts of common pleas.

(D) All hearings and investigations of the board shall be considered civil actions for the purposes of section 305.252 of the Revised Code.

(E) Information received by the board pursuant to an investigation is confidential and not subject to discovery in any civil action.

The board shall conduct all investigations and proceedings in a manner that protects the confidentiality of patients and persons who file complaints with the board. The board shall not make public the names or any other identifying information about patients or complainants unless proper consent is given.

The board may share any information it receives pursuant to an investigation, including patient records and patient record information, with law enforcement agencies, other licensing boards, and other governmental agencies that are prosecuting, adjudicating, or investigating alleged violations of statutes or administrative rules. An agency or board that receives the information shall comply with the same requirements regarding confidentiality as those with which the state medical board must comply, notwithstanding any conflicting provision of the Revised Code or procedure of the agency or board that applies when it is dealing with other information in its possession. In a judicial proceeding, the information may be admitted into evidence only in accordance with the Rules of Evidence, but the court shall require that appropriate measures are taken to ensure that confidentiality is maintained with respect to any part of the information that contains names or other identifying information about patients or complainants whose confidentiality was protected by the state medical board when the information was in the board's possession. Measures to ensure confidentiality that may be taken by the court include sealing its records or deleting specific information from its records.

(F) The state medical board shall develop requirements for and provide appropriate initial training and continuing education for investigators employed by the board to carry out its duties under this chapter. The training and continuing education may include enrollment in courses operated or approved by the Ohio peace officer training commission that the board considers appropriate under conditions set forth in section 109.79 of the Revised Code.

(G) On a quarterly basis, the board shall prepare a report that documents the disposition of all cases during the preceding three months. The report shall contain the following information for each case with which the board has completed its activities:

- (1) The case number assigned to the complaint or alleged violation;
- (2) The type of license, if any, held by the individual against whom the complaint is directed;
- (3) A description of the allegations contained in the complaint;
- (4) The disposition of the case.

The report shall state how many cases are still pending, and shall be prepared in a manner that protects the identity of each individual involved in each case. The report is a public record for purposes of section 149.43 of the Revised Code.

Added by 129th General Assembly File No.120, HB 292, §1, eff. 9/6/2012.

178.19 Notice of criminal prosecution.

(A) As used in this section, "prosecutor" has the same meaning as in section 2935.01 of the Revised Code.

(B) Whenever any individual holding a valid license to practice as a genetic counselor pleads guilty to, is subject to a judicial finding of guilt of, or is subject to a judicial finding of eligibility for intervention in lieu of conviction for

a violation of Chapter 2907., 2925., or 3719. of the Revised Code or of any substantively comparable ordinance of a municipal corporation in connection with the person's practice, the prosecutor in the case, on forms prescribed and provided by the state medical board, shall promptly notify the board of the conviction. Within thirty days of receipt of that information, the board shall initiate action in accordance with Chapter 119. of the Revised Code to determine whether to suspend or revoke the license under section 4778.16 of the Revised Code.

(C) The prosecutor in any case against any person holding a valid license to practice as a genetic counselor, on forms prescribed and provided by the state medical board, shall notify the board of any of the following:

(1) A plea of guilty to, a finding of guilt by a jury or court of, or judicial finding of eligibility for intervention in lieu of conviction for a felony, or a case in which the trial court issues an order of dismissal upon technical or procedural grounds of a felony charge;

(2) A plea of guilty to, a finding of guilt by a jury or court of, or judicial finding of eligibility for intervention in lieu of conviction for a misdemeanor committed in the course of practice, or a case in which the trial court issues an order of dismissal upon technical or procedural grounds of a charge of a misdemeanor, if the alleged act was committed in the course of practice;

(3) A plea of guilty to, a finding of guilt by a jury or court of, or judicial finding of eligibility for intervention in lieu of conviction for a misdemeanor involving moral turpitude, or a case in which the trial court issues an order of dismissal upon technical or procedural grounds of a charge of a misdemeanor involving moral turpitude.

The report shall include the name and address of the license holder, the nature of the offense for which the action was taken, and the certified court documents recording the action.

Added by 129th General Assembly File No.120, HB 292, §1, eff. 9/6/2012.

4778.20 Enforcement.

The secretary of the state medical board shall enforce the laws relating to the practice of genetic counselors. If the secretary has knowledge or notice of a violation of this chapter or the rules adopted under it, the secretary shall investigate the matter, and, upon probable cause appearing, file a complaint and prosecute the offender. When requested by the secretary, the prosecuting attorney of the proper county shall take charge of and conduct the prosecution.

Added by 129th General Assembly File No.120, HB 292, §1, eff. 9/6/2012.

4778.21 Practice without a license.

The attorney general, the prosecuting attorney of any county in which the offense was committed or the offender resides, the state medical board, or any other person having knowledge of a person engaged either directly or by complicity in practicing as a genetic counselor without having first obtained under this chapter a license to practice as a genetic counselor, may, in accordance with provisions of the Revised Code governing injunctions, maintain an action in the name of the state to enjoin any person from engaging either directly or by complicity in unlawfully practicing as a genetic counselor by applying for an injunction in any court of competent jurisdiction.

Prior to application for an injunction, the secretary of the state medical board shall notify the individual allegedly engaged either directly or by complicity in the unlawful practice by registered mail that the secretary has received information indicating that this individual is so engaged. The individual shall answer the secretary within thirty days showing that the individual is either properly licensed for the stated activity or that the individual is not in violation of this chapter. If the answer is not forthcoming within thirty days after notice by the secretary, the secretary shall request that the attorney general, the prosecuting attorney of the county in which the offense was committed or the offender resides, or the state medical board proceed as authorized in this section.

Upon the filing of a verified petition in court, the court shall conduct a hearing on the petition and shall give the same preference to this proceeding as is given all proceedings under Chapter 119. of the Revised Code, irrespective of the position of the proceeding on the calendar of the court.

Conjunction proceedings shall be in addition to, and not in lieu of, all penalties and other remedies provided in this chapter.

Added by 129th General Assembly File No.120, HB 292, §1, eff. 9/6/2012.

4778.22 Disposition of funds.

All fees, penalties, and other funds received by the state medical board under this chapter shall be deposited in accordance with section 4731.24 of the Revised Code.

Added by 129th General Assembly File No.120, HB 292, §1, eff. 9/6/2012.

4778.24 Liability of board members, employees and agents.

In the absence of fraud or bad faith, the state medical board, a current or former board member, an agent of the board, a person formally requested by the board to be the board's representative, or an employee of the board shall not be held liable in damages to any person as the result of any act, omission, proceeding, conduct, or decision related to official duties undertaken or performed pursuant to this chapter. If any such person asks to be defended by the state against any claim or action arising out of any act, omission, proceeding, conduct, or decision related to the person's official duties, and if the request is made in writing at a reasonable time before trial and the person requesting defense cooperates in good faith in the defense of the claim or action, the state shall provide and pay for the person's defense and shall pay any resulting judgment, compromise, or settlement. At no time shall the state pay any part of a claim or judgment that is for punitive or exemplary damages.

Added by 129th General Assembly File No.120, HB 292, §1, eff. 9/6/2012.

4778.25 Compliance with law regarding sanctions for human trafficking.

The state medical board shall comply with section 4776.20 of the Revised Code.

Added by 129th General Assembly File No.169, HB 247, §1, eff. 3/22/2013.

4778.99 Penalties.

Whoever violates section 4778.02 of the Revised Code is guilty of a misdemeanor of the first degree on a first offense and felony of the fifth degree on each subsequent offense.

Added by 129th General Assembly File No.120, HB 292, §1, eff. 9/6/2012.