

RULES AND REGULATIONS

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF MEDICINE [49 PA. CODE CHS. 16 AND 18] Genetic Counselors

The State Board of Medicine (Board) amends §§ 16.11 and 16.13 (relating to licenses, certificates and registrations; and licensure, certification, examination and registration fees) and adds Chapter 18, Subchapter K (relating to genetic counselors) to read as set forth in Annex A.

Effective Date

This final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin*.

Background and Purpose

The act of December 22, 2011 (P. L. 576, No. 125) (Act 125) amended the Medical Practice Act of 1985 (act) (63 P. S. §§ 422.1—422.51a) to require the Board to license and regulate genetic counselors. This final-form rulemaking effectuates Act 125.

Statutory Authority

The final-form rulemaking is authorized under section 13.4 of the act (63 P. S. § 422.13d), which authorizes the Board to license genetic counselors, to issue temporary permits to graduates of genetic counseling education programs and to regulate the practice of genetic counseling and discipline licensees. Section 8 of the act (63 P. S. § 422.8) authorizes the Board to adopt regulations as are reasonably necessary to carry out the purposes of the act. In addition, section 3 of Act 125 directs the Board to promulgate regulations to license genetic counselors.

Summary of Comments and Responses to Proposed Rulemaking

Notice of proposed rulemaking was published at 43 Pa.B. 6212 (October 19, 2013) with a 30-day public comment period. The Board did not receive comments from the regulated community or the public. Neither the House Professional Licensure Committee (HPLC) nor the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) provided comments to the Board. On December 18, 2013, the Independent Regulatory Review Commission (IRRC) submitted comments to the Board.

IRRC suggested that the Board further amend § 16.11 to list each of the categories of licenses that the Board will be issuing to genetic counselors. The Board agrees that § 16.11 does not include an exhaustive list of the licenses issued by the Board for genetic counselors or for other types of licenses that the Board issues. For example, athletic trainers, respiratory therapists and physician assistants have temporary licenses, permits or authorizations to practice issued by the Board. However, these temporary licenses, permits and authorizations to practice are not listed in § 16.11. The Board will consider IRRC's suggestion and will determine whether it should amend § 16.11 in another rulemaking package that would enable the Board to address the various licenses issued that are not listed in the section.

Upon review of § 16.11, the Board discovered it had erred in a previous rulemaking package regarding physician assistants and respiratory therapists by amending § 16.11(b) but failing to amend § 16.11(c). Subsection (b) lists the nonmedical doctor licenses issued by the Board. Subsection (c) lists the licenses subject to biennial registration with the Board. Subsections (b) and (c) lists these licenses in the same order; however, because the Board erred by omitting respiratory therapists from the list in subsection (c), the lists will not be in the same order after this final-form rulemaking is published unless the Board adds respiratory therapist licenses to the list in subsection (c). Accordingly, the Board added biennial registration of a respiratory therapy license to the list in subsection (c) as part of this final-form rulemaking.

Regarding the fees in § 16.13, IRRC questioned the content of the "Fee Report Form" submitted for the biennial renewal fee for genetic counselors, as the content of that form is different than the content of the fee report forms submitted for other fees, such as the licensure application fee. The licensing boards and commissions within the Bureau of Professional and Occupational Affairs (BPOA) set two types of fees: fees for services performed for individual applicants/licensees; and biennial renewal fees.

The fees for services performed for individual applicants are based on the cost to the Board to provide the services to the individuals. Accordingly, the fee report forms for fees for services performed include the following: a section on fee-related activities and costs, wherein the BPOA's revenue office performs an analysis to determine what types of employees are tasked with processing the individual applications; how much time these employees, on average, may be expected use to perform their part of the processing; the cost of the salary and benefits of these employees; and an amount for administrative overhead regarding the total time spent processing an individual application. Thus, the fees for services performed fees recoup from the individual applicant the average cost of processing an applicant's application.

The second type of fee charged by the Board is the biennial renewal fee. The biennial renewal fee is not based on the cost to the Board to provide services to a particular applicant or licensee; accordingly, the fee-related activities include the investigative, prosecutorial, adjudicative, regulatory and administrative activities of the Board. Under section 6(b) of the act (63 P. S. § 422.6(b)), the Board sets the biennial renewal fee for licensees so that the total revenue and expenses over a 2-year period will be adequate to meet the minimum enforcement efforts required by the act. In determining the biennial renewal fee for each of the licensee types licensed by the Board, the Board anticipates the amount of resources likely to be consumed in providing the investigative, prosecutorial, adjudicative, regulatory and administrative functions regarding the licensee class and, to a lesser extent, considers the average annual salary of the licensee type and seeks to impose a proportional burden across licensee types.

At the time of enactment of Act 125, the Board estimated an annual cost associated with this new class of licensee of approximately \$6,000 based on an estimated 100 genetic counselors, resulting in a biennial renewal fee of approximately \$120. However, the Board revisited the appropriate biennial renewal fee to be applied to genetic

counselors. Based on records of the American Board of Genetic Counseling (ABGC), there are currently 177 certified genetic counselors in this Commonwealth. The Board estimates there may be five individuals certified by the American Board of Medical Genetics (ABMG) that practice as genetic counselors who may also apply for licensure. The Board cannot estimate whether there are uncertified genetic counselors who will seek licensure. Therefore, for purposes of determining the appropriate fee, the Board estimates approximately 180 genetic counselors will seek licensure and on that basis has determined that a \$75 biennial renewal fee is more appropriate.

Section 18.705(b)(1) (relating to application for temporary provisional genetic counselor license) provides that an applicant for a temporary provisional genetic counselor license shall demonstrate that the applicant has been granted active candidate status establishing eligibility to sit for the next available certification examination offered by the ABGC. IRRC suggested that, to be consistent with section 13.4(g)(1) of the act, the Board should also include the certification examination offered by the ABMG. The Board intentionally did not include the ABMG because the ABMG has not offered an examination for approximately 25 years. Thus, an individual would not have active candidate status to sit for the the ABMG examination. In contrast, the Board included the ABMG as a certification that would establish eligibility for licensure under § 18.703 (relating to application for genetic counselor license) because applicants for the genetic counselor license may have passed the the ABMG examination at a time when the ABMG offered an examination.

IRRC suggested that the Board reference the application fee in its regulations as the fee required to be paid by an applicant for a temporary genetic counselor license. Section 18.705(a) already includes a reference to § 16.13(m). Therefore, the second reference to the required application fee in § 18.705(b)(2) is unnecessary and has been deleted.

IRRC further recommended the Board make additions to § 18.705 to explain what actions could be taken by an individual who formerly held a provisional license but who either failed to take the the ABGC examination by the close of the second examination period or who failed to pass the the ABGC examination within two examination cycles after receiving the temporary provisional license. IRRC asked if this individual would be permanently barred from applying for a license. The Board added a sentence to subsection (e) to notify the public that an individual whose temporary provisional genetic counselor license has expired under subsection (d) or (e) may apply for a genetic counselor license when the individual meets the qualifications of § 18.703, including passing the examination.

IRRC suggested that the use of the title “graduate genetic counselor,” which the holder of a temporary provisional genetic counselor license is authorized to use, might confuse the public because a “graduate” college degree is understood to represent education beyond a bachelor’s degree. Applicants for a temporary provisional genetic counselor license or a genetic counselor license shall have completed a master’s degree or higher. Placing “graduate” before the professional title is done by other professions to signify that an individual has completed the education program but is not yet a fully licensed professional. By way of example, “graduate nurse” is used to designate a nurse who has completed nursing educa-

tion but who has not yet passed the nurse licensure examination. The Board does not believe the public will be confused by the title.

IRRC questioned whether the cross-reference in § 18.706 (relating to biennial registration of genetic counselor license) to the requirement for professional liability insurance should be to § 18.710 (relating to professional liability insurance coverage for genetic counselors), as in other sections of the proposed rulemaking, rather than to section 13.4(k) of the act. The Board changed the cross-reference.

IRRC commented on § 18.708 (relating to disciplinary action for applicants and genetic counselors), noting that subsections (b) and (c) list what is considered unprofessional or immoral conduct, but that subsection (a) does not directly state that a licensee may be disciplined for violations of subsection (b) or (c). IRRC recommended addressing this issue by adding language to subsection (a). Subsection (a) provides notice that a licensed genetic counselor, graduate genetic counselor or applicant for a license is subject to refusal of license or disciplinary action under sections 22 and 41 of the act (63 P.S. §§ 422.22 and 422.41). Section 41 of the act relates to reasons for refusal, revocation, suspension or other corrective actions against licensees or applicants. Section 41(6) of the act authorizes the Board to refuse a license to an applicant or discipline a licensee for violating any lawful regulation of the Board. Section 41(8) of the act authorizes the Board to refuse a license to an applicant or discipline a licensee for being guilty of immoral or unprofessional conduct. Licensees and applicants are subject to discipline or license refusal under section 41 of the act. The Board declines to amend subsection (a) to list only one of the grounds for refusal or discipline in section 41 of the act because to do so might lead some to believe that genetic counselor applicants and licensees are subject to discipline only under section 41(8) of the act, rather than under the entirety of section 41 of the act. Subsections (b) and (c) merely clarify what the Board considers to be unprofessional conduct and immoral conduct for purposes of section 41(8) of the act.

IRRC noted that the proposed rulemaking did not directly reference the reporting required under § 16.16 (relating to reporting of disciplinary actions, criminal dispositions and other licenses, certificates or authorizations to practice) and recommended adding failure to comply with the reporting requirements of § 16.16 to § 18.708. Section 41(6) of the act authorizes the Board to refuse a license to an applicant or discipline a licensee for violating a lawful regulation of the Board, including § 16.16. The Board declines to amend § 18.708 to reference only one regulatory provision that could be violated when § 18.708(a) already provides notice that discipline is possible for violating any provision of the Board’s regulations.

IRRC provided comments on § 18.709 (relating to continuing education for genetic counselors). IRRC suggested that the Board repeat the statutory exemption from continuing education for courses in office management or practice building. The Board added this language to § 18.709(a)(1). IRRC also questioned whether it was sufficient to allow genetic counselors to earn credit for activities approved by the ABGC or the National Society of Genetic Counselors (NSGC). According to the stakeholders with whom the Board met in developing the proposed rulemaking, virtually all continuing education in the field is approved by either the ABGC or the NSGC. Approval by these organizations benefits practitioners by

creating a Nationally-accepted pool of continuing education courses that are recognized by employers, certifying bodies and all of the states in which these professionals are licensed. Requiring continuing education that is widely-accepted benefits licensees by ensuring license and employment portability. In addition, recognizing continuing education approved by these organizations protects the public because the organizations consistently approve only good quality continuing education programs. The Board believes allowing licensees to obtain continuing education credit for licensure renewal through courses approved by these organizations benefits both licensee and the public, and ensures adequate availability of continuing education programs.

On July 22, 2014, IRRC issued a disapproval order indicating concerns with the clarity of Chapter 18, Subchapter K in three areas. First, IRRC stated that the titles “genetic counselor” and “graduate genetic counselor” were not sufficiently differentiated so that the public can understand which title represents a fully licensed practitioner. The Board explained that it does not share this concern because stakeholders informed the Board during the proposed rulemaking process that “graduate genetic counselor” was commonly used for individuals who completed their graduate degree, but had not yet taken the National certification examination. In addition, the Board notes that other health-related professions utilize similar titles to signify those individuals who have completed the required education but had not yet taken the licensure examination. For example, section 13.2 of the act (63 P. S. § 422.13b) provides for graduates of a physician assistant program recognized by the Board to practice under direct supervision and uses the title “graduate physician assistant.” In addition, the State Board of Nursing issues temporary practice permits to “graduate professional nurses” and “graduate practical nurses” and has done so for many years without public confusion.

Nevertheless, the Board is sensitive to IRRC’s concern regarding potential public confusion. Accordingly, the Board revised the final-form rulemaking to aid clarity. First, the Board added a definition for “graduate genetic counselor” to § 18.702 (relating to definitions) as “an individual who has been issued a temporary provisional genetic counselor license by the Board under § 18.705 (relating to application for temporary provisional genetic counselor license) to practice under the supervision of a physician or genetic counselor.” In addition, the Board added to § 18.705(f) a requirement that a graduate genetic counselor inform clients that the graduate genetic counselor holds a temporary provisional license and practices under supervision. Finally, the Board added to the list of conduct which would constitute unprofessional conduct in § 18.708(b) a new paragraph for failing to inform a client that a graduate genetic counselor holds a temporary provisional license and practices under supervision. The Board believes these additions will create a clearer distinction between these two titles and will serve to eliminate confusion caused by the use of “graduate genetic counselor.”

IRRC next noted that although § 18.702 defines “genetic counselor,” the term “licensed genetic counselor” is used as well. The Board amended the final-form rulemaking to refer to licensed individuals by using the defined term “genetic counselor.”

IRRC also raised a concern regarding § 18.708, questioning whether the section adequately set forth the various disciplinary provisions through which applicants and genetic counselors may be disciplined. The Board

amended § 18.708 by adding cross-references to the act and to Chapter 16 to address the IRRC’s concerns. The Board believes these amendments will make it clear that the disciplinary provisions of the act and Chapter 16 apply to all licensees of the Board, but that the more specific provisions in Chapter 18, Subchapter K apply specifically to genetic counselors.

Fiscal Impact and Paperwork Requirements

The statutory requirements that genetic counselors obtain and renew licenses to practice genetic counseling, obtain and maintain professional liability insurance, and complete at least 30 hours of continuing education biennially will have a fiscal impact and impose paperwork requirements on the regulated community. Most genetic counselors are employed in health care facilities, colleges and universities, and employers may pay the licensure fees and costs associated with professional liability insurance and continuing education.

The new requirements will also have a fiscal impact and will impose additional paperwork requirements on the Commonwealth, specifically the Board, which is charged with administering the act. However, the costs to the Board will be recouped through application fees and biennial renewal fees.

Sunset Date

The Board continuously monitors the effectiveness of its regulations. Therefore, a sunset date has not been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 7, 2013, the Board submitted a copy of the notice of proposed rulemaking, published at 43 Pa.B. 6212, to IRRC and the Chairpersons of the HPLC and the SCP/PLC for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments from IRRC, the HPLC, the SCP/PLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on July 9, 2014, the final-form rulemaking was deemed approved by the HPLC and the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on July 10, 2014, and disapproved the final-form rulemaking. IRRC issued its disapproval order on July 22, 2014.

Under section 7(c) of the Regulatory Review Act (71 P. S. § 745.7(c)), the Board delivered the revised final-form rulemaking to IRRC, the HPLC and the SCP/PLC on August 29, 2014. Under section 7(c.1) of the Regulatory Review Act, IRRC met on September 18, 2014, and approved the final-form rulemaking with changes. Under section 7(d) of the Regulatory Review Act, the final-form rulemaking was deemed approved by the HPLC and the SCP/PLC on October 2, 2013.

Contact Person

Interested persons may obtain information regarding the final-form rulemaking by writing to Teresa Lazo, Board Counsel, State Board of Medicine, P. O. Box 2649, Harrisburg, PA 17105-2649, tlazo@pa.gov.

Findings

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) The amendments to the final-form rulemaking do not enlarge the purpose of the proposed rulemaking published at 43 Pa.B. 6212.

(4) This final-form rulemaking is necessary and appropriate for administration and enforcement of the authorizing acts identified in this preamble.

Order

The Board orders that:

(a) The regulations of the Board, 49 Pa. Code Chapters 16 and 18, are amended by adding §§ 18.701—18.710 and by amending §§ 16.11 and 16.13 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Board shall submit this order and Annex A to the Office of General Counsel and to the Office of Attorney General as required by law.

(c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect on publication in the *Pennsylvania Bulletin*.

ANDREW J. BEHNKE, MD,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 44 Pa.B. 6306 (October 4, 2014).)

Fiscal Note: Fiscal Note 16A-4937 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 16. STATE BOARD OF MEDICINE—GENERAL PROVISIONS

Subchapter B. GENERAL LICENSE, CERTIFICATION AND REGISTRATION PROVISIONS

§ 16.11. Licenses, certificates and registrations.

(a) The following medical doctor licenses are issued by the Board:

- (1) License without restriction.
(2) Institutional license.
(3) Extraterritorial license.
(4) Graduate license.
(5) Temporary license.
(6) Interim limited license.

(b) The following nonmedical doctor licenses and certificates are issued by the Board:

- (1) Nurse-midwife license.
(2) Nurse-midwife certificate of prescriptive authority.
(3) Physician assistant license.
(4) Acupuncturist license.
(5) Practitioner of Oriental medicine license.
(6) Behavior specialist license.
(7) Athletic trainer license.
(8) Perfusionist license.
(9) Respiratory therapist license.
(10) Genetic counselor license.

(c) The following registrations are issued by the Board:

- (1) Registration as a supervising physician of a physician assistant.
(2) Biennial registration of a license without restriction.
(3) Biennial registration of an extraterritorial license.
(4) Biennial registration of a midwife license.
(5) Biennial registration of a physician assistant license.
(6) Biennial registration of a drugless therapist license.
(7) Biennial registration of a limited license-permanent.
(8) Biennial registration of an acupuncturist license.
(9) Biennial registration of a practitioner of Oriental medicine license.
(10) Biennial registration of a behavior specialist license.
(11) Biennial registration of athletic trainer license.
(12) Biennial registration of a perfusionist license.
(13) Biennial registration of a respiratory therapy license.
(14) Biennial registration of a genetic counselor license.

§ 16.13. Licensure, certification, examination and registration fees.

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(l) Perfusionist License:

Table with 2 columns: Description and Fee. Rows include Application for perfusionist license (\$50), Biennial registration of perfusionist license (\$50), Application for reactivation of perfusionist license (\$50), Application for temporary graduate perfusionist license (\$50), Application for temporary provisional perfusionist license (\$40).

(m) Genetic Counselor License:

Table with 2 columns: Description and Fee. Rows include Application for genetic counselor license (\$50), Application for uncertified genetic counselor license (\$100), Biennial renewal of genetic counselor license (\$75), Application for reactivation of genetic counselor license (\$50), Application for temporary provisional genetic counselor license (\$50).

**CHAPTER 18. STATE BOARD OF
MEDICINE—PRACTITIONERS OTHER THAN
MEDICAL DOCTORS**

Subchapter K. GENETIC COUNSELORS

Sec.	
18.701.	Purpose.
18.702.	Definitions.
18.703.	Application for genetic counselor license.
18.704.	Application for genetic counselor license by uncertified persons.
18.705.	Application for temporary provisional genetic counselor license.
18.706.	Biennial registration of genetic counselor license.
18.707.	Inactive status of genetic counselor license; reactivation of inactive license.
18.708.	Disciplinary action for applicants and genetic counselors.
18.709.	Continuing education for genetic counselors.
18.710.	Professional liability insurance coverage for genetic counselors.

§ 18.701. Purpose.

This subchapter implements section 13.4 of the act (63 P. S. § 422.13d), regarding genetic counselors.

§ 18.702. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

ABGC—The American Board of Genetic Counseling or an equivalent successor.

ABMG—The American Board of Medical Genetics or an equivalent successor.

Active candidate status—The designation awarded to an individual who has received approval from the ABGC or the ABMG to sit for the respective certification examination.

Genetic counseling—The provision of services to individuals, couples, families and organizations by one or more appropriately trained individuals to address the physical and psychological issues associated with the occurrence or risk of occurrence of a genetic disorder, birth defect or genetically influenced condition or disease in an individual or a family.

Genetic counselor—An individual who is licensed to practice genetic counseling by the Board or the State Board of Osteopathic Medicine.

Graduate genetic counselor—An individual who has been issued a temporary provisional genetic counselor license by the Board under § 18.705 (relating to application for temporary provisional genetic counselor license) to practice under the supervision of a physician or genetic counselor.

Hour of continuing education—At least 50 minutes of instruction, including relevant question and answer sessions, in an approved course of continuing education or an equivalent time that an online or correspondence course would be presented live.

NSGC—The National Society of Genetic Counselors or an equivalent successor.

§ 18.703. Application for genetic counselor license.

(a) An applicant for a license to practice as a genetic counselor shall submit, on forms made available by the Board, a completed application for a license to practice as a genetic counselor, including the necessary supporting documents, and pay the application fee in § 16.13(m) (relating to licensure, certification, examination and registration fees).

(b) The Board may issue a license to practice as a genetic counselor to an applicant who demonstrates that the applicant:

(1) Is at least 21 years of age and of good moral character, as required under section 13.4(e)(1) and (2) of the act (63 P. S. § 422.13d(e)(1) and (2)).

(2) Has received a master's degree or doctoral degree in human genetics or genetic counseling from an ABGC-accredited or ABMG-accredited educational program or has met the requirements for certification by the ABGC or the ABMG. Proof of the degree, if applicable, shall be sent directly from the applicant's education program and include an official transcript.

(3) Has passed the examination for certification as a genetic counselor by the ABGC or the ABMG or has passed the examination for certification as a Ph.D. medical geneticist by the ABMG. Proof that the applicant has passed the examination shall be sent directly from the ABGC or the ABMG, and may include proof of current certification.

(4) Has obtained professional liability insurance, or is exempt from the requirement to obtain professional liability insurance, as set forth in § 18.710 (relating to professional liability insurance coverage for genetic counselors).

(c) The Board may deny an application for licensure as a genetic counselor upon the grounds for disciplinary action in § 18.708 (relating to disciplinary action for applicants and genetic counselors).

§ 18.704. Application for genetic counselor license by uncertified persons.

(a) An applicant for a license to practice as a genetic counselor who has never passed the ABGC or ABMG certification examination shall submit, on forms made available by the Board, a completed application for a license to practice as a genetic counselor, including the necessary supporting documents, and pay the application fee in § 16.13(m) (relating to licensure, certification, examination and registration fees).

(b) The Board may issue a license to practice as a genetic counselor to an uncertified applicant who:

(1) Submits an application to the Board, along with the required supporting documentation, by February 20, 2015.

(2) Demonstrates that the applicant is at least 21 years of age and of good moral character as required under section 13.4(e)(1) and (2) of the act (63 P. S. § 422.13d(e)(1) and (2)).

(3) Demonstrates that the applicant has received a master's degree or higher in genetics or a related field of study and has worked as a genetic counselor for a minimum of 3 continuous years preceding December 22, 2011, or has received a bachelor's degree in genetics or a related field of study and has been employed as a genetic counselor for at least 10 continuous years prior to December 22, 2011.

(i) Proof of the degree shall be sent directly from the applicant's educational program and include an official transcript.

(ii) Related fields of study must include core courses in genetics.

(iii) Proof of employment as a genetic counselor may include Federal income tax forms or notarized letters from the applicant's employers.

(4) Submits at least three letters of recommendation, including one from a genetic counselor certified by the ABGC or the ABMG and one from either a clinical geneticist or medical geneticist certified by the ABMG. A

person who submits a letter of recommendation shall have worked with the applicant in an employment setting sometime during the previous 10 continuous years and be able to attest to the applicant's competency in providing genetic counseling services.

(5) Demonstrates that the applicant has obtained professional liability insurance, or is exempt from the requirement to obtain professional liability insurance, as set forth in § 18.710 (relating to professional liability insurance coverage for genetic counselors).

§ 18.705. Application for temporary provisional genetic counselor license.

(a) An applicant for a temporary provisional genetic counselor license shall submit, on forms made available by the Board, a completed application, including the necessary supporting documents, and pay the fee in § 16.13(m) (relating to licensure, certification, examination and registration fees) for an application for a temporary provisional genetic counselor license.

(b) The Board may grant a temporary provisional genetic counselor license, which authorizes the license holder to practice only under the supervision of a genetic counselor or physician licensed under the act or under the Osteopathic Medical Practice Act (63 P. S. §§ 271.1—271.18), to an applicant who:

(1) Demonstrates that the applicant has been granted active candidate status establishing eligibility to sit for the next available certification examination offered by the ABGC.

(2) Demonstrates that the applicant is at least 21 years of age, of good moral character and has completed an application form provided by the Board.

(3) Otherwise complies with this subchapter.

(c) The Board may deny an application for a temporary provisional genetic counselor license upon the grounds in § 18.708 (relating to disciplinary action for applicants and genetic counselors).

(d) A temporary provisional genetic counselor license will expire upon the close of the second examination period for which the holder is eligible to test following the date of issuance of the temporary provisional license and may not be renewed.

(e) A temporary provisional genetic counselor license will expire upon notice to the Board that the holder has not passed the certification examination within two examination cycles after receiving the temporary provisional license. The holder of a temporary provisional genetic counselor license who fails to pass the examination within two examination cycles shall immediately cease practicing and return the license to the Board. An individual whose temporary provisional genetic counselor license has expired under subsection (d) or this subsection may apply for a genetic counselor license when the individual can demonstrate the qualifications in § 18.703 (relating to application for genetic counselor license).

(f) The holder of a temporary provisional genetic counselor license may not use the title "genetic counselor." The holder of a temporary provisional genetic counselor license may use the title "graduate genetic counselor" but may not use an abbreviation of the title.

(g) A graduate genetic counselor shall inform clients that the graduate genetic counselor holds a temporary provisional license and practices under supervision.

§ 18.706. Biennial registration of genetic counselor license.

(a) The license of a genetic counselor will expire biennially on December 31 of each even-numbered year in accordance with § 16.15 (relating to biennial registration; inactive status and unregistered status). A genetic counselor may not practice after December 31 of an even-numbered year unless the genetic counselor has completed the biennial renewal process and the Board has issued a renewed license.

(b) As a condition of biennial renewal, a genetic counselor shall:

(1) Submit a completed application, including payment of the biennial registration fee in § 16.13(m) (relating to licensure, certification, examination and registration fees) for application for biennial registration of genetic counselor license.

(2) Disclose on the application a license to practice as a genetic counselor in another state, district, territory, possession or country.

(3) Disclose on the application disciplinary action pending before or taken by the appropriate health care licensing authority in another jurisdiction since the most recent application for biennial registration, whether or not licensed to practice in that other jurisdiction.

(4) Disclose on the application pending criminal charges and a finding or verdict of guilt, admission of guilt, plea of nolo contendere, probation without verdict, disposition instead of trial or accelerated rehabilitative disposition in any criminal matter since the most recent application for biennial registration.

(5) Verify on the application that the genetic counselor has complied with the continuing education requirements mandated by section 13.4(j) of the act (63 P. S. § 422.13d(j)) during the biennial period immediately preceding the period for which registration is sought in accordance with § 18.709 (relating to continuing education for genetic counselors).

(6) Verify on the application that, if practicing as a genetic counselor in this Commonwealth, the licensee maintains professional liability insurance coverage in accordance with § 18.710 (relating to professional liability insurance coverage for genetic counselors).

§ 18.707. Inactive status of genetic counselor license; reactivation of inactive license.

(a) A genetic counselor license will become inactive upon either of the following:

(1) The licensee requests in writing that the Board place the license on inactive status. Written confirmation of inactive status will be forwarded to the licensee.

(2) The licensee fails to register the license by the expiration of the biennial registration period, that is, by December 31 of each even-numbered year.

(b) A genetic counselor whose license has become inactive may not practice as a genetic counselor in this Commonwealth until the license has been reactivated.

(c) To reactivate an inactive license, the licensee shall apply on forms made available by the Board. The licensee shall:

(1) Include the documentation required under § 18.709 (relating to continuing education for genetic counselors) for the immediately preceding biennium. Unless waived by the Board under section 13.4(j)(3) of the act (63 P. S. § 422.13d(j)(3)), the Board will not reactivate a license

until the required continuing education for the preceding biennium has been successfully completed.

(2) Pay the current biennial registration fee and the reactivation application fee specified in § 16.13(m) (relating to licensure, certification, examination and registration fees).

(3) Except as provided in subsection (d), verify that the licensee did not practice as a genetic counselor in this Commonwealth while the license was inactive.

(d) A licensee whose license has been inactive for 4 years or more shall demonstrate continued competence by showing current certification by the ABGC.

(e) A licensee who has practiced with an inactive license, and who cannot make the verification required under subsection (c)(3), shall also pay the late fees required under section 225 of the Bureau of Professional and Occupational Affairs Fee Act (63 P. S. § 1401-225) as more fully set forth in this subsection. Payment of a late fee does not preclude the Board from taking disciplinary action for practicing as a genetic counselor without a currently registered license.

(1) A licensee whose license was active at the end of the immediately preceding biennial registration period and who practiced after the license became inactive shall pay a late fee of \$5 for each month or part of a month from the beginning of the current biennium until the date the reactivation application is filed.

(2) A licensee whose license has been inactive since before the beginning of the current biennium shall pay the biennial registration fee for each biennial registration period during which the licensee practiced and shall pay a late fee of \$5 for each month or part of a month from the first date the licensee practiced as a genetic counselor in this Commonwealth after the license became inactive until the date the reactivation application is filed.

§ 18.708. Disciplinary action for applicants and genetic counselors.

(a) A genetic counselor, graduate genetic counselor or applicant for a license under this subchapter is subject to refusal of license or disciplinary action under sections 22 and 41 of the act (63 P. S. §§ 422.22 and 422.41). Following a final determination subject to the right of notice, hearing and adjudication and the right of appeal therefrom in accordance with 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law), the Board may refuse licensure or impose any of the corrective actions of section 42 of the act (63 P. S. § 422.42).

(b) A genetic counselor, graduate genetic counselor or applicant for licensure is subject to discipline under section 41(6) and (8) of the act for violating the provisions of this chapter and Chapter 16 (relating to State Board of Medicine—general provisions) or for being guilty of immoral or unprofessional conduct. Unprofessional conduct includes the conduct in § 16.61(a) (relating to unprofessional and immoral conduct) and, for purposes of this subchapter, also includes:

- (1) Engaging in conduct prohibited under § 16.110 (relating to sexual misconduct).
- (2) Performing an act in a health care profession in a fraudulent, incompetent or negligent manner.
- (3) Violating a provision of the act or this subchapter setting a standard of professional conduct.
- (4) Engaging in health care practice beyond the licensee's authority to practice.

(5) Representing oneself to be a physician or other health care practitioner whose profession the genetic counselor is not licensed to practice.

(6) Practicing while the licensee's ability to do so is impaired by alcohol, drugs, physical disability or mental instability.

(7) Revealing personally identifiable facts obtained as the result of a practitioner-patient relationship without the prior consent of the patient, except as authorized or required by statute or regulation.

(8) Failing to provide appropriate supervision to a genetic counselor student or a graduate genetic counselor practicing under a temporary provisional license. For purposes of this paragraph, appropriate supervision of a genetic counselor student means that the student is under the overall direction of the chair or director of the educational program. For purposes of this paragraph, appropriate supervision of a graduate genetic counselor means that the graduate genetic counselor is under the overall direction of the area supervisor and the supervisor conducts periodic review of the work of the graduate genetic counselor.

(9) Practicing outside the scope of practice for a genetic counselor as set forth in section 13.4(c) of the act (63 P. S. § 422.13d(c)).

(10) Failing to inform a client that a graduate genetic counselor holds a temporary provisional license and practices under supervision.

(c) Immoral conduct includes the conduct in § 16.61(b) and; for purposes of this subchapter, also includes:

(1) Misrepresenting or concealing a material fact in obtaining a license issued by the Board or renewal, reactivation or reinstatement thereof.

(2) Being convicted of a crime involving moral turpitude, dishonesty or corruption in the courts of the Commonwealth, the United States, another state, the District of Columbia, a territory of the United States or another country.

(3) Committing an act involving moral turpitude, dishonesty or corruption.

§ 18.709. Continuing education for genetic counselors.

(a) *Credit hour requirements.* A genetic counselor shall satisfy the following continuing education credit hour requirements:

(1) As a condition for biennial registration, a genetic counselor shall complete at least 30 hours of continuing education applicable to the practice of genetic counseling. Credit will not be given for a course in office management or practice building. A genetic counselor is not required to complete continuing education during the biennium in which the genetic counselor was first licensed if licensure occurred within 3 years of completion of the degree.

(2) Except when reactivating an inactive license, when the Board has granted a waiver, or when ordered by the Board, continuing education credits may be used to satisfy the continuing education credit hour requirements only for the biennial period in which the credits were earned. An hour of continuing education may not be used to satisfy the requirement of paragraph (1) for more than one biennium.

(3) A genetic counselor may request a waiver of the continuing education credit hour requirements because of serious illness, military service or other demonstrated

hardship by submitting a request for waiver with the supporting documentation to the Board at least 90 days prior to the end of the biennial registration period for which the waiver is sought. The Board may grant the waiver request in whole or in part and may extend the deadline by which the credit hour requirements shall be met.

(4) A genetic counselor may be subject to disciplinary sanction as provided in section 41 of the act (63 P. S. § 422.41), including the suspension or revocation of the license, imposition of a civil penalty or other corrective measure as determined by the Board, if the licensee either submits false information to the Board regarding completion of the continuing education credit hour requirements to complete biennial registration, or fails to complete the continuing education hour requirements and practices as a genetic counselor after the end of the biennial period.

(b) *Continuing education activities.* Credit for continuing education may be earned for activities approved by the ABGC or the NSGC.

(c) *Documentation of continuing education.* Continuing education shall be documented with a certificate of attendance or completion issued by the activity provider. The certificate must include the name of the course provider, the name and date of the course, the name of the licensee, the number of credit hours based on a 50-minute hour, and the category of continuing education, if applicable.

§ 18.710. Professional liability insurance coverage for genetic counselors.

(a) A genetic counselor practicing in this Commonwealth shall maintain a level of professional liability

insurance coverage in the minimum amount of \$1 million per occurrence or claims made as required under section 13.4(k) of the act (63 P. S. § 422.13d(k)).

(b) Proof of professional liability insurance coverage may include:

(1) A certificate of insurance or copy of the declaration page from the insurance policy setting forth the effective date, expiration date and dollar amounts of coverage. The policy may be personally purchased liability insurance or professional liability insurance coverage provided by the genetic counselor's employer.

(2) Evidence of a plan of self-insurance approved by the Insurance Commissioner of the Commonwealth under regulations of the Insurance Department in 31 Pa. Code Chapter 243 (relating to medical malpractice and health-related self-insurance plans).

(c) A license that was issued in reliance upon a letter from the applicant's insurance carrier indicating that the applicant will be covered against professional liability effective upon the issuance of the applicant's license as permitted under section 13.4(k)(2) of the act will become inactive as a matter of law 30 days after the date of issuance of the license if the licensee has not provided proof of professional liability insurance coverage and will remain inactive until the licensee provides proof of insurance coverage.

(d) A licensee who does not have professional liability insurance coverage as required under section 13.4(k) of the act may not practice as a genetic counselor in this Commonwealth.

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