

AN ACT relating to the licensure of genetic counselors and making an appropriation therefor.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 8 of this Act:

- (1) "ABGC" means the American Board of Genetic Counseling or its successor or equivalent;*
- (2) "ABMG" means the American Board of Medical Genetics or its successor or equivalent;*
- (3) "ACGC" means the Accreditation Council for Genetic Counseling or its successor or equivalent;*
- (4) "Active candidate status" or "ACS" means a status conferred upon a person who has met the requirements to take the ABGC certification examination in general genetics and genetic counseling and has been granted this designation by the ABGC;*
- (5) "Board" means the State Board of Medical Licensure created in KRS 311.530;*
- (6) "CEU" means a continuing education unit defined by the NSGC;*
- (7) "Committee" means the Kentucky Genetic Counselors Advisory Committee created in Section 6 of this Act under the State Board of Medical Licensure;*
- (8) "Examination for licensure" means the ABGC or ABMG certification examination;*
- (9) "Genetic counseling" means the provision of services by a genetic counselor or licensed physician to:*
 - (a) Obtain and evaluate individual, family, and medical histories to determine genetic risk for genetic or medical conditions and diseases in a patient, his or 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 or medical conditions and diseases;
- (c) Identify, order, and coordinate genetic laboratory tests 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 or 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; or
- (h) Provide written documentation of medical, genetic, and counseling information for families and health care professionals;
- (10) "Genetic counseling intern" means a student enrolled in a genetic counseling program accredited by the ABGC or ABMG;
- (11) "Genetic counselor" means an individual licensed by the board to engage in the competent practice of genetic counseling;
- (12) "NSGC" means the National Society of Genetic Counselors or its successor or equivalent;
- (13) "Qualified supervisor" means any person licensed as a genetic counselor or a physician licensed under this chapter;
- (14) "Reciprocity" means the issuance of a license by the board 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 Kentucky;

(15) "Supervisee" means a genetic counselor with a temporary license; and

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

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

(1) On and after January 1, 2016, a person shall not engage in the practice of genetic counseling in this state without a valid license issued by the board.

(2) A person shall not hold himself or herself out as a genetic counselor unless he or she holds a license issued by the board in accordance with Section 4 of this Act. A person not licensed by the board shall not use in connection with his or her name or place of business the terms "genetic counselor," "licensed genetic counselor," "gene counselor," "genetic consultant," "genetic associate," or any words, letters, abbreviations, or insignia indicating or implying the person holds a genetic counseling license.

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

The provisions of Sections 1 to 8 of this Act shall not apply to:

(1) Any person licensed by the state 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 shall not hold himself or herself out to the public as a genetic counselor;

(2) Any 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 organization by which he or she is employed; and

- (3) A student or intern enrolled in an ACGC-accredited 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 with the title of "genetic counseling intern."

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) The board may issue a license as a genetic counselor to an applicant who:

- (a) Submits an application to the board on a form prescribed by the board;
(b) Pays a fee determined by the board not to exceed one hundred dollars (\$100); and
(c) Provides satisfactory evidence of possessing certification as a:
1. Genetic counselor by the ABGC or ABMG; or
 2. Medical geneticist by the ABMG.

- (2) (a) The board may issue a temporary license to an applicant who:

1. Has been granted an active candidate status by the ABGC; and
2. Pays a fee determined by the board not to exceed one hundred dollars (\$100).

- (b) A person issued a temporary license under this section:

1. Shall apply for and take the examination for certification within twelve (12) months of the issuance of the temporary license; and
2. May only practice if he or she has entered into a genetic supervision contract and is directly supervised by a licensed genetic counselor or a licensed physician.

- (c) A temporary license granted by the board shall be valid for one (1) year from the date issued and shall expire upon the earliest of the following:
1. Issuance of a license pursuant to subsection (1) of this section;
 2. Thirty (30) days after the holder fails to pass the complete certification examination; or
 3. The expiration date printed on the license.

(3) The board may issue a reciprocal license to an applicant who:

- (a) Completes an application on a form prescribed by the board;
- (b) Shows valid proof of a license or registration issued by another state, territory, or jurisdiction of the United States which, in the opinion of the board, imposes substantially equivalent licensure requirements as Kentucky;
- (c) Is in good standing in the other state, jurisdiction, or territory; and
- (d) Pays an application fee determined by the board not to exceed one hundred dollars (\$100).

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) A license issued by the board shall expire on June 30 of even-numbered years unless sooner canceled, suspended, or revoked.
- (2) To renew a license, an applicant for renewal shall:
 - (a) Pay a renewal fee on or before the expiration date of the license; and
 - (b) Meet all other requirements for renewal under this chapter.
- (3) If a licensee fails to pay a renewal fee on or before the expiration date of a license, the license becomes invalid without further action by the board.
- (4) If a licensee holds a license that has been invalid for not more than three (3) years, the board shall reinstate the license if the applicant for reinstatement:
 - (a) Submits a completed renewal application;

- (b) Pays the current renewal fee;
 - (c) Pays a reinstatement fee determined by the board not to exceed one hundred dollars (\$100); and
 - (d) Provides the board with a sworn statement, signed by the applicant, that he or she has fulfilled the continuing education requirements required by the board for the current renewal period.
- (5) If more than three (3) years have elapsed since the date a license has expired, the board may reinstate the license if the applicant for reinstatement:
- (a) Submits a completed renewal application;
 - (b) Pays the current renewal fee established by the board;
 - (c) Pays a reinstatement fee equal to the current initial application fee; and
 - (d) Provides the board with a sworn statement, signed by the applicant, that he or she has fulfilled the continuing education requirements required by the board for the current renewal period.
- (6) To renew a license under this section, an applicant shall complete continuing education. The continuing education shall consist of the completion in each two (2) year license cycle of thirty (30) contact hours that have been approved by the National Society of Genetic Counselors.
- (7) An applicant seeking renewal of a license shall certify that the applicant:
- (a) Has complied with the continuing education requirements; or
 - (b) Has not complied with the continuing education requirements but is seeking a waiver from the board under subsection (8) of this section.
- (8) The board may grant an applicant seeking renewal of a license a waiver from all or part of the continuing education requirement for the renewal period if the applicant was not able to fulfill the requirement due to a hardship that resulted from any of the following conditions:
- (a) Service in the Armed Forces of the United States during a substantial part

of the renewal period;

(b) An incapacitating illness or injury; or

(c) Other circumstances determined by the board.

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

(1) The board shall promulgate administrative regulations in accordance with KRS Chapter 13A relating to the licensure and regulation of genetic counselors. The administrative regulations shall include but not be limited to the establishment of fees.

(2) There is hereby created the Kentucky Genetic Counselors Advisory Committee, composed of five (5) members appointed by the Governor. The committee shall review and make recommendations to the board regarding all matters relating to genetic counselors that come before the board, including but not limited to:

(a) Applications for licensure;

(b) Licensure renewal requirements;

(c) Disciplinary investigations or action, when specifically requested by one (1) of the board's panels established under KRS 311.591; and

(d) Promulgation of administrative regulations.

(3) Except for initial appointments, members of the committee shall be appointed by the board for four (4) year terms and shall consist of:

(a) Three (3) practicing licensed genetic counselors who shall each be selected for each vacancy by the board from a list of at least six (6) licensed genetic counselors submitted by the licensed genetic counselors of Kentucky, or those holding a temporary license;

(b) One (1) member of the board; and

(c) One (1) citizen at large.

(4) The chair of the committee shall be a licensed genetic counselor elected by a

- majority vote of the committee members and shall preside over meetings. Meetings shall be held quarterly at a time and place within the Commonwealth as designated by the chair. Additional meetings may be held at the call of the chair or upon the written request of three (3) committee members.
- (5) Initial appointments shall be for staggered terms. Two (2) members shall serve a four (4) year term, two (2) members shall serve a two (2) year term, and one (1) member shall serve a one (1) year term.
- (6) Members of the committee shall not be compensated for their service but shall receive reimbursement for expenditures relating to attendance at committee meetings, consistent with state policies for the reimbursement of travel expenses for state employees.
- (7) A committee member may be removed by the board for good cause or if he or she misses two (2) consecutive committee meetings without good cause.
- (8) Upon the death, resignation, or removal of any member, the vacancy for the unexpired term shall be filled by the board in the same manner as the original appointment.
- (9) The quorum required for any meeting of the committee shall be three (3) members. No action by the committee or its members shall have any effect unless a quorum of the committee is present at the meeting where the action is taken.
- (10) The board shall not be required to implement or adopt the recommendations of the committee.
- (11) (a) All license, permit, or certificate fees, charges, fines, and other moneys collected by the board under the provisions of Sections 1 to 8 of this Act, and the administrative regulations of the board, shall be deposited into the State Treasury and credited to a trust and agency fund to be used by the board to carry out the provisions and defray the costs of administering Sections 1 to 8 of this Act, and are hereby appropriated for those purposes.

(b) Notwithstanding KRS 45.229, any moneys remaining in the fund at the close of the fiscal year shall not lapse but shall be carried forward into the succeeding fiscal year.

→SECTION 7. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

(1) The board may refuse to issue a license, or may suspend, revoke, or impose probationary or supervisory conditions upon a license or, impose an administrative fine, issue a written reprimand, or any combination thereof regarding any licensee upon proof that the licensee has:

(a) Committed any act of dishonesty or corruption. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action. Upon conviction of the crime, the judgment and sentence are presumptive evidence at the ensuing disciplinary hearing of the guilt of the licensee or applicant. Conviction includes all instances in which a plea of no contest is the basis of the conviction;

(b) Misrepresented or concealed a material fact in obtaining a license, or in reinstatement thereof;

(c) Committed any unfair, false, misleading, or deceptive act or practice;

(d) Been incompetent or negligent in the practice of genetic counseling;

(e) Violated any state statute or administrative regulation governing the practice of genetic counseling or any activities undertaken by a genetic counselor;

(f) Failed to comply with an order issued by the board or an assurance of voluntary compliance; or

(g) Violated the code of ethical conduct as set forth by the board by administrative regulation.

(2) Five (5) years from the date of a revocation, any person whose license has been

revoked may petition the board for reinstatement. The board shall investigate the petition and may reinstate the license upon a finding that the individual has complied with any terms prescribed by the board and is again able to competently engage in the practice of genetic counseling.

(3) When, in the judgment of the board, an alleged violation is not of a serious nature, and the evidence presented to the board after the investigation and appropriate opportunity for the licensee to respond, provides a clear indication that the alleged violation did in fact occur, the board may issue a written reprimand to the licensee. A copy of the reprimand shall be placed in the permanent file of the licensee. The licensee shall have the right to file a response to the reprimand within thirty (30) days of its receipt and to have the response placed in the permanent licensure file. The licensee may alternatively, within thirty (30) days of the receipt, file a request for hearing with the board conducted in accordance with the provisions of KRS Chapter 13B. Upon receipt of this request, the board shall set aside the written reprimand and set the matter for hearing.

(4) At any time during the investigative or hearing processes, the board may enter into an agreed order or accept an assurance of voluntary compliance with the licensee which effectively deals with the complaint.

(5) The board may reconsider, modify, or reverse any probation, suspensions or other disciplinary action it has imposed.

➔SECTION 8. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

(1) The board, before suspending, revoking, imposing probationary or supervisory conditions upon a license or, imposing an administrative fine, or any combination of actions regarding any licensee under the provisions of Sections 1 to 8 of this Act, shall set the matter for hearing in accordance with KRS Chapter

13B. After denying an application under Sections 1 to 8 of this Act, or issuing a written reprimand, the board shall grant a hearing in accordance with KRS Chapter 13B to the denied applicant only upon written request of the applicant made within thirty (30) days of the date of the letter advising of the denial or the reprimand.

(2) Any party aggrieved by a final order of the board may appeal to the Circuit Court of the county in which the aggrieved party resides in accordance with KRS Chapter 13B.

➔Section 9. KRS 311.990 is amended to read as follows:

- (1) Any person who violates KRS 311.250 shall be guilty of a violation.
- (2) Any college or professor thereof violating the provisions of KRS 311.300 to 311.350 shall be civilly liable on his bond for a sum not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each violation, which may be recovered by an action in the name of the Commonwealth.
- (3) Any person who presents to the county clerk for the purpose of registration any license which has been fraudulently obtained, or obtains any license under KRS 311.380 to 311.510 by false or fraudulent statement or representation, or practices podiatry under a false or assumed name or falsely impersonates another practitioner or former practitioner of a like or different name, or aids and abets any person in the practice of podiatry within the state without conforming to the requirements of KRS 311.380 to 311.510, or otherwise violates or neglects to comply with any of the provisions of KRS 311.380 to 311.510, shall be guilty of a Class A misdemeanor. Each case of practicing podiatry in violation of the provisions of KRS 311.380 to 311.510 shall be considered a separate offense.
- (4) Each violation of KRS 311.560 shall constitute a Class D felony.
- (5) Each violation of KRS 311.590 shall constitute a Class D felony. Conviction under this subsection of a holder of a license or permit shall result automatically in

- permanent revocation of such license or permit.
- (6) Conviction of willfully resisting, preventing, impeding, obstructing, threatening, or interfering with the board or any of its members, or of any officer, agent, inspector, or investigator of the board or the Cabinet for Health and Family Services, in the administration of any of the provisions of KRS 311.550 to 311.620 shall be a Class A misdemeanor.
- (7) Each violation of subsection (1) of KRS 311.375 shall, for the first offense, be a Class B misdemeanor, and, for each subsequent offense shall be a Class A misdemeanor.
- (8) Each violation of subsection (2) of KRS 311.375 shall, for the first offense, be a violation, and, for each subsequent offense, be a Class B misdemeanor.
- (9) Each day of violation of either subsection of KRS 311.375 shall constitute a separate offense.
- (10) (a) Any person who intentionally or knowingly performs an abortion contrary to the requirements of KRS 311.723(1) shall be guilty of a Class D felony; and
- (b) Any person who intentionally, knowingly, or recklessly violates the requirements of KRS 311.723(2) shall be guilty of a Class A misdemeanor.
- (11) (a) 1. Any physician who performs a partial-birth abortion in violation of KRS 311.765 shall be guilty of a Class D felony. However, a physician shall not be guilty of the criminal offense if the partial-birth abortion was necessary to save the life of the mother whose life was endangered by a physical disorder, illness, or injury.
2. A physician may seek a hearing before the State Board of Medical Licensure on whether the physician's conduct was necessary to save the life of the mother whose life was endangered by a physical disorder, illness, or injury. The board's findings, decided by majority vote of a quorum, shall be admissible at the trial of the physician. The board shall

promulgate administrative regulations to carry out the provisions of this subparagraph.

3. Upon a motion of the physician, the court shall delay the beginning of the trial for not more than thirty (30) days to permit the hearing, referred to in subparagraph 2. of this paragraph, to occur.
 - (b) Any person other than a physician who performs a partial-birth abortion shall not be prosecuted under this subsection but shall be prosecuted under provisions of law which prohibit any person other than a physician from performing any abortion.
 - (c) No penalty shall be assessed against the woman upon whom the partial-birth abortion is performed or attempted to be performed.
- (12) Any person who intentionally performs an abortion with knowledge that, or with reckless disregard as to whether, the person upon whom the abortion is to be performed is an unemancipated minor, and who intentionally or knowingly fails to conform to any requirement of KRS 311.732 is guilty of a Class A misdemeanor.
- (13) Any person who negligently releases information or documents which are confidential under KRS 311.732 is guilty of a Class B misdemeanor.
- (14) Any person who performs an abortion upon a married woman either with knowledge or in reckless disregard of whether KRS 311.735 applies to her and who intentionally, knowingly, or recklessly fails to conform to the requirements of KRS 311.735 shall be guilty of a Class D felony.
- (15) Any person convicted of violating KRS 311.750 shall be guilty of a Class B felony.
- (16) Any person who violates KRS 311.760(2) shall be guilty of a Class D felony.
- (17) Any person who violates KRS 311.770 or 311.780 shall be guilty of a Class D felony.
- (18) A person convicted of violating KRS 311.780 shall be guilty of a Class C felony.
- (19) Any person who violates KRS 311.810 shall be guilty of a Class A misdemeanor.

- (20) Any professional medical association or society, licensed physician, or hospital or hospital medical staff who shall have violated the provisions of KRS 311.606 shall be guilty of a Class B misdemeanor.
- (21) Any administrator, officer, or employee of a publicly owned hospital or publicly owned health care facility who performs or permits the performance of abortions in violation of KRS 311.800(1) shall be guilty of a Class A misdemeanor.
- (22) Any person who violates KRS 311.905(3) shall be guilty of a violation.
- (23) Any person who violates the provisions of KRS 311.820 shall be guilty of a Class A misdemeanor.
- (24) (a) Any person who fails to test organs, skin, or other human tissue which is to be transplanted, or violates the confidentiality provisions required by KRS 311.281, shall be guilty of a Class A misdemeanor;
- (b) Any person who has human immunodeficiency virus infection, who knows he is infected with human immunodeficiency virus, and who has been informed that he may communicate the infection by donating organs, skin, or other human tissue who donates organs, skin, or other human tissue shall be guilty of a Class D felony.
- (25) Any person who sells or makes a charge for any transplantable organ shall be guilty of a Class D felony.
- (26) Any person who offers remuneration for any transplantable organ for use in transplantation into himself shall be fined not less than five thousand dollars (\$5,000) nor more than fifty thousand dollars (\$50,000).
- (27) Any person brokering the sale or transfer of any transplantable organ shall be guilty of a Class C felony.
- (28) Any person charging a fee associated with the transplantation of a transplantable organ in excess of the direct and indirect costs of procuring, distributing, or transplanting the transplantable organ shall be fined not less than fifty thousand

dollars (\$50,000) nor more than five hundred thousand dollars (\$500,000).

(29) Any hospital performing transplantable organ transplants which knowingly fails to report the possible sale, purchase, or brokering of a transplantable organ shall be fined not less than ten thousand dollars (\$10,000) or more than fifty thousand dollars (\$50,000).

(30) Any person who violates Section 2 of this Act shall be guilty of a Class B misdemeanor for the first offense, and a Class A misdemeanor for a second or subsequent offense. In addition to any other penalty imposed for that violation, the board may, through the Attorney General, petition a Circuit Court to enjoin the person who is violating Section 2 of this Act from practicing genetic counseling in violation of the requirements of Sections 1 to 8 of this Act.