

**INDEPENDENT REGULATORY REVIEW COMMISSION
DISAPPROVAL ORDER**

Commissioners Voting:

Public Meeting Held July 10, 2014

John F. Mizner, Esq., Chairman
George D. Bedwick, Vice Chairman
W. Russell Faber
Lawrence J. Tabas, Esq.
Dennis A. Watson, Esq.

Order Issued July 22, 2014
Regulation No. 16A-4937 (#3034)
State Board of Medicine
Genetic Counselors

On October 7, 2013, the Independent Regulatory Review Commission (Commission) received this proposed regulation from the State Board of Medicine (Board). This rulemaking amends 49 Pa. Code Sections 16.11 and 16.13 and adds Sections 18.701 to 18.710. The proposed regulation was published in the October 19, 2013 *Pennsylvania Bulletin* with a 30-day public comment period. The final-form regulation was submitted to the Commission on June 5, 2014.

This regulation implements Act 125 of 2011 (Act 125) which established licensure and regulation of genetic counselors. The regulation includes fees, provisions for three types of licensure, biennial registration, disciplinary actions, continuing education and professional liability insurance.

We find that this regulation does not meet the criterion of clarity. 71 P.S. § 745.5b(b)(3). As explained below, we find that there are two areas of the regulation that we believe should be clarified.

First, the titles in the regulation of “genetic counselor” and “graduate genetic counselor” are not sufficiently differentiated so that the public can understand which title represents a fully licensed practitioner. Under 63 P.S. § 422.13d(b), use of the title “genetic counselor” is specified as:

An individual who holds an active license as provided by this act may hold himself out to the public **by any title or description of services incorporating the term “genetic counselor”** or use any words or symbols indicating that the individual is a genetic counselor, except as otherwise provided by this act. [Emphasis added.]

Another category of licensure, a “provisional license,” is provided under 63 P.S. § 422.13d(g). This provision states the Board may issue a provisional license to practice genetic counseling to a person who meets all of the qualifications for licensure as a genetic counselor but has not yet passed the certification examination. We believe the statute provides the Board with flexibility to specify titles that distinguish between a fully licensed genetic counselor and a person practicing on a provisional license (e.g., who has not yet passed the certification examination).

The regulation defines the term “genetic counselor” in Section 18.702 and this term is used throughout the regulation, but the term “licensed genetic counselor” is used as well. Subsection 18.705(f) of the regulation specifies that a person holding a provisional genetic counselor license may use the title “graduate genetic counselor.” Our comments questioned whether the public, who would be receiving the counseling services, will clearly understand that the title “graduate genetic counselor” is a lesser qualification than “genetic counselor.” We asked the Board to review this title and consider whether another title would be clearer from the perspective of the public.

The Board responded that it does not believe the public will be confused by this title. We disagree and find that a clear distinction between titles is needed in the regulation so that the public can clearly understand there is a difference in the qualifications of the respective practitioners. Also, these titles should be used consistently throughout the regulation.

Our second concern is with the clarity of Section 18.708 (relating to *Disciplinary action for applicants and licensed genetic counselors*). Our comments asked the Board to amend Section 18.708 to directly relate disciplinary actions to unprofessional conduct and immoral conduct. The Board declined to make these amendments stating that it does not want to narrow disciplinary action to just these provisions since the act authorizes the Board to discipline for violating the regulations and for immoral or unprofessional conduct.

Our specific concern is that the reader of Section 18.708 is not given clear direction on the actions that could result in disciplinary action by the Board. Subsection (a) references the statute at 63 P.S. §§ 422.22 and 422.41, but there are several other specific actions in regulation that could also result in discipline. The following Subsections (b) and (c) essentially define unprofessional conduct and immoral conduct for genetic counselors, but Subsection (a) does not directly state a licensee could be disciplined for not conforming to them. The Board’s existing regulation already addresses unprofessional and immoral conduct at 49 Pa. Code §16.61, which should be referenced in Section 18.708. Additionally, Section 18.708 should be amended to clarify that Subsections (b) and (c) are supplemental to Section 16.61 and in the event of inconsistencies with Section 16.61, Subsections (b) and (c) take precedence. Another provision that could result in discipline is the reporting requirements at 49 Pa. Code § 16.16. (relating to *Reporting of disciplinary actions, criminal dispositions and other licenses, certificates or authorizations to practice*). We believe Section 18.708 should incorporate all of these provisions so that licensees are given clear notice of the actions that could result in discipline.

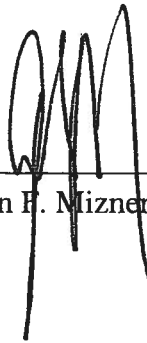
We have determined this regulation is consistent with the statutory authority of the Board and the intention of the General Assembly. However, after considering all of the other criteria of the Regulatory Review Act discussed above, we find promulgation of this regulation is not in the public interest.

BY ORDER OF THE COMMISSION:

The regulation # 16A-4937 (IRRC # 3034) from the _____

State Board of Medicine

was disapproved on July 10, 2014.



John F. Mizner, Chairman