

# Comments of the Independent Regulatory Review Commission



## State Board of Osteopathic Medicine Regulation #16A-5328 (IRRC #3043)

### Genetic Counselors

February 26, 2014

We submit for your consideration the following comments on the proposed rulemaking published in the December 28, 2013 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the State Board of Osteopathic Medicine (Board) to respond to all comments received from us or any other source.

**1. Section 25.231. Schedule of Fees. – Consistency with statute; Reasonableness; Acceptable data; Economic impact.**

Licensure fees are addressed in the statute at 63 P.S. § 271.10c(h), which states:

Licensure fees.--All application and licensure fees shall be set by the board by regulation. Until such a time as the board adopts a fee by regulation, applicants shall pay a biennial fee of \$125.

The Board provided “Fee Report Forms” in support of all of the fees proposed to be added to this section. However, the Fee Report Form for the \$125 “Biennial renewal Fee – Genetic counselor” omits the “Fee-Related Activities and Costs” calculation that was provided to support the amount of all of the other fees.

We note that the directive in statute conditionally sets a biennial renewal fee of \$125 “until such time as the board adopts a fee by regulation.” Since the Board is now adopting this fee by regulation, the Board should provide a full review of the Board’s costs for biennial renewal of genetic counselor license, including the “Fee-Related Activities and Costs,” in support of the amount of the fee in the final regulation.

**2. Section 25.904. Application for genetic counselor license by uncertified persons – Protection of the public welfare; Clarity.**

*Liability insurance*

This proposed regulation is virtually identical to the recent State Board of Medicine proposed regulation for genetic counselors (#16A-4937 / IRRC #3034). We note that the State Board of Medicine proposed regulation includes a provision addressing professional liability insurance at

49 Pa. Code § 18.704(b)(5), but a similar provision was not included in this regulation under Section 25.904. Liability insurance is required by 63 P.S. § 271.10c(k). The Board should add a provision addressing liability insurance to the final-form regulation.

#### *Noncertified persons*

Since the statute uses the phrase “noncertified persons” at 63 P.S. § 271.10c(f), we suggest changing the title of this section accordingly.

### **3. Section 25.905. Application for temporary provisional genetic counselor license. – Consistency with statute; Clarity.**

#### *American Board of Medical Genetics (ABMG)*

Under 63 P.S. § 271.10c(g)(1), the statute states: “. . . eligibility to sit for the next available certification examination by ABGC or ABMG.” [Emphasis added.] Paragraph (b)(1) of the regulation omits the phrase “or ABMG,” which should be added to the final regulation.

#### *Citation to fees*

Paragraph (b)(2) requires payment of “the appropriate fee as required under section 10.3(e)(1)—(3) and (5) of the act (63 P. S. § 271.10c(e)(1)—(3) and (5)).” Other provisions, such as Subsections 25.903(a) and 25.904(a) reference payment of the fee in Subsection 25.231 of the Board’s regulation. Rather than citing the Board’s statutory authority, we recommend that Paragraph (b)(2) reference the fee in Subsection 25.231 because the reader will be directed to the actual fee required and it will be consistent with other provisions in the Board’s regulation.

#### *Failure to pass the examination within two examination cycles*

Subsection (e) reflects 63 P.S. § 271.10c(3) of the statute by stating:

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.

However, the statute and regulation do not address what actions the former provisionally licensed person could take under these circumstances. If that same person later passes an examination on a third try, can that person still apply to the Board for licensure under Section 25.903 or is that person permanently barred from applying for a license? We recommend that the Board address this circumstance in the regulation.

#### *Title for temporary provisional genetic counselor*

Subsection (f) specifies that a person holding a temporary provisional license may use the title “graduate genetic counselor.” We question 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.” For example, a “graduate” college degree is understood to represent education beyond a Bachelor’s degree. We ask the Board to review this title and consider whether another title would be clearer from the perspective of the public.

**4. Section 25.906. Biennial renewal of genetic counselor license. – Clarity.**

Regarding professional liability insurance, other provisions, such as Paragraph 25.903(b)(4), cross-reference Section 25.910 of the regulation. However, Paragraph (b)(6) cross references “section 10.3(k) of the act.” For consistency, the Board should either change this cross-reference to Section 25.910 of the regulation, or explain why Paragraph (b)(6) should cross-reference the act.

**5. Section 25.908. Disciplinary action for applicants and licensed genetic counselors. - Protection of the public safety.**

*Unprofessional or immoral conduct*

Subsections (b) and (c) list what is considered unprofessional or immoral conduct. However, Subsection (a) does not directly state a licensee could be disciplined for violations of Subsection (b) or (c). We recommend adding this to Subsection (a).

*Reporting Requirements*

The proposed regulation does not directly require reporting by a current licensee or applicant of violations in another jurisdiction. If a current licensee or an applicant is found by another jurisdiction to have engaged in unprofessional conduct or immoral conduct similar to Subsections (b) and (c), how would the Board know?

**6. Section 25.909. Continuing education for licensed genetic counselors. – Consistency with statute; Clarity.**

We question whether two statutory provisions are sufficiently addressed by the regulation. First, 63 P.S. § 271.10c(j)(1) states that “. . . No credit shall be given for any course in office management or practice building.” We did not find this limitation in the regulation and recommend adding it.

Second, 63 P.S. § 271.10c(j)(4) states:

Continuing education programs and program providers under this subsection shall be approved by the board in accordance with standards and criteria established by the board by regulation . . . .

We recognize that Subsection (b) specifies “Credit for continuing education may be earned for activities approved by the ABGC or the NSGC.” Does the Board consider this to be sufficient? Are there no other continuing education programs and program providers that the Board would approve for continuing education?