

By: Nelson

S.B. No. 1879

A BILL TO BE ENTITLED

AN ACT

relating to the licensing and regulation of genetic counselors;
providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle I, Title 3, Occupations Code, is amended by adding Chapter 506 to read as follows:

CHAPTER 506. LICENSED GENETIC COUNSELORS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 506.001. SHORT TITLE. This chapter may be cited as the Licensed Genetic Counselor Act.

Sec. 506.002. GENERAL DEFINITIONS. In this chapter:

(1) "Advisory committee" means the licensed genetic counselor advisory committee.

(2) "Board" means the Texas Medical Board.

(3) "Executive director" means the executive director of the board.

(4) "Licensed genetic counselor" means a person licensed under this chapter to engage in the practice of genetic counseling.

Sec. 506.003. DEFINITION: PRACTICE OF GENETIC COUNSELING.

In this chapter, "practice of genetic counseling" means, on the documented referral by a physician licensed to practice medicine in this state or by a person acting under authority delegated under Subchapter A, Chapter 157, providing professional services for

1 compensation to communicate genetic information to an individual,
2 family, group, or other entity. The term includes:

3 (1) assessing the likelihood of an occurrence or
4 recurrence of a birth defect or a potentially inherited or
5 genetically influenced condition, including:

6 (A) obtaining and analyzing a complete health
7 history of an individual and family;

8 (B) reviewing pertinent medical records;

9 (C) evaluating the risks associated with
10 exposure to possible mutagens or teratogens; and

11 (D) recommending genetic testing to evaluate a
12 condition or determine the carrier status of a family member;

13 (2) assisting an individual, family, or group to:

14 (A) appreciate the medical, psychological, and
15 social implications of a disorder, including the disorder's
16 features, variability, usual course, and management options;

17 (B) understand the effect genetic factors have on
18 a disorder and on the chance for recurrence of the disorder in other
19 family members;

20 (C) understand the options available for coping
21 with, preventing, or reducing the occurrence or recurrence of a
22 condition; and

23 (D) understand genetic or prenatal tests and
24 coordinate testing for inherited disorders; and

25 (3) facilitating an individual's or family's:

26 (A) examination of the risk and burden perception
27 associated with the disorder;

1 (B) decision-making related to testing or
2 medical interventions consistent with the individual's or family's
3 beliefs, goals, needs, resources, culture, and ethical or moral
4 views; and

5 (C) adjustment and adaptation to the disorder or
6 to the individual's or family's genetic risk by addressing the need
7 for psychological, social, and medical support.

8 Sec. 506.004. PRACTICE OF MEDICINE NOT AUTHORIZED. This
9 chapter does not authorize:

10 (1) the practice of medicine as defined by Subtitle B,
11 Title 3; or

12 (2) the making of a medical diagnosis.

13 Sec. 506.005. APPLICATION OF SUNSET ACT. The licensed
14 genetic counselor advisory committee is subject to Chapter 325,
15 Government Code (Texas Sunset Act). Unless continued in existence
16 as provided by that chapter, the advisory committee is abolished
17 and this chapter expires September 1, 2019.

18 Sec. 506.006. APPLICABILITY; EXEMPTIONS. (a) This
19 chapter does not apply to a physician licensed to practice medicine
20 in this state unless the physician is a licensed genetic counselor.

21 (b) A person may engage in the practice of genetic
22 counseling without holding a license under this chapter if the
23 person:

24 (1) is licensed, certified, or registered to practice
25 in this state in a health care-related field and engages in an
26 activity or service of genetic counseling but does not use the title
27 "genetic counselor" or represent or imply the person is licensed as

1 a genetic counselor under this chapter;

2 (2) is a student:

3 (A) pursuing a course of study or engaged in a
4 training program for an occupation regulated by this state and
5 acting within the occupation's scope of practice; or

6 (B) enrolled in a board-approved supervised
7 genetic counseling training program and engaged in an activity
8 constituting the practice of genetic counseling as a required part
9 of the training program; or

10 (3) is a genetic counselor who:

11 (A) is certified by the American Board of Medical
12 Genetics, the American Board of Genetic Counseling, or another
13 certification body approved by the board;

14 (B) is not a resident of this state;

15 (C) performs an activity or provides a service in
16 this state for not more than 30 days during any year and the
17 activity or service is under the direction and supervision of a
18 physician licensed to practice medicine in this state or a licensed
19 genetic counselor; and

20 (D) meets any other requirements established by
21 board rule.

22 (c) A student described by Subsection (b)(2) includes an
23 individual who:

24 (1) is trained as:

25 (A) a genetic counselor and has applied to take
26 the certification examination; or

27 (B) a doctoral medical geneticist and has applied

1 to take the certification examination; and

2 (2) has not failed the certification examination more
3 than two times.

4 [Sections 506.007-506.050 reserved for expansion]

5 SUBCHAPTER B. ADVISORY COMMITTEE

6 Sec. 506.051. ADVISORY COMMITTEE. (a) The advisory
7 committee is an informal advisory committee to the board and is not
8 subject to Chapter 2110, Government Code.

9 (b) The advisory committee has no independent rulemaking
10 authority.

11 Sec. 506.052. APPOINTMENT OF ADVISORY COMMITTEE. The
12 advisory committee consists of seven members appointed by the
13 president of the board as follows:

14 (1) two licensed physician members, one of whom is a
15 board certified obstetrician gynecologist, a board certified
16 oncologist, or a board certified clinical geneticist; and

17 (2) five licensed genetic counselor members, each of
18 whom:

19 (A) has engaged for at least two years in the
20 practice of genetic counseling as a genetic counselor:

21 (i) licensed under this chapter; or

22 (ii) certified by the American Board of
23 Medical Genetics, the American Board of Genetic Counseling, or
24 another certification body approved by the board;

25 (B) is a United States citizen; and

26 (C) has been a resident of this state for not less
27 than six months preceding appointment.

1 Sec. 506.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS.

2 (a) In this section, "Texas trade association" means a cooperative
3 and voluntarily joined association of business or professional
4 competitors in this state designed to assist its members and its
5 industry or profession in dealing with mutual business or
6 professional problems and in promoting their common interest.

7 (b) A person may not be a member of the advisory committee
8 if:

9 (1) the person is an officer, employee, or paid
10 consultant of a Texas trade association in the field of genetic
11 counseling; or

12 (2) the person's spouse is an officer, manager, or paid
13 consultant of a Texas trade association in the field of genetic
14 counseling.

15 (c) A person may not be a member of the advisory committee if
16 the person is required to register as a lobbyist under Chapter 305,
17 Government Code, because of the person's activities for
18 compensation on behalf of a profession related to the field of
19 genetic counseling.

20 Sec. 506.054. TERMS; VACANCY. (a) Members of the advisory
21 committee serve two-year terms. The terms of the members expire on
22 February 1 of each odd-numbered year.

23 (b) If a vacancy occurs during a member's term, the
24 president of the board shall appoint a new member to fill the
25 unexpired term.

26 (c) An advisory committee member may not serve more than two
27 consecutive full terms.

1 Sec. 506.055. GROUNDS FOR REMOVAL. (a) It is a ground for
2 removal from the advisory committee that a member:

3 (1) does not have at the time of appointment the
4 qualifications required by Section 506.052;

5 (2) does not maintain during service on the advisory
6 committee the qualifications required by Section 506.052;

7 (3) is ineligible for membership under Section
8 506.053;

9 (4) cannot, because of illness or disability,
10 discharge the member's duties for a substantial part of the member's
11 term; or

12 (5) has had a restriction, suspension, or revocation
13 of a license to perform genetic counseling in this state or any
14 other state.

15 (b) The executive director shall review the qualifications
16 of the members of the advisory committee and notify the board of any
17 action that may be required.

18 (c) The validity of an action of the advisory committee is
19 not affected by the fact that it is taken when a ground for removal
20 of a committee member exists.

21 Sec. 506.056. OFFICERS. The president of the board
22 biennially shall designate a committee member as the presiding
23 officer of the advisory committee to serve in that capacity at the
24 will of the president.

25 Sec. 506.057. PER DIEM. An advisory committee member is not
26 entitled to reimbursement for travel expenses or compensation.

27 Sec. 506.058. MEETINGS. (a) The advisory committee shall

1 meet as requested by the board.

2 (b) A meeting may be held by telephone or other electronic
3 conference call.

4 [Sections 506.059-506.100 reserved for expansion]

5 SUBCHAPTER C. POWERS AND DUTIES OF THE BOARD

6 AND THE EXECUTIVE DIRECTOR

7 Sec. 506.101. GENERAL POWERS AND DUTIES. The board, in
8 consultation with the advisory committee, shall:

9 (1) establish qualifications for genetic counselors
10 in this state;

11 (2) establish requirements for an examination for a
12 license to practice as a genetic counselor;

13 (3) establish minimum education and training
14 requirements necessary for a license as a genetic counselor;

15 (4) prescribe the application form for a license to
16 practice as a genetic counselor; and

17 (5) develop an approved program of mandatory
18 continuing education and the manner in which attendance at all
19 approved courses, clinics, forums, lectures, programs, or seminars
20 is monitored and recorded.

21 Sec. 506.102. RULES. In consultation with the advisory
22 committee, the board shall adopt rules to implement and enforce
23 this chapter.

24 Sec. 506.103. FEES; SPECIAL ACCOUNT. (a) The board by
25 rule shall set fees required by this chapter in amounts reasonable
26 and necessary to cover the costs of administering this chapter.

27 (b) The board shall deposit all the fees collected to the

1 credit of the genetic counseling licensing account. The genetic
2 counseling licensing account is a special account in the general
3 revenue fund that may be appropriated only to the board to pay for
4 the board's administration of this chapter.

5 Sec. 506.104. ANNUAL REPORT. (a) The board annually shall
6 prepare a complete and detailed written report accounting for all
7 funds received and disbursed by the board under this chapter during
8 the preceding fiscal year.

9 (b) The annual report must meet the reporting requirements
10 applicable to financial reporting provided by the General
11 Appropriations Act.

12 Sec. 506.105. GIFTS, GRANTS, AND DONATIONS. In addition to
13 any fees paid to the board or money appropriated to the board, the
14 board may receive and accept under this chapter a gift, grant,
15 donation, or other item of value from any source, including the
16 United States or a private source.

17 [Sections 506.106-506.150 reserved for expansion]

18 SUBCHAPTER D. PUBLIC INTEREST INFORMATION;

19 COMPLAINT AND INVESTIGATIVE INFORMATION

20 Sec. 506.151. PUBLIC PARTICIPATION. (a) The board shall
21 develop and implement policies that provide the public with a
22 reasonable opportunity to appear before the board and speak on any
23 issue relating to genetic counseling.

24 (b) The executive director shall prepare and maintain a
25 written plan that describes how a person who does not speak English
26 may be provided reasonable access to the board's programs and
27 services under this chapter.

1 Sec. 506.152. PUBLIC INTEREST INFORMATION. (a) The board
2 shall prepare information of public interest describing the
3 functions of the board under this chapter and the procedure by which
4 complaints are filed and resolved under this chapter.

5 (b) The board shall make the information available to the
6 public and appropriate state agencies.

7 Sec. 506.153. COMPLAINTS. (a) The board by rule shall
8 establish methods by which consumers are notified of the name,
9 mailing address, and telephone number of the board for the purpose
10 of directing complaints about genetic counselors to the board.

11 (b) The board shall list with its regular telephone number
12 any toll-free telephone number established under other state law
13 that may be called to present a complaint about a genetic counselor.

14 Sec. 506.154. RECORDS OF COMPLAINTS. (a) The board shall
15 maintain a file on each written complaint filed with the board under
16 this chapter. The file must include:

- 17 (1) the name of the person who filed the complaint;
18 (2) the date the complaint is received by the board;
19 (3) the subject matter of the complaint;
20 (4) the name of each person contacted in relation to
21 the complaint;
22 (5) a summary of the results of the review or
23 investigation of the complaint; and
24 (6) an explanation of the reason the file was closed,
25 if the board closed the file without taking action other than to
26 investigate the complaint.

27 (b) The board shall provide to the person filing the

1 complaint and to each person who is a subject of the complaint a
2 copy of the board's policies and procedures relating to complaint
3 investigation and resolution. A person who reports a complaint by
4 telephone shall be given information on how to file a written
5 complaint.

6 (c) The board, at least quarterly and until final
7 disposition of the complaint, shall notify the person filing the
8 complaint and each person who is a subject of the complaint of the
9 status of the investigation unless the notice would jeopardize an
10 ongoing investigation.

11 Sec. 506.155. LICENSE HOLDER ACCESS TO COMPLAINT
12 INFORMATION. (a) The board shall provide a genetic counselor who
13 is the subject of a formal complaint filed under this chapter with
14 access to all information in its possession that the board intends
15 to offer into evidence in presenting its case in chief at the
16 contested hearing on the complaint, subject to any other privilege
17 or restriction established by rule, statute, or legal precedent.
18 The board shall provide the information not later than the 30th day
19 after receipt of a written request from the license holder or the
20 license holder's counsel, unless good cause is shown for delay.

21 (b) Notwithstanding Subsection (a), the board is not
22 required to provide:

- 23 (1) board investigative reports;
- 24 (2) investigative memoranda;
- 25 (3) the identity of a non-testifying complainant;
- 26 (4) attorney-client communications;
- 27 (5) attorney work product; or

1 (6) other material covered by a privilege recognized
2 by the Texas Rules of Civil Procedure or the Texas Rules of
3 Evidence.

4 Sec. 506.156. HEALTH CARE ENTITY REQUEST FOR INFORMATION.
5 On the written request of a health care entity, the board shall
6 provide to the entity:

7 (1) information about a complaint filed against the
8 license holder that was resolved after investigation by:

9 (A) a disciplinary order of the board; or

10 (B) an agreed settlement; and

11 (2) the basis of and current status of any complaint
12 under active investigation that has been referred by the executive
13 director or the director's designee for legal action.

14 Sec. 506.157. CONFIDENTIALITY OF INVESTIGATIVE
15 INFORMATION. The following information is privileged and
16 confidential and is not subject to discovery, subpoena, or other
17 means of legal compulsion for release to any person other than the
18 board or board employee or agent involved in license holder
19 discipline:

20 (1) a complaint, adverse report, investigation file,
21 or other report;

22 (2) the identity of and reports made by a physician or
23 licensed genetic counselor performing or supervising compliance or
24 monitoring for the board; or

25 (3) other investigative information in the possession
26 of or received by or gathered by the board or a board employee or
27 agent relating to a license holder, a license application, or a

1 criminal investigation or proceeding.

2 Sec. 506.158. PERMITTED DISCLOSURE OF INVESTIGATIVE
3 INFORMATION. (a) Notwithstanding Section 506.157, investigative
4 information in the possession of the board or a board employee or
5 agent may be disclosed to a licensing authority in another state or
6 country in which the license holder is licensed or has applied for a
7 license or similar authority.

8 (b) If the investigative information in the possession of
9 the board or a board employee or agent indicates a crime may have
10 been committed, the board shall report the information to the
11 proper law enforcement agency. The board shall cooperate with and
12 assist all law enforcement agencies conducting criminal
13 investigations of a license holder by providing information
14 relevant to the investigation. Confidential information disclosed
15 by the board to a law enforcement agency remains confidential and
16 may not be disclosed by the law enforcement agency except as
17 necessary to further the investigation or prosecution.

18 Sec. 506.159. IMMUNITY AND REPORTING REQUIREMENTS.

19 (a) Any person, including a physician or genetic counselor, shall
20 report relevant information to the board related to the acts of a
21 licensed genetic counselor in this state if, in that person's
22 opinion, the licensed genetic counselor poses a continuing threat
23 to the public welfare. The duty to report under this section may
24 not be nullified through contract.

25 (b) A person who without malice furnishes records,
26 information, or assistance to the board under this section is
27 immune from any civil liability arising from that action in a suit

1 against the person brought by or on behalf of a licensed genetic
2 counselor who is reported under this section.

3 [Sections 506.160-506.200 reserved for expansion]

4 SUBCHAPTER E. LICENSING REQUIREMENTS

5 Sec. 506.201. LICENSE REQUIRED. (a) Except as provided by
6 Section 506.006, a person may not act as a genetic counselor unless
7 that person is licensed under this chapter.

8 (b) Unless the person holds a license under this chapter, a
9 person may not use the title or represent or imply the person has
10 the title "genetic counselor," "certified genetic counselor,"
11 "licensed genetic counselor," "gene counselor," "genetic
12 consultant," or "genetic associate" or use any other word,
13 abbreviation, or insignia indicating or implying the person is a
14 licensed genetic counselor.

15 (c) Nothing in this chapter may be construed to prohibit a
16 physician or an employee or other person acting under the
17 physician's delegated authority from representing to a patient or
18 the public that the physician, employee, or person provides genetic
19 counseling.

20 Sec. 506.202. LICENSE APPLICATION. An applicant for a
21 license must:

22 (1) file a written application with the board on a form
23 prescribed by the board; and

24 (2) pay the application fee set by the board.

25 Sec. 506.203. LICENSE ELIGIBILITY. (a) To be eligible for
26 a license, a license applicant must demonstrate to the satisfaction
27 of the board that the applicant:

1 (1) is of good moral character;

2 (2) has not been convicted of a felony or a crime
3 involving moral turpitude;

4 (3) has not used drugs or alcohol to an extent that
5 affects the applicant's professional competency;

6 (4) has not had a certificate of registration or
7 license revoked by a licensing agency or by a certifying
8 professional organization; and

9 (5) has not engaged in fraud or deceit in applying for
10 a license under this chapter.

11 (b) In addition to meeting the requirements of Subsection
12 (a), an applicant must:

13 (1) successfully complete the examination required by
14 Section 506.204;

15 (2) have successfully completed:

16 (A) a master's degree in a genetic counseling
17 training program that is approved by the board and that is at least
18 as stringent as a genetic counseling training program accredited by
19 the American Board of Genetic Counselors; or

20 (B) a master's degree in a medical genetics
21 training program that is approved by the board and that is at least
22 as stringent as a medical genetics training program accredited by
23 the American Board of Medical Genetics; and

24 (3) meet any other requirement prescribed by the
25 board.

26 Sec. 506.204. EXAMINATION. (a) An applicant for a license
27 under this chapter must successfully complete an examination

1 approved by the board that demonstrates the applicant's knowledge
2 of genetic counseling.

3 (b) The board shall adopt rules to govern the development
4 and administration of an examination for a license as a genetic
5 counselor under this chapter. Any written portion of the
6 examination must be validated by an independent testing
7 professional.

8 Sec. 506.205. TEMPORARY LICENSE. (a) The board may,
9 through the executive director, issue a temporary license to an
10 applicant who:

11 (1) submits an application on a form prescribed by the
12 board;

13 (2) has successfully completed the examination
14 required by the board;

15 (3) pays the appropriate fee set by the board; and

16 (4) meets all the qualifications for a license under
17 this chapter and is waiting for the next scheduled meeting of the
18 board for the license to be issued.

19 (b) A temporary license is valid until the 100th day after
20 the date issued and may be extended until the 130th day after the
21 date issued.

22 Sec. 506.206. ISSUANCE AND RENEWAL OF LICENSE. The board
23 shall issue a license as a genetic counselor to a person who meets
24 the requirements of this chapter and the rules adopted under this
25 chapter.

26 Sec. 506.207. TERM; RENEWAL. (a) A license as a genetic
27 counselor expires on the second anniversary of the date of

1 issuance. The board by rule shall provide for the renewal of a
2 license as a genetic counselor.

3 (b) The board by rule may adopt a system under which
4 licenses expire on various dates during the year. For the year in
5 which the license expiration date is changed, license fees shall be
6 prorated on a monthly basis so that each license holder pays only
7 that portion of the license fee that is allocable to the number of
8 months during which the license or license renewal is valid. On
9 renewal of the license on the new expiration date, the total license
10 renewal fee is payable.

11 Sec. 506.208. NOTICE OF LICENSE RENEWAL. At least 30 days
12 before the expiration of a person's license, the board shall send
13 written notice of the impending license expiration to the license
14 holder's last known address according to the records of the board.

15 Sec. 506.209. PROCEDURE FOR RENEWAL. (a) A person who is
16 otherwise eligible to renew a license may renew an unexpired
17 license by paying the required renewal fee to the board before the
18 expiration date of the license. A person whose license has expired
19 may not engage in activities that require a license.

20 (b) If the person's license has been expired for 90 days or
21 less, the person may renew the license by paying to the board one
22 and one-half times the required renewal fee.

23 (c) If the person's license has been expired for longer than
24 90 days but less than one year, the person may renew the license by
25 paying to the board two times the required renewal fee.

26 (d) If the person's license has been expired for one year or
27 longer, the person may not renew the license. The person may obtain

1 a new license by complying with the requirements and procedures for
2 obtaining an original license.

3 [Sections 506.210-506.300 reserved for expansion]

4 SUBCHAPTER F. DISCIPLINARY PROCEEDINGS

5 Sec. 506.301. DISCIPLINARY ACTIONS BY BOARD. (a) On a
6 determination that an applicant or license holder committed an act
7 or attempted to commit an act described by Section 506.302,
8 506.303, or 506.304, the board by order may take any of the
9 following actions:

10 (1) deny the person's license application or revoke
11 the person's license;

12 (2) require the person to complete additional
13 training;

14 (3) stay the enforcement of an order and place the
15 person on probation;

16 (4) require the person to submit to the care,
17 counseling, or treatment of a health care practitioner designated
18 by the board;

19 (5) suspend, limit, or restrict the person's license,
20 including:

21 (A) limiting the practice of the person to, or
22 excluding from the person's practice, one or more of the specified
23 activities of genetic counseling; or

24 (B) stipulating periodic board review;

25 (6) assess an administrative penalty against the
26 person as provided by Section 506.351; or

27 (7) administer a public reprimand.

1 (b) If the board stays enforcement of an order and places a
2 person on probation, the board retains the right to vacate the
3 probationary stay and enforce the original order for noncompliance
4 with the terms of probation or impose any other remedial measure or
5 sanction authorized by this section.

6 (c) The board may restore or reissue a license or remove any
7 disciplinary or corrective measure that the board has imposed.

8 Sec. 506.302. CONDUCT RELATED TO MISREPRESENTATION OR
9 FRAUD. The board may take action under Section 506.301 against an
10 applicant or a license holder who:

11 (1) fraudulently or deceptively obtains or attempts to
12 obtain a license;

13 (2) fraudulently or deceptively uses a license;

14 (3) falsely represents that the person is a physician,
15 nurse, physician assistant, or other licensed health care provider;

16 (4) acts in an unprofessional or dishonorable manner
17 that is likely to deceive, defraud, or injure the public;

18 (5) fraudulently alters any license;

19 (6) uses any genetic counselor license that has been
20 fraudulently purchased, issued, or counterfeited or that has been
21 materially altered;

22 (7) directly or indirectly aids or abets the practice
23 of genetic counseling by any person not licensed by the board to
24 practice as a genetic counselor; or

25 (8) unlawfully advertises in a false, misleading, or
26 deceptive manner as defined in Section 101.201.

27 Sec. 506.303. CONDUCT RELATED TO VIOLATION OF LAW.

1 (a) The board may take action under Section 506.301 against an
2 applicant or license holder who:

3 (1) violates this chapter or a rule adopted under this
4 chapter;

5 (2) is convicted of a felony, placed on deferred
6 adjudication, or placed in a pretrial diversion program; or

7 (3) violates state law if the violation is connected
8 with the practice of genetic counseling.

9 (b) A complaint, indictment, or conviction of a law
10 violation is not necessary for the board to act under Subsection
11 (a)(3). Proof of the commission of the act while in practice as a
12 genetic counselor or under the guise of a genetic counselor is
13 sufficient for action by the board.

14 Sec. 506.304. CONDUCT INDICATING LACK OF FITNESS. (a) The
15 board may take action under Section 506.301 against an applicant or
16 license holder who:

17 (1) habitually uses drugs or intoxicating liquors to
18 the extent that, in the board's opinion, the person cannot safely
19 act as a genetic counselor;

20 (2) has been adjudicated as mentally incompetent;

21 (3) has a mental or physical condition that renders
22 the person unable to safely act as a genetic counselor;

23 (4) has committed an act of moral turpitude;

24 (5) has failed to practice as a genetic counselor in an
25 acceptable manner consistent with public health and welfare;

26 (6) has had the person's license or other
27 authorization to practice as a genetic counselor suspended,

1 revoked, or restricted;

2 (7) has had other disciplinary action taken by another
3 state regarding the practice of genetic counseling;

4 (8) was removed or suspended or has had disciplinary
5 action taken by the person's peers in any professional association
6 or society, if that action, in the opinion of the board, was based
7 on unprofessional conduct or professional incompetence that was
8 likely to harm the public;

9 (9) has repeated or recurring meritorious
10 professional liability claims that, in the board's opinion, are
11 evidence of professional incompetence likely to harm the public; or

12 (10) sexually abuses or exploits another person during
13 the license holder's practice as a genetic counselor.

14 (b) An action described by Subsection (a)(8) does not
15 constitute state action on the part of the association or society.

16 Sec. 506.305. SUBPOENA. (a) The executive director, the
17 director's designee, or the secretary-treasurer of the board may
18 issue a subpoena or subpoena duces tecum:

19 (1) to conduct an investigation or a contested case
20 proceeding related to:

21 (A) alleged misconduct by a genetic counselor;

22 (B) an alleged violation of this chapter or
23 another law related to the practice of a genetic counselor; or

24 (C) the practice of genetic counseling under this
25 chapter;

26 (2) for purposes of determining whether to issue,
27 suspend, restrict, or revoke a license under this chapter; or

1 (3) for purposes of determining whether to issue or
2 deny a license under this chapter.

3 (b) Failure to timely comply with a subpoena issued under
4 this section is a ground for:

5 (1) disciplinary action by the board or another
6 licensing or regulatory agency with jurisdiction over the person
7 subject to the subpoena; and

8 (2) denial of a license or license application.

9 Sec. 506.306. PROTECTION OF PATIENT IDENTITY. In a
10 disciplinary investigation or proceeding conducted under this
11 chapter, the board shall protect the identity of each patient whose
12 medical records are examined and used in a public proceeding unless
13 the patient:

14 (1) testifies in a public proceeding; or

15 (2) submits to the board a written release in regard to
16 the patient's record or identity.

17 Sec. 506.307. RULES FOR DISCIPLINARY PROCEEDINGS. Rules of
18 practice adopted under this chapter by the board under Section
19 2001.004, Government Code, applicable to the proceedings for a
20 disciplinary action may not conflict with rules adopted by the
21 State Office of Administrative Hearings.

22 Sec. 506.308. REQUIRED SUSPENSION OF INCARCERATED GENETIC
23 COUNSELOR. Regardless of the offense, the board shall suspend the
24 license of a genetic counselor serving a prison term in a state or
25 federal penitentiary during the term of the incarceration.

26 Sec. 506.309. TEMPORARY SUSPENSION. (a) The president of
27 the board, with board approval, shall appoint a three-member

1 disciplinary panel consisting of board members to determine whether
2 a genetic counselor's license should be temporarily suspended.

3 (b) If the disciplinary panel determines from the evidence
4 or information presented to the panel that a person licensed to
5 practice as a genetic counselor would, by continuing in practice,
6 constitute a threat to the public welfare, the disciplinary panel
7 shall temporarily suspend the license of that person.

8 (c) A license may be suspended under this section without
9 notice or hearing on the complaint if:

10 (1) institution of proceedings for a hearing before
11 the board is initiated simultaneously with the temporary
12 suspension; and

13 (2) a hearing is held under Chapter 2001, Government
14 Code, and this chapter as soon as possible.

15 (d) Notwithstanding Chapter 551, Government Code, the
16 disciplinary panel may hold a meeting by telephone conference call
17 if immediate action is required and convening the disciplinary
18 panel at one location is inconvenient for any member of the panel.

19 Sec. 506.310. INFORMAL PROCEEDINGS. (a) The board by rule
20 shall adopt procedures under this chapter governing:

21 (1) informal disposition of a contested case under
22 Section 2001.056, Government Code; and

23 (2) informal proceedings held in compliance with
24 Section 2001.054, Government Code.

25 (b) Rules adopted under this section must require that:

26 (1) an informal meeting in compliance with Section
27 2001.054, Government Code, be scheduled not later than the 180th

1 day after the date the board's official investigation of the
2 complaint is commenced, unless good cause is shown by the board for
3 scheduling the informal meeting after that date;

4 (2) the board give notice to the license holder of the
5 time and place of the meeting not later than the 30th day before the
6 date the meeting is held;

7 (3) the complainant and the license holder be provided
8 an opportunity to be heard;

9 (4) at least one of the board members or committee
10 members participating in the informal meeting as a member of the
11 disciplinary panel be a member who represents the public;

12 (5) the board's legal counsel or a representative of
13 the attorney general be present to advise the board or the board's
14 staff; and

15 (6) a member of the board's staff be at the meeting to
16 present to the panel the facts that the staff reasonably believes
17 could be proven by competent evidence or qualified witnesses at a
18 hearing.

19 (c) An affected genetic counselor is entitled, orally or in
20 writing, to:

21 (1) reply to the staff's presentation; and

22 (2) present the facts the genetic counselor reasonably
23 believes the genetic counselor could prove by competent evidence or
24 qualified witnesses at a hearing.

25 (d) After ample time is given for the presentations, the
26 board panel shall recommend that the investigation be closed or
27 shall attempt to mediate the disputed matters and make a

1 recommendation regarding the disposition of the case in the absence
2 of a hearing under applicable law concerning contested cases.

3 (e) If the license holder has previously been the subject of
4 disciplinary action by the board, the board shall schedule the
5 informal meeting as soon as practicable but not later than the
6 deadline prescribed by Subsection (b)(1).

7 Sec. 506.311. ROLES AND RESPONSIBILITIES OF PARTICIPANT IN
8 INFORMAL PROCEEDINGS. (a) A board or committee member that serves
9 as a panelist at an informal meeting under Section 506.310 shall
10 make recommendations for the disposition of a complaint or
11 allegation. The member may request the assistance of a board
12 employee at any time.

13 (b) Board employees shall present a summary of the
14 allegations against the affected genetic counselor and offer the
15 facts pertaining to the allegation that the employees reasonably
16 believe may be proven by competent evidence at a formal hearing.

17 (c) A board attorney shall act as counsel to the panel and,
18 notwithstanding Subsection (e), shall be present during the
19 informal meeting and the panel's deliberation to advise the panel
20 on legal issues that arise during the proceeding. The attorney may
21 ask questions of participants in the informal meeting to clarify
22 any statement made by the participant.

23 (d) The attorney shall provide to the panel a historical
24 perspective on comparable cases that have appeared before the
25 board, keep the proceedings focused on the case being discussed,
26 and ensure that the board's employees and the affected genetic
27 counselor have an opportunity to present information related to the

1 case.

2 (e) During the panel's deliberations, the attorney may be
3 present only to advise the panel on legal issues and to provide
4 information on comparable cases that have appeared before the
5 board.

6 [Sections 506.312-506.350 reserved for expansion]

7 SUBCHAPTER G. ADMINISTRATIVE PENALTY

8 Sec. 506.351. ADMINISTRATIVE PENALTY. (a) The board by
9 order may impose an administrative penalty against a person
10 licensed under this chapter who violates this chapter or a rule or
11 order adopted under this chapter.

12 (b) The penalty may be in an amount not to exceed \$5,000.
13 Each day a violation continues or occurs is a separate violation for
14 purposes of imposing a penalty.

15 (c) The board shall base the amount of the penalty on:

16 (1) the severity of patient harm;

17 (2) the severity of economic harm to any person;

18 (3) the increased potential of harm to the public;

19 (4) any attempted concealment of misconduct;

20 (5) the motive for the violation;

21 (6) any prior misconduct of a similar or related
22 nature;

23 (7) the license holder's disciplinary history;

24 (8) any prior written warning or written admonishments
25 from any government agency or official regarding statutes or rules
26 relating to the misconduct;

27 (9) whether the violation is of a board order;

1 (10) the person's failure to implement remedial
2 measures to correct or mitigate harm from the misconduct;

3 (11) the person's lack of rehabilitative potential or
4 likelihood of future misconduct of a similar nature;

5 (12) any relevant circumstances increasing the
6 seriousness of the misconduct; or

7 (13) any other matter that justice may require.

8 Sec. 506.352. NOTICE OF VIOLATION AND PENALTY. If the board
9 by order determines that a violation has occurred and imposes an
10 administrative penalty, the board shall give notice to the person
11 of the order. The notice must include a statement of the person's
12 right to judicial review of the order.

13 Sec. 506.353. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.

14 (a) Not later than the 30th day after the date the board's order
15 imposing the administrative penalty is final, the person shall:

16 (1) pay the penalty;

17 (2) pay the penalty and file a petition for judicial
18 review contesting the occurrence of the violation, the amount of
19 the penalty, or both; or

20 (3) without paying the penalty, file a petition for
21 judicial review contesting the occurrence of the violation, the
22 amount of the penalty, or both.

23 (b) Within the 30-day period, a person who acts under
24 Subsection (a)(3) may:

25 (1) stay the enforcement of the penalty by:

26 (A) paying the penalty to the court for placement
27 in an escrow account; or

1 (B) giving the court a supersedeas bond approved
2 by the court for the amount of the penalty and that is effective
3 until all judicial review of the board's order is final; or

4 (2) request the court to stay enforcement of the
5 penalty by:

6 (A) filing with the court an affidavit of the
7 person stating that the person is financially unable to pay the
8 penalty and is financially unable to give the supersedeas bond; and

9 (B) giving a copy of the affidavit to the
10 executive director by certified mail.

11 (c) If the executive director receives a copy of an
12 affidavit under Subsection (b)(2), the executive director may file
13 with the court a contest to the affidavit not later than the fifth
14 day after the date the copy is received.

15 (d) The court shall hold a hearing on the facts alleged in
16 the affidavit as soon as practicable and shall stay the enforcement
17 of the penalty on finding that the alleged facts are true. The
18 person who files an affidavit has the burden of proving that the
19 person is financially unable to pay the penalty and to give a
20 supersedeas bond.

21 Sec. 506.354. COLLECTION OF PENALTY. If the person does not
22 pay the administrative penalty and the enforcement of the penalty
23 is not stayed, the executive director may refer the matter to the
24 attorney general for collection of the penalty.

25 Sec. 506.355. DETERMINATION BY COURT. (a) If on appeal
26 the court sustains the determination that a violation occurred, the
27 court may uphold or reduce the amount of the administrative penalty

1 and order the person to pay the full or reduced penalty.

2 (b) If the court does not sustain the determination that a
3 violation occurred, the court shall order that a penalty is not
4 owed.

5 Sec. 506.356. REMITTANCE OF PENALTY AND INTEREST. (a) If
6 after judicial review the administrative penalty is reduced or not
7 imposed by the court, the court shall, after the judgment becomes
8 final:

9 (1) order that the appropriate amount, plus accrued
10 interest, be remitted to the person if the person paid the penalty;
11 or

12 (2) order the release of the bond in full if the
13 penalty is not imposed or order the release of the bond after the
14 person pays the penalty imposed if the person posted a supersedeas
15 bond.

16 (b) The interest paid under Subsection (a)(1) is a rate
17 charged on loans to depository institutions by the New York Federal
18 Reserve Bank. The interest is paid for the period beginning on the
19 date the penalty is paid and ending on the date the penalty is
20 remitted.

21 [Sections 506.357-506.400 reserved for expansion]

22 SUBCHAPTER H. INJUNCTIVE RELIEF

23 Sec. 506.401. INJUNCTIVE AUTHORITY. In addition to any
24 other action authorized by law, the board may institute an action in
25 its own name to enjoin a violation of this chapter.

26 SECTION 2. (a) Not later than October 1, 2009, the
27 president of the Texas Medical Board shall appoint the members of

1 the licensed genetic counselor advisory committee created under
2 Chapter 506, Occupations Code, as added by this Act.

3 (b) The Texas Medical Board shall adopt rules under Chapter
4 506, Occupations Code, as added by this Act, not later than June 30,
5 2010.

6 SECTION 3. (a) Except as provided by Subsection (b) of this
7 Section, this Act takes effect September 1, 2009.

8 (b) Section 506.201, Occupations Code, as added by this Act,
9 and Subchapters F, G, and H, Chapter 506, Occupations Code, as added
10 by this Act, take effect July 1, 2010.