

1-1 By: Nelson S.B. No. 1879  
1-2 (In the Senate - Filed March 11, 2009; March 24, 2009, read  
1-3 first time and referred to Committee on Health and Human Services;  
1-4 April 17, 2009, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 9, Nays 0; April 17, 2009,  
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1879 By: Nelson

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the licensing and regulation of genetic counselors;  
1-11 providing penalties.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subtitle I, Title 3, Occupations Code, is  
1-14 amended by adding Chapter 506 to read as follows:

1-15 CHAPTER 506. LICENSED GENETIC COUNSELORS

1-16 SUBCHAPTER A. GENERAL PROVISIONS

1-17 Sec. 506.001. SHORT TITLE. This chapter may be cited as the  
1-18 Licensed Genetic Counselor Act.

1-19 Sec. 506.002. GENERAL DEFINITIONS. In this chapter:

1-20 (1) "Advisory committee" means the licensed genetic  
1-21 counselor advisory committee.

1-22 (2) "Board" means the Texas Medical Board.

1-23 (3) "Executive director" means the executive director  
1-24 of the board.

1-25 (4) "Licensed genetic counselor" means a person  
1-26 licensed under this chapter to engage in the practice of genetic  
1-27 counseling.

1-28 Sec. 506.003. DEFINITION: PRACTICE OF GENETIC COUNSELING.

1-29 In this chapter, "practice of genetic counseling" means, on the  
1-30 documented referral by a physician licensed to practice medicine in  
1-31 this state or by a person acting under authority delegated under  
1-32 Subchapter A, Chapter 157, providing professional services for  
1-33 compensation to communicate genetic information to an individual,  
1-34 family, group, or other entity. The term includes:

1-35 (1) assessing the likelihood of an occurrence or  
1-36 recurrence of a birth defect or a potentially inherited or  
1-37 genetically influenced condition, including:

1-38 (A) obtaining and analyzing a complete health  
1-39 history of an individual and family;

1-40 (B) reviewing pertinent medical records;

1-41 (C) evaluating the risks associated with  
1-42 exposure to possible mutagens or teratogens; and

1-43 (D) recommending genetic testing to evaluate a  
1-44 condition or determine the carrier status of a family member;

1-45 (2) assisting an individual, family, or group to:

1-46 (A) appreciate the medical, psychological, and  
1-47 social implications of a disorder, including the disorder's  
1-48 features, variability, usual course, and management options;

1-49 (B) understand the effect genetic factors have on  
1-50 a disorder and on the chance for recurrence of the disorder in other  
1-51 family members;

1-52 (C) understand the options available for coping  
1-53 with, preventing, or reducing the occurrence or recurrence of a  
1-54 condition; and

1-55 (D) understand genetic or prenatal tests and  
1-56 coordinate testing for inherited disorders; and

1-57 (3) facilitating an individual's or family's:

1-58 (A) examination of the risk and burden perception  
1-59 associated with the disorder;

1-60 (B) decision-making related to testing or  
1-61 medical interventions consistent with the individual's or family's  
1-62 beliefs, goals, needs, resources, culture, and ethical or moral  
1-63 views; and

2-1 (C) adjustment and adaptation to the disorder or  
2-2 to the individual's or family's genetic risk by addressing the need  
2-3 for psychological, social, and medical support.

2-4 Sec. 506.004. PRACTICE OF MEDICINE NOT AUTHORIZED. This  
2-5 chapter does not authorize:

2-6 (1) the practice of medicine as defined by Subtitle B,  
2-7 Title 3; or

2-8 (2) the making of a medical diagnosis.

2-9 Sec. 506.005. APPLICATION OF SUNSET ACT. The licensed  
2-10 genetic counselor advisory committee is subject to Chapter 325,  
2-11 Government Code (Texas Sunset Act). Unless continued in existence  
2-12 as provided by that chapter, the advisory committee is abolished  
2-13 and this chapter expires September 1, 2019.

2-14 Sec. 506.006. APPLICABILITY; EXEMPTIONS. (a) This  
2-15 chapter does not apply to a physician licensed to practice medicine  
2-16 in this state unless the physician is a licensed genetic counselor.

2-17 (b) A person may engage in the practice of genetic  
2-18 counseling without holding a license under this chapter if the  
2-19 person:

2-20 (1) is licensed, certified, or registered to practice  
2-21 in this state in a health care-related field and engages in an  
2-22 activity or service of genetic counseling but does not use the title  
2-23 "genetic counselor" or represent or imply the person is licensed as  
2-24 a genetic counselor under this chapter;

2-25 (2) is a student:

2-26 (A) pursuing a course of study or engaged in a  
2-27 training program for an occupation regulated by this state and  
2-28 acting within the occupation's scope of practice; or

2-29 (B) enrolled in a board-approved supervised  
2-30 genetic counseling training program and engaged in an activity  
2-31 constituting the practice of genetic counseling as a required part  
2-32 of the training program; or

2-33 (3) is a genetic counselor who:

2-34 (A) is certified by the American Board of Medical  
2-35 Genetics, the American Board of Genetic Counseling, or another  
2-36 certification body approved by the board;

2-37 (B) is not a resident of this state;

2-38 (C) performs an activity or provides a service in  
2-39 this state for not more than 30 days during any year and the  
2-40 activity or service is under the direction and supervision of a  
2-41 physician licensed to practice medicine in this state or a licensed  
2-42 genetic counselor; and

2-43 (D) meets any other requirements established by  
2-44 board rule.

2-45 (c) A student described by Subsection (b)(2) includes an  
2-46 individual who:

2-47 (1) is trained as:

2-48 (A) a genetic counselor and has applied to take  
2-49 the certification examination; or

2-50 (B) a doctoral medical geneticist and has applied  
2-51 to take the certification examination; and

2-52 (2) has not failed the certification examination more  
2-53 than two times.

2-54 [Sections 506.007-506.050 reserved for expansion]

2-55 SUBCHAPTER B. ADVISORY COMMITTEE

2-56 Sec. 506.051. ADVISORY COMMITTEE. (a) The advisory  
2-57 committee is an informal advisory committee to the board and is not  
2-58 subject to Chapter 2110, Government Code.

2-59 (b) The advisory committee has no independent rulemaking  
2-60 authority.

2-61 Sec. 506.052. APPOINTMENT OF ADVISORY COMMITTEE. The  
2-62 advisory committee consists of seven members appointed by the  
2-63 president of the board as follows:

2-64 (1) two licensed physician members, one of whom is a  
2-65 board certified obstetrician gynecologist, a board certified  
2-66 oncologist, or a board certified clinical geneticist; and

2-67 (2) five licensed genetic counselor members, each of  
2-68 whom:

2-69 (A) has engaged for at least two years in the

3-1 practice of genetic counseling as a genetic counselor:  
3-2 (i) licensed under this chapter; or  
3-3 (ii) certified by the American Board of  
3-4 Medical Genetics, the American Board of Genetic Counseling, or  
3-5 another certification body approved by the board;  
3-6 (B) is a United States citizen; and  
3-7 (C) has been a resident of this state for not less  
3-8 than six months preceding appointment.

3-9 Sec. 506.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS.  
3-10 (a) In this section, "Texas trade association" means a cooperative  
3-11 and voluntarily joined association of business or professional  
3-12 competitors in this state designed to assist its members and its  
3-13 industry or profession in dealing with mutual business or  
3-14 professional problems and in promoting their common interest.

3-15 (b) A person may not be a member of the advisory committee  
3-16 if:  
3-17 (1) the person is an officer, employee, or paid  
3-18 consultant of a Texas trade association in the field of genetic  
3-19 counseling; or

3-20 (2) the person's spouse is an officer, manager, or paid  
3-21 consultant of a Texas trade association in the field of genetic  
3-22 counseling.

3-23 (c) A person may not be a member of the advisory committee if  
3-24 the person is required to register as a lobbyist under Chapter 305,  
3-25 Government Code, because of the person's activities for  
3-26 compensation on behalf of a profession related to the field of  
3-27 genetic counseling.

3-28 Sec. 506.054. TERMS; VACANCY. (a) Members of the advisory  
3-29 committee serve two-year terms. The terms of the members expire on  
3-30 February 1 of each odd-numbered year.

3-31 (b) If a vacancy occurs during a member's term, the  
3-32 president of the board shall appoint a new member to fill the  
3-33 unexpired term.

3-34 (c) An advisory committee member may not serve more than two  
3-35 consecutive full terms.

3-36 Sec. 506.055. GROUNDS FOR REMOVAL. (a) It is a ground for  
3-37 removal from the advisory committee that a member:

3-38 (1) does not have at the time of appointment the  
3-39 qualifications required by Section 506.052;

3-40 (2) does not maintain during service on the advisory  
3-41 committee the qualifications required by Section 506.052;

3-42 (3) is ineligible for membership under Section  
3-43 506.053;

3-44 (4) cannot, because of illness or disability,  
3-45 discharge the member's duties for a substantial part of the member's  
3-46 term; or

3-47 (5) has had a restriction, suspension, or revocation  
3-48 of a license to perform genetic counseling in this state or any  
3-49 other state.

3-50 (b) The executive director shall review the qualifications  
3-51 of the members of the advisory committee and notify the board of any  
3-52 action that may be required.

3-53 (c) The validity of an action of the advisory committee is  
3-54 not affected by the fact that it is taken when a ground for removal  
3-55 of a committee member exists.

3-56 Sec. 506.056. OFFICERS. The president of the board  
3-57 biennially shall designate a committee member as the presiding  
3-58 officer of the advisory committee to serve in that capacity at the  
3-59 will of the president.

3-60 Sec. 506.057. PER DIEM. An advisory committee member is not  
3-61 entitled to reimbursement for travel expenses or compensation.

3-62 Sec. 506.058. MEETINGS. (a) The advisory committee shall  
3-63 meet as requested by the board.

3-64 (b) A meeting may be held by telephone or other electronic  
3-65 conference call.

3-66 [Sections 506.059-506.100 reserved for expansion]

3-67 SUBCHAPTER C. POWERS AND DUTIES OF THE BOARD

3-68 AND THE EXECUTIVE DIRECTOR

3-69 Sec. 506.101. GENERAL POWERS AND DUTIES. The board, in

- 4-1 consultation with the advisory committee, shall:
- 4-2 (1) establish qualifications for genetic counselors
- 4-3 in this state;
- 4-4 (2) establish requirements for an examination for a
- 4-5 license to practice as a genetic counselor;
- 4-6 (3) establish minimum education and training
- 4-7 requirements necessary for a license as a genetic counselor;
- 4-8 (4) prescribe the application form for a license to
- 4-9 practice as a genetic counselor; and
- 4-10 (5) develop an approved program of mandatory
- 4-11 continuing education and the manner in which attendance at all
- 4-12 approved courses, clinics, forums, lectures, programs, or seminars
- 4-13 is monitored and recorded.

4-14 Sec. 506.102. RULES. In consultation with the advisory  
 4-15 committee, the board shall adopt rules to implement and enforce  
 4-16 this chapter.

4-17 Sec. 506.103. FEES; SPECIAL ACCOUNT. (a) The board by  
 4-18 rule shall set fees required by this chapter in amounts reasonable  
 4-19 and necessary to cover the costs of administering this chapter.

4-20 (b) The board shall deposit all the fees collected to the  
 4-21 credit of the genetic counseling licensing account. The genetic  
 4-22 counseling licensing account is a special account in the general  
 4-23 revenue fund that may be appropriated only to the board to pay for  
 4-24 the board's administration of this chapter.

4-25 Sec. 506.104. ANNUAL REPORT. (a) The board annually shall  
 4-26 prepare a complete and detailed written report accounting for all  
 4-27 funds received and disbursed by the board under this chapter during  
 4-28 the preceding fiscal year.

4-29 (b) The annual report must meet the reporting requirements  
 4-30 applicable to financial reporting provided by the General  
 4-31 Appropriations Act.

4-32 Sec. 506.105. GIFTS, GRANTS, AND DONATIONS. In addition to  
 4-33 any fees paid to the board or money appropriated to the board, the  
 4-34 board may receive and accept under this chapter a gift, grant,  
 4-35 donation, or other item of value from any source, including the  
 4-36 United States or a private source.

4-37 [Sections 506.106-506.150 reserved for expansion]

4-38 SUBCHAPTER D. PUBLIC INTEREST INFORMATION;  
 4-39 COMPLAINT AND INVESTIGATIVE INFORMATION

4-40 Sec. 506.151. PUBLIC PARTICIPATION. (a) The board shall  
 4-41 develop and implement policies that provide the public with a  
 4-42 reasonable opportunity to appear before the board and speak on any  
 4-43 issue relating to genetic counseling.

4-44 (b) The executive director shall prepare and maintain a  
 4-45 written plan that describes how a person who does not speak English  
 4-46 may be provided reasonable access to the board's programs and  
 4-47 services under this chapter.

4-48 Sec. 506.152. PUBLIC INTEREST INFORMATION. (a) The board  
 4-49 shall prepare information of public interest describing the  
 4-50 functions of the board under this chapter and the procedure by which  
 4-51 complaints are filed and resolved under this chapter.

4-52 (b) The board shall make the information available to the  
 4-53 public and appropriate state agencies.

4-54 Sec. 506.153. COMPLAINTS. (a) The board by rule shall  
 4-55 establish methods by which consumers are notified of the name,  
 4-56 mailing address, and telephone number of the board for the purpose  
 4-57 of directing complaints about genetic counselors to the board.

4-58 (b) The board shall list with its regular telephone number  
 4-59 any toll-free telephone number established under other state law  
 4-60 that may be called to present a complaint about a genetic counselor.

4-61 Sec. 506.154. RECORDS OF COMPLAINTS. (a) The board shall  
 4-62 maintain a file on each written complaint filed with the board under  
 4-63 this chapter. The file must include:

- 4-64 (1) the name of the person who filed the complaint;
- 4-65 (2) the date the complaint is received by the board;
- 4-66 (3) the subject matter of the complaint;
- 4-67 (4) the name of each person contacted in relation to
- 4-68 the complaint;
- 4-69 (5) a summary of the results of the review or

5-1 investigation of the complaint; and  
 5-2 (6) an explanation of the reason the file was closed,  
 5-3 if the board closed the file without taking action other than to  
 5-4 investigate the complaint.

5-5 (b) The board shall provide to the person filing the  
 5-6 complaint and to each person who is a subject of the complaint a  
 5-7 copy of the board's policies and procedures relating to complaint  
 5-8 investigation and resolution. A person who reports a complaint by  
 5-9 telephone shall be given information on how to file a written  
 5-10 complaint.

5-11 (c) The board, at least quarterly and until final  
 5-12 disposition of the complaint, shall notify the person filing the  
 5-13 complaint and each person who is a subject of the complaint of the  
 5-14 status of the investigation unless the notice would jeopardize an  
 5-15 ongoing investigation.

5-16 Sec. 506.155. LICENSE HOLDER ACCESS TO COMPLAINT  
 5-17 INFORMATION. (a) The board shall provide a genetic counselor who  
 5-18 is the subject of a formal complaint filed under this chapter with  
 5-19 access to all information in its possession that the board intends  
 5-20 to offer into evidence in presenting its case in chief at the  
 5-21 contested hearing on the complaint, subject to any other privilege  
 5-22 or restriction established by rule, statute, or legal precedent.  
 5-23 The board shall provide the information not later than the 30th day  
 5-24 after receipt of a written request from the license holder or the  
 5-25 license holder's counsel, unless good cause is shown for delay.

5-26 (b) Notwithstanding Subsection (a), the board is not  
 5-27 required to provide:

5-28 (1) board investigative reports;  
 5-29 (2) investigative memoranda;  
 5-30 (3) the identity of a non-testifying complainant;  
 5-31 (4) attorney-client communications;  
 5-32 (5) attorney work product; or  
 5-33 (6) other material covered by a privilege recognized  
 5-34 by the Texas Rules of Civil Procedure or the Texas Rules of  
 5-35 Evidence.

5-36 Sec. 506.156. HEALTH CARE ENTITY REQUEST FOR INFORMATION.  
 5-37 On the written request of a health care entity, the board shall  
 5-38 provide to the entity:

5-39 (1) information about a complaint filed against the  
 5-40 license holder that was resolved after investigation by:

5-41 (A) a disciplinary order of the board; or  
 5-42 (B) an agreed settlement; and

5-43 (2) the basis of and current status of any complaint  
 5-44 under active investigation that has been referred by the executive  
 5-45 director or the director's designee for legal action.

5-46 Sec. 506.157. CONFIDENTIALITY OF INVESTIGATIVE  
 5-47 INFORMATION. The following information is privileged and  
 5-48 confidential and is not subject to discovery, subpoena, or other  
 5-49 means of legal compulsion for release to any person other than the  
 5-50 board or board employee or agent involved in license holder  
 5-51 discipline:

5-52 (1) a complaint, adverse report, investigation file,  
 5-53 or other report;

5-54 (2) the identity of and reports made by a physician or  
 5-55 licensed genetic counselor performing or supervising compliance or  
 5-56 monitoring for the board; or

5-57 (3) other investigative information in the possession  
 5-58 of or received by or gathered by the board or a board employee or  
 5-59 agent relating to a license holder, a license application, or a  
 5-60 criminal investigation or proceeding.

5-61 Sec. 506.158. PERMITTED DISCLOSURE OF INVESTIGATIVE  
 5-62 INFORMATION. (a) Notwithstanding Section 506.157, investigative  
 5-63 information in the possession of the board or a board employee or  
 5-64 agent may be disclosed to a licensing authority in another state or  
 5-65 country in which the license holder is licensed or has applied for a  
 5-66 license or similar authority.

5-67 (b) If the investigative information in the possession of  
 5-68 the board or a board employee or agent indicates a crime may have  
 5-69 been committed, the board shall report the information to the

6-1 proper law enforcement agency. The board shall cooperate with and  
6-2 assist all law enforcement agencies conducting criminal  
6-3 investigations of a license holder by providing information  
6-4 relevant to the investigation. Confidential information disclosed  
6-5 by the board to a law enforcement agency remains confidential and  
6-6 may not be disclosed by the law enforcement agency except as  
6-7 necessary to further the investigation or prosecution.

6-8 Sec. 506.159. IMMUNITY AND REPORTING REQUIREMENTS.

6-9 (a) Any person, including a physician or genetic counselor, shall  
6-10 report relevant information to the board related to the acts of a  
6-11 licensed genetic counselor in this state if, in that person's  
6-12 opinion, the licensed genetic counselor poses a continuing threat  
6-13 to the public welfare. The duty to report under this section may  
6-14 not be nullified through contract.

6-15 (b) A person who without malice furnishes records,  
6-16 information, or assistance to the board under this section is  
6-17 immune from any civil liability arising from that action in a suit  
6-18 against the person brought by or on behalf of a licensed genetic  
6-19 counselor who is reported under this section.

6-20 [Sections 506.160-506.200 reserved for expansion]

6-21 SUBCHAPTER E. LICENSING REQUIREMENTS

6-22 Sec. 506.201. LICENSE REQUIRED. (a) Except as provided by  
6-23 Section 506.006, a person may not act as a genetic counselor unless  
6-24 that person is licensed under this chapter.

6-25 (b) Unless the person holds a license under this chapter, a  
6-26 person may not use the title or represent or imply the person has  
6-27 the title "genetic counselor," "certified genetic counselor,"  
6-28 "licensed genetic counselor," "gene counselor," "genetic  
6-29 consultant," or "genetic associate" or use any other word,  
6-30 abbreviation, or insignia indicating or implying the person is a  
6-31 licensed genetic counselor.

6-32 (c) Nothing in this chapter may be construed to prohibit a  
6-33 physician or an employee or other person acting under the  
6-34 physician's delegated authority from representing to a patient or  
6-35 the public that the physician, employee, or person provides genetic  
6-36 counseling.

6-37 Sec. 506.202. LICENSE APPLICATION. An applicant for a  
6-38 license must:

6-39 (1) file a written application with the board on a form  
6-40 prescribed by the board; and

6-41 (2) pay the application fee set by the board.

6-42 Sec. 506.203. LICENSE ELIGIBILITY. (a) To be eligible for  
6-43 a license, a license applicant must demonstrate to the satisfaction  
6-44 of the board that the applicant:

6-45 (1) is of good moral character;

6-46 (2) has not been convicted of a felony or a crime  
6-47 involving moral turpitude;

6-48 (3) has not used drugs or alcohol to an extent that  
6-49 affects the applicant's professional competency;

6-50 (4) has not had a certificate of registration or  
6-51 license revoked by a licensing agency or by a certifying  
6-52 professional organization; and

6-53 (5) has not engaged in fraud or deceit in applying for  
6-54 a license under this chapter.

6-55 (b) In addition to meeting the requirements of Subsection  
6-56 (a), an applicant must:

6-57 (1) successfully complete the examination required by  
6-58 Section 506.204;

6-59 (2) have successfully completed:

6-60 (A) a master's degree in a genetic counseling  
6-61 training program that is approved by the board and that is at least  
6-62 as stringent as a genetic counseling training program accredited by  
6-63 the American Board of Genetic Counselors; or

6-64 (B) a master's degree in a medical genetics  
6-65 training program that is approved by the board and that is at least  
6-66 as stringent as a medical genetics training program accredited by  
6-67 the American Board of Medical Genetics; and

6-68 (3) meet any other requirement prescribed by the  
6-69 board.

7-1 Sec. 506.204. EXAMINATION. (a) An applicant for a license  
7-2 under this chapter must successfully complete an examination  
7-3 approved by the board that demonstrates the applicant's knowledge  
7-4 of genetic counseling.

7-5 (b) The board shall adopt rules to govern the development  
7-6 and administration of an examination for a license as a genetic  
7-7 counselor under this chapter. Any written portion of the  
7-8 examination must be validated by an independent testing  
7-9 professional.

7-10 Sec. 506.205. TEMPORARY LICENSE. (a) The board may,  
7-11 through the executive director, issue a temporary license to an  
7-12 applicant who:

7-13 (1) submits an application on a form prescribed by the  
7-14 board;

7-15 (2) has successfully completed the examination  
7-16 required by the board;

7-17 (3) pays the appropriate fee set by the board; and

7-18 (4) meets all the qualifications for a license under  
7-19 this chapter and is waiting for the next scheduled meeting of the  
7-20 board for the license to be issued.

7-21 (b) A temporary license is valid until the 100th day after  
7-22 the date issued and may be extended until the 130th day after the  
7-23 date issued.

7-24 Sec. 506.206. ISSUANCE AND RENEWAL OF LICENSE. The board  
7-25 shall issue a license as a genetic counselor to a person who meets  
7-26 the requirements of this chapter and the rules adopted under this  
7-27 chapter.

7-28 Sec. 506.207. TERM; RENEWAL. (a) A license as a genetic  
7-29 counselor expires on the second anniversary of the date of  
7-30 issuance. The board by rule shall provide for the renewal of a  
7-31 license as a genetic counselor.

7-32 (b) The board by rule may adopt a system under which  
7-33 licenses expire on various dates during the year. For the year in  
7-34 which the license expiration date is changed, license fees shall be  
7-35 prorated on a monthly basis so that each license holder pays only  
7-36 that portion of the license fee that is allocable to the number of  
7-37 months during which the license or license renewal is valid. On  
7-38 renewal of the license on the new expiration date, the total license  
7-39 renewal fee is payable.

7-40 Sec. 506.208. NOTICE OF LICENSE RENEWAL. At least 30 days  
7-41 before the expiration of a person's license, the board shall send  
7-42 written notice of the impending license expiration to the license  
7-43 holder's last known address according to the records of the board.

7-44 Sec. 506.209. PROCEDURE FOR RENEWAL. (a) A person who is  
7-45 otherwise eligible to renew a license may renew an unexpired  
7-46 license by paying the required renewal fee to the board before the  
7-47 expiration date of the license. A person whose license has expired  
7-48 may not engage in activities that require a license.

7-49 (b) If the person's license has been expired for 90 days or  
7-50 less, the person may renew the license by paying to the board one  
7-51 and one-half times the required renewal fee.

7-52 (c) If the person's license has been expired for longer than  
7-53 90 days but less than one year, the person may renew the license by  
7-54 paying to the board two times the required renewal fee.

7-55 (d) If the person's license has been expired for one year or  
7-56 longer, the person may not renew the license. The person may obtain  
7-57 a new license by complying with the requirements and procedures for  
7-58 obtaining an original license.

7-59 [Sections 506.210-506.300 reserved for expansion]

7-60 SUBCHAPTER F. DISCIPLINARY PROCEEDINGS

7-61 Sec. 506.301. DISCIPLINARY ACTIONS BY BOARD. (a) On a  
7-62 determination that an applicant or license holder committed an act  
7-63 or attempted to commit an act described by Section 506.302,  
7-64 506.303, or 506.304, the board by order may take any of the  
7-65 following actions:

7-66 (1) deny the person's license application or revoke  
7-67 the person's license;

7-68 (2) require the person to complete additional  
7-69 training;

8-1                   (3) stay the enforcement of an order and place the  
8-2 person on probation;  
8-3                   (4) require the person to submit to the care,  
8-4 counseling, or treatment of a health care practitioner designated  
8-5 by the board;  
8-6                   (5) suspend, limit, or restrict the person's license,  
8-7 including:  
8-8                   (A) limiting the practice of the person to, or  
8-9 excluding from the person's practice, one or more of the specified  
8-10 activities of genetic counseling; or  
8-11                   (B) stipulating periodic board review;  
8-12                   (6) assess an administrative penalty against the  
8-13 person as provided by Section 506.351; or  
8-14                   (7) administer a public reprimand.  
8-15                   (b) If the board stays enforcement of an order and places a  
8-16 person on probation, the board retains the right to vacate the  
8-17 probationary stay and enforce the original order for noncompliance  
8-18 with the terms of probation or impose any other remedial measure or  
8-19 sanction authorized by this section.  
8-20                   (c) The board may restore or reissue a license or remove any  
8-21 disciplinary or corrective measure that the board has imposed.  
8-22 Sec. 506.302. CONDUCT RELATED TO MISREPRESENTATION OR  
8-23 FRAUD. The board may take action under Section 506.301 against an  
8-24 applicant or a license holder who:  
8-25                   (1) fraudulently or deceptively obtains or attempts to  
8-26 obtain a license;  
8-27                   (2) fraudulently or deceptively uses a license;  
8-28                   (3) falsely represents that the person is a physician,  
8-29 nurse, physician assistant, or other licensed health care provider;  
8-30                   (4) acts in an unprofessional or dishonorable manner  
8-31 that is likely to deceive, defraud, or injure the public;  
8-32                   (5) fraudulently alters any license;  
8-33                   (6) uses any genetic counselor license that has been  
8-34 fraudulently purchased, issued, or counterfeited or that has been  
8-35 materially altered;  
8-36                   (7) directly or indirectly aids or abets the practice  
8-37 of genetic counseling by any person not licensed by the board to  
8-38 practice as a genetic counselor; or  
8-39                   (8) unlawfully advertises in a false, misleading, or  
8-40 deceptive manner as defined in Section 101.201.  
8-41 Sec. 506.303. CONDUCT RELATED TO VIOLATION OF LAW.  
8-42 (a) The board may take action under Section 506.301 against an  
8-43 applicant or license holder who:  
8-44                   (1) violates this chapter or a rule adopted under this  
8-45 chapter;  
8-46                   (2) is convicted of a felony, placed on deferred  
8-47 adjudication, or placed in a pretrial diversion program; or  
8-48                   (3) violates state law if the violation is connected  
8-49 with the practice of genetic counseling.  
8-50                   (b) A complaint, indictment, or conviction of a law  
8-51 violation is not necessary for the board to act under Subsection  
8-52 (a)(3). Proof of the commission of the act while in practice as a  
8-53 genetic counselor or under the guise of a genetic counselor is  
8-54 sufficient for action by the board.  
8-55 Sec. 506.304. CONDUCT INDICATING LACK OF FITNESS. (a) The  
8-56 board may take action under Section 506.301 against an applicant or  
8-57 license holder who:  
8-58                   (1) habitually uses drugs or intoxicating liquors to  
8-59 the extent that, in the board's opinion, the person cannot safely  
8-60 act as a genetic counselor;  
8-61                   (2) has been adjudicated as mentally incompetent;  
8-62                   (3) has a mental or physical condition that renders  
8-63 the person unable to safely act as a genetic counselor;  
8-64                   (4) has committed an act of moral turpitude;  
8-65                   (5) has failed to practice as a genetic counselor in an  
8-66 acceptable manner consistent with public health and welfare;  
8-67                   (6) has had the person's license or other  
8-68 authorization to practice as a genetic counselor suspended,  
8-69 revoked, or restricted;



9-1 (7) has had other disciplinary action taken by another  
9-2 state regarding the practice of genetic counseling;

9-3 (8) was removed or suspended or has had disciplinary  
9-4 action taken by the person's peers in any professional association  
9-5 or society, if that action, in the opinion of the board, was based  
9-6 on unprofessional conduct or professional incompetence that was  
9-7 likely to harm the public;

9-8 (9) has repeated or recurring meritorious  
9-9 professional liability claims that, in the board's opinion, are  
9-10 evidence of professional incompetence likely to harm the public; or

9-11 (10) sexually abuses or exploits another person during  
9-12 the license holder's practice as a genetic counselor.

9-13 (b) An action described by Subsection (a)(8) does not  
9-14 constitute state action on the part of the association or society.

9-15 Sec. 506.305. SUBPOENA. (a) The executive director, the  
9-16 director's designee, or the secretary-treasurer of the board may  
9-17 issue a subpoena or subpoena duces tecum:

9-18 (1) to conduct an investigation or a contested case  
9-19 proceeding related to:

9-20 (A) alleged misconduct by a genetic counselor;

9-21 (B) an alleged violation of this chapter or  
9-22 another law related to the practice of a genetic counselor; or

9-23 (C) the practice of genetic counseling under this  
9-24 chapter;

9-25 (2) for purposes of determining whether to issue,  
9-26 suspend, restrict, or revoke a license under this chapter; or

9-27 (3) for purposes of determining whether to issue or  
9-28 deny a license under this chapter.

9-29 (b) Failure to timely comply with a subpoena issued under  
9-30 this section is a ground for:

9-31 (1) disciplinary action by the board or another  
9-32 licensing or regulatory agency with jurisdiction over the person  
9-33 subject to the subpoena; and  
9-34 (2) denial of a license or license application.

9-35 Sec. 506.306. PROTECTION OF PATIENT IDENTITY. In a  
9-36 disciplinary investigation or proceeding conducted under this  
9-37 chapter, the board shall protect the identity of each patient whose  
9-38 medical records are examined and used in a public proceeding unless  
9-39 the patient:

9-40 (1) testifies in a public proceeding; or

9-41 (2) submits to the board a written release in regard to  
9-42 the patient's record or identity.

9-43 Sec. 506.307. RULES FOR DISCIPLINARY PROCEEDINGS. Rules of  
9-44 practice adopted under this chapter by the board under Section  
9-45 2001.004, Government Code, applicable to the proceedings for a  
9-46 disciplinary action may not conflict with rules adopted by the  
9-47 State Office of Administrative Hearings.

9-48 Sec. 506.308. REQUIRED SUSPENSION OF INCARCERATED GENETIC  
9-49 COUNSELOR. Regardless of the offense, the board shall suspend the  
9-50 license of a genetic counselor serving a prison term in a state or  
9-51 federal penitentiary during the term of the incarceration.

9-52 Sec. 506.309. TEMPORARY SUSPENSION. (a) The president of  
9-53 the board, with board approval, shall appoint a three-member  
9-54 disciplinary panel consisting of board members to determine whether  
9-55 a genetic counselor's license should be temporarily suspended.

9-56 (b) If the disciplinary panel determines from the evidence  
9-57 or information presented to the panel that a person licensed to  
9-58 practice as a genetic counselor would, by continuing in practice,  
9-59 constitute a threat to the public welfare, the disciplinary panel  
9-60 shall temporarily suspend the license of that person.

9-61 (c) A license may be suspended under this section without  
9-62 notice or hearing on the complaint if:

9-63 (1) institution of proceedings for a hearing before  
9-64 the board is initiated simultaneously with the temporary  
9-65 suspension; and

9-66 (2) a hearing is held under Chapter 2001, Government  
9-67 Code, and this chapter as soon as possible.

9-68 (d) Notwithstanding Chapter 551, Government Code, the  
9-69 disciplinary panel may hold a meeting by telephone conference call

10-1 if immediate action is required and convening the disciplinary  
 10-2 panel at one location is inconvenient for any member of the panel.

10-3 Sec. 506.310. INFORMAL PROCEEDINGS. (a) The board by rule  
 10-4 shall adopt procedures under this chapter governing:

10-5 (1) informal disposition of a contested case under  
 10-6 Section 2001.056, Government Code; and

10-7 (2) informal proceedings held in compliance with  
 10-8 Section 2001.054, Government Code.

10-9 (b) Rules adopted under this section must require that:

10-10 (1) an informal meeting in compliance with Section  
 10-11 2001.054, Government Code, be scheduled not later than the 180th  
 10-12 day after the date the board's official investigation of the  
 10-13 complaint is commenced, unless good cause is shown by the board for  
 10-14 scheduling the informal meeting after that date;

10-15 (2) the board give notice to the license holder of the  
 10-16 time and place of the meeting not later than the 30th day before the  
 10-17 date the meeting is held;

10-18 (3) the complainant and the license holder be provided  
 10-19 an opportunity to be heard;

10-20 (4) at least one of the board members or committee  
 10-21 members participating in the informal meeting as a member of the  
 10-22 disciplinary panel be a member who represents the public;

10-23 (5) the board's legal counsel or a representative of  
 10-24 the attorney general be present to advise the board or the board's  
 10-25 staff; and

10-26 (6) a member of the board's staff be at the meeting to  
 10-27 present to the panel the facts that the staff reasonably believes  
 10-28 could be proven by competent evidence or qualified witnesses at a  
 10-29 hearing.

10-30 (c) An affected genetic counselor is entitled, orally or in  
 10-31 writing, to:

10-32 (1) reply to the staff's presentation; and

10-33 (2) present the facts the genetic counselor reasonably  
 10-34 believes the genetic counselor could prove by competent evidence or  
 10-35 qualified witnesses at a hearing.

10-36 (d) After ample time is given for the presentations, the  
 10-37 board panel shall recommend that the investigation be closed or  
 10-38 shall attempt to mediate the disputed matters and make a  
 10-39 recommendation regarding the disposition of the case in the absence  
 10-40 of a hearing under applicable law concerning contested cases.

10-41 (e) If the license holder has previously been the subject of  
 10-42 disciplinary action by the board, the board shall schedule the  
 10-43 informal meeting as soon as practicable but not later than the  
 10-44 deadline prescribed by Subsection (b)(1).

10-45 Sec. 506.311. ROLES AND RESPONSIBILITIES OF PARTICIPANT IN  
 10-46 INFORMAL PROCEEDINGS. (a) A board or committee member that serves  
 10-47 as a panelist at an informal meeting under Section 506.310 shall  
 10-48 make recommendations for the disposition of a complaint or  
 10-49 allegation. The member may request the assistance of a board  
 10-50 employee at any time.

10-51 (b) Board employees shall present a summary of the  
 10-52 allegations against the affected genetic counselor and offer the  
 10-53 facts pertaining to the allegation that the employees reasonably  
 10-54 believe may be proven by competent evidence at a formal hearing.

10-55 (c) A board attorney shall act as counsel to the panel and,  
 10-56 notwithstanding Subsection (e), shall be present during the  
 10-57 informal meeting and the panel's deliberation to advise the panel  
 10-58 on legal issues that arise during the proceeding. The attorney may  
 10-59 ask questions of participants in the informal meeting to clarify  
 10-60 any statement made by the participant.

10-61 (d) The attorney shall provide to the panel a historical  
 10-62 perspective on comparable cases that have appeared before the  
 10-63 board, keep the proceedings focused on the case being discussed,  
 10-64 and ensure that the board's employees and the affected genetic  
 10-65 counselor have an opportunity to present information related to the  
 10-66 case.

10-67 (e) During the panel's deliberations, the attorney may be  
 10-68 present only to advise the panel on legal issues and to provide  
 10-69 information on comparable cases that have appeared before the

11-1 board.  
 11-2 [Sections 506.312-506.350 reserved for expansion]  
 11-3 SUBCHAPTER G. ADMINISTRATIVE PENALTY  
 11-4 Sec. 506.351. ADMINISTRATIVE PENALTY. (a) The board by  
 11-5 order may impose an administrative penalty against a person  
 11-6 licensed under this chapter who violates this chapter or a rule or  
 11-7 order adopted under this chapter.  
 11-8 (b) The penalty may be in an amount not to exceed \$5,000.  
 11-9 Each day a violation continues or occurs is a separate violation for  
 11-10 purposes of imposing a penalty.  
 11-11 (c) The board shall base the amount of the penalty on:  
 11-12 (1) the severity of patient harm;  
 11-13 (2) the severity of economic harm to any person;  
 11-14 (3) the increased potential of harm to the public;  
 11-15 (4) any attempted concealment of misconduct;  
 11-16 (5) the motive for the violation;  
 11-17 (6) any prior misconduct of a similar or related  
 11-18 nature;  
 11-19 (7) the license holder's disciplinary history;  
 11-20 (8) any prior written warning or written admonishments  
 11-21 from any government agency or official regarding statutes or rules  
 11-22 relating to the misconduct;  
 11-23 (9) whether the violation is of a board order;  
 11-24 (10) the person's failure to implement remedial  
 11-25 measures to correct or mitigate harm from the misconduct;  
 11-26 (11) the person's lack of rehabilitative potential or  
 11-27 likelihood of future misconduct of a similar nature;  
 11-28 (12) any relevant circumstances increasing the  
 11-29 seriousness of the misconduct; or  
 11-30 (13) any other matter that justice may require.  
 11-31 Sec. 506.352. NOTICE OF VIOLATION AND PENALTY. If the board  
 11-32 by order determines that a violation has occurred and imposes an  
 11-33 administrative penalty, the board shall give notice to the person  
 11-34 of the order. The notice must include a statement of the person's  
 11-35 right to judicial review of the order.  
 11-36 Sec. 506.353. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.  
 11-37 (a) Not later than the 30th day after the date the board's order  
 11-38 imposing the administrative penalty is final, the person shall:  
 11-39 (1) pay the penalty;  
 11-40 (2) pay the penalty and file a petition for judicial  
 11-41 review contesting the occurrence of the violation, the amount of  
 11-42 the penalty, or both; or  
 11-43 (3) without paying the penalty, file a petition for  
 11-44 judicial review contesting the occurrence of the violation, the  
 11-45 amount of the penalty, or both.  
 11-46 (b) Within the 30-day period, a person who acts under  
 11-47 Subsection (a)(3) may:  
 11-48 (1) stay the enforcement of the penalty by:  
 11-49 (A) paying the penalty to the court for placement  
 11-50 in an escrow account; or  
 11-51 (B) giving the court a supersedeas bond approved  
 11-52 by the court for the amount of the penalty and that is effective  
 11-53 until all judicial review of the board's order is final; or  
 11-54 (2) request the court to stay enforcement of the  
 11-55 penalty by:  
 11-56 (A) filing with the court an affidavit of the  
 11-57 person stating that the person is financially unable to pay the  
 11-58 penalty and is financially unable to give the supersedeas bond; and  
 11-59 (B) giving a copy of the affidavit to the  
 11-60 executive director by certified mail.  
 11-61 (c) If the executive director receives a copy of an  
 11-62 affidavit under Subsection (b)(2), the executive director may file  
 11-63 with the court a contest to the affidavit not later than the fifth  
 11-64 day after the date the copy is received.  
 11-65 (d) The court shall hold a hearing on the facts alleged in  
 11-66 the affidavit as soon as practicable and shall stay the enforcement  
 11-67 of the penalty on finding that the alleged facts are true. The  
 11-68 person who files an affidavit has the burden of proving that the  
 11-69 person is financially unable to pay the penalty and to give a

12-1 supersedeas bond.  
12-2 Sec. 506.354. COLLECTION OF PENALTY. If the person does not  
12-3 pay the administrative penalty and the enforcement of the penalty  
12-4 is not stayed, the executive director may refer the matter to the  
12-5 attorney general for collection of the penalty.

12-6 Sec. 506.355. DETERMINATION BY COURT. (a) If on appeal  
12-7 the court sustains the determination that a violation occurred, the  
12-8 court may uphold or reduce the amount of the administrative penalty  
12-9 and order the person to pay the full or reduced penalty.

12-10 (b) If the court does not sustain the determination that a  
12-11 violation occurred, the court shall order that a penalty is not  
12-12 owed.

12-13 Sec. 506.356. REMITTANCE OF PENALTY AND INTEREST. (a) If  
12-14 after judicial review the administrative penalty is reduced or not  
12-15 imposed by the court, the court shall, after the judgment becomes  
12-16 final:

12-17 (1) order that the appropriate amount, plus accrued  
12-18 interest, be remitted to the person if the person paid the penalty;  
12-19 or

12-20 (2) order the release of the bond in full if the  
12-21 penalty is not imposed or order the release of the bond after the  
12-22 person pays the penalty imposed if the person posted a supersedeas  
12-23 bond.

12-24 (b) The interest paid under Subsection (a)(1) is a rate  
12-25 charged on loans to depository institutions by the New York Federal  
12-26 Reserve Bank. The interest is paid for the period beginning on the  
12-27 date the penalty is paid and ending on the date the penalty is  
12-28 remitted.

12-29 [Sections 506.357-506.400 reserved for expansion]

12-30 SUBCHAPTER H. INJUNCTIVE RELIEF

12-31 Sec. 506.401. INJUNCTIVE AUTHORITY. In addition to any  
12-32 other action authorized by law, the board may institute an action in  
12-33 its own name to enjoin a violation of this chapter.

12-34 SECTION 2. (a) Not later than October 1, 2009, the  
12-35 president of the Texas Medical Board shall appoint the members of  
12-36 the licensed genetic counselor advisory committee created under  
12-37 Chapter 506, Occupations Code, as added by this Act.

12-38 (b) The Texas Medical Board shall adopt rules under Chapter  
12-39 506, Occupations Code, as added by this Act, not later than June 30,  
12-40 2010.

12-41 SECTION 3. (a) Except as provided by Subsection (b) of this  
12-42 Section, this Act takes effect September 1, 2009.

12-43 (b) Section 506.201, Occupations Code, as added by this Act,  
12-44 and Subchapters F, G, and H, Chapter 506, Occupations Code, as added  
12-45 by this Act, take effect July 1, 2010.

12-46 \* \* \* \* \*