



## Ohio Revised Code

### Section 4778.14 Revocation or denial of license.

Effective: September 29, 2015

Legislation: House Bill 64 - 131st General Assembly

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(A) The state medical board, by an affirmative vote of not fewer than six members, may revoke or may refuse to grant a license to practice as a genetic counselor to an individual found by the board to have committed fraud, misrepresentation, or deception in applying for or securing the license.

(B) The board, by an affirmative vote of not fewer than six members, shall, to the extent permitted by law, limit, revoke, or suspend an individual's license to practice as a genetic counselor, refuse to issue a license to an applicant, refuse to renew a license, refuse to reinstate a license, or reprimand or place on probation the holder of a license for any of the following reasons:

(1) Permitting the holder's name or license to be used by another person;

(2) Failure to comply with the requirements of this chapter, Chapter 4731. of the Revised Code, or any rules adopted by the board;

(3) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this chapter, Chapter 4731. of the Revised Code, or the rules adopted by the board;

(4) A departure from, or failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances whether or not actual injury to the patient is established;

(5) Inability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness, including physical deterioration that adversely affects cognitive, motor, or perceptive skills;

(6) Impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice;



(7) Willfully betraying a professional confidence;

(8) Making a false, fraudulent, deceptive, or misleading statement in securing or attempting to secure a license to practice as a genetic counselor.

As used in this division, "false, fraudulent, deceptive, or misleading statement" means a statement that includes a misrepresentation of fact, is likely to mislead or deceive because of a failure to disclose material facts, is intended or is likely to create false or unjustified expectations of favorable results, or includes representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.

(9) The obtaining of, or attempting to obtain, money or a thing of value by fraudulent misrepresentations in the course of practice;

(10) A plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a felony;

(11) Commission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed;

(12) A plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a misdemeanor committed in the course of practice;

(13) A plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a misdemeanor involving moral turpitude;

(14) Commission of an act in the course of practice that constitutes a misdemeanor in this state, regardless of the jurisdiction in which the act was committed;

(15) Commission of an act involving moral turpitude that constitutes a misdemeanor in this state, regardless of the jurisdiction in which the act was committed;



(16) A plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for violating any state or federal law regulating the possession, distribution, or use of any drug, including trafficking in drugs;

(17) Any of the following actions taken by an agency responsible for authorizing, certifying, or regulating an individual to practice a health care occupation or provide health care services in this state or in another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand;

(18) Violation of the conditions placed by the board on a license to practice as a genetic counselor;

(19) Failure to cooperate in an investigation conducted by the board under section 4778.18 of the Revised Code, including failure to comply with a subpoena or order issued by the board or failure to answer truthfully a question presented by the board at a deposition or in written interrogatories, except that failure to cooperate with an investigation shall not constitute grounds for discipline under this section if a court of competent jurisdiction has issued an order that either quashes a subpoena or permits the individual to withhold the testimony or evidence in issue;

(20) Failure to maintain the individual's status as a certified genetic counselor;

(21) Failure to comply with the code of ethics established by the national society of genetic counselors.

(C) Disciplinary actions taken by the board under divisions (A) and (B) of this section shall be taken pursuant to an adjudication under Chapter 119. of the Revised Code, except that in lieu of an adjudication, the board may enter into a consent agreement with a genetic counselor or applicant to resolve an allegation of a violation of this chapter or any rule adopted under it. A consent agreement, when ratified by an affirmative vote of not fewer than six members of the board, shall constitute the findings and order of the board with respect to the matter addressed in the agreement. If the board refuses to ratify a consent agreement, the admissions and findings contained in the consent agreement shall be of no force or effect.



A telephone conference call may be utilized for ratification of a consent agreement that revokes or suspends an individual's license. The telephone conference call shall be considered a special meeting under division (F) of section 121.22 of the Revised Code.

(D) For purposes of divisions (B)(11), (14), and (15) of this section, the commission of the act may be established by a finding by the board, pursuant to an adjudication under Chapter 119. of the Revised Code, that the applicant or license holder committed the act in question. The board shall have no jurisdiction under these divisions in cases where the trial court renders a final judgment in the license holder's favor and that judgment is based upon an adjudication on the merits. The board shall have jurisdiction under these divisions in cases where the trial court issues an order of dismissal on technical or procedural grounds.

(E) The sealing of conviction records by any court shall have no effect on a prior board order entered under the provisions of this section or on the board's jurisdiction to take action under the provisions of this section if, based upon a plea of guilty, a judicial finding of guilt, or a judicial finding of eligibility for intervention in lieu of conviction, the board issued a notice of opportunity for a hearing or took other formal action under Chapter 119. of the Revised Code prior to the court's order to seal the records. The board shall not be required to seal, destroy, redact, or otherwise modify its records to reflect the court's sealing of conviction records.

(F) For purposes of this division, any individual who holds a license to practice as a genetic counselor, or applies for a license, shall be deemed to have given consent to submit to a mental or physical examination when directed to do so in writing by the board and to have waived all objections to the admissibility of testimony or examination reports that constitute a privileged communication.

(1) In enforcing division (B)(5) of this section, the board, on a showing of a possible violation, may compel any individual who holds a license to practice as a genetic counselor or who has applied for a license to practice as a genetic counselor to submit to a mental or physical examination, or both. A physical examination may include an HIV test. The expense of the examination is the responsibility of the individual compelled to be examined. Failure to submit to a mental or physical examination or consent to an HIV test ordered by the board constitutes an admission of the allegations against the



individual unless the failure is due to circumstances beyond the individual's control, and a default and final order may be entered without the taking of testimony or presentation of evidence. If the board finds a genetic counselor unable to practice because of the reasons set forth in division (B)(5) of this section, the board shall require the genetic counselor to submit to care, counseling, or treatment by physicians approved or designated by the board, as a condition for an initial, continued, reinstated, or renewed license to practice. An individual affected by this division shall be afforded an opportunity to demonstrate to the board the ability to resume practicing in compliance with acceptable and prevailing standards of care.

(2) For purposes of division (B)(6) of this section, if the board has reason to believe that any individual who holds a license to practice as a genetic counselor or any applicant for a license suffers such impairment, the board may compel the individual to submit to a mental or physical examination, or both. The expense of the examination is the responsibility of the individual compelled to be examined. Any mental or physical examination required under this division shall be undertaken by a treatment provider or physician qualified to conduct such examination and chosen by the board.

Failure to submit to a mental or physical examination ordered by the board constitutes an admission of the allegations against the individual unless the failure is due to circumstances beyond the individual's control, and a default and final order may be entered without the taking of testimony or presentation of evidence. If the board determines that the individual's ability to practice is impaired, the board shall suspend the individual's license or deny the individual's application and shall require the individual, as a condition for an initial, continued, reinstated, or renewed license, to submit to treatment.

Before being eligible to apply for reinstatement of a license suspended under this division, the genetic counselor shall demonstrate to the board the ability to resume practice in compliance with acceptable and prevailing standards of care. The demonstration shall include the following:

- (a) Certification from a treatment provider approved under section 4731.25 of the Revised Code that the individual has successfully completed any required inpatient treatment;
- (b) Evidence of continuing full compliance with an aftercare contract or consent agreement;



(c) Two written reports indicating that the individual's ability to practice has been assessed and that the individual has been found capable of practicing according to acceptable and prevailing standards of care. The reports shall be made by individuals or providers approved by the board for making such assessments and shall describe the basis for their determination.

The board may reinstate a license suspended under this division after such demonstration and after the individual has entered into a written consent agreement.

When the impaired genetic counselor resumes practice, the board shall require continued monitoring of the genetic counselor. The monitoring shall include monitoring of compliance with the written consent agreement entered into before reinstatement or with conditions imposed by board order after a hearing, and, on termination of the consent agreement, submission to the board for at least two years of annual written progress reports made under penalty of falsification stating whether the genetic counselor has maintained sobriety.

(G) If the secretary and supervising member determine both of the following, they may recommend that the board suspend an individual's license to practice without a prior hearing:

(1) That there is clear and convincing evidence that a genetic counselor has violated division (B) of this section;

(2) That the individual's continued practice presents a danger of immediate and serious harm to the public.

Written allegations shall be prepared for consideration by the board. The board, on review of the allegations and by an affirmative vote of not fewer than six of its members, excluding the secretary and supervising member, may suspend a license without a prior hearing. A telephone conference call may be utilized for reviewing the allegations and taking the vote on the summary suspension.

The board shall issue a written order of suspension by certified mail or in person in accordance with section 119.07 of the Revised Code. The order shall not be subject to suspension by the court during pendency of any appeal filed under section 119.12 of the Revised Code. If the genetic counselor



requests an adjudicatory hearing by the board, the date set for the hearing shall be within fifteen days, but not earlier than seven days, after the genetic counselor requests the hearing, unless otherwise agreed to by both the board and the genetic counselor.

A summary suspension imposed under this division shall remain in effect, unless reversed on appeal, until a final adjudicative order issued by the board pursuant to this section and Chapter 119. of the Revised Code becomes effective. The board shall issue its final adjudicative order within sixty days after completion of its hearing. Failure to issue the order within sixty days shall result in dissolution of the summary suspension order, but shall not invalidate any subsequent, final adjudicative order.

(H) If the board takes action under division (B)(10), (12), or (13) of this section, and the judicial finding of guilt, guilty plea, or judicial finding of eligibility for intervention in lieu of conviction is overturned on appeal, on exhaustion of the criminal appeal, a petition for reconsideration of the order may be filed with the board along with appropriate court documents. On receipt of a petition and supporting court documents, the board shall reinstate the license to practice as a genetic counselor. The board may then hold an adjudication under Chapter 119. of the Revised Code to determine whether the individual committed the act in question. Notice of opportunity for hearing shall be given in accordance with Chapter 119. of the Revised Code. If the board finds, pursuant to an adjudication held under this division, that the individual committed the act, or if no hearing is requested, it may order any of the sanctions specified in division (B) of this section.

(I) The license to practice as a genetic counselor and the counselor's practice in this state are automatically suspended as of the date the genetic counselor pleads guilty to, is found by a judge or jury to be guilty of, or is subject to a judicial finding of eligibility for intervention in lieu of conviction in this state or treatment of intervention in lieu of conviction in another jurisdiction for any of the following criminal offenses in this state or a substantially equivalent criminal offense in another jurisdiction: aggravated murder, murder, voluntary manslaughter, felonious assault, kidnapping, rape, sexual battery, gross sexual imposition, aggravated arson, aggravated robbery, or aggravated burglary. Continued practice after the suspension shall be considered practicing without a license.

The board shall notify the individual subject to the suspension by certified mail or in person in accordance with section 119.07 of the Revised Code. If an individual whose license is suspended



under this division fails to make a timely request for an adjudication under Chapter 119. of the Revised Code, the board shall enter a final order permanently revoking the individual's license to practice.

(J) In any instance in which the board is required by Chapter 119. of the Revised Code to give notice of opportunity for hearing and the individual subject to the notice does not timely request a hearing in accordance with section 119.07 of the Revised Code, the board is not required to hold a hearing, but may adopt, by an affirmative vote of not fewer than six of its members, a final order that contains the board's findings. In the final order, the board may order any of the sanctions identified under division (A) or (B) of this section.

(K) Any action taken by the board under division (B) of this section resulting in a suspension shall be accompanied by a written statement of the conditions under which the license of the genetic counselor may be reinstated. The board shall adopt rules in accordance with Chapter 119. of the Revised Code governing conditions to be imposed for reinstatement. Reinstatement of a license suspended pursuant to division (B) of this section requires an affirmative vote of not fewer than six members of the board.

(L) When the board refuses to grant or issue a license to practice as a genetic counselor to an applicant, revokes an individual's license, refuses to renew an individual's license, or refuses to reinstate an individual's license, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a license to practice as a genetic counselor and the board shall not accept an application for reinstatement of the license or for issuance of a new license.

(M) Notwithstanding any other provision of the Revised Code, all of the following apply:

(1) The surrender of a license to practice as a genetic counselor is not effective unless or until accepted by the board. A telephone conference call may be utilized for acceptance of the surrender of an individual's license. The telephone conference call shall be considered a special meeting under division (F) of section 121.22 of the Revised Code. Reinstatement of a license surrendered to the board requires an affirmative vote of not fewer than six members of the board.





(2) An application made under this chapter for a license to practice may not be withdrawn without approval of the board.

(3) Failure by an individual to renew a license in accordance with section 4778.06 of the Revised Code shall not remove or limit the board's jurisdiction to take disciplinary action under this section against the individual.