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Sub. H. B. No. 292

Representative Gonzales

**Cosponsors: Representatives Grossman, Stebelton, Reece, Dovilla,
Gardner, Baker, Wachtmann, Fende, Antonio, Carney, Celeste, Duffey,
Garland, Yuko, Beck, Blair, Boyd, Cera, Combs, Conditt, Damschroder,
DeVitis, Hackett, Johnson, Maag, Milkovich, Pelanda, Ruhl, Sears, Slaby,
Stinziano, Weddington, Winburn**

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A B I L L

To amend sections 4731.07, 4731.19, 4731.22, 1
4731.222, 4731.224, 4731.24, and 4731.25 and to 2
enact sections 4778.01, 4778.02, 4778.03, 4778.04, 3
4778.05, 4778.06, 4778.07, 4778.08, 4778.09, 4
4778.10, 4778.11, 4778.12, 4778.14, 4778.15, 5
4778.16, 4778.18, 4778.19, 4778.20, 4778.21, 6
4778.22, 4778.24, and 4778.99 of the Revised Code 7
to establish licensure requirements for genetic 8
counselors and to modify certain laws governing 9
the State Medical Board. 10

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 4731.07, 4731.19, 4731.22, 4731.222, 11
4731.224, 4731.24, and 4731.25 be amended and sections 4778.01, 12
4778.02, 4778.03, 4778.04, 4778.05, 4778.06, 4778.07, 4778.08, 13
4778.09, 4778.10, 4778.11, 4778.12, 4778.14, 4778.15, 4778.16, 14
4778.18, 4778.19, 4778.20, 4778.21, 4778.22, 4778.24, and 4778.99 15
of the Revised Code be enacted to read as follows: 16

Sec. 4731.07. The state medical board shall keep a record of
its proceedings. It shall also keep a register of applicants for
certificates of registration and certificates to practice issued
under this chapter and Chapters 4730., 4760., 4762., and 4774. of
the Revised Code and licenses issued under Chapter 4778. of the
Revised Code. The register shall show the name of the applicant
and whether the applicant was granted or refused a certificate or
license. With respect to applicants to practice medicine and
surgery or osteopathic medicine and surgery, the register shall
show the name of the institution that granted the applicant the
degree of doctor of medicine or osteopathic medicine. The books
and records of the board shall be prima-facie evidence of matters
therein contained.

Sec. 4731.19. (A) A person seeking a certificate to practice
a limited branch of medicine shall file with the state medical
board an application in a manner prescribed by the board. The
application shall include or be accompanied by ~~evidence of~~ all of
the following:

(1) ~~That~~ Evidence that the applicant is at least eighteen
years of age and of good moral character;

(2) ~~That~~ Evidence that the applicant has attained high school
graduation or its equivalent;

(3) ~~That~~ Evidence that the applicant holds one of the
following:

(a) A diploma or certificate from a school, college, or
institution in good standing as determined by the board, showing
the completion of the required courses of instruction;

(b) A diploma or certificate from a school, college, or
institution in another state or jurisdiction showing completion of
a course of instruction that meets course requirements determined

by the board through rules adopted under section 4731.05 of the Revised Code;

(c) For not less than five years preceding application, a current license, registration, or certificate in good standing in another state for massage therapy or cosmetic therapy.

(4) Evidence that the applicant has successfully passed an examination, prescribed in rules described in section 4731.16 of the Revised Code, to determine competency to practice the applicable limited branch of medicine;

(5) An affidavit signed by the applicant attesting to the accuracy and truthfulness of information submitted under this section and consenting to release of information;

(6) Any other information the board requires.

(B) An applicant for a certificate to practice a limited branch of medicine shall comply with the requirements of section 4731.171 of the Revised Code.

(C) At the time of making application for a certificate to practice a limited branch of medicine, the applicant shall pay to the board a fee of one hundred fifty dollars, no part of which shall be returned. No application shall be considered filed until the board receives the appropriate fee.

(D) The board may investigate the application materials received under this section and contact any agency or organization for recommendations or other information about the applicant.

Sec. 4731.22. (A) The state medical board, by an affirmative vote of not fewer than six of its members, may revoke or may refuse to grant a certificate to a person found by the board to have committed fraud during the administration of the examination for a certificate to practice or to have committed fraud, misrepresentation, or deception in applying for or securing any

certificate to practice or certificate of registration issued by 77
the board. 78

(B) The board, by an affirmative vote of not fewer than six 79
members, shall, to the extent permitted by law, limit, revoke, or 80
suspend an individual's certificate to practice, refuse to 81
register an individual, refuse to reinstate a certificate, or 82
reprimand or place on probation the holder of a certificate for 83
one or more of the following reasons: 84

(1) Permitting one's name or one's certificate to practice or 85
certificate of registration to be used by a person, group, or 86
corporation when the individual concerned is not actually 87
directing the treatment given; 88

(2) Failure to maintain minimal standards applicable to the 89
selection or administration of drugs, or failure to employ 90
acceptable scientific methods in the selection of drugs or other 91
modalities for treatment of disease; 92

(3) Selling, giving away, personally furnishing, prescribing, 93
or administering drugs for other than legal and legitimate 94
therapeutic purposes or a plea of guilty to, a judicial finding of 95
guilt of, or a judicial finding of eligibility for intervention in 96
lieu of conviction of, a violation of any federal or state law 97
regulating the possession, distribution, or use of any drug; 98

(4) Willfully betraying a professional confidence. 99

For purposes of this division, "willfully betraying a 100
professional confidence" does not include providing any 101
information, documents, or reports to a child fatality review 102
board under sections 307.621 to 307.629 of the Revised Code and 103
does not include the making of a report of an employee's use of a 104
drug of abuse, or a report of a condition of an employee other 105
than one involving the use of a drug of abuse, to the employer of 106
the employee as described in division (B) of section 2305.33 of 107

the Revised Code. Nothing in this division affects the immunity 108
from civil liability conferred by that section upon a physician 109
who makes either type of report in accordance with division (B) of 110
that section. As used in this division, "employee," "employer," 111
and "physician" have the same meanings as in section 2305.33 of 112
the Revised Code. 113

(5) Making a false, fraudulent, deceptive, or misleading 114
statement in the solicitation of or advertising for patients; in 115
relation to the practice of medicine and surgery, osteopathic 116
medicine and surgery, podiatric medicine and surgery, or a limited 117
branch of medicine; or in securing or attempting to secure any 118
certificate to practice or certificate of registration issued by 119
the board. 120

As used in this division, "false, fraudulent, deceptive, or 121
misleading statement" means a statement that includes a 122
misrepresentation of fact, is likely to mislead or deceive because 123
of a failure to disclose material facts, is intended or is likely 124
to create false or unjustified expectations of favorable results, 125
or includes representations or implications that in reasonable 126
probability will cause an ordinarily prudent person to 127
misunderstand or be deceived. 128

(6) A departure from, or the failure to conform to, minimal 129
standards of care of similar practitioners under the same or 130
similar circumstances, whether or not actual injury to a patient 131
is established; 132

(7) Representing, with the purpose of obtaining compensation 133
or other advantage as personal gain or for any other person, that 134
an incurable disease or injury, or other incurable condition, can 135
be permanently cured; 136

(8) The obtaining of, or attempting to obtain, money or 137
anything of value by fraudulent misrepresentations in the course 138

of practice;	139
(9) 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;	140 141 142
(10) Commission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed;	143 144 145
(11) 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;	146 147 148
(12) 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;	149 150 151
(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;	152 153 154
(14) Commission of an act involving moral turpitude that constitutes a misdemeanor in this state, regardless of the jurisdiction in which the act was committed;	155 156 157
(15) Violation of the conditions of limitation placed by the board upon a certificate to practice;	158 159
(16) Failure to pay license renewal fees specified in this chapter;	160 161
(17) Except as authorized in section 4731.31 of the Revised Code, engaging in the division of fees for referral of patients, or the receiving of a thing of value in return for a specific referral of a patient to utilize a particular service or business;	162 163 164 165
(18) Subject to section 4731.226 of the Revised Code, violation of any provision of a code of ethics of the American medical association, the American osteopathic association, the	166 167 168

American podiatric medical association, or any other national professional organizations that the board specifies by rule. The state medical board shall obtain and keep on file current copies of the codes of ethics of the various national professional organizations. The individual whose certificate is being suspended or revoked shall not be found to have violated any provision of a code of ethics of an organization not appropriate to the individual's profession.

For purposes of this division, a "provision of a code of ethics of a national professional organization" does not include any provision that would preclude the making of a report by a physician of an employee's use of a drug of abuse, or of a condition of an employee other than one involving the use of a drug of abuse, to the employer of the employee as described in division (B) of section 2305.33 of the Revised Code. Nothing in this division affects the immunity from civil liability conferred by that section upon a physician who makes either type of report in accordance with division (B) of that section. As used in this division, "employee," "employer," and "physician" have the same meanings as in section 2305.33 of the Revised Code.

(19) Inability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness, including, but not limited to, physical deterioration that adversely affects cognitive, motor, or perceptive skills.

In enforcing this division, the board, upon a showing of a possible violation, may compel any individual authorized to practice by this chapter or who has submitted an application pursuant to this chapter to submit to a mental examination, physical examination, including an HIV test, or both a mental and a physical examination. 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 201
test ordered by the board constitutes an admission of the 202
allegations against the individual unless the failure is due to 203
circumstances beyond the individual's control, and a default and 204
final order may be entered without the taking of testimony or 205
presentation of evidence. If the board finds an individual unable 206
to practice because of the reasons set forth in this division, the 207
board shall require the individual to submit to care, counseling, 208
or treatment by physicians approved or designated by the board, as 209
a condition for initial, continued, reinstated, or renewed 210
authority to practice. An individual affected under this division 211
shall be afforded an opportunity to demonstrate to the board the 212
ability to resume practice in compliance with acceptable and 213
prevailing standards under the provisions of the individual's 214
certificate. For the purpose of this division, any individual who 215
applies for or receives a certificate to practice under this 216
chapter accepts the privilege of practicing in this state and, by 217
so doing, shall be deemed to have given consent to submit to a 218
mental or physical examination when directed to do so in writing 219
by the board, and to have waived all objections to the 220
admissibility of testimony or examination reports that constitute 221
a privileged communication. 222

(20) Except when civil penalties are imposed under section 223
4731.225 or 4731.281 of the Revised Code, and subject to section 224
4731.226 of the Revised Code, violating or attempting to violate, 225
directly or indirectly, or assisting in or abetting the violation 226
of, or conspiring to violate, any provisions of this chapter or 227
any rule promulgated by the board. 228

This division does not apply to a violation or attempted 229
violation of, assisting in or abetting the violation of, or a 230
conspiracy to violate, any provision of this chapter or any rule 231
adopted by the board that would preclude the making of a report by 232

a physician of an employee's use of a drug of abuse, or of a 233
condition of an employee other than one involving the use of a 234
drug of abuse, to the employer of the employee as described in 235
division (B) of section 2305.33 of the Revised Code. Nothing in 236
this division affects the immunity from civil liability conferred 237
by that section upon a physician who makes either type of report 238
in accordance with division (B) of that section. As used in this 239
division, "employee," "employer," and "physician" have the same 240
meanings as in section 2305.33 of the Revised Code. 241

(21) The violation of section 3701.79 of the Revised Code or 242
of any abortion rule adopted by the public health council pursuant 243
to section 3701.341 of the Revised Code; 244

(22) Any of the following actions taken by an agency 245
responsible for authorizing, certifying, or regulating an 246
individual to practice a health care occupation or provide health 247
care services in this state or another jurisdiction, for any 248
reason other than the nonpayment of fees: the limitation, 249
revocation, or suspension of an individual's license to practice; 250
acceptance of an individual's license surrender; denial of a 251
license; refusal to renew or reinstate a license; imposition of 252
probation; or issuance of an order of censure or other reprimand; 253

(23) The violation of section 2919.12 of the Revised Code or 254
the performance or inducement of an abortion upon a pregnant woman 255
with actual knowledge that the conditions specified in division 256
(B) of section 2317.56 of the Revised Code have not been satisfied 257
or with a heedless indifference as to whether those conditions 258
have been satisfied, unless an affirmative defense as specified in 259
division (H)(2) of that section would apply in a civil action 260
authorized by division (H)(1) of that section; 261

(24) The revocation, suspension, restriction, reduction, or 262
termination of clinical privileges by the United States department 263
of defense or department of veterans affairs or the termination or 264

suspension of a certificate of registration to prescribe drugs by 265
the drug enforcement administration of the United States 266
department of justice; 267

(25) Termination or suspension from participation in the 268
medicare or medicaid programs by the department of health and 269
human services or other responsible agency for any act or acts 270
that also would constitute a violation of division (B)(2), (3), 271
(6), (8), or (19) of this section; 272

(26) Impairment of ability to practice according to 273
acceptable and prevailing standards of care because of habitual or 274
excessive use or abuse of drugs, alcohol, or other substances that 275
impair ability to practice. 276

For the purposes of this division, any individual authorized 277
to practice by this chapter accepts the privilege of practicing in 278
this state subject to supervision by the board. By filing an 279
application for or holding a certificate to practice under this 280
chapter, an individual shall be deemed to have given consent to 281
submit to a mental or physical examination when ordered to do so 282
by the board in writing, and to have waived all objections to the 283
admissibility of testimony or examination reports that constitute 284
privileged communications. 285

If it has reason to believe that any individual authorized to 286
practice by this chapter or any applicant for certification to 287
practice suffers such impairment, the board may compel the 288
individual to submit to a mental or physical examination, or both. 289
The expense of the examination is the responsibility of the 290
individual compelled to be examined. Any mental or physical 291
examination required under this division shall be undertaken by a 292
treatment provider or physician who is qualified to conduct the 293
examination and who is chosen by the board. 294

Failure to submit to a mental or physical examination ordered 295

by the board constitutes an admission of the allegations against 296
the individual unless the failure is due to circumstances beyond 297
the individual's control, and a default and final order may be 298
entered without the taking of testimony or presentation of 299
evidence. If the board determines that the individual's ability to 300
practice is impaired, the board shall suspend the individual's 301
certificate or deny the individual's application and shall require 302
the individual, as a condition for initial, continued, reinstated, 303
or renewed certification to practice, to submit to treatment. 304

Before being eligible to apply for reinstatement of a 305
certificate suspended under this division, the impaired 306
practitioner shall demonstrate to the board the ability to resume 307
practice in compliance with acceptable and prevailing standards of 308
care under the provisions of the practitioner's certificate. The 309
demonstration shall include, but shall not be limited to, the 310
following: 311

(a) Certification from a treatment provider approved under 312
section 4731.25 of the Revised Code that the individual has 313
successfully completed any required inpatient treatment; 314

(b) Evidence of continuing full compliance with an aftercare 315
contract or consent agreement; 316

(c) Two written reports indicating that the individual's 317
ability to practice has been assessed and that the individual has 318
been found capable of practicing according to acceptable and 319
prevailing standards of care. The reports shall be made by 320
individuals or providers approved by the board for making the 321
assessments and shall describe the basis for their determination. 322

The board may reinstate a certificate suspended under this 323
division after that demonstration and after the individual has 324
entered into a written consent agreement. 325

When the impaired practitioner resumes practice, the board 326

shall require continued monitoring of the individual. The 327
monitoring shall include, but not be limited to, compliance with 328
the written consent agreement entered into before reinstatement or 329
with conditions imposed by board order after a hearing, and, upon 330
termination of the consent agreement, submission to the board for 331
at least two years of annual written progress reports made under 332
penalty of perjury stating whether the individual has maintained 333
sobriety. 334

(27) A second or subsequent violation of section 4731.66 or 335
4731.69 of the Revised Code; 336

(28) Except as provided in division (N) of this section: 337

(a) Waiving the payment of all or any part of a deductible or 338
copayment that a patient, pursuant to a health insurance or health 339
care policy, contract, or plan that covers the individual's 340
services, otherwise would be required to pay if the waiver is used 341
as an enticement to a patient or group of patients to receive 342
health care services from that individual; 343

(b) Advertising that the individual will waive the payment of 344
all or any part of a deductible or copayment that a patient, 345
pursuant to a health insurance or health care policy, contract, or 346
plan that covers the individual's services, otherwise would be 347
required to pay. 348

(29) Failure to use universal blood and body fluid 349
precautions established by rules adopted under section 4731.051 of 350
the Revised Code; 351

(30) Failure to provide notice to, and receive acknowledgment 352
of the notice from, a patient when required by section 4731.143 of 353
the Revised Code prior to providing nonemergency professional 354
services, or failure to maintain that notice in the patient's 355
file; 356

(31) Failure of a physician supervising a physician assistant 357

to maintain supervision in accordance with the requirements of 358
Chapter 4730. of the Revised Code and the rules adopted under that 359
chapter; 360

(32) Failure of a physician or podiatrist to enter into a 361
standard care arrangement with a clinical nurse specialist, 362
certified nurse-midwife, or certified nurse practitioner with whom 363
the physician or podiatrist is in collaboration pursuant to 364
section 4731.27 of the Revised Code or failure to fulfill the 365
responsibilities of collaboration after entering into a standard 366
care arrangement; 367

(33) Failure to comply with the terms of a consult agreement 368
entered into with a pharmacist pursuant to section 4729.39 of the 369
Revised Code; 370

(34) Failure to cooperate in an investigation conducted by 371
the board under division (F) of this section, including failure to 372
comply with a subpoena or order issued by the board or failure to 373
answer truthfully a question presented by the board at a 374
deposition or in written interrogatories, except that failure to 375
cooperate with an investigation shall not constitute grounds for 376
discipline under this section if a court of competent jurisdiction 377
has issued an order that either quashes a subpoena or permits the 378
individual to withhold the testimony or evidence in issue; 379

(35) Failure to supervise an acupuncturist in accordance with 380
Chapter 4762. of the Revised Code and the board's rules for 381
supervision of an acupuncturist; 382

(36) Failure to supervise an anesthesiologist assistant in 383
accordance with Chapter 4760. of the Revised Code and the board's 384
rules for supervision of an anesthesiologist assistant; 385

(37) Assisting suicide as defined in section 3795.01 of the 386
Revised Code; 387

(38) Failure to comply with the requirements of section 388

2317.561 of the Revised Code;	389
(39) Failure to supervise a radiologist assistant in accordance with Chapter 4774. of the Revised Code and the board's rules for supervision of radiologist assistants;	390 391 392
(40) Performing or inducing an abortion at an office or facility with knowledge that the office or facility fails to post the notice required under section 3701.791 of the Revised Code;	393 394 395
(41) Failure to comply with the standards and procedures established in rules under section 4731.054 of the Revised Code for the operation of or the provision of care at a pain management clinic;	396 397 398 399
(42) Failure to comply with the standards and procedures established in rules under section 4731.054 of the Revised Code for providing supervision, direction, and control of individuals at a pain management clinic;	400 401 402 403
(43) Failure to comply with the requirements of section 4729.79 of the Revised Code, unless the state board of pharmacy no longer maintains a drug database pursuant to section 4729.75 of the Revised Code;	404 405 406 407
(41) (44) Failure to comply with the requirements of section 2919.171 of the Revised Code or failure to submit to the department of health in accordance with a court order a complete report as described in section 2919.171 of the Revised Code;	408 409 410 411
<u>(45) Failure to supervise a genetic counselor holding a supervised practice license in accordance with Chapter 4778. of the Revised Code and the board's rules for supervision of the genetic counselor;</u>	412 413 414 415
<u>(46) Failure to fulfill the responsibilities of collaboration after entering into a collaborative agreement with a genetic counselor under division (B) of section 4778.11 of the Revised</u>	416 417 418

Code or failure to comply with the board's rules regarding such 419
agreements. 420

(C) Disciplinary actions taken by the board under divisions 421
(A) and (B) of this section shall be taken pursuant to an 422
adjudication under Chapter 119. of the Revised Code, except that 423
in lieu of an adjudication, the board may enter into a consent 424
agreement with an individual to resolve an allegation of a 425
violation of this chapter or any rule adopted under it. A consent 426
agreement, when ratified by an affirmative vote of not fewer than 427
six members of the board, shall constitute the findings and order 428
of the board with respect to the matter addressed in the 429
agreement. If the board refuses to ratify a consent agreement, the 430
admissions and findings contained in the consent agreement shall 431
be of no force or effect. 432

A telephone conference call may be utilized for ratification 433
of a consent agreement that revokes or suspends an individual's 434
certificate to practice. The telephone conference call shall be 435
considered a special meeting under division (F) of section 121.22 436
of the Revised Code. 437

If the board takes disciplinary action against an individual 438
under division (B) of this section for a second or subsequent plea 439
of guilty to, or judicial finding of guilt of, a violation of 440
section 2919.123 of the Revised Code, the disciplinary action 441
shall consist of a suspension of the individual's certificate to 442
practice for a period of at least one year or, if determined 443
appropriate by the board, a more serious sanction involving the 444
individual's certificate to practice. Any consent agreement 445
entered into under this division with an individual that pertains 446
to a second or subsequent plea of guilty to, or judicial finding 447
of guilt of, a violation of that section shall provide for a 448
suspension of the individual's certificate to practice for a 449
period of at least one year or, if determined appropriate by the 450

board, a more serious sanction involving the individual's 451
certificate to practice. 452

(D) For purposes of divisions (B)(10), (12), and (14) of this 453
section, the commission of the act may be established by a finding 454
by the board, pursuant to an adjudication under Chapter 119. of 455
the Revised Code, that the individual committed the act. The board 456
does not have jurisdiction under those divisions if the trial 457
court renders a final judgment in the individual's favor and that 458
judgment is based upon an adjudication on the merits. The board 459
has jurisdiction under those divisions if the trial court issues 460
an order of dismissal upon technical or procedural grounds. 461

(E) The sealing of conviction records by any court shall have 462
no effect upon a prior board order entered under this section or 463
upon the board's jurisdiction to take action under this section 464
if, based upon a plea of guilty, a judicial finding of guilt, or a 465
judicial finding of eligibility for intervention in lieu of 466
conviction, the board issued a notice of opportunity for a hearing 467
prior to the court's order to seal the records. The board shall 468
not be required to seal, destroy, redact, or otherwise modify its 469
records to reflect the court's sealing of conviction records. 470

(F)(1) The board shall investigate evidence that appears to 471
show that a person has violated any provision of this chapter or 472
any rule adopted under it. Any person may report to the board in a 473
signed writing any information that the person may have that 474
appears to show a violation of any provision of this chapter or 475
any rule adopted under it. In the absence of bad faith, any person 476
who reports information of that nature or who testifies before the 477
board in any adjudication conducted under Chapter 119. of the 478
Revised Code shall not be liable in damages in a civil action as a 479
result of the report or testimony. Each complaint or allegation of 480
a violation received by the board shall be assigned a case number 481
and shall be recorded by the board. 482

(2) Investigations of alleged violations of this chapter or 483
any rule adopted under it shall be supervised by the supervising 484
member elected by the board in accordance with section 4731.02 of 485
the Revised Code and by the secretary as provided in section 486
4731.39 of the Revised Code. The president may designate another 487
member of the board to supervise the investigation in place of the 488
supervising member. No member of the board who supervises the 489
investigation of a case shall participate in further adjudication 490
of the case. 491

(3) In investigating a possible violation of this chapter or 492
any rule adopted under this chapter, the board may administer 493
oaths, order the taking of depositions, inspect and copy any 494
books, accounts, papers, records, or documents, issue subpoenas, 495
and compel the attendance of witnesses and production of books, 496
accounts, papers, records, documents, and testimony, except that a 497
subpoena for patient record information shall not be issued 498
without consultation with the attorney general's office and 499
approval of the secretary and supervising member of the board. 500
Before issuance of a subpoena for patient record information, the 501
secretary and supervising member shall determine whether there is 502
probable cause to believe that the complaint filed alleges a 503
violation of this chapter or any rule adopted under it and that 504
the records sought are relevant to the alleged violation and 505
material to the investigation. The subpoena may apply only to 506
records that cover a reasonable period of time surrounding the 507
alleged violation. 508

On failure to comply with any subpoena issued by the board 509
and after reasonable notice to the person being subpoenaed, the 510
board may move for an order compelling the production of persons 511
or records pursuant to the Rules of Civil Procedure. 512

A subpoena issued by the board may be served by a sheriff, 513
the sheriff's deputy, or a board employee designated by the board. 514

Service of a subpoena issued by the board may be made by 515
delivering a copy of the subpoena to the person named therein, 516
reading it to the person, or leaving it at the person's usual 517
place of residence. When the person being served is a person whose 518
practice is authorized by this chapter, service of the subpoena 519
may be made by certified mail, restricted delivery, return receipt 520
requested, and the subpoena shall be deemed served on the date 521
delivery is made or the date the person refuses to accept 522
delivery. 523

A sheriff's deputy who serves a subpoena shall receive the 524
same fees as a sheriff. Each witness who appears before the board 525
in obedience to a subpoena shall receive the fees and mileage 526
provided for under section 119.094 of the Revised Code. 527

(4) All hearings and investigations of the board shall be 528
considered civil actions for the purposes of section 2305.252 of 529
the Revised Code. 530

(5) Information received by the board pursuant to an 531
investigation is confidential and not subject to discovery in any 532
civil action. 533

The board shall conduct all investigations and proceedings in 534
a manner that protects the confidentiality of patients and persons 535
who file complaints with the board. The board shall not make 536
public the names or any other identifying information about 537
patients or complainants unless proper consent is given or, in the 538
case of a patient, a waiver of the patient privilege exists under 539
division (B) of section 2317.02 of the Revised Code, except that 540
consent or a waiver of that nature is not required if the board 541
possesses reliable and substantial evidence that no bona fide 542
physician-patient relationship exists. 543

The board may share any information it receives pursuant to 544
an investigation, including patient records and patient record 545

information, with law enforcement agencies, other licensing boards, and other governmental agencies that are prosecuting, adjudicating, or investigating alleged violations of statutes or administrative rules. An agency or board that receives the information shall comply with the same requirements regarding confidentiality as those with which the state medical board must comply, notwithstanding any conflicting provision of the Revised Code or procedure of the agency or board that applies when it is dealing with other information in its possession. In a judicial proceeding, the information may be admitted into evidence only in accordance with the Rules of Evidence, but the court shall require that appropriate measures are taken to ensure that confidentiality is maintained with respect to any part of the information that contains names or other identifying information about patients or complainants whose confidentiality was protected by the state medical board when the information was in the board's possession. Measures to ensure confidentiality that may be taken by the court include sealing its records or deleting specific information from its records.

(6) On a quarterly basis, the board shall prepare a report that documents the disposition of all cases during the preceding three months. The report shall contain the following information for each case with which the board has completed its activities:

(a) The case number assigned to the complaint or alleged violation;

(b) The type of certificate to practice, if any, held by the individual against whom the complaint is directed;

(c) A description of the allegations contained in the complaint;

(d) The disposition of the case.

The report shall state how many cases are still pending and

shall be prepared in a manner that protects the identity of each 577
person involved in each case. The report shall be a public record 578
under section 149.43 of the Revised Code. 579

(G) If the secretary and supervising member determine both of 580
the following, they may recommend that the board suspend an 581
individual's certificate to practice without a prior hearing: 582

(1) That there is clear and convincing evidence that an 583
individual has violated division (B) of this section; 584

(2) That the individual's continued practice presents a 585
danger of immediate and serious harm to the public. 586

Written allegations shall be prepared for consideration by 587
the board. The board, upon review of those allegations and by an 588
affirmative vote of not fewer than six of its members, excluding 589
the secretary and supervising member, may suspend a certificate 590
without a prior hearing. A telephone conference call may be 591
utilized for reviewing the allegations and taking the vote on the 592
summary suspension. 593

The board shall issue a written order of suspension by 594
certified mail or in person in accordance with section 119.07 of 595
the Revised Code. The order shall not be subject to suspension by 596
the court during pendency of any appeal filed under section 119.12 597
of the Revised Code. If the individual subject to the summary 598
suspension requests an adjudicatory hearing by the board, the date 599
set for the hearing shall be within fifteen days, but not earlier 600
than seven days, after the individual requests the hearing, unless 601
otherwise agreed to by both the board and the individual. 602

Any summary suspension imposed under this division shall 603
remain in effect, unless reversed on appeal, until a final 604
adjudicative order issued by the board pursuant to this section 605
and Chapter 119. of the Revised Code becomes effective. The board 606
shall issue its final adjudicative order within seventy-five days 607

after completion of its hearing. A failure to issue the order 608
within seventy-five days shall result in dissolution of the 609
summary suspension order but shall not invalidate any subsequent, 610
final adjudicative order. 611

(H) If the board takes action under division (B)(9), (11), or 612
(13) of this section and the judicial finding of guilt, guilty 613
plea, or judicial finding of eligibility for intervention in lieu 614
of conviction is overturned on appeal, upon exhaustion of the 615
criminal appeal, a petition for reconsideration of the order may 616
be filed with the board along with appropriate court documents. 617
Upon receipt of a petition of that nature and supporting court 618
documents, the board shall reinstate the individual's certificate 619
to practice. The board may then hold an adjudication under Chapter 620
119. of the Revised Code to determine whether the individual 621
committed the act in question. Notice of an opportunity for a 622
hearing shall be given in accordance with Chapter 119. of the 623
Revised Code. If the board finds, pursuant to an adjudication held 624
under this division, that the individual committed the act or if 625
no hearing is requested, the board may order any of the sanctions 626
identified under division (B) of this section. 627

(I) The certificate to practice issued to an individual under 628
this chapter and the individual's practice in this state are 629
automatically suspended as of the date of the individual's second 630
or subsequent plea of guilty to, or judicial finding of guilt of, 631
a violation of section 2919.123 of the Revised Code, or the date 632
the individual pleads guilty to, is found by a judge or jury to be 633
guilty of, or is subject to a judicial finding of eligibility for 634
intervention in lieu of conviction in this state or treatment or 635
intervention in lieu of conviction in another jurisdiction for any 636
of the following criminal offenses in this state or a 637
substantially equivalent criminal offense in another jurisdiction: 638
aggravated murder, murder, voluntary manslaughter, felonious 639

assault, kidnapping, rape, sexual battery, gross sexual 640
imposition, aggravated arson, aggravated robbery, or aggravated 641
burglary. Continued practice after suspension shall be considered 642
practicing without a certificate. 643

The board shall notify the individual subject to the 644
suspension by certified mail or in person in accordance with 645
section 119.07 of the Revised Code. If an individual whose 646
certificate is automatically suspended under this division fails 647
to make a timely request for an adjudication under Chapter 119. of 648
the Revised Code, the board shall do whichever of the following is 649
applicable: 650

(1) If the automatic suspension under this division is for a 651
second or subsequent plea of guilty to, or judicial finding of 652
guilt of, a violation of section 2919.123 of the Revised Code, the 653
board shall enter an order suspending the individual's certificate 654
to practice for a period of at least one year or, if determined 655
appropriate by the board, imposing a more serious sanction 656
involving the individual's certificate to practice. 657

(2) In all circumstances in which division (I)(1) of this 658
section does not apply, enter a final order permanently revoking 659
the individual's certificate to practice. 660

(J) If the board is required by Chapter 119. of the Revised 661
Code to give notice of an opportunity for a hearing and if the 662
individual subject to the notice does not timely request a hearing 663
in accordance with section 119.07 of the Revised Code, the board 664
is not required to hold a hearing, but may adopt, by an 665
affirmative vote of not fewer than six of its members, a final 666
order that contains the board's findings. In that final order, the 667
board may order any of the sanctions identified under division (A) 668
or (B) of this section. 669

(K) Any action taken by the board under division (B) of this 670

section resulting in a suspension from practice shall be 671
accompanied by a written statement of the conditions under which 672
the individual's certificate to practice may be reinstated. The 673
board shall adopt rules governing conditions to be imposed for 674
reinstatement. Reinstatement of a certificate suspended pursuant 675
to division (B) of this section requires an affirmative vote of 676
not fewer than six members of the board. 677

(L) When the board refuses to grant a certificate to an 678
applicant, revokes an individual's certificate to practice, 679
refuses to register an applicant, or refuses to reinstate an 680
individual's certificate to practice, the board may specify that 681
its action is permanent. An individual subject to a permanent 682
action taken by the board is forever thereafter ineligible to hold 683
a certificate to practice and the board shall not accept an 684
application for reinstatement of the certificate or for issuance 685
of a new certificate. 686

(M) Notwithstanding any other provision of the Revised Code, 687
all of the following apply: 688

(1) The surrender of a certificate issued under this chapter 689
shall not be effective unless or until accepted by the board. A 690
telephone conference call may be utilized for acceptance of the 691
surrender of an individual's certificate to practice. The 692
telephone conference call shall be considered a special meeting 693
under division (F) of section 121.22 of the Revised Code. 694
Reinstatement of a certificate surrendered to the board requires 695
an affirmative vote of not fewer than six members of the board. 696

(2) An application for a certificate made under the 697
provisions of this chapter may not be withdrawn without approval 698
of the board. 699

(3) Failure by an individual to renew a certificate of 700
registration in accordance with this chapter shall not remove or 701

limit the board's jurisdiction to take any disciplinary action 702
under this section against the individual. 703

(N) Sanctions shall not be imposed under division (B)(28) of 704
this section against any person who waives deductibles and 705
copayments as follows: 706

(1) In compliance with the health benefit plan that expressly 707
allows such a practice. Waiver of the deductibles or copayments 708
shall be made only with the full knowledge and consent of the plan 709
purchaser, payer, and third-party administrator. Documentation of 710
the consent shall be made available to the board upon request. 711

(2) For professional services rendered to any other person 712
authorized to practice pursuant to this chapter, to the extent 713
allowed by this chapter and rules adopted by the board. 714

(O) Under the board's investigative duties described in this 715
section and subject to division (F) of this section, the board 716
shall develop and implement a quality intervention program 717
designed to improve through remedial education the clinical and 718
communication skills of individuals authorized under this chapter 719
to practice medicine and surgery, osteopathic medicine and 720
surgery, and podiatric medicine and surgery. In developing and 721
implementing the quality intervention program, the board may do 722
all of the following: 723

(1) Offer in appropriate cases as determined by the board an 724
educational and assessment program pursuant to an investigation 725
the board conducts under this section; 726

(2) Select providers of educational and assessment services, 727
including a quality intervention program panel of case reviewers; 728

(3) Make referrals to educational and assessment service 729
providers and approve individual educational programs recommended 730
by those providers. The board shall monitor the progress of each 731
individual undertaking a recommended individual educational 732

program. 733

(4) Determine what constitutes successful completion of an 734
individual educational program and require further monitoring of 735
the individual who completed the program or other action that the 736
board determines to be appropriate; 737

(5) Adopt rules in accordance with Chapter 119. of the 738
Revised Code to further implement the quality intervention 739
program. 740

An individual who participates in an individual educational 741
program pursuant to this division shall pay the financial 742
obligations arising from that educational program. 743

Sec. 4731.222. ~~Before restoring to good standing~~ (A) This 744
section applies to both of the following: 745

(1) An applicant seeking restoration of a certificate issued 746
under this chapter that has been in a suspended or inactive state 747
for any cause for more than two years, ~~or before issuing;~~ 748

(2) An applicant seeking issuance of a certificate pursuant 749
to section 4731.29, 4731.295, 4731.57, or 4731.571 of the Revised 750
Code ~~to an applicant~~ who for more than two years has not been 751
engaged in the practice of medicine and surgery, osteopathic 752
medicine and surgery, podiatric medicine and surgery, or a limited 753
branch of medicine as ~~an~~ any of the following: 754

(a) An active practitioner, ~~as a;~~ 755

(b) A participant in a program of graduate medical education, 756
as defined in section 4731.091 of the Revised Code, ~~as a;~~ 757

(c) A student in a college of podiatry determined by the 758
state medical board to be in good standing, ~~or as a;~~ 759

(d) A student in a school, college, or institution giving 760
instruction in a limited branch of medicine determined by the 761

board to be in good standing under section ~~4731.19~~ 4731.16 of the 762
Revised Code, ~~the state medical board may require the applicant to~~ 763
~~pass an oral or written examination, or both, to determine the~~ 764
~~applicant's present fitness to resume practice.~~ 765

~~The authority of (B) Before restoring a certificate to good~~ 766
~~standing for or issuing a certificate to an applicant subject to~~ 767
~~this section, the state medical board to~~ may impose terms and 768
conditions ~~includes~~ including the following: 769

~~(A)(1) Requiring the applicant to pass an oral or written~~ 770
~~examination, or both, to determine the applicant's present fitness~~ 771
~~to resume practice;~~ 772

(2) Requiring the applicant to obtain additional training and 773
to pass an examination upon completion of such training; 774

~~(B)(3) Restricting or limiting the extent, scope, or type of~~ 775
practice of the applicant. 776

The board shall consider the moral background and the 777
activities of the applicant during the period of suspension or 778
inactivity, in accordance with section 4731.08 of the Revised 779
Code. The board shall not restore a certificate under this section 780
unless the applicant complies with sections 4776.01 to 4776.04 of 781
the Revised Code. 782

Sec. 4731.224. (A) Within sixty days after the imposition of 783
any formal disciplinary action taken by any health care facility, 784
including a hospital, health care facility operated by a health 785
insuring corporation, ambulatory surgical center, or similar 786
facility, against any individual holding a valid certificate to 787
practice issued pursuant to this chapter, the chief administrator 788
or executive officer of the facility shall report to the state 789
medical board the name of the individual, the action taken by the 790
facility, and a summary of the underlying facts leading to the 791

action taken. Upon request, the board shall be provided certified 792
copies of the patient records that were the basis for the 793
facility's action. Prior to release to the board, the summary 794
shall be approved by the peer review committee that reviewed the 795
case or by the governing board of the facility. As used in this 796
division, "formal disciplinary action" means any action resulting 797
in the revocation, restriction, reduction, or termination of 798
clinical privileges for violations of professional ethics, or for 799
reasons of medical incompetence, medical malpractice, or drug or 800
alcohol abuse. "Formal disciplinary action" includes a summary 801
action, an action that takes effect notwithstanding any appeal 802
rights that may exist, and an action that results in an individual 803
surrendering clinical privileges while under investigation and 804
during proceedings regarding the action being taken or in return 805
for not being investigated or having proceedings held. "Formal 806
disciplinary action" does not include any action taken for the 807
sole reason of failure to maintain records on a timely basis or 808
failure to attend staff or section meetings. 809

The filing or nonfiling of a report with the board, 810
investigation by the board, or any disciplinary action taken by 811
the board, shall not preclude any action by a health care facility 812
to suspend, restrict, or revoke the individual's clinical 813
privileges. 814

In the absence of fraud or bad faith, no individual or entity 815
that provides patient records to the board shall be liable in 816
damages to any person as a result of providing the records. 817

(B) If any individual authorized to practice under this 818
chapter or any professional association or society of such 819
individuals believes that a violation of any provision of this 820
chapter, Chapter 4730., 4760., 4762., ~~or 4774.~~ or 4778. of the 821
Revised Code, or any rule of the board has occurred, the 822

individual, association, or society shall report to the board the 823
information upon which the belief is based. This division does not 824
require any treatment provider approved by the board under section 825
4731.25 of the Revised Code or any employee, agent, or 826
representative of such a provider to make reports with respect to 827
an impaired practitioner participating in treatment or aftercare 828
for substance abuse as long as the practitioner maintains 829
participation in accordance with the requirements of section 830
4731.25 of the Revised Code, and as long as the treatment provider 831
or employee, agent, or representative of the provider has no 832
reason to believe that the practitioner has violated any provision 833
of this chapter or any rule adopted under it, other than the 834
provisions of division (B)(26) of section 4731.22 of the Revised 835
Code. This division does not require reporting by any member of an 836
impaired practitioner committee established by a health care 837
facility or by any representative or agent of a committee or 838
program sponsored by a professional association or society of 839
individuals authorized to practice under this chapter to provide 840
peer assistance to practitioners with substance abuse problems 841
with respect to a practitioner who has been referred for 842
examination to a treatment program approved by the board under 843
section 4731.25 of the Revised Code if the practitioner cooperates 844
with the referral for examination and with any determination that 845
the practitioner should enter treatment and as long as the 846
committee member, representative, or agent has no reason to 847
believe that the practitioner has ceased to participate in the 848
treatment program in accordance with section 4731.25 of the 849
Revised Code or has violated any provision of this chapter or any 850
rule adopted under it, other than the provisions of division 851
(B)(26) of section 4731.22 of the Revised Code. 852

(C) Any professional association or society composed 853
primarily of doctors of medicine and surgery, doctors of 854
osteopathic medicine and surgery, doctors of podiatric medicine 855

and surgery, or practitioners of limited branches of medicine that 856
suspends or revokes an individual's membership for violations of 857
professional ethics, or for reasons of professional incompetence 858
or professional malpractice, within sixty days after a final 859
decision shall report to the board, on forms prescribed and 860
provided by the board, the name of the individual, the action 861
taken by the professional organization, and a summary of the 862
underlying facts leading to the action taken. 863

The filing of a report with the board or decision not to file 864
a report, investigation by the board, or any disciplinary action 865
taken by the board, does not preclude a professional organization 866
from taking disciplinary action against an individual. 867

(D) Any insurer providing professional liability insurance to 868
an individual authorized to practice under this chapter, or any 869
other entity that seeks to indemnify the professional liability of 870
such an individual, shall notify the board within thirty days 871
after the final disposition of any written claim for damages where 872
such disposition results in a payment exceeding twenty-five 873
thousand dollars. The notice shall contain the following 874
information: 875

(1) The name and address of the person submitting the 876
notification; 877

(2) The name and address of the insured who is the subject of 878
the claim; 879

(3) The name of the person filing the written claim; 880

(4) The date of final disposition; 881

(5) If applicable, the identity of the court in which the 882
final disposition of the claim took place. 883

(E) The board may investigate possible violations of this 884
chapter or the rules adopted under it that are brought to its 885

attention as a result of the reporting requirements of this 886
section, except that the board shall conduct an investigation if a 887
possible violation involves repeated malpractice. As used in this 888
division, "repeated malpractice" means three or more claims for 889
medical malpractice within the previous five-year period, each 890
resulting in a judgment or settlement in excess of twenty-five 891
thousand dollars in favor of the claimant, and each involving 892
negligent conduct by the practicing individual. 893

(F) All summaries, reports, and records received and 894
maintained by the board pursuant to this section shall be held in 895
confidence and shall not be subject to discovery or introduction 896
in evidence in any federal or state civil action involving a 897
health care professional or facility arising out of matters that 898
are the subject of the reporting required by this section. The 899
board may use the information obtained only as the basis for an 900
investigation, as evidence in a disciplinary hearing against an 901
individual whose practice is regulated under this chapter, or in 902
any subsequent trial or appeal of a board action or order. 903

The board may disclose the summaries and reports it receives 904
under this section only to health care facility committees within 905
or outside this state that are involved in credentialing or 906
recredentialing the individual or in reviewing the individual's 907
clinical privileges. The board shall indicate whether or not the 908
information has been verified. Information transmitted by the 909
board shall be subject to the same confidentiality provisions as 910
when maintained by the board. 911

(G) Except for reports filed by an individual pursuant to 912
division (B) of this section, the board shall send a copy of any 913
reports or summaries it receives pursuant to this section to the 914
individual who is the subject of the reports or summaries. The 915
individual shall have the right to file a statement with the board 916
concerning the correctness or relevance of the information. The 917

statement shall at all times accompany that part of the record in 918
contention. 919

(H) An individual or entity that, pursuant to this section, 920
reports to the board or refers an impaired practitioner to a 921
treatment provider approved by the board under section 4731.25 of 922
the Revised Code shall not be subject to suit for civil damages as 923
a result of the report, referral, or provision of the information. 924

(I) In the absence of fraud or bad faith, no professional 925
association or society of individuals authorized to practice under 926
this chapter that sponsors a committee or program to provide peer 927
assistance to practitioners with substance abuse problems, no 928
representative or agent of such a committee or program, and no 929
member of the state medical board shall be held liable in damages 930
to any person by reason of actions taken to refer a practitioner 931
to a treatment provider approved under section 4731.25 of the 932
Revised Code for examination or treatment. 933

Sec. 4731.24. Except as provided in sections 4731.281 and 934
4731.40 of the Revised Code, all receipts of the state medical 935
board, from any source, shall be deposited in the state treasury. 936
Until July 1, 1998, the funds shall be deposited to the credit of 937
the occupational licensing and regulatory fund. On and after July 938
1, 1998, the funds shall be deposited to the credit of the state 939
medical board operating fund, which is hereby created on July 1, 940
1998. All funds deposited into the state treasury under this 941
section shall be used solely for the administration and 942
enforcement of this chapter and Chapters 4730., 4760., 4762., and 943
4774., and 4778. of the Revised Code by the board. 944

Sec. 4731.25. The state medical board, in accordance with 945
Chapter 119. of the Revised Code, shall adopt and may amend and 946
rescind rules establishing standards for approval of physicians 947

and facilities as treatment providers for impaired practitioners 948
who are regulated under this chapter or Chapter 4730., 4760., 949
4762., ~~or 4774.~~ or 4778. of the Revised Code. The rules shall 950
include standards for both inpatient and outpatient treatment. The 951
rules shall provide that in order to be approved, a treatment 952
provider must have the capability of making an initial examination 953
to determine what type of treatment an impaired practitioner 954
requires. Subject to the rules, the board shall review and approve 955
treatment providers on a regular basis. The board, at its 956
discretion, may withdraw or deny approval subject to the rules. 957

An approved impaired practitioner treatment provider shall: 958

(A) Report to the board the name of any practitioner 959
suffering or showing evidence of suffering impairment as described 960
in division (B)(5) of section 4730.25 of the Revised Code, 961
division (B)(26) of section 4731.22 of the Revised Code, division 962
(B)(6) of section 4760.13 of the Revised Code, division (B)(6) of 963
section 4762.13 of the Revised Code, ~~or~~ division (B)(6) of section 964
4774.13 of the Revised Code, or division (B)(6) of section 4778.14 965
of the Revised Code who fails to comply within one week with a 966
referral for examination; 967

(B) Report to the board the name of any impaired practitioner 968
who fails to enter treatment within forty-eight hours following 969
the provider's determination that the practitioner needs 970
treatment; 971

(C) Require every practitioner who enters treatment to agree 972
to a treatment contract establishing the terms of treatment and 973
aftercare, including any required supervision or restrictions of 974
practice during treatment or aftercare; 975

(D) Require a practitioner to suspend practice upon entry 976
into any required inpatient treatment; 977

(E) Report to the board any failure by an impaired 978

practitioner to comply with the terms of the treatment contract 979
during inpatient or outpatient treatment or aftercare; 980

(F) Report to the board the resumption of practice of any 981
impaired practitioner before the treatment provider has made a 982
clear determination that the practitioner is capable of practicing 983
according to acceptable and prevailing standards of care; 984

(G) Require a practitioner who resumes practice after 985
completion of treatment to comply with an aftercare contract that 986
meets the requirements of rules adopted by the board for approval 987
of treatment providers; 988

(H) Report the identity of any practitioner practicing under 989
the terms of an aftercare contract to hospital administrators, 990
medical chiefs of staff, and chairpersons of impaired practitioner 991
committees of all health care institutions at which the 992
practitioner holds clinical privileges or otherwise practices. If 993
the practitioner does not hold clinical privileges at any health 994
care institution, the treatment provider shall report the 995
practitioner's identity to the impaired practitioner committee of 996
the county medical society, osteopathic academy, or podiatric 997
medical association in every county in which the practitioner 998
practices. If there are no impaired practitioner committees in the 999
county, the treatment provider shall report the practitioner's 1000
identity to the president or other designated member of the county 1001
medical society, osteopathic academy, or podiatric medical 1002
association. 1003

(I) Report to the board the identity of any practitioner who 1004
suffers a relapse at any time during or following aftercare. 1005

Any individual authorized to practice under this chapter who 1006
enters into treatment by an approved treatment provider shall be 1007
deemed to have waived any confidentiality requirements that would 1008
otherwise prevent the treatment provider from making reports 1009

required under this section. 1010

In the absence of fraud or bad faith, no person or 1011
organization that conducts an approved impaired practitioner 1012
treatment program, no member of such an organization, and no 1013
employee, representative, or agent of the treatment provider shall 1014
be held liable in damages to any person by reason of actions taken 1015
or recommendations made by the treatment provider or its 1016
employees, representatives, or agents. 1017

Sec. 4778.01. As used in this chapter: 1018

(A) "American board of genetic counseling" means the 1019
organization known by that name, its successor organization, or an 1020
equivalent organization recognized by the state medical board. 1021

(B) "American board of medical genetics" means the 1022
organization known by that name, its successor organization, or an 1023
equivalent organization recognized by the state medical board. 1024

(C) "Certified genetic counselor" means either of the 1025
following: 1026

(1) An individual who possesses the certified genetic 1027
counselor credential from the American board of genetic 1028
counseling; 1029

(2) An individual who is a diplomate of the American board of 1030
medical genetics. 1031

(D) "Collaborating physician" means a physician who has 1032
entered into a collaborative agreement with a genetic counselor 1033
under division (B) of section 4778.11 of the Revised Code. 1034

(E) "Collaborative agreement" means the document that is 1035
established under division (B) of section 4778.11 of the Revised 1036
Code by a genetic counselor and the genetic counselor's 1037
collaborating physician. 1038

(F) "Genetic counselor" means an individual who engages in any of the activities authorized under section 4778.11 of the Revised Code. 1039
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(G) "National society of genetic counselors" means the organization known by that name, its successor organization, or an equivalent organization recognized by the state medical board. 1042
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(H) "Physician" means an individual authorized under Chapter 4731. of the Revised Code to practice medicine and surgery or osteopathic medicine and surgery. 1045
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Sec. 4778.02. (A)(1) Except as provided in division (B) of this section, no person shall practice as a genetic counselor unless the person holds a current, valid license to practice as a genetic counselor issued under this chapter. 1048
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(2) No person shall use the title "genetic counselor," or otherwise hold the person out as a genetic counselor, unless the person holds a current, valid license to practice as a genetic counselor issued under this chapter. 1052
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(B) Division (A)(1) of this section does not apply to either of the following: 1056
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(1) A student performing an activity as part of a genetic counseling graduate program described in division (B)(2) of section 4778.03 of the Revised Code; 1058
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(2) A person who is authorized pursuant to another provision of the Revised Code to perform any of the activities that a genetic counselor is authorized to perform. 1061
1062
1063

Sec. 4778.03. (A) An individual seeking a license to practice as a genetic counselor shall file with the state medical board an application in a manner prescribed by the board. The application shall include all the information the board considers necessary to 1064
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process the application, including evidence satisfactory to the 1068
board that the applicant meets the requirements specified in 1069
division (B) of this section. 1070

At the time an application is submitted, the applicant shall 1071
pay the board an application fee of two hundred dollars. No part 1072
of the fee shall be returned to the applicant or transferred for 1073
purposes of another application. 1074

(B) To be eligible to receive a license to practice as a 1075
genetic counselor, an applicant shall demonstrate to the board 1076
that the applicant meets all of the following requirements: 1077

(1) Is at least eighteen years of age and of good moral 1078
character; 1079

(2) Has attained a master's degree or higher degree from a 1080
genetic counseling graduate program accredited by the American 1081
board of genetic counseling, inc.; 1082

(3) Is a certified genetic counselor; 1083

(4) Has satisfied any other requirements established by the 1084
board in rules adopted under section 4778.12 of the Revised Code. 1085

(C) The board shall review all applications received under 1086
this section. Not later than sixty days after receiving an 1087
application it considers complete, the board shall determine 1088
whether the applicant meets the requirements for a license to 1089
practice as a genetic counselor. The affirmative vote of not fewer 1090
than six members of the board is required to determine that the 1091
applicant meets the requirements for the license. 1092

Sec. 4778.04. In addition to any other eligibility 1093
requirement set forth in this chapter, each applicant for a 1094
license to practice as a genetic counselor shall comply with 1095
sections 4776.01 to 4776.04 of the Revised Code. The state medical 1096

board shall not grant to an applicant a license to practice as a 1097
genetic counselor unless the board, in its discretion, decides 1098
that the results of the criminal records check do not make the 1099
applicant ineligible for a license issued pursuant to section 1100
4778.05 of the Revised Code. 1101

Sec. 4778.05. If the state medical board determines under 1102
section 4778.03 of the Revised Code that an applicant meets the 1103
requirements for a license to practice as a genetic counselor, the 1104
secretary of the board shall issue the license to the applicant. 1105
The license shall expire biennially and may be renewed in 1106
accordance with section 4778.06 of the Revised Code. 1107

Sec. 4778.06. (A) An individual seeking to renew a license to 1108
practice as a genetic counselor shall, on or before the 1109
thirty-first day of January of each even-numbered year, apply for 1110
renewal of the license. The state medical board shall send renewal 1111
notices at least one month prior to the expiration date. 1112

Renewal applications shall be submitted to the board in a 1113
manner prescribed by the board. Each application shall be 1114
accompanied by a biennial renewal fee of one hundred fifty 1115
dollars. 1116

The applicant shall report any criminal offense to which the 1117
applicant has pleaded guilty, of which the applicant has been 1118
found guilty, or for which the applicant has been found eligible 1119
for intervention in lieu of conviction, since last signing an 1120
application for a license to practice as a genetic counselor. 1121

(B) To be eligible for renewal, a genetic counselor shall 1122
certify to the board that the counselor has done both of the 1123
following: 1124

(1) Maintained the counselor's status as a certified genetic 1125

counselor; 1126

(2) Completed at least thirty hours of continuing education 1127
in genetic counseling that has been approved by the national 1128
society of genetic counselors or American board of genetic 1129
counseling. 1130

(C) If an applicant submits a renewal application that the 1131
board considers to be complete and qualifies for renewal pursuant 1132
to division (B) of this section, the board shall issue to the 1133
applicant a renewed license to practice as a genetic counselor. 1134

(D) The board may require a random sample of genetic 1135
counselors to submit materials documenting that their status as 1136
certified genetic counselors has been maintained and that the 1137
number of hours of continuing education required under division 1138
(B)(2) of this section has been completed. 1139

If a genetic counselor certifies that the genetic counselor 1140
has completed the number of hours and type of continuing education 1141
required for renewal of a license, and the board finds through the 1142
random sample or any other means that the genetic counselor did 1143
not complete the requisite continuing education, the board may 1144
impose a civil penalty of not more than five thousand dollars. The 1145
board's finding shall be made pursuant to an adjudication under 1146
Chapter 119. of the Revised Code and by an affirmative vote of not 1147
fewer than six members. A civil penalty imposed under this 1148
division may be in addition to or in lieu of any other action the 1149
board may take under section 4778.14 of the Revised Code. 1150

Sec. 4778.07. (A) A license to practice as a genetic 1151
counselor issued under section 4778.05 of the Revised Code that is 1152
not renewed on or before its expiration date is automatically 1153
suspended on its expiration date. Continued practice after 1154
suspension shall be considered as practicing in violation of 1155
section 4778.02 of the Revised Code. 1156

(B) If a license has been suspended pursuant to this section 1157
for two years or less, the board shall reinstate the license upon 1158
an applicant's submission of a complete renewal application, the 1159
biennial renewal fee, and a monetary penalty of twenty-five 1160
dollars. 1161

(C)(1) If a license has been suspended pursuant to this 1162
section for more than two years, it may be restored upon an 1163
applicant's submission of a complete restoration application, the 1164
biennial renewal fee, and a monetary penalty of fifty dollars and 1165
compliance with sections 4776.01 to 4776.04 of the Revised Code. 1166
The board shall not restore a license unless the board, in its 1167
discretion, decides that the results of the criminal records check 1168
do not make the applicant ineligible for a license issued pursuant 1169
to section 4778.05 of the Revised Code. 1170

(2) The board may impose terms and conditions for the 1171
restoration, including the following: 1172

(a) Requiring the applicant to pass an oral or written 1173
examination, or both, to determine the applicant's present fitness 1174
to resume practice; 1175

(b) Requiring the applicant to obtain additional training and 1176
to pass an examination upon completion of such training; 1177

(c) Restricting or limiting the extent, scope, or type of 1178
practice of the applicant. 1179

Sec. 4778.08. (A) The state medical board may issue to an 1180
applicant under section 4778.03 of the Revised Code a license to 1181
practice as a genetic counselor, designated as a supervised 1182
practice license, if both of the following apply: 1183

(1) The applicant meets the requirements specified in section 1184
4778.03 of the Revised Code other than being a certified genetic 1185
counselor; 1186

(2) The applicant is in active candidate status with the American board of genetic counseling. 1187
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(B) A supervised practice license authorizes the holder to engage in the activities authorized by section 4778.11 of the Revised Code while the holder is under the general supervision of a genetic counselor licensed under section 4778.05 of the Revised Code or a physician. General supervision does not require the supervising licensed genetic counselor or physician to be present while the holder engages in such activities, but does require the licensed genetic counselor or physician to have professional responsibility for the holder and be readily accessible to the holder for professional consultation and assistance. 1189
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A supervised practice license is valid from the date of issuance until the earlier of one year from that date or the date a license is issued under section 4778.05 of the Revised Code. A supervised practice license may not be renewed. 1199
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Sec. 4778.09. (A) The state medical board may issue a license to practice as a genetic counselor, designated as a special activity license, to an individual from another state seeking to practice in this state genetic counseling associated with a rare disease. 1203
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(B) An applicant for a special activity license shall submit to the board all of the following information: 1208
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(1) Evidence that the applicant holds a current, unrestricted license to practice genetic counseling issued by another state or, if the applicant practices genetic counseling in another state that does not license genetic counselors, evidence that the applicant is a certified genetic counselor; 1210
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(2) Evidence that the applicant has actively practiced genetic counseling within the two-year period immediately 1215
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preceding application; 1217

(3) The name of the applicant's sponsoring institution or organization, a statement of need for genetic counseling from the sponsoring institution or organization, and the name of the rare disease for which the applicant will be practicing genetic counseling in this state. 1218
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(C) At the time an application is submitted, the applicant shall pay a fee of twenty-five dollars. No part of the fee shall be returned to the applicant or transferred for purposes of another application. 1223
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(D) A special activity license is valid for the shorter of thirty days or the duration of the genetic counseling associated with the rare disease for which the license was issued. The license may not be renewed. 1227
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(E) The holder of a special activity license may practice genetic counseling only to the extent that it is associated with the rare disease for which the license was issued. The license holder shall not bill a patient or any third party payer for genetic counseling provided in this state. 1231
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(F) The board may revoke a special activity license on receiving proof satisfactory to the board that the holder of the license has engaged in practice in this state outside the scope of the license or that there are grounds for action against the license holder under section 4778.14 of the Revised Code. 1236
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Sec. 4778.10. On application by the holder of a license to practice as a genetic counselor, the state medical board shall issue a duplicate license to replace one that is missing or damaged, to reflect a name change, or for any other reasonable cause. The fee for a duplicate license is thirty-five dollars. 1241
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Sec. 4778.11. (A) An individual who holds a valid license to 1246

<u>practice as a genetic counselor may engage in all of the following</u>	1247
<u>activities:</u>	1248
<u>(1) Obtain and evaluate the medical histories of a patient</u>	1249
<u>and the patient's family members to determine the risk for genetic</u>	1250
<u>or medical conditions and diseases in the patient, the patient's</u>	1251
<u>offspring, or the patient's family members;</u>	1252
<u>(2) Discuss with a patient and the patient's family the</u>	1253
<u>features, natural history, means of diagnosis, genetic and</u>	1254
<u>environmental factors, and management of risk for genetic or</u>	1255
<u>medical conditions and diseases;</u>	1256
<u>(3) Identify and coordinate genetic laboratory tests and</u>	1257
<u>other diagnostic studies as appropriate for genetic assessment;</u>	1258
<u>(4) Integrate the results of genetic laboratory tests and</u>	1259
<u>other diagnostic tests with individual and family medical</u>	1260
<u>histories;</u>	1261
<u>(5) Explain to a patient and the patient's family the</u>	1262
<u>clinical implications of the results of genetic laboratory tests</u>	1263
<u>and other diagnostic tests;</u>	1264
<u>(6) Evaluate the response of a patient or the patient's</u>	1265
<u>family members to one or more genetic conditions or the risk of</u>	1266
<u>reoccurrence and provide patient-centered counseling and guidance;</u>	1267
<u>(7) Identify and use community resources that provide</u>	1268
<u>medical, educational, financial, and psychosocial support and</u>	1269
<u>advocacy;</u>	1270
<u>(8) Provide medical, genetic, and counseling information to</u>	1271
<u>patients, their families, and other health care professionals;</u>	1272
<u>(9) Pursuant to a collaborative agreement, perform the</u>	1273
<u>activities specified in division (B) of this section.</u>	1274
<u>(B) A genetic counselor may enter into a collaborative</u>	1275

agreement with a physician who agrees to work with and provide 1276
medical support to the genetic counselor. The agreement shall be 1277
established as a written, formal document that memorializes the 1278
relationship between the genetic counselor and the physician and 1279
establishes the criteria governing the genetic counselor's 1280
performance of both of the following: 1281

(1) Order genetic or other tests for the purpose of 1282
diagnosing a medical condition or inherited disorder or 1283
determining the carrier status of one or more of the patient's 1284
family members; 1285

(2) Select the most appropriate, accurate, and cost-effective 1286
methods of diagnosis. 1287

Sec. 4778.12. The state medical board shall adopt rules in 1288
accordance with Chapter 119. of the Revised Code to implement and 1289
administer this chapter. The rules shall include the following: 1290

(A) Any standards and procedures not addressed in this 1291
chapter that the board considers necessary for issuing and 1292
renewing licenses under this chapter; 1293

(B) Any standards and procedures the board considers 1294
necessary to govern the practice of genetic counselors, the 1295
collaborative agreements between genetic counselors and 1296
collaborating physicians, and the supervision of genetic 1297
counselors holding supervised practice licenses; 1298

(C) Any other standards and procedures the board considers 1299
necessary for the administration and enforcement of this chapter. 1300

Sec. 4778.14. (A) The state medical board, by an affirmative 1301
vote of not fewer than six members, may revoke or may refuse to 1302
grant a license to practice as a genetic counselor to an 1303
individual found by the board to have committed fraud, 1304
misrepresentation, or deception in applying for or securing the 1305

<u>license.</u>	1306
<u>(B) The board, by an affirmative vote of not fewer than six</u>	1307
<u>members, shall, to the extent permitted by law, limit, revoke, or</u>	1308
<u>suspend an individual's license to practice as a genetic</u>	1309
<u>counselor, refuse to issue a license to an applicant, refuse to</u>	1310
<u>reinstate a license, or reprimand or place on probation the holder</u>	1311
<u>of a license for any of the following reasons:</u>	1312
<u>(1) Permitting the holder's name or license to be used by</u>	1313
<u>another person;</u>	1314
<u>(2) Failure to comply with the requirements of this chapter,</u>	1315
<u>Chapter 4731. of the Revised Code, or any rules adopted by the</u>	1316
<u>board;</u>	1317
<u>(3) Violating or attempting to violate, directly or</u>	1318
<u>indirectly, or assisting in or abetting the violation of, or</u>	1319
<u>conspiring to violate, any provision of this chapter, Chapter</u>	1320
<u>4731. of the Revised Code, or the rules adopted by the board;</u>	1321
<u>(4) A departure from, or failure to conform to, minimal</u>	1322
<u>standards of care of similar practitioners under the same or</u>	1323
<u>similar circumstances whether or not actual injury to the patient</u>	1324
<u>is established;</u>	1325
<u>(5) Inability to practice according to acceptable and</u>	1326
<u>prevailing standards of care by reason of mental illness or</u>	1327
<u>physical illness, including physical deterioration that adversely</u>	1328
<u>affects cognitive, motor, or perceptive skills;</u>	1329
<u>(6) Impairment of ability to practice according to acceptable</u>	1330
<u>and prevailing standards of care because of habitual or excessive</u>	1331
<u>use or abuse of drugs, alcohol, or other substances that impair</u>	1332
<u>ability to practice;</u>	1333
<u>(7) Willfully betraying a professional confidence;</u>	1334
<u>(8) Making a false, fraudulent, deceptive, or misleading</u>	1335

statement in securing or attempting to secure a license to 1336
practice as a genetic counselor. 1337

As used in this division, "false, fraudulent, deceptive, or 1338
misleading statement" means a statement that includes a 1339
misrepresentation of fact, is likely to mislead or deceive because 1340
of a failure to disclose material facts, is intended or is likely 1341
to create false or unjustified expectations of favorable results, 1342
or includes representations or implications that in reasonable 1343
probability will cause an ordinarily prudent person to 1344
misunderstand or be deceived. 1345

(9) The obtaining of, or attempting to obtain, money or a 1346
thing of value by fraudulent misrepresentations in the course of 1347
practice; 1348

(10) A plea of guilty to, a judicial finding of guilt of, or 1349
a judicial finding of eligibility for intervention in lieu of 1350
conviction for, a felony; 1351

(11) Commission of an act that constitutes a felony in this 1352
state, regardless of the jurisdiction in which the act was 1353
committed; 1354

(12) A plea of guilty to, a judicial finding of guilt of, or 1355
a judicial finding of eligibility for intervention in lieu of 1356
conviction for, a misdemeanor committed in the course of practice; 1357

(13) A plea of guilty to, a judicial finding of guilt of, or 1358
a judicial finding of eligibility for intervention in lieu of 1359
conviction for, a misdemeanor involving moral turpitude; 1360

(14) Commission of an act in the course of practice that 1361
constitutes a misdemeanor in this state, regardless of the 1362
jurisdiction in which the act was committed; 1363

(15) Commission of an act involving moral turpitude that 1364
constitutes a misdemeanor in this state, regardless of the 1365

<u>jurisdiction in which the act was committed;</u>	1366
<u>(16) A plea of guilty to, a judicial finding of guilt of, or</u>	1367
<u>a judicial finding of eligibility for intervention in lieu of</u>	1368
<u>conviction for violating any state or federal law regulating the</u>	1369
<u>possession, distribution, or use of any drug, including</u>	1370
<u>trafficking in drugs;</u>	1371
<u>(17) Any of the following actions taken by an agency</u>	1372
<u>responsible for authorizing, certifying, or regulating an</u>	1373
<u>individual to practice a health care occupation or provide health</u>	1374
<u>care services in this state or in another jurisdiction, for any</u>	1375
<u>reason other than the nonpayment of fees: the limitation,</u>	1376
<u>revocation, or suspension of an individual's license to practice;</u>	1377
<u>acceptance of an individual's license surrender; denial of a</u>	1378
<u>license; refusal to renew or reinstate a license; imposition of</u>	1379
<u>probation; or issuance of an order of censure or other reprimand;</u>	1380
<u>(18) Violation of the conditions placed by the board on a</u>	1381
<u>license to practice as a genetic counselor;</u>	1382
<u>(19) Failure to cooperate in an investigation conducted by</u>	1383
<u>the board under section 4778.18 of the Revised Code, including</u>	1384
<u>failure to comply with a subpoena or order issued by the board or</u>	1385
<u>failure to answer truthfully a question presented by the board at</u>	1386
<u>a deposition or in written interrogatories, except that failure to</u>	1387
<u>cooperate with an investigation shall not constitute grounds for</u>	1388
<u>discipline under this section if a court of competent jurisdiction</u>	1389
<u>has issued an order that either quashes a subpoena or permits the</u>	1390
<u>individual to withhold the testimony or evidence in issue;</u>	1391
<u>(20) Failure to maintain the individual's status as a</u>	1392
<u>certified genetic counselor;</u>	1393
<u>(21) Failure to comply with the code of ethics established by</u>	1394
<u>the national society of genetic counselors.</u>	1395
<u>(C) Disciplinary actions taken by the board under divisions</u>	1396

(A) and (B) of this section shall be taken pursuant to an 1397
adjudication under Chapter 119. of the Revised Code, except that 1398
in lieu of an adjudication, the board may enter into a consent 1399
agreement with a genetic counselor or applicant to resolve an 1400
allegation of a violation of this chapter or any rule adopted 1401
under it. A consent agreement, when ratified by an affirmative 1402
vote of not fewer than six members of the board, shall constitute 1403
the findings and order of the board with respect to the matter 1404
addressed in the agreement. If the board refuses to ratify a 1405
consent agreement, the admissions and findings contained in the 1406
consent agreement shall be of no force or effect. 1407

A telephone conference call may be utilized for ratification 1408
of a consent agreement that revokes or suspends an individual's 1409
license. The telephone conference call shall be considered a 1410
special meeting under division (F) of section 121.22 of the 1411
Revised Code. 1412

(D) For purposes of divisions (B)(11), (14), and (15) of this 1413
section, the commission of the act may be established by a finding 1414
by the board, pursuant to an adjudication under Chapter 119. of 1415
the Revised Code, that the applicant or license holder committed 1416
the act in question. The board shall have no jurisdiction under 1417
these divisions in cases where the trial court renders a final 1418
judgment in the license holder's favor and that judgment is based 1419
upon an adjudication on the merits. The board shall have 1420
jurisdiction under these divisions in cases where the trial court 1421
issues an order of dismissal on technical or procedural grounds. 1422

(E) The sealing of conviction records by any court shall have 1423
no effect on a prior board order entered under the provisions of 1424
this section or on the board's jurisdiction to take action under 1425
the provisions of this section if, based upon a plea of guilty, a 1426
judicial finding of guilt, or a judicial finding of eligibility 1427
for intervention in lieu of conviction, the board issued a notice 1428

of opportunity for a hearing or took other formal action under 1429
Chapter 119. of the Revised Code prior to the court's order to 1430
seal the records. The board shall not be required to seal, 1431
destroy, redact, or otherwise modify its records to reflect the 1432
court's sealing of conviction records. 1433

(F) For purposes of this division, any individual who holds a 1434
license to practice as a genetic counselor, or applies for a 1435
license, shall be deemed to have given consent to submit to a 1436
mental or physical examination when directed to do so in writing 1437
by the board and to have waived all objections to the 1438
admissibility of testimony or examination reports that constitute 1439
a privileged communication. 1440

(1) In enforcing division (B)(5) of this section, the board, 1441
on a showing of a possible violation, may compel any individual 1442
who holds a license to practice as a genetic counselor or who has 1443
applied for a license to practice as a genetic counselor to submit 1444
to a mental or physical examination, or both. A physical 1445
examination may include an HIV test. The expense of the 1446
examination is the responsibility of the individual compelled to 1447
be examined. Failure to submit to a mental or physical examination 1448
or consent to an HIV test ordered by the board constitutes an 1449
admission of the allegations against the individual unless the 1450
failure is due to circumstances beyond the individual's control, 1451
and a default and final order may be entered without the taking of 1452
testimony or presentation of evidence. If the board finds a 1453
genetic counselor unable to practice because of the reasons set 1454
forth in division (B)(5) of this section, the board shall require 1455
the genetic counselor to submit to care, counseling, or treatment 1456
by physicians approved or designated by the board, as a condition 1457
for an initial, continued, reinstated, or renewed license to 1458
practice. An individual affected by this division shall be 1459
afforded an opportunity to demonstrate to the board the ability to 1460

resume practicing in compliance with acceptable and prevailing standards of care. 1461
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(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. 1463
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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. 1473
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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: 1483
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(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; 1488
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(b) Evidence of continuing full compliance with an aftercare 1491

contract or consent agreement; 1492

(c) Two written reports indicating that the individual's 1493
ability to practice has been assessed and that the individual has 1494
been found capable of practicing according to acceptable and 1495
prevailing standards of care. The reports shall be made by 1496
individuals or providers approved by the board for making such 1497
assessments and shall describe the basis for their determination. 1498

The board may reinstate a license suspended under this 1499
division after such demonstration and after the individual has 1500
entered into a written consent agreement. 1501

When the impaired genetic counselor resumes practice, the 1502
board shall require continued monitoring of the genetic counselor. 1503
The monitoring shall include monitoring of compliance with the 1504
written consent agreement entered into before reinstatement or 1505
with conditions imposed by board order after a hearing, and, on 1506
termination of the consent agreement, submission to the board for 1507
at least two years of annual written progress reports made under 1508
penalty of falsification stating whether the genetic counselor has 1509
maintained sobriety. 1510

(G) If the secretary and supervising member determine both of 1511
the following, they may recommend that the board suspend an 1512
individual's license to practice without a prior hearing: 1513

(1) That there is clear and convincing evidence that a 1514
genetic counselor has violated division (B) of this section; 1515

(2) That the individual's continued practice presents a 1516
danger of immediate and serious harm to the public. 1517

Written allegations shall be prepared for consideration by 1518
the board. The board, on review of the allegations and by an 1519
affirmative vote of not fewer than six of its members, excluding 1520
the secretary and supervising member, may suspend a license 1521
without a prior hearing. A telephone conference call may be 1522

utilized for reviewing the allegations and taking the vote on the 1523
summary suspension. 1524

The board shall issue a written order of suspension by 1525
certified mail or in person in accordance with section 119.07 of 1526
the Revised Code. The order shall not be subject to suspension by 1527
the court during pendency of any appeal filed under section 119.12 1528
of the Revised Code. If the genetic counselor requests an 1529
adjudicatory hearing by the board, the date set for the hearing 1530
shall be within fifteen days, but not earlier than seven days, 1531
after the genetic counselor requests the hearing, unless otherwise 1532
agreed to by both the board and the genetic counselor. 1533

A summary suspension imposed under this division shall remain 1534
in effect, unless reversed on appeal, until a final adjudicative 1535
order issued by the board pursuant to this section and Chapter 1536
119. of the Revised Code becomes effective. The board shall issue 1537
its final adjudicative order within sixty days after completion of 1538
its hearing. Failure to issue the order within sixty days shall 1539
result in dissolution of the summary suspension order, but shall 1540
not invalidate any subsequent, final adjudicative order. 1541

(H) If the board takes action under division (B)(10), (12), 1542
or (13) of this section, and the judicial finding of guilt, guilty 1543
plea, or judicial finding of eligibility for intervention in lieu 1544
of conviction is overturned on appeal, on exhaustion of the 1545
criminal appeal, a petition for reconsideration of the order may 1546
be filed with the board along with appropriate court documents. On 1547
receipt of a petition and supporting court documents, the board 1548
shall reinstate the license to practice as a genetic counselor. 1549
The board may then hold an adjudication under Chapter 119. of the 1550
Revised Code to determine whether the individual committed the act 1551
in question. Notice of opportunity for hearing shall be given in 1552
accordance with Chapter 119. of the Revised Code. If the board 1553
finds, pursuant to an adjudication held under this division, that 1554

the individual committed the act, or if no hearing is requested, 1555
it may order any of the sanctions specified in division (B) of 1556
this section. 1557

(I) The license to practice as a genetic counselor and the 1558
counselor's practice in this state are automatically suspended as 1559
of the date the genetic counselor pleads guilty to, is found by a 1560
judge or jury to be guilty of, or is subject to a judicial finding 1561
of eligibility for intervention in lieu of conviction in this 1562
state or treatment of intervention in lieu of conviction in 1563
another jurisdiction for any of the following criminal offenses in 1564
this state or a substantially equivalent criminal offense in 1565
another jurisdiction: aggravated murder, murder, voluntary 1566
manslaughter, felonious assault, kidnapping, rape, sexual battery, 1567
gross sexual imposition, aggravated arson, aggravated robbery, or 1568
aggravated burglary. Continued practice after the suspension shall 1569
be considered practicing without a license. 1570

The board shall notify the individual subject to the 1571
suspension by certified mail or in person in accordance with 1572
section 119.07 of the Revised Code. If an individual whose license 1573
is suspended under this division fails to make a timely request 1574
for an adjudication under Chapter 119. of the Revised Code, the 1575
board shall enter a final order permanently revoking the 1576
individual's license to practice. 1577

(J) In any instance in which the board is required by Chapter 1578
119. of the Revised Code to give notice of opportunity for hearing 1579
and the individual subject to the notice does not timely request a 1580
hearing in accordance with section 119.07 of the Revised Code, the 1581
board is not required to hold a hearing, but may adopt, by an 1582
affirmative vote of not fewer than six of its members, a final 1583
order that contains the board's findings. In the final order, the 1584
board may order any of the sanctions identified under division (A) 1585
or (B) of this section. 1586

(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. 1587
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(L) When the board refuses to grant a license to practice as a genetic counselor to an applicant, revokes an individual's license, refuses to renew a 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. 1596
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(M) Notwithstanding any other provision of the Revised Code, all of the following apply: 1605
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(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. 1607
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(2) An application made under this chapter for a license to practice may not be withdrawn without approval of the board. 1615
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(3) Failure by an individual to renew a license in accordance 1617

with section 4778.06 of the Revised Code shall not remove or limit 1618
the board's jurisdiction to take disciplinary action under this 1619
section against the individual. 1620

Sec. 4778.15. On receipt of a notice pursuant to section 1621
3123.43 of the Revised Code, the state medical board shall comply 1622
with sections 3123.41 to 3123.50 of the Revised Code and any 1623
applicable rules adopted under section 3123.63 of the Revised Code 1624
with respect to a license issued under this chapter. 1625

Sec. 4778.16. If the state medical board has reason to 1626
believe that any person who has been granted a license to practice 1627
as a genetic counselor under this chapter is mentally ill or 1628
mentally incompetent, it may file in the probate court of the 1629
county in which the person has a legal residence an affidavit in 1630
the form prescribed in section 5122.11 of the Revised Code and 1631
signed by the board secretary or a member of the board secretary's 1632
staff, whereupon the same proceedings shall be had as provided in 1633
Chapter 5122. of the Revised Code. The attorney general may 1634
represent the board in any proceeding commenced under this 1635
section. 1636

If any person who has been granted a license to practice is 1637
adjudged by a probate court to be mentally ill or mentally 1638
incompetent, the person's license shall be automatically suspended 1639
until the person has filed with the state medical board a 1640
certified copy of an adjudication by a probate court of the 1641
person's subsequent restoration to competency or has submitted to 1642
the board proof, satisfactory to the board, that the person has 1643
been discharged as having a restoration to competency in the 1644
manner and form provided in section 5122.38 of the Revised Code. 1645
The judge of the probate court shall forthwith notify the state 1646
medical board of an adjudication of mental illness or mental 1647
incompetence, and shall note any suspension of a license in the 1648

margin of the court's record of such license. 1649

Sec. 4778.18. (A) The state medical board shall investigate 1650
evidence that appears to show that any individual has violated 1651
this chapter or the rules adopted under it. Any person may report 1652
to the board in a signed writing any information the person has 1653
that appears to show a violation of this chapter or rules adopted 1654
under it. In the absence of bad faith, a person who reports such 1655
information or testifies before the board in an adjudication 1656
conducted under Chapter 119. of the Revised Code shall not be 1657
liable for civil damages as a result of reporting the information 1658
or providing testimony. Each complaint or allegation of a 1659
violation received by the board shall be assigned a case number 1660
and be recorded by the board. 1661

(B) Investigations of alleged violations of this chapter or 1662
rules adopted under it shall be supervised by the supervising 1663
member elected by the board in accordance with section 4731.02 of 1664
the Revised Code and by the board's secretary, pursuant to section 1665
4778.20 of the Revised Code. The board's president may designate 1666
another member of the board to supervise the investigation in 1667
place of the supervising member. A member of the board who 1668
supervises the investigation of a case shall not participate in 1669
further adjudication of the case. 1670

(C) In investigating a possible violation of this chapter or 1671
the rules adopted under it, the board may administer oaths, order 1672
the taking of depositions, inspect and copy any books, accounts, 1673
papers, records, or documents, issue subpoenas, and compel the 1674
attendance of witnesses and production of books, accounts, papers, 1675
records, documents, and testimony, except that a subpoena for 1676
patient record information shall not be issued without 1677
consultation with the attorney general's office and approval of 1678
the secretary and supervising member of the board. Before issuance 1679

of a subpoena for patient record information, the secretary and 1680
supervising member shall determine whether there is probable cause 1681
to believe that the complaint filed alleges a violation of this 1682
chapter or the rules adopted under it and that the records sought 1683
are relevant to the alleged violation and material to the 1684
investigation. The subpoena may apply only to records that cover a 1685
reasonable period of time surrounding the alleged violation. 1686

On failure to comply with any subpoena issued by the board 1687
and after reasonable notice to the person being subpoenaed, the 1688
board may move for an order compelling the production of persons 1689
or records pursuant to the Rules of Civil Procedure. 1690

A subpoena issued by the board may be served by a sheriff, 1691
the sheriff's deputy, or a board employee designated by the board. 1692
Service of a subpoena issued by the board may be made by 1693
delivering a copy of the subpoena to the person named therein, 1694
reading it to the person, or leaving it at the person's usual 1695
place of residence. When the person being served is a genetic 1696
counselor, service of the subpoena may be made by certified mail, 1697
restricted delivery, return receipt requested, and the subpoena 1698
shall be deemed served on the date delivery is made or the date 1699
the person refuses to accept delivery. 1700

A sheriff's deputy who serves a subpoena shall receive the 1701
same fees as a sheriff. Each witness who appears before the board 1702
in obedience to a subpoena shall receive the fees and mileage 1703
provided for witnesses in civil cases in the courts of common 1704
pleas. 1705

(D) All hearings and investigations of the board shall be 1706
considered civil actions for the purposes of section 2305.252 of 1707
the Revised Code. 1708

(E) Information received by the board pursuant to an 1709
investigation is confidential and not subject to discovery in any 1710

civil action. 1711

The board shall conduct all investigations and proceedings in 1712
a manner that protects the confidentiality of patients and persons 1713
who file complaints with the board. The board shall not make 1714
public the names or any other identifying information about 1715
patients or complainants unless proper consent is given. 1716

The board may share any information it receives pursuant to 1717
an investigation, including patient records and patient record 1718
information, with law enforcement agencies, other licensing 1719
boards, and other governmental agencies that are prosecuting, 1720
adjudicating, or investigating alleged violations of statutes or 1721
administrative rules. An agency or board that receives the 1722
information shall comply with the same requirements regarding 1723
confidentiality as those with which the state medical board must 1724
comply, notwithstanding any conflicting provision of the Revised 1725
Code or procedure of the agency or board that applies when it is 1726
dealing with other information in its possession. In a judicial 1727
proceeding, the information may be admitted into evidence only in 1728
accordance with the Rules of Evidence, but the court shall require 1729
that appropriate measures are taken to ensure that confidentiality 1730
is maintained with respect to any part of the information that 1731
contains names or other identifying information about patients or 1732
complainants whose confidentiality was protected by the state 1733
medical board when the information was in the board's possession. 1734
Measures to ensure confidentiality that may be taken by the court 1735
include sealing its records or deleting specific information from 1736
its records. 1737

(F) The state medical board shall develop requirements for 1738
and provide appropriate initial training and continuing education 1739
for investigators employed by the board to carry out its duties 1740
under this chapter. The training and continuing education may 1741
include enrollment in courses operated or approved by the Ohio 1742

peace officer training commission that the board considers 1743
appropriate under conditions set forth in section 109.79 of the 1744
Revised Code. 1745

(G) On a quarterly basis, the board shall prepare a report 1746
that documents the disposition of all cases during the preceding 1747
three months. The report shall contain the following information 1748
for each case with which the board has completed its activities: 1749

(1) The case number assigned to the complaint or alleged 1750
violation; 1751

(2) The type of license, if any, held by the individual 1752
against whom the complaint is directed; 1753

(3) A description of the allegations contained in the 1754
complaint; 1755

(4) The disposition of the case. 1756

The report shall state how many cases are still pending, and 1757
shall be prepared in a manner that protects the identity of each 1758
individual involved in each case. The report is a public record 1759
for purposes of section 149.43 of the Revised Code. 1760

Sec. 4778.19. (A) As used in this section, "prosecutor" has 1761
the same meaning as in section 2935.01 of the Revised Code. 1762

(B) Whenever any individual holding a valid license to 1763
practice as a genetic counselor pleads guilty to, is subject to a 1764
judicial finding of guilt of, or is subject to a judicial finding 1765
of eligibility for intervention in lieu of conviction for a 1766
violation of Chapter 2907., 2925., or 3719. of the Revised Code or 1767
of any substantively comparable ordinance of a municipal 1768
corporation in connection with the person's practice, the 1769
prosecutor in the case, on forms prescribed and provided by the 1770
state medical board, shall promptly notify the board of the 1771
conviction. Within thirty days of receipt of that information, the 1772

board shall initiate action in accordance with Chapter 119. of the 1773
Revised Code to determine whether to suspend or revoke the license 1774
under section 4778.16 of the Revised Code. 1775

(C) The prosecutor in any case against any person holding a 1776
valid license to practice as a genetic counselor, on forms 1777
prescribed and provided by the state medical board, shall notify 1778
the board of any of the following: 1779

(1) A plea of guilty to, a finding of guilt by a jury or 1780
court of, or judicial finding of eligibility for intervention in 1781
lieu of conviction for a felony, or a case in which the trial 1782
court issues an order of dismissal upon technical or procedural 1783
grounds of a felony charge; 1784

(2) A plea of guilty to, a finding of guilt by a jury or 1785
court of, or judicial finding of eligibility for intervention in 1786
lieu of conviction for a misdemeanor committed in the course of 1787
practice, or a case in which the trial court issues an order of 1788
dismissal upon technical or procedural grounds of a charge of a 1789
misdemeanor, if the alleged act was committed in the course of 1790
practice; 1791

(3) A plea of guilty to, a finding of guilt by a jury or 1792
court of, or judicial finding of eligibility for intervention in 1793
lieu of conviction for a misdemeanor involving moral turpitude, or 1794
a case in which the trial court issues an order of dismissal upon 1795
technical or procedural grounds of a charge of a misdemeanor 1796
involving moral turpitude. 1797

The report shall include the name and address of the license 1798
holder, the nature of the offense for which the action was taken, 1799
and the certified court documents recording the action. 1800

Sec. 4778.20. The secretary of the state medical board shall 1801
enforce the laws relating to the practice of genetic counselors. 1802

If the secretary has knowledge or notice of a violation of this 1803
chapter or the rules adopted under it, the secretary shall 1804
investigate the matter, and, upon probable cause appearing, file a 1805
complaint and prosecute the offender. When requested by the 1806
secretary, the prosecuting attorney of the proper county shall 1807
take charge of and conduct the prosecution. 1808

Sec. 4778.21. The attorney general, the prosecuting attorney 1809
of any county in which the offense was committed or the offender 1810
resides, the state medical board, or any other person having 1811
knowledge of a person engaged either directly or by complicity in 1812
practicing as a genetic counselor without having first obtained 1813
under this chapter a license to practice as a genetic counselor, 1814
may, in accordance with provisions of the Revised Code governing 1815
injunctions, maintain an action in the name of the state to enjoin 1816
any person from engaging either directly or by complicity in 1817
unlawfully practicing as a genetic counselor by applying for an 1818
injunction in any court of competent jurisdiction. 1819

Prior to application for an injunction, the secretary of the 1820
state medical board shall notify the individual allegedly engaged 1821
either directly or by complicity in the unlawful practice by 1822
registered mail that the secretary has received information 1823
indicating that this individual is so engaged. The individual 1824
shall answer the secretary within thirty days showing that the 1825
individual is either properly licensed for the stated activity or 1826
that the individual is not in violation of this chapter. If the 1827
answer is not forthcoming within thirty days after notice by the 1828
secretary, the secretary shall request that the attorney general, 1829
the prosecuting attorney of the county in which the offense was 1830
committed or the offender resides, or the state medical board 1831
proceed as authorized in this section. 1832

Upon the filing of a verified petition in court, the court 1833

shall conduct a hearing on the petition and shall give the same 1834
preference to this proceeding as is given all proceedings under 1835
Chapter 119. of the Revised Code, irrespective of the position of 1836
the proceeding on the calendar of the court. 1837

Injunction proceedings shall be in addition to, and not in 1838
lieu of, all penalties and other remedies provided in this 1839
chapter. 1840

Sec. 4778.22. All fees, penalties, and other funds received 1841
by the state medical board under this chapter shall be deposited 1842
in accordance with section 4731.24 of the Revised Code. 1843

Sec. 4778.24. In the absence of fraud or bad faith, the 1844
state medical board, a current or former board member, an agent of 1845
the board, a person formally requested by the board to be the 1846
board's representative, or an employee of the board shall not be 1847
held liable in damages to any person as the result of any act, 1848
omission, proceeding, conduct, or decision related to official 1849
duties undertaken or performed pursuant to this chapter. If any 1850
such person asks to be defended by the state against any claim or 1851
action arising out of any act, omission, proceeding, conduct, or 1852
decision related to the person's official duties, and if the 1853
request is made in writing at a reasonable time before trial and 1854
the person requesting defense cooperates in good faith in the 1855
defense of the claim or action, the state shall provide and pay 1856
for the person's defense and shall pay any resulting judgment, 1857
compromise, or settlement. At no time shall the state pay any part 1858
of a claim or judgment that is for punitive or exemplary damages. 1859

Sec. 4778.99. Whoever violates section 4778.02 of the Revised 1860
Code is guilty of a misdemeanor of the first degree on a first 1861
offense and felony of the fifth degree on each subsequent offense. 1862
1863

Section 2. That existing sections 4731.07, 4731.19, 4731.22, 1864
4731.222, 4731.224, 4731.24, and 4731.25 of the Revised Code are 1865
hereby repealed. 1866

Section 3. Section 4731.22 of the Revised Code is presented 1867
in this act as a composite of the section as amended by both H.B. 1868
78 and Am. Sub. H.B. 93 of the 129th General Assembly. The General 1869
Assembly, applying the principle stated in division (B) of section 1870
1.52 of the Revised Code that amendments are to be harmonized if 1871
reasonably capable of simultaneous operation, finds that the 1872
composite is the resulting version of the section in effect prior 1873
to the effective date of the section as presented in this act. 1874

Section 4. Section 4778.02 of the Revised Code, as enacted by 1875
this act, shall take effect one year after the effective date of 1876
this act. 1877