

# State of South Dakota

## EIGHTY-FOURTH SESSION LEGISLATIVE ASSEMBLY, 2009

229Q0369

### HOUSE BILL NO. 1092

Introduced by: Representatives Rave, Blake, Boomgarden, Burg, Cutler, Dennert, Engels, Hunhoff (Bernie), Lucas, Peters, Pitts, Rausch, Solberg, Street, Tidemann, and Vanderlinde and Senators Hunhoff (Jean), Abdallah, Adelstein, Ahlers, Bartling, Brown, Dempster, Gant, Gillespie, Gray, Hansen (Tom), Heidepriem, Jerstad, Knudson, Merchant, Miles, and Nesselhuf

1 FOR AN ACT ENTITLED, An Act to regulate the practice of genetic counseling and to prohibit  
2 the practice of genetic counseling without a license.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Terms used in this Act mean:

- 5 (1) "ABGC," the American Board of Genetic Counseling;
- 6 (2) "ABMG," the American Board of Medical Genetics;
- 7 (3) "Board," The South Dakota Board of Medical and Osteopathic Examiners;
- 8 (4) "Genetic counselor," a person licensed under this Act to engage in the practice of  
9 genetic counseling;
- 10 (5) "Referral," a written or telecommunicated authorization for genetic counseling  
11 services from a licensed physician or a licensed certified nurse midwife, licensed  
12 certified nurse practitioner, licensed clinical nurse specialist, or a licensed physician  
13 assistant, who has an agreement and signed protocols with a licensed physician who



authorizes referrals to a genetic counselor; and

- (6) "Supervision," the ongoing direct clinical review, for the purposes of training or teaching, by a supervisor approved by the board who monitors the performance or a person's supervised interaction with a client and provides regular documented face-to-face consultation, guidance, and instructions with respect to the clinical skills and competencies of the person supervised. This supervision may be by personal contact or indirect contact by telecommunication.

Section 2. For the purposes of this Act, genetic counseling is a communication process, conducted by appropriately trained persons that includes:

- (1) Assisting a person, the person's family, a health care provider, or the public with comprehending the issues inherent to genetic counseling. Such assistance may include the following:
- (a) Appreciating the medical, psychological, and social implications of a disorder including features, variability, usual course, and management options;
  - (b) Learning how genetic factors contribute to the disorder and affect the chance for recurrence of the condition in other family members;
  - (c) Understanding available options for coping with, preventing, or reducing the chance of occurrence or recurrence of a condition;
  - (d) Selecting the most appropriate, accurate, and cost-effective methods of diagnosis; or
  - (e) Understanding genetic tests, including diagnostic genetic tests, screening tests, or predispositional genetic tests, coordinating testing for inherited disorders, and interpreting complex genetic test results;
- (2) Assessing the likelihood of the occurrence or recurrence of an abnormality in the

fetus in structure, function, or metabolism or of any potentially inherited or genetically influenced condition. Such assessment may include the following:

- (a) Obtaining and analyzing a complete health history of a person and the person's family;
- (b) Reviewing pertinent medical records;
- (c) Evaluating the risks from exposure to possible mutagens or teratogens; or
- (d) Discussing genetic testing or other evaluations to diagnose a condition or determine the carrier status of one or more family members; and

(3) Facilitating an individual's or family's:

- (a) Exploration of the perception of risk and burden associated with a genetic disorder;
- (b) Decision-making regarding testing or medical interventions consistent with the individual's or family's beliefs, goals, needs, resources, or cultural, ethical, or moral views; and
- (c) Adjustment and adaptation to the condition or the genetic risk by addressing needs for psychological, social, and medical support.

Section 3. For the purposes of this Act, the practice of genetic counseling is the process of helping people understand and adapt to the medical, psychological, and familial implications of genetic contributions to disease performed pursuant to a referral. This process integrates the following:

- (1) Interpretation of family and medical histories to assess the chance of disease occurrence or recurrence;
- (2) Education about inheritance, testing, management, prevention, resources, and research; and

(3) Counseling to promote informed decisions and adaptation to the risk or condition.

Section 4. No person may engage in the practice of genetic counseling, act or represent himself or herself to be a genetic counselor, or use such titles as genetic counselor, licensed genetic counselor, gene counselor, genetic associate, or any words, letters, abbreviations, or insignia, such as certified genetic counselor (CGC), indicating or implying that such person is a genetic counselor, unless such person holds a license or temporary license and otherwise complies with the provisions of this Act and the rules adopted pursuant to this Act. However, any qualified and licensed health care professional who is practicing within the professional's scope of practice may engage in the practice of genetic counseling, without being licensed pursuant to this Act, but may not use the title, genetic counselor, or any other title indicating or implying that the person is a genetic counselor unless licensed as such in this state. A violation of this section is a Class 1 misdemeanor.

Section 5. Any person desiring to engage in the practice of genetic counseling in this state shall apply to the board for a license and pay the license fee. The application shall contain such information as the board may require. The license fee shall be established by the board by rules promulgated pursuant to chapter 1-26. The license fee may not exceed two hundred dollars. The board may grant a license to any applicant who gives satisfactory proof of being of at least eighteen years of age and who is of good moral character and also fulfills the following requirements:

(1) Education at one of the following levels:

(a) Master's degree from a genetic counseling training program that is accredited by the ABGC and approved by the board; or

(b) Doctoral degree from a medical genetics training program that is accredited by the ABMG and approved by the board; and

1       (2)     Successful completion of all requirements of the certification examination within a  
2               period not to exceed four years from initial examination to successful completion and  
3               with no more than two attempts.

4       Section 6. The board may, in compliance with chapter 1-26, refuse to grant a license under  
5       this Act for unprofessional, immoral, or dishonorable conduct on the part of the applicant.

6       Section 7. No licensed genetic counselor may provide genetic counseling to individuals,  
7       couples, groups, or families without a documented referral from a physician, certified nurse  
8       midwife, licensed certified nurse practitioner, licensed clinical nurse specialist, or a licensed  
9       physician assistant. The licensed physician, certified nurse midwife, licensed certified nurse  
10      practitioner, licensed clinical nurse specialist, or licensed physician assistant shall maintain  
11      supervision of the patient. The licensed genetic counselor shall submit reports to the physician,  
12      certified nurse midwife, licensed certified nurse practitioner, licensed clinical nurse specialist,  
13      or licensed physician assistant on any services provided. No genetic testing may be provided  
14      unless ordered by a physician, certified nurse midwife, licensed certified nurse practitioner,  
15      licensed clinical nurse specialist, or licensed physician assistant.

16      Section 8. A licensed genetic counselor may provide a general seminar without a referral to  
17      a group or organization on genetic counseling if the seminar does not include individual, couple,  
18      or family specific counseling.

19      Section 9. The board may issue a temporary license to an applicant who has paid the  
20      temporary license fee, meets all the qualifications for licensure as established in section 5 of this  
21      Act with the exception of certification by the ABMG or ABGC, and has submitted evidence to  
22      the board that the applicant is a candidate accepted to write the examination or is awaiting the  
23      results of the first examination for which the applicant is eligible after graduation from an  
24      approved genetic counseling program. The board shall establish a temporary license fee by rules

1 promulgated pursuant to chapter 1-26. The temporary license fee may not exceed one hundred  
2 dollars. A temporary licensee shall take the next available examination. If any temporary  
3 licensee fails the first sitting of ABGC or ABMG certification examination or the temporary  
4 license expires, then he or she may reapply for a second temporary license. A temporary license  
5 may not be issued if the applicant has failed the ABGC or ABMG certification examination  
6 more than twice. A temporary license expires on the occurrence of the following:

- 7 (1) Issuance of a regular license;
- 8 (2) Failure to pass the board-approved examination; or
- 9 (3) Expiration of the term for which the temporary license was issued.

10 Section 10. Any licensee practicing pursuant to the authority of a temporary license shall  
11 practice under the supervision of a licensed genetic counselor or a physician approved by the  
12 board with current ABMG certification in clinical genetics.

13 Section 11. Each license issued pursuant to this Act shall be renewed annually on a date set  
14 by the board. The board shall renew a license upon payment of the renewal fee, submission of  
15 a renewal application in a form approved by the board, and evidence satisfactory to the board  
16 of the applicant's successful completion, within a three year period prior to the application for  
17 license renewal of five continuing education units or fifty contact hours. Any genetic counselor  
18 who maintains current certification by the ABGC or ABMG may document compliance with  
19 this requirement by providing proof of current certification by the ABGC or ABMG. The board  
20 shall establish the renewal fee by rules promulgated pursuant to chapter 1-26. The fee may not  
21 exceed one hundred dollars.

22 Section 12. The board shall promulgate rules pursuant to chapter 1-26 pertaining to fees,  
23 licensure, investigations, and disciplinary proceedings.

24 Section 13. The board may cancel, revoke, suspend, or limit the license of any genetic

1 counselor issued pursuant to this Act upon satisfactory proof by a preponderance of the  
2 evidence, in compliance with chapter 1-26, of such licensee's professional incompetence, or  
3 unprofessional or dishonorable conduct as defined in §§ 36-4-29 and 36-4-30, or proof of a  
4 violation of this Act in any respect.

5 Section 14. Upon application, the board may reinstate and renew a license to practice to any  
6 person whose license has been cancelled, suspended, or revoked. However, no license that has  
7 been cancelled or revoked may be reinstated and renewed prior to one year after the cancellation  
8 or revocation. The reinstatement and renewal of any license may be made in such manner and  
9 form and under such conditions as the board may require.

10 Section 15. The board shall appoint a genetic counselor advisory committee composed of  
11 a minimum of one genetic counselor and three physicians licensed pursuant to chapter 36-4.  
12 Each committee member shall serve a term of three years. However, the terms of initial  
13 appointees shall be staggered so that no more than one member's term expires in any one year.  
14 No committee member may be appointed to more than three consecutive full terms. If a vacancy  
15 occurs, the board shall appoint a person to fill the unexpired term. The committee shall meet at  
16 least annually or as deemed necessary to conduct business. The advisory committee shall assist  
17 the board in the regulation of genetic counselors pursuant to this Act. The committee shall also  
18 make recommendations to the board regarding rules promulgated pursuant to this Act.