

VOLUME 45, ISSUE 23  
ISSUE DATE: DECEMBER 2, 2013  
**RULE ADOPTIONS**

LAW AND PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS  
**STATE BOARD OF MEDICAL EXAMINERS  
GENETIC COUNSELING ADVISORY COMMITTEE**

**Adopted New Rules: N.J.A.C. 13:35-14**

**Genetic Counseling Advisory Committee Rules**

Proposed: November 5, 2012, at 44 N.J.R. 2447(a). (see also 45 N.J.R. 734(a))

Adopted: September 11, 2013, by the State Board of Medical Examiners, George J. Scott, D.P.M., D.O., President.

Filed: October 31, 2013, as R.2013 d.136, **with substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 45:9-37.115.

Effective Date: December 2, 2013.

Operative Date: March 2, 2014.

Expiration Date: May 3, 2018.

**Summary** of Public Comments and Agency Responses:

The official comment period ended May 1, 2013. The Board received comments from the following individuals:

1. Lawrence Downs, Esq., Chief Executive Officer, Medical Society of New Jersey
2. Niecee Singer Schonberger, National Society of Genetic Counselors (NSGC)
3. Rachel Klein, Human Genetics Association of NJ
4. Hetal Vig, Cancer Institute of New Jersey
5. Tressie Dalaya, NSGC

6. Michelle Lyons, Human Genetics Association of NJ

[page=2479] 1. COMMENT: Two commenters request that the comment period be extended.

RESPONSE: Pursuant to a notice published in the New Jersey Register on April 1, 2013, at 45 N.J.R. 734(a), the Committee extended the comment period to May 1, 2013.

2. COMMENT: Two commenters support the adopted new rules.

RESPONSE: The Committee thanks the commenters for their support.

3. COMMENT: A commenter contends that all medical health professionals should be required to accurately identify their education and training. The commenter contends that the new rules do not establish how licensed genetic counselors should hold themselves out to the public. The commenter is concerned that licensed genetic counselors who hold doctoral degrees could present themselves as "doctors." The commenter contends that this would be misleading and that the regulations should prohibit licensed genetic counselors from holding themselves out as "doctors in genetic counseling."

RESPONSE: The Committee agrees that health care professionals should accurately identify their education and training and believes that P.L. 2009, c. 41 (N.J.S.A. 45:9-37.111 et seq.) establishes that individuals licensed by the Committee will be identified as "licensed genetic counselors." The Committee does not believe it is appropriate to prohibit an individual from using an academic title that he or she has earned. If it becomes apparent that licensed genetic counselors who use the academic title of "doctor" are creating undue confusion for patients who receive genetic counseling services, the Committee will discuss the need for regulatory amendments at that time.

4. COMMENT: A commenter contends that every healthcare professional who provides genetic counseling services should be held to the same standard. The commenter contends that the public will not appreciate the difference between a nurse, a genetic counselor, or a physician.

RESPONSE: The Committee points out that N.J.S.A. 45:9-37.117 establishes that nurses and physicians are not required to meet the same standards as licensed genetic counselors in order to provide genetic counseling services.

5. COMMENT: A commenter points out that S555, which would revise genetic counselor's scope of practice and more clearly exempt physicians from the requirements of the Genetic Counselor's Licensing Act, has been passed by the Senate and is currently under review in the Assembly. The commenter asks that the Committee consider this legislative intent in its new rules.

RESPONSE: After the commenter submitted his comment, S555 was approved by the Assembly and the Governor. It was enacted as P.L. 2013, c. 30 on March 12, 2013. Prior to the enactment of the amendment to the Genetic Counselor's Licensing Act, P.L. 2013, c. 30, the definition of "genetic counseling" in N.J.S.A. 45:9-37.113 included "interpreting and explaining genetic

laboratory tests and other diagnostic studies." This definition has been amended to take out the term "interpreting." The amended definition of "genetic counseling" now includes "explaining the clinical implications of genetic laboratory tests and other diagnostic studies and their results; integrating genetic laboratory test results and other diagnostic studies with personal and family medical history to assess and communicate risk factors for genetic or medical conditions and diseases." P.L. 2013, c. 30 also changed the phrase "assessing psychosocial factors, recognizing social, educational, and cultural issues" to replace the comma between "psychosocial factors" and "recognizing social, educational, and cultural issues" with a semicolon. This change clarifies that recognizing social, educational, and cultural issues is separate from assessing psychosocial factors. The Board has changed N.J.A.C. 13:35-14.2 and 14.8 upon adoption to reflect the changes to the definition of "genetic counseling" from P.L. 2013, c. 30.

P.L. 2013, c. 30 revised the exemption to licensing requirements for a person licensed to practice medicine and surgery in New Jersey. The original provision required that such a person be acting within the scope of his or her profession and be doing work consistent with that person's training. P.L. 2013, c. 30 removed these qualifications to the exemption. The original law prohibited a person licensed to practice medicine and surgery from identifying him- or herself as a "genetic counselor." The amendments to the law prohibit such a person from using the title "licensed genetic counselor." The Board has changed N.J.A.C. 13:35-14.1 upon adoption to reflect these changes.

6. COMMENT: One commenter asks why the requirements for continuing education are different than those of the American Board of Genetic Counseling.

RESPONSE: The American Board of Genetic Counseling continuing education requirements are based on a five-year renewal cycle. The Committee's continuing education requirements are based on the biennial renewal cycle for licensure established by N.J.S.A. 45:9-119.

7. COMMENT: A commenter recommends that the term "interpreting" in N.J.A.C. 13:35-14.8(a)1 be changed to "assessing." The commenter contends that this change would make the rule consistent with N.J.A.C. 13:35-14.8(a)4, 5, and 6.

RESPONSE: As "interpreting" is the term that is used in the definition of "genetic counseling" in N.J.S.A. 45:9-37.113, it is appropriate to use this term in N.J.A.C. 13:35-14.8(a)1.

8. COMMENT: One commenter recommends that the new rules be amended to require licensed genetic counselors to refer to a physician or a Medical Geneticist when there is evidence of a disease or condition that requires medical diagnosis or further medical attention.

RESPONSE: The Committee expects that licensed genetic counselors, acting as healthcare professionals, will refer patients to physicians or other healthcare professionals when appropriate. If it becomes apparent that licensed genetic counselors are not acting in such a professional manner, the Committee will discuss the need for regulatory amendments at that time.

9. COMMENT: One commenter is concerned with N.J.A.C. 13:35-14.11. The commenter asks if other healthcare professionals are prohibited from soliciting clients. The commenter also asks for a definition of "soliciting clients," if there is a difference between soliciting clients and offering services, and if a licensed genetic counselor is permitted to offer services directly to a client or only to a representative of the client. The commenter posits three situations, a licensed genetic counselor calling a potential client to set up an appointment at the request of a physician, a physician directing a patient to a licensed genetic counselor, and a licensed genetic counselor meeting with a physician to discuss referrals for genetic counseling, and asks how N.J.A.C. 13:35-14.11 would affect the posited situations.

RESPONSE: Other healthcare professionals are prohibited from soliciting clients. There is a difference between soliciting clients and offering services. Soliciting entails appealing to clients to use services as opposed to simply offering services. A licensed genetic counselor would be able to offer services directly to a potential client and N.J.A.C. 13:35-14.11 would not prohibit a licensed genetic counselor from engaging in the practices posited by the commenter. The Committee points out that a licensed genetic counselor who discusses referrals with a physician would be prohibited from paying or receiving a fee for such referrals.

10. COMMENT: A commenter contends that the fees charged by the Committee are too high.

RESPONSE: N.J.S.A. 45:1-3.2 requires that the fees established by the Committee be set at a level that defrays the expenses incurred by the Committee. It is the agency's position that the fees are based on an estimate of these expenses.

### **Federal Standards Statement**

A Federal standards analysis is not required because there are no Federal laws or standards applicable to the adopted new rules.

**Full text** of the adopted new rules follows (additions to proposal indicated in boldface with asterisks **\*thus\***; deletions from proposal indicated in brackets with asterisks \*[thus]\*):

## **SUBCHAPTER 14. GENETIC COUNSELING ADVISORY COMMITTEE**

### **13:35-14.1 Purpose and scope**

(a) The purpose of this subchapter is to implement the provisions of P.L. 2009, c. 41 (N.J.S.A. 45:9-37.111 et seq.), which created the Genetic Counseling Advisory Committee under the Board of Medical Examiners.

[page=2480] (b) This subchapter shall apply to all applicants who seek licensure by the Committee as a genetic counselor and to all persons who are licensed by the Committee as genetic counselors in this State.

(c) This subchapter does not apply to any person who is:

1. Licensed by the State to practice medicine and surgery, \*[or licensed as a registered professional nurse, when acting within the scope of the person's profession and performing work of a nature consistent with the person's training,]\* so long as the person does not hold him- or herself out to the public as a **\*licensed\*** genetic counselor;

**\*2. Licensed by the State as a registered professional nurse, when acting within the scope of the person's profession and performing work of a nature consistent with the person's training, so long as the person does not hold him- or herself out to the public as a genetic counselor;\***

\*[2.]\* **\*3.\*** A student enrolled in an educational program accredited by the American Board of Genetic Counseling or its successor, so long as the student is practicing as part of a supervised course of study and is clearly designated by the title "genetic counseling intern" or a title of similar import;

\*[3.]\* **\*4.\*** A graduate from an educational program accredited by the American Board of Genetic Counseling, the American Board of Medical Genetics, or their successors, who meets the requirements of N.J.A.C. 13:35-14.4; or

\*[4.]\* **\*5.\*** A genetic counselor from another state providing genetic counseling services in New Jersey pursuant to N.J.A.C. 13:35-14.5.

#### 13:35-14.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Board" means the State Board of Medical Examiners.

"Committee" means the Genetic Counseling Advisory Committee.

"Direct review" means a supervisor is immediately available in person or by electronic means.

"Genetic conditions" means a disease caused in whole or in part by a change in the DNA sequence away from the normal sequence, which may include chromosome abnormalities, single gene disorders, complex conditions, conditions due to genetic variants, gene environment interactions, epigenetics, and issues related to pharmacogenomics.

"Genetic counseling" means a communication process, conducted by one or more appropriately trained individuals, that may include: obtaining and interpreting individual, family, medical, and developmental histories; determining the mode of inheritance and risk of transmission of genetic conditions and birth defects; discussing the inheritance features, natural history, means of diagnosis, and management of genetic conditions and birth defects; identifying, coordinating, \*[interpreting,]\* and explaining **\*the clinical implications of\*** genetic laboratory tests and other diagnostic studies **\*and their results; integrating genetic laboratory test results and other diagnostic studies with personal and family medical history to assess and communicate risk**

**factors for genetic or medical conditions and diseases\***; assessing psychosocial factors\*[,]\*\*;\* recognizing social, educational, and cultural issues; evaluating the client's or family's responses to the condition or risk of recurrence and providing client-centered counseling and anticipatory guidance; and facilitating informed decision making about testing, management, and alternatives.

"Licensed genetic counselor" means a person who holds a current, valid license issued by the Committee.

"Medical geneticist" means a physician licensed by the Board who is certified by the American Board of Medical Genetics or its successor.

"Supervision" means the direct review of an unlicensed individual for the purpose of teaching, training, administration, accountability, or clinical review by a supervisor in the same area of specialized practice.

"Supervisor" means a licensed genetic counselor or a medical geneticist.

#### 13:35-14.3 Application for licensure

(a) An applicant for a license shall submit to the Committee:

1. A completed application for license on a form available from the Committee;
2. Proof that the applicant holds a master's degree or doctoral degree in genetic counseling from an institution accredited by either the American Board of Genetic Counseling or American Board of Medical Genetics, or their successors;
3. Proof that the applicant has passed the genetic counseling certification examination offered by the American Board of Medical Genetics, the American Board of Genetic Counseling, or their successors; and
4. The application and licensing fees from N.J.A.C. 13:35-14.18.

#### 13:35-14.4 Practice prior to passing the examination for licensure

(a) Prior to passing the genetic counseling examination for licensure, an individual who has met all of the other licensing requirements of N.J.A.C. 13:35-14.3 and has submitted a completed application to the Committee may apply to the Committee for a work permit letter authorizing the applicant to provide genetic counseling. The holder of a work permit letter shall:

1. Not hold him- or herself out to the public as a licensed genetic counselor; and
2. Practice under the supervision of a licensed genetic counselor or a medical geneticist pursuant to (b) below.

(b) A licensed genetic counselor or medical geneticist providing supervision of a holder of a work permit letter shall:

1. Supervise no more than two holders of work permit letters at a time;
2. Co-sign all consultation summaries prior to release of the summaries; and
3. Conduct face-to-face reviews with a holder of a work permit letter for at least one hour a week.

(c) An applicant seeking a work permit letter shall submit to the Committee:

1. Proof from the American Board of Genetic Counseling or its successor that the applicant is eligible to take the licensing examination; and
2. A signed statement from the licensed genetic counselor or medical geneticist indicating that he or she will supervise the applicant. This statement shall include the supervisor's license number.

(d) The holder of a work permit letter who provides genetic counseling shall indicate that he or she is a "permitted genetic counselor" whenever he or she identifies him- or herself either in person or on a chart, report, or other document.

(e) The holder of a work permit letter who provides genetic counseling shall take the first examination for which he or she is eligible. If the holder fails the first examination, he or she shall take the next examination for which he or she is eligible. If the holder fails the second examination, he or she shall surrender the work permit letter to the Committee and shall not provide genetic counseling until he or she passes the examination and obtains a license from the Committee.

(f) Notwithstanding (e) above, the holder of a work permit letter who has failed to take the first or second examination for which he or she is eligible may apply to the Committee to maintain his or her work permit letter if he or she failed to take an examination for reasons of hardship. An application to maintain a work permit letter shall set forth in specific detail the reasons for requesting to maintain the work permit letter. The holder shall provide the Committee with supplemental materials that support the request to maintain the work permit letter.

(g) The holder of a work permit letter who was permitted to maintain the work permit letter pursuant to (f) above shall take the first examination for which he or she is eligible. If he or she fails this examination, or fails to take the examination, he or she shall surrender the work permit letter to the Committee.

#### 13:35-14.5 Out-of-State genetic counselor

(a) An individual who is not a licensed genetic counselor may provide genetic counseling to clients physically present in New Jersey if the individual is either licensed in another state as a genetic counselor or is certified by the American Board of Genetic Counseling or the American

Board of Medical Genetics, if the individual is from a state that does not license genetic counselors.

(b) An unlicensed individual providing genetic counseling pursuant to this section shall not interact with more than six clients in New Jersey in one calendar year.

[page=2481] (c) The requirements of this section shall not apply to an unlicensed genetic counselor who is:

1. Providing consultation to licensed genetic counselors or other health care professionals;
2. Providing genetic counseling as part of a medical study that is performed under the jurisdiction of an institutional review board; or
3. Presenting educational information to professional peers or to a not-for-profit client advocacy organization.

#### 13:35-14.6 Renewal of license

(a) Licenses shall be renewed biennially on a form provided by the Committee. An applicant for license renewal shall attest that the continuing education requirements of N.J.A.C. 13:35-14.7 have been completed during the prior biennial period.

(b) The Committee shall send a notice of renewal to each licensed genetic counselor at least 60 days prior to the expiration of the license. If the notice to renew is not sent at least 60 days prior to the expiration date, no monetary penalties or fines shall apply to the licensed genetic counselor for any unlicensed practice during the period following the licensure expiration, not to exceed the number of days short of 60 before the renewals were issued.

(c) The licensed genetic counselor shall submit the renewal application and pay the renewal fee pursuant to N.J.A.C. 13:35-14.18 prior to the date of expiration of the license. If a licensed genetic counselor does not renew the license prior to its expiration date, he or she may renew it no later than 30 days after its expiration date by submitting a renewal application and paying a renewal fee and a late fee pursuant to N.J.A.C. 13:35-14.18. A licensed genetic counselor who fails to renew the license within 30 days after the expiration date of the license shall be suspended without a hearing.

(d) Individuals who continue to practice in New Jersey or hold themselves out as licensed genetic counselors in New Jersey after being suspended shall be deemed to have violated N.J.S.A. 45:9-37.117, even if no notice of suspension had been provided to the person.

(e) A person seeking reinstatement within five years following the suspension of a license pursuant to (c) above shall demonstrate his or her competency to provide genetic counseling services and shall submit the following to the Committee:

1. A completed reinstatement application;

2. Payment of the past delinquent renewal;
3. Payment of a reinstatement fee as set forth in N.J.A.C. 13:35-14.18;
4. A certification verifying completion of the continuing education credits pursuant to N.J.A.C. 13:35-14.7 for renewal of a license; and
5. An affidavit of employment listing each job held during the period of suspension, which includes the names, addresses, and telephone numbers of each employer.

(f) In addition to fulfilling the requirements set forth in (e) above, a person whose license has been suspended pursuant to (c) above for more than five years who seeks to have his or her license reinstated shall demonstrate that he or she has maintained proficiency. A person who fails to demonstrate to the satisfaction of the Committee that he or she has maintained proficiency while suspended may be subject to an examination or other requirements as determined by the Committee prior to reinstatement of his or her license.

(g) Renewal applications for all licenses shall provide the licensed genetic counselor with the option of either active or inactive renewal. Licensed genetic counselors electing to renew as inactive shall not practice in New Jersey or hold themselves out to the public as licensed genetic counselors in New Jersey.

(h) The Committee may permit a licensed genetic counselor who has been on inactive status to return to active status upon application to the Committee.

(i) A person who elected inactive status and has been on inactive status for five years or less who can demonstrate his or her competency to provide genetic counseling services may be reactivated by the Committee upon submission of the following:

1. A certification verifying completion within the last two years of the continuing education hours required pursuant to N.J.A.C. 13:35-14.7 for the renewal of a license;
2. An affidavit of employment listing each job held during the period the licensed genetic counselor was on inactive status, which includes the name, address, and telephone number of each employer; and
3. Payment of the renewal fee as set forth in N.J.A.C. 13:35-14.18.

(j) In addition to the fulfilling the requirements set forth in (i) above, a person whose license has been inactive for more than five years who seeks to have his or her license reactivated shall demonstrate that he or she has maintained proficiency. A person who fails to demonstrate to the satisfaction of the Committee that he or she has maintained proficiency while inactive may be subject to an examination or other requirements as determined by the Committee prior to reactivation of his or her license.

### 13:35-14.7 Continuing education

(a) Upon biennial license renewal, licensed genetic counselors shall attest that they have completed courses of continuing education of the types and number of credit hours specified in (b) below. Falsification of any information submitted on the renewal application may require an appearance before the Committee and may subject a licensed genetic counselor to penalties and/or suspension or revocation of the license pursuant to N.J.S.A. 45:1-21 through 45:1-25.

(b) Each applicant for biennial license renewal shall be required to complete, during the preceding biennial period, 40 continuing education hours related to the practice of genetic counseling, except as provided in (c) below. These 40 continuing education hours shall include at least one hour in medical ethics.

(c) A licensed genetic counselor who is licensed in the second year of a biennial renewal period shall not be required to complete continuing education hours during that biennial period.

(d) A licensed genetic counselor who completes more than the minimum continuing education hours set forth above during the last six months of a biennial registration period may carry no more than 20 of the additional continuing education hours into a succeeding biennial period.

(e) A licensed genetic counselor may obtain continuing education hours through successful completion of continuing education courses or programs approved by the National Society of Genetic Counselors or its successor, one continuing education hour for each hour of instruction.

(f) At least 30 of the continuing education hours required by (b) above shall be in courses or programs designated as "Category One" by the National Society of Genetic Counselors or its successor.

(g) The Committee shall perform audits of randomly selected licensed genetic counselors to determine compliance with continuing education requirements.

(h) A licensed genetic counselor shall maintain certifications from the National Society of Genetic Counselors, or its successor, attesting to completion of continuing education hours for a period of four years after completion of the hours and shall submit this certification to the Committee upon request.

(i) The Committee may waive the continuing education requirements of this section, or provide a licensed genetic counselor additional time to complete continuing education requirements, on an individual basis for reasons of hardship, such as severe illness, disability, or military service.

1. A licensed genetic counselor seeking a waiver of the continuing education requirements shall apply to the Committee in writing at least 90 days prior to license renewal and set forth in specific detail the reasons for requesting the waiver. The licensed genetic counselor shall provide the Committee with supplemental materials that support the request for waiver.

2. A waiver of continuing education requirements granted pursuant to this subsection shall be

effective only for the biennial period for which such waiver is granted. If the condition(s) that necessitated the waiver continue(s) into the next biennial period, a licensed genetic counselor shall apply to the Committee for the renewal of such waiver for the new biennial period.

(j) The Committee may direct or order a licensed genetic counselor to complete continuing education hours:

1. As part of a disciplinary or remedial measure in addition to the required 40 hours of continuing education; or
2. To correct a deficiency in the licensed genetic counselor's continuing education requirements.

[page=2482] (k) Any continuing education hours completed by the licensed genetic counselor in compliance with an order or directive from the Committee as set forth in (j) above shall not be used to satisfy the minimum continuing education requirements as set forth in this section.

#### 13:35-14.8 Scope of practice

(a) The following is within the scope of practice of a licensed genetic counselor:

1. Obtaining and interpreting individual, family, medical, and developmental histories;
2. Determining the mode of inheritance and risk of transmission of genetic conditions and of birth defects, including evaluating the risks from exposure to possible mutagens and teratogens;
3. Discussing the inheritance features, natural history, means of diagnosis, and management of genetic conditions and birth defects;
4. Identifying, coordinating, *\*[interpreting,]\** and explaining **\*the clinical implications of\*** genetic laboratory tests and other diagnostic studies **\*and their results\***;

**\*5. Integrating genetic laboratory test results and other diagnostic studies with personal and family medical history to assess and communicate risk factors for genetic or medical conditions and diseases;\***

*\*[5.]\** **\*6.\*** Assessing psychosocial factors*\*[, recognizing]\*\*;\**

**\*7. Recognizing\*** social, educational, and cultural issues;

*\*[6.]\** **\*8.\*** Evaluating the client's or family's responses to the condition or risk of recurrence and providing client-centered counseling and anticipatory guidance; and

*\*[7.]\** **\*9.\*** Facilitating informed decision making about testing, management, and alternatives.

#### 13:35-14.9 Sexual misconduct

(a) The purpose of this section is to identify for licensed genetic counselors conduct that shall be deemed sexual misconduct.

(b) As used in this section, the following terms have the following meanings:

"Client" means any person who is the recipient of genetic counseling services.

"Client-genetic counselor relationship" means a relationship between a licensed genetic counselor and a client in which the licensed genetic counselor owes a continuing duty to the client to render genetic counseling services consistent with his or her training and experience.

"Licensed genetic counselor" means a person who holds a license from the Committee as a genetic counselor.

"Sexual contact" means the knowing touching of a person's body directly or through clothing, where the circumstances surrounding the touching would be construed by a reasonable person to be motivated by the licensed genetic counselor's own prurient interest or for sexual arousal or gratification. "Sexual contact" includes, but is not limited to, the imposition of a part of the licensed genetic counselor's body upon a part of the client's body, sexual penetration, or the insertion or imposition of any object or any part of a licensed genetic counselor's or client's body into or near the genital, anal, or other opening of the other person's body. "Sexual contact" does not include the touching of a client's body that is necessary during the performance of a generally accepted and recognized genetic counseling encounter.

"Sexual harassment" means solicitation of any sexual act, physical advances, or verbal or non-verbal conduct that is sexual in nature, which occurs in connection with a licensed genetic counselor's activities or role as a genetic counselor that is unwelcome or offensive to a reasonable person, or creates a hostile workplace environment, and the licensed genetic counselor knows, should know, or is told this. "Sexual harassment" may consist of a single extreme or severe act or multiple acts and may include, but is not limited to, conduct of a licensed genetic counselor with a client, co-worker, employee, student, or supervisee, whether or not such individual is in a subordinate position to the licensed genetic counselor.

"Spouse" means the husband, wife, civil union partner, domestic partner, or fiancée of the licensed genetic counselor or an individual involved in a long-term committed relationship with the licensed genetic counselor. For purposes of the definition of "spouse," a long-term committed relationship means a relationship that is at least six months in duration.

(c) A licensed genetic counselor shall not engage in sexual contact with a client with whom he or she has a client-genetic counselor relationship. The client-genetic counselor relationship is ongoing for purposes of this section, unless more than three months has elapsed since the last genetic counseling was rendered or the relationship is actively terminated by way of written notice to the client and documentation in the client record.

(d) A licensed genetic counselor shall not seek or solicit sexual contact with a client with whom he or she has a client-genetic counselor relationship and shall not seek or solicit sexual contact

with any person in exchange for professional services.

(e) A licensed genetic counselor shall not engage in any discussion of an intimate sexual nature with a person with whom the licensed genetic counselor has a client-genetic counselor relationship, unless that discussion is directly related to a proper genetic counseling purpose. Such discussion shall not include disclosure by the licensed genetic counselor of his or her own sexual relationships.

(f) A licensed genetic counselor shall provide privacy conditions that prevent the exposure of the unclothed body of the client. Appropriate draping measures shall be employed to protect client privacy.

(g) A licensed genetic counselor shall not engage in sexual harassment either within or outside of the professional setting.

(h) A licensed genetic counselor shall not engage in any other activity that would lead a reasonable person to believe that the activity serves the licensed genetic counselor's personal prurient interests or which is for the sexual arousal, or sexual gratification, of the licensed genetic counselor or client or which constitutes an act of sexual abuse.

(i) Violation of any of the prohibitions or directives set forth in (c) through (h) above shall constitute professional misconduct pursuant to N.J.S.A. 45:1-21(e).

(j) Nothing in this section shall be construed to prevent a licensed genetic counselor from rendering genetic counseling to a spouse, providing that the rendering of such genetic counseling is consistent with accepted standards of genetic counseling.

(k) It shall not be a defense to any action under this section that:

1. The client solicited or consented to sexual contact with the licensed genetic counselor; or
2. The licensed genetic counselor is in love with or held affection for the client.

#### 13:35-14.10 Change in address of record or name

(a) A licensed genetic counselor shall notify the Committee in writing within 30 days of changes to:

1. The licensed genetic counselor's address registered with the Committee. Service to the address registered with the Committee shall constitute effective notice pursuant to N.J.A.C. 13:45-3.2; or
2. The licensed genetic counselor's legal name. Notification of a name change shall include a copy of the marriage license or a court order that authorized the legal name change.

#### 13:35-14.11 Advertising and solicitation practices

(a) The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise.

1. "Advertisement" means any attempt directly or indirectly by publication, dissemination, or circulation in print or electronic media to induce directly or indirectly any person or entity to purchase or enter into an agreement to purchase services, treatment, or goods related thereto from a licensed genetic counselor.
2. "Electronic media" shall include radio, television, telephone, facsimile machine, or computer.
3. "Fee schedule" refers to the fees charged for services or goods offered by a licensed genetic counselor.
4. "Graphic representation" means the use of drawings, animations, clinical photographs, dramatizations, music, or lyrics.
5. "Print media" shall refer to newspapers, magazines, periodicals, professional journals, telephone directories, circulars, handbills, fliers, or other publications, the content of which is disseminated by means of the printed word.

[page=2483] 6. "Routine professional service" refers to a service that a licensed genetic counselor or professional association routinely performs.

(b) Subject to the limitation of (c) and (f) through (h) below, a licensed genetic counselor may provide information to the public by advertising in print or electronic media.

(c) A licensed genetic counselor who engages in the use of advertising that contains any of the following shall be deemed to have engaged in professional misconduct:

1. Any statement, claim, or format including a graphic representation that is false, fraudulent, misleading, or deceptive;
2. Any misrepresentation of a material fact;
3. The suppression, omission, or concealment of any material fact under circumstances that the licensed genetic counselor knows or should have known is improper or prevents a client from making a full and informed judgment on the basis of the information set forth in the advertisement;
4. Any claim that the service performed or the materials used are superior to those ordinarily performed or used in the profession;
5. Any promotion of professional service that the licensed genetic counselor knows or should know is beyond the licensed genetic counselor's ability to perform;
6. A technique or communication that appears to intimidate, exert undue pressure, or to unduly

influence a client;

7. Any personal testimonial by a client attesting to the quality or competence of service or treatment by a licensed genetic counselor involving technical assessments that are beyond the client's competency to assess, or any testimonial not in compliance with N.J.A.C. 13:35-14.13;

8. The communication of any fact, data, or information that may personally identify a client without the client's signed written permission obtained in advance;

9. An offer to pay, give, or accept a fee or other consideration to or from a third party for the referral of a client;

10. Any print, language, or format that directly or indirectly obscures a material fact; or

11. Any guarantee of results from any genetic counseling encounter.

(d) The Committee may require a licensed genetic counselor to substantiate the truthfulness of any assertion or representation set forth in an advertisement.

(e) Any violations of (f) through (h) below shall be deemed professional misconduct.

(f) A licensed genetic counselor shall not engage, either directly or through the use of any agent, employee, or representative, in solicitation of a client. This subsection shall not prohibit a licensed genetic counselor from offering services through materials provided to a community service organization that makes known the availability of all professional services listed; nor shall it prohibit the offering of services by a licensed genetic counselor to any bona fide representative of a client including, employers, labor union representatives, or insurance carriers.

(g) Advertising making reference to or setting forth fees shall be limited to a stated fee for specifically described routine professional services or goods offered by licensed genetic counselors.

1. A licensed genetic counselor who advertises a fee shall disclose all relevant and material variables and considerations that are ordinarily included in such a service, so that the fee will be clearly understood by clients.

2. In the absence of such disclosure referred to in (g)1 above, the stated fees shall be presumed to include everything ordinarily required for such a service. No additional charges shall be made for an advertised service unless the advertisement specifically delineates the additional services contemplated and the fee to be charged.

(h) The time period during which an advertised fee will remain in effect shall be set forth on the face of the advertisement. In the absence of such disclosure, the effective period shall be deemed to be 30 days from the date of the advertisement's final publication.

13:35-14.12 Advertising free or discounted services; required disclosures

(a) An advertisement offering a fee reduction shall state the reduced fee and the licensed genetic counselor's usual fee for each service for which a reduction is advertised. The usual fee shall be the fee charged for the advertised service for a period of not less than 90 days prior to the publication of the advertised reduction.

(b) If the discount or free service does not apply to all services to be rendered, the advertisement shall specify any associated or reasonably anticipated services that are not included and a statement of the specific charges for all associated or reasonably anticipated services which are not included.

(c) Except for those services specifically excluded in the advertisement offering free services, the licensed genetic counselor shall not charge for any service rendered during a period of 72 hours from the time the free service was rendered.

#### 13:35-14.13 Testimonial advertising

(a) All testimonials involving a specific or identifiable genetic counseling service shall truthfully reflect the actual experience of the client.

(b) The licensed genetic counselor shall be able to substantiate any objective, verifiable statement of fact appearing in a testimonial. The failure to do so, if required by the Committee, may be deemed professional misconduct.

(c) Where a licensed genetic counselor directly or indirectly provides compensation to a testimonial giver, the fact of such compensation shall be conspicuously disclosed in a clear, legible and readable manner in any advertisement as follows: "COMPENSATION HAS BEEN PROVIDED FOR THIS TESTIMONIAL."

#### 13:35-14.14 Minimum content

(a) A licensed genetic counselor shall include the following in all advertisements and professional representations (other than an office entry sign), including advertisements in a classified directory, business cards, and professional stationery:

1. The name and license number of at least one licensed genetic counselor working at the advertised practice location; and

2. The street address and telephone number of the practice.

(b) An offer for genetic counseling services can be made only by a licensed genetic counselor or a person exempt from licensing requirements pursuant to N.J.S.A. 45:37.117 and N.J.A.C.

13:35-14.1.

#### 13:35-14.15 Recordkeeping

(a) Licensed genetic counselors shall make contemporaneous, permanent entries into client records, which shall accurately reflect the genetic counseling services rendered. Client records shall be maintained for a period of seven years from the date of the most recent entry. The client record shall contain, at a minimum:

1. Intake record;
2. The dates of each service;
3. Reasons for visits;
4. A summary of each session with an assessment and plan;
5. The name and title of the licensed genetic counselor or permitted genetic counselor who provided services;
6. The licensed genetic counselor's or permitted genetic counselor's initials for every entry to the records; and
7. Any referral to another healthcare professional.

(b) Corrections and/or additions to existing records may be made to a client record, provided that each change is clearly identified as such, and such is dated and initialed by the licensed genetic counselor making the change.

#### 13:35-14.16 Client access to records

(a) Licensed genetic counselors shall provide access to client records to a client or an authorized representative in accordance with the following:

1. No later than 30 days from receipt of a written request from a client or an authorized representative, the licensed genetic counselor shall provide a copy of the client record, and/or billing records as may be requested;
2. The licensed genetic counselor may charge a fee for the reproduction of records, which shall be no greater than \$ 1.00 per page or \$ 100.00 for the entire record, whichever is less; and
3. If the client or a subsequent treating health care professional is unable to read the client record, because it is illegible, the licensed [page=2484] genetic counselor, upon request, shall provide a typed transcription of the record. If the record is in a language other than English, the licensed genetic counselor shall also provide a translation.

(b) Where the client has requested the release of all or a portion of a client record to a specified individual or entity, in order to protect the confidentiality of the records, the licensed genetic counselor shall:

1. Secure and maintain a current written authorization bearing the signature of the client or an authorized representative;
2. Ensure that the scope of the release is consistent with the request; and
3. Forward the records to the attention of the specific individual identified in the request.

13:35-14.17 Confidentiality

(a) Licensed genetic counselors shall maintain the confidentiality of client records and any confidential information acquired from a client, except that:

1. The licensed genetic counselor shall release client records as directed by a subpoena issued by the Board or Committee, or the Office of the Attorney General, or by a demand for a statement in writing under oath, pursuant to N.J.S.A. 45:1-18. Such records shall be originals, unless otherwise specified, and shall be unedited, with full client names;
2. The licensed genetic counselor shall release information as required by Federal or State statutes or regulations;
3. The licensed genetic counselor may disclose confidential information if he or she is party to a civil, criminal, or disciplinary action arising from the genetic counseling services provided; or
4. The client is a defendant in a criminal proceeding and keeping client records or information confidential would violate the defendant's right to present testimony and witnesses on his or her behalf.

13:35-14.18 Fee schedule

(a) The following fees shall be charged by the Committee:

- |   |   |
|---|---|
| 1. Application fee  | \$ 30.00  |
| 2. Initial license fee  |   |
| i. If paid during the first year of a biennial renewal period   | \$ 220.00                                       |
| ii. If paid during the second year of a biennial renewal period | \$ 110.00                                       |
| 3. Renewal of license   | \$ 220.00                                       |
| 4. Late license renewal   | \$ 50.00  |
| 5. Reinstatement fee  | \$ 100.00                                       |
| 7. Inactive license fee   | (to be determined by<br>Director by regulation) |
| 8. Duplicate/replacement license                                | \$ 25.00  |
| 9. Verification of license                                      | \$ 25.00  |