

COMMONWEALTH OF MASSACHUSETTS

BOARD OF REGISTRATION OF GENETIC COUNSELORS

**THIS AGENDA CONSTITUTES NOTICE OF THE REGULARLY SCHEDULED MEETING OF THE
BOARD OF REGISTRATION OF GENETIC COUNSELORS
IN COMPLIANCE WITH THE OPEN MEETING LAW, M.G.L. c. 30A, § 20**

**Thursday, April 4, 2019
09:30 a.m.**

**239 Causeway Street ~ 4th Floor ~ Room 421
Boston, Massachusetts 02114**

Agenda

Time	Item #	Item	Exhibits	Staff Contact
9:30 AM	I	Call to Order Determination of Quorum		Board Chair
	II	Approval of Agenda	Draft Agenda	Board Chair
	III	Approval of Minutes A. February 7, 2019 Minutes	Draft Minutes	Board Chair
	IV	Legal Training A. Open Meeting Law	Presentation	MS
	V	Staff Action Policy A. Unlicensed Practice	Draft Policy	MS
	VI	Investigations Triage(s): N/A Staff Assignment(s): A. SA-INV-14722: Salimbene, Mia (GC405) School: Brandeis University Employer: N/A Complaint(s): N/A	Investigative Report	LSM
	VII	Flex Session A. Announcements 1-Attonery General press Release: “Cambridge Genetic Testing Facility to Pay \$500,000 for Overbilling MassHealth.” B. Topics for next agenda	Press Release	RC

	VIII	<p>Executive Session: N/A The Board will meet in Executive Session as authorized pursuant to M.G.L. c. 30A, § 21(a)(1) for the purposes of discussing the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against an individual.</p> <ol style="list-style-type: none"> 1. Specifically, the Board will discuss and evaluate the necessity of modifying probation conditions for a Licensee. 2. Specifically, the Board will discuss complaints or charges brought against a Licensee or Licensees. 3. Finally, the Board will consider approving prior executive session minutes in accordance with M.G.L. ch.30A, § 22(a) for previous executive sessions of the Board. <p>The Board will not reconvene in public session subsequent to the closed session(s).</p>	N/A	N/A
	IX	65C Session: N/A	N/A	N/A
	X	Adjudicatory Session: N/A	N/A	N/A
	XI	Adjournment -next Board meeting scheduled for July 25, 2019.		Board Chair

COMMONWEALTH OF MASSACHUSETTS
BOARD OF REGISTRATION IN GENETIC COUNSELORS

Board Meeting

April 4, 2019
239 Causeway Street, Boston, MA 02114
Room 421

MINUTES

Board Members Present: Kayla Sheets, GC, Genetic Counselor 4, Board Chair
Lauren Lichten, GC, Genetic Counselor 1, Board Vice-Chair
Shelley McCormick, GC, Genetic Counselor 3, Board Secretary
Allison Cirino, GC, Genetic Counselor 2

Board Members Not Present: Jillian Fleming, Board Member, Public Member (Remote Participation)

Staff Present: Roberlyne Cherfils, Executive Director, Multi-Board, BHPL
Mary Strachan, Board Counsel, Office of the General Counsel, DPH
Lisa Seeley-Murphy, Compliance Officer
Emily Duré, Office Support Specialist I, Multi-Board, BHPL

I. Call to Order - Determination of Quorum

A quorum of the Board was present. Ms. Sheets called the meeting to order at 9:30 a.m.

II. Approval of the Agenda

DISCUSSION: None.

ACTION: Ms. Sheets made a motion to approve the agenda. Ms. Cirino seconded the motion. The motion passed unanimously.

Document: April 4, 2019 Board Meeting Agenda

III. Approval of Minutes

DISCUSSION: Ms. Strachan requested edits to February 7, 2019 minutes. Ms. Cherfils requested that Ms. Strachan email her edits to the Board's Staff. Ms. Fleming also requested edits to the minutes.

ACTION: Ms. Sheets made a motion to approve the minutes with edits. Ms. Lichten seconded the motion. The motion passed unanimously.

Document: February 7, 2019 Genetic Counselors Board Meeting Minutes

IV. Legal Training

A. Open Meeting Law

DISCUSSION: Ms. Strachan stated that she tries to review Open Meeting Law with the Board members annually. She explained that the Open Meeting Law is enforced by the Attorney General's Office and that Office provides resources and training, including a Power Point regarding that Open Meeting Law to state agencies. However, it appears that the Power Point has not been updated in approximately five years as it still lists Martha Coakley on the Power Point. Ms. Strachan said it appeared that the content of the Power Point had been updated but she had contacted the Attorney General's Office to inquire if there had been further updates. She said that she was still waiting to hear back from them. She explained to the Board that there were You Tube videos about the Open Meeting Law on the Attorney General's website. She explained that

the purpose of the Open Meeting Law is to balance transparency in state government with recognizing that some information that Public Boards and Committees discuss may be of a private nature. She said that there is a list of specific exceptions under Open Meeting Law. However, the default position is that any information that a state agency has in its possession is public information.

Ms. Strachan explained that all public bodies are subject to Open Meeting Law. But not all bodies are public bodies. For example, professional organizations are not subject to the Open Meeting Law because those organizations are not part of government. She said that if someone sits on a school board, a licensing board or a zoning board, the Open Meeting Law applies. The Open Meeting Law is the same across all government agencies organizations in Massachusetts.

Ms. Strachan said that under the Open Meeting Law, the Board is required to post an agenda in order to give the public notice as to when and where the meeting will held and what will be discussed. Under Open Meeting Law, the agenda must be posted at least forty-eight hours before the meeting will be held.

She told the Board that once the agenda is set, nothing can be added. But often, items are removed from the agenda. Ms. Strachan explained that there may be a conflict of interest, or another reason that a matter cannot be fully presented. She said that sometimes there is a complaint against an individual and in that case, the individual has the right to be at the meeting to have the opportunity to answer questions from the Board. She said that sometimes the individual cannot make the meeting that month. In that case, the Board will try to accommodate the individual by deferring the matter until the following month.

Ms. Strachan said to Board members you may remember, or not, from the Board member orientation, that although Board members are not compensated, they are special state employees for purposes of certain laws. In other words, in addition to the Open Meeting Law, they are also subject to state ethics laws. She explained that if Board members have a private or professional relationship with someone who is bringing a matter before the board, for the sake of transparency, that the relationship must be disclosed and not just within the room, but as the law says, to the board member's appointing authority, which is the Governor.

Ms. Strachan explained that when the Board conducts business or discusses policy decisions, those items would occur in open session. She said that most complaints would also be discussed in open session, unless the complaint entailed discussions of a private nature. But she said that if the Board received a complaint against a licensee and medical information would be discussed, and it would not necessarily be the licensee's medical information, it could be a patient's information, it would not be discussed in open session. Even though the identifiers of the patient like the name or date of birth, or another identifier would not be included.

Ms. Strachan stated that the rule of thumb is that if someone was present at the time of the incident and from the facts of the complaint, that person could figure out who the patient was, then that would be an invasion of a patient's privacy. Or if the licensee's own medical or mental condition is going to be discussed, then that would be a violation of the licensees' privacy, therefore the matter would not be discussed in public session. It would be discussed in executive session. She said that if there is criminal activity that would be discussed, because that goes to someone's "character," then that would be a valid reason to take it out of public session and put it into private session.

Under Open Meeting Law, Board members must discuss Board business at a public meeting and not in private. Consequently, 2 or more Board members may not discuss board business privately. Furthermore, a discussion among Board members via email can also constitute a discussion or deliberation and therefore cannot happen outside the Board meeting. For example, if one Board member emails others or even 1 other Board member and she responds, that can be considered a communication or deliberation and since it did not occur at a public meeting, it can be a violation of Open Meeting Law. Second, does the communication constitute a deliberation? Are you discussing matters that should be open to the general public and does the public know that you will be deliberating on the matter?

Third, does the communication involve a matter within the body's jurisdiction? Does the statute give you authority to make to decision on the matter? If so, it falls under Open Meeting Law and it constitutes a public meeting.

Finally, does the communication fall within one of the exceptions that Ms. Strachan talked about? If so, it's still a public meeting, but it would fall into the executive session instead of the general session.

Ms. Strachan said that's why when Board staff sends email notices to Board members, they are blind copied on emails. The concern is that if members were to hit reply to all and comment on an agenda item, it could be technically considered a discussion outside of a Public Meeting or in some cases even be considered a deliberation.

She cautioned the Board that there are consequences if there is a violation of Open Meeting Law. She explained that if the Attorney General's Office received a complaint, they would investigate the complaint. They would assign it to an

investigator, and if they determined, after looking at all of the circumstances, that there was some kind of violation of Open Meeting Law, they may levy a fine, or they may nullify Board decisions because of the violation of Open Meeting Law.

Ms. Strachan said that maybe six or seven years, there was an Open Meeting Law complaint filed, not against this Board, but another Board in the Bureau.

She said that one of the complaints was that there was not quorum in the room when certain votes were taken. She clarified that the issue was not that the discussion had taken place outside of a public meeting, and that the issue occurred in the public meeting. She further explained that at one time, there was a different methodology for determining quorum. Ms. Strachan explained that in the past, if a Board had ten members on the Board, but the law said the Board should be twelve members, the Board needed a majority of the number of appointed people. So in that case, the Board you needed a majority of ten instead of twelve people. She said that methodology had been okay with the Attorney General's Office. But then over time, it changed. The new interpretation of the statute says that you should have six people on the Board, then you need a majority of six people even if only 4 or 5 people were appointed. She noted that the violation was not a deliberate act, it was a result of a change in interpretation of the law and that some of the Board votes technically did not have quorum under the new interpretation.

Ms. Strachan told the Board that as a result, staff was instructed to go back through the minutes for the past year and identify cases in which there was misconduct on the part of licensee and the Board voted to discipline the licensee and the discipline had been administered.

Because of the technical violation of the Open Meeting Law, the discipline was undone even though the licensee was guilty of some kind misconduct. Ms. Strachan said that it was a pretty hefty consequence even though there was no deliberate violation of the law. It was a change in the interpretation of the law, but never the less, the Board was held accountable.

She advised the Board that they always need to be mindful of the Open Meeting Law.

Ms. Cherfils added that if the Board decides to create subcommittees to do research and make recommendations to the Board on a particular topic, those committees also fall under Open Meeting Law. Committees must have an agenda and it must be posted at least 48 hours prior the meeting and public must have the opportunity to attend. Ms. Cherfils stated that in the past, some Boards had subcommittees and those subcommittees did not fall under Open Meeting Law, but the Boards have since received clarification that subcommittees are also subject to Open Meeting Law.

Ms. Strachan referred to a document about the Open Meeting Law. She said the document is a good reference tool for Open Meeting Law. She said that the Board members previously received a copy of the document at their Board Orientation. She said that she thought it made sense to review it again and reminded Board members to retain the document.

The Board asked if Open Meeting Law is different in every state. Ms. Strachan responded that the law is different in every state. Ms. Cherfils said that because the Board meets only four times a year, it's not something the Board does on a month to month basis. Therefore, Open Meeting Law may not always be fresh in Board member's minds. She asked that when members are in doubt about something, to contact her and Ms. Strachan first. They will research it and will let Board members know which direction they should take on the issue or matter.

Ms. Cherfils said with regard to Board member appointments, open seats are advertised in two places for the public. The first place is on the Board's website. She explained that whenever a member leaves a Board, the information on the website is updated to show that the seat is vacant as soon as she receives a resignation. Therefore any member of the general public is aware of the vacant seat. She receives a lot questions around Board appointments. Who gets appointed? Why? How is the public notified? She said that the public is always notified, because it is always on the Board's website.

The second place is on the Boards and Commissions' website. Ms. Cherfils explained that they are the people in the Governors' office who process all of the appointments. She explained that they also post open seats on their website as soon as the seat becomes vacant. She said that they have an inquiry form on their webpage for the public to use to express interest in a particular seat. Any member of the public can submit the inquiry form on the Boards and Commissions webpage regarding an open seat and that information will be funneled to Ms. Cherfils.

Ms. Cherfils asked that if any individuals approach Board members because the individual is interested in serving as a Board member or that a Board member thinks would be an asset to the Board because of their specialties or areas of expertise, that they refer the individual to her so that she could vet them and determine if they are eligible for the seat.

Ms. Cherfils explained that depending on the statute, there are eligibility requirements that must be met. For example, RC public board members must be a recipient of respiratory care services, or that Board members must be a resident of Massachusetts.

Ms. Cherfils explained that the final decision lies with the Governor's office. She said that while it's great that she can make recommendations for Board members to the Governor's office, they may at any time appoint someone else to the seat. Ms. Cherfils said that she cannot guarantee an appointment to anyone. Ms. Cherfils also said is not aware of any individuals who may be under consideration is she did not recommend that individual as she is not the appointing authority.

ACTION: None

Document: None

V. Staff Action Policy

A. Unlicensed Practice

DISCUSSION: Ms. Strachan said that this is a continuation of the discussion from the last Board meeting. She said that after reviewing the policy, it may make sense to change the title. She said that she drafted the policy based on similar policies that other Boards have implemented over the years.

She said that the purpose of the policy is to authorize and allow for the timely review and disposition of staff assignments and complaints pertaining to unlicensed practice by Genetic Counselors. Ms. Strachan said that what the Board was trying to address was practice after license expiration and she wanted to make that clearer. She said that she thought it would make sense to change the title to either Practice with an Expired License or Practice after License Expiration. She stated that the policy does not address situations in which an individual was never licensed as a genetic counselor or for someone whose license was suspended by the Board for misconduct.

She explained that if the Board adopted the policy and these set of circumstances arose, then the Board is giving Board staff the authority to dispose of complaints or staff assignment rather than having the licensee wait until the next Board meeting. She explained that it would only apply if the situation fit into the circumstances covered by the policy.

She said if the licensee practiced with an expired license for thirty days or less before they rectified the situation, they are usually given a pass. If they practiced with an expired license for a period of more than 30 days, up to one year, then we would dismiss the complaint with an advisory letter. That would mean that we would open a formal docketed complaint. If someone checked their license, that person would see that the licensee had a complaint, but it was dismissed. If someone practiced with an expired license for longer than that period, then the Board would be authorizing Ms. Cherfils and Ms. Strachan or their successors, to offer to resolve the complaint with a discipline and that would be a Reprimand. A Reprimand is a public censure. It does not put any restrictions on their license, but it does not come off their record either. If someone looked them up on the website, that person would see that there was complaint opened, a violation was found and that conduct warranted discipline and that discipline was a Reprimand. The licensee would need to agree to the Reprimand. Ms. Strachan explained that if the Board upon hearing the complaint decided to take action, those cases go to her. She said that she always attempts to get the licensee to agree to the discipline, but if the licensee refuses to sign the consent agreement, the licensee has the right to a hearing before a hearings officer. The Board would eventually order a Reprimand, unless the licensee was able to provide addition information that changed the Board's mind.

Ms. Cherfils clarified that if a licensee practiced without a license for over than thirty day, the licensee acknowledges it and does everything that policies states, Board staff would open a complaint, issue an advisory letter and close the complaint. If they do not, then the Board staff would follow the process Ms. Strachan talked about and Ms. Strachan would offer the licensee a reprimand.

Board discussed the impact of their license renewal cycle on the policy and asked the draft policy language be changed from more than 30 days, but less than one year, to greater than 30 days, but less than two years. The Board also wanted to add the requirement that the licensee did not have previous discipline in any jurisdiction. In addition, the title of the policy was changed to Practice After License Expiration.

ACTION: Ms. Sheets made a motion to approve the policy with edits. Ms. Cirino seconded the motion. The motion carried unanimously.

Document: Draft Policy

VI. Investigations

Staff Assignment(s):

A. SA-INV-14722: Salimbene, Mia (GC405)

School: Brandeis University
Employer: N/A
Attorney: N/A

DISCUSSION: Ms. Seeley-Murphy presented the case to the Board. The Licensee's license is current and the Licensee has no prior history with the Board. On the Licensee application to the Board, the Licensee disclosed that she had discipline in Pennsylvania. Ms. Seeley-Murphy told the Board that she did not actually receive discipline, but had been investigated for practicing without a license. The investigation was concluded and dismissed by the Board in Pennsylvania. No discipline was warranted. She was working in a job in Pennsylvania that did not require a license.

ACTION: Ms. Lichten made a motion to dismiss the staff assignment. Ms. Sheets seconded the motion. The motion passed unanimously.

Document: Investigative Report

VII. Flex Session

A. Announcements

1. Attorney General Press Release:

DISCUSSION: Ms. Cherfils shared a copy of a press release from the Attorney General. She said that there was an investigation of a Cambridge genetic testing company for inappropriately billing MassHealth. She told the Board that there was a settlement. The company will be paying a \$500, 000 fine and that there may also be federal charges Ms. Cherfils said that she wanted the Board to be aware of the settlement and the press release in the event that Board members receive any questions about the issue. She also asked the Board if they wanted the press release to be posted on the Board's website under news and announcements. The Board decided to post the press release on the Board's website.

2. Board Nominees:

DISCUSSION: Ms. Cherfils informed the Board she had received two nominations for the Board and that she vetted both of them and sent the nominations on for next level review. She said that if approved there, they would go to the Governor's Office for review. She also thanked Ms. Lichten for her service on the Board as Ms. Lichten is leaving the Board.

ACTION: None

Document: Press Notice

B. Topics for Next Agenda

DISCUSSION: Ms. Cherfils asked for topics for the next agendas. The Board asked for update on any new bills. Ms. Strachan said that she will check for new bills before the next Board meeting.

ACTION: None

Document: None

VII. Executive Session

At 10:50 a.m. Ms. Sheets motioned to enter into Executive Session. Ms. McCormick seconded the motion. The motion passed unanimously.

Ms. Sheets announced that the Board will meet in Executive Session as authorized pursuant to M. G. L. c. 30A, section 21 (a)(1) for the purposes of discussing the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against an individual.

1. Specifically, the Board will discuss complaints or charges brought against a Licensee or Licensees.

2. Finally, the Board will consider approving prior executive session minutes in accordance with M.G.L. ch. 30A, § 22(a) for previous executive sessions of the Board.

XII. ADJOURNMENT

The next meeting of the Board of Registration of Genetic Counselors is scheduled for July 25, 2019 at 9:30 a.m. in Boston, MA.

Respectfully submitted by the Board of Registration of Genetic Counselors