



COMMONWEALTH OF KENTUCKY
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OAG 17-015

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Subject: Whether nutritionists may continue to provide nutrition counseling based on genetic assessments consistent with the enactment of laws regulating genetic counselors.

Requested by: Brittany Dawn McAllister
Board for Certification of Nutrition Specialists

Written by: Matt James

Syllabus: Nutritionists may continue to provide nutrition counseling using genetic assessments performed by other professionals licensed to perform genetic assessments consistent with their practice as nutritionists.

Statutes construed: KRS 310.005

Opinion of the Attorney General

Brittany Dawn McAllister, Advocacy Manager for the Board for Certification of Nutrition Specialists, has requested an opinion of this office on whether nutritionists may continue to provide nutrition counseling based on individual genomic profiles after the enactment of S.B. 146, 2017 Gen. Assemb., Reg. Sess. (Ky. 2017),¹ which creates general laws regulating genetic counselors. We advise that nutritionists may continue to provide nutrition counseling utilizing genetic

¹ S.B. 146 was signed into law by the Governor on March 24, 2017.

assessments performed by other professionals licensed to perform genetic assessments consistent with S.B. 146.

S.B. 146 creates a new section of KRS Chapter 310 authorizing the State Board of Medical Licensure to regulate the practice of genetic counseling. It defines genetic counseling as the provision of services by a genetic counselor to "obtain and evaluate . . . medical histories to determine genetic risk for genetic or medical conditions," "identify, order, and coordinate genetic laboratory tests and other diagnostic studies . . . for the genetic assessment," "integrate genetic laboratory test results . . . with personal and family medical history to assess and communicate risk factors for genetic or medical conditions and diseases," among other things. *Id.* § (1)(9). Section 2 of the bill forbids persons from practicing genetic counseling or holding themselves out as a genetic counselor without a license from the State Board of Medical Licensure. Section 3 of the bill exempts "any person licensed by the state to practice in a profession other than that of a genetic counselor when acting within the scope of the person's profession and doing work of a nature consistent with the person's training." *Id.* § 3(1). S.B. 146 thus exempts other licensed professionals providing genetic counseling within the scope of their practice from the requirement to be a licensed genetic counselor. We requested the input of the Kentucky Board of Medical Licensure and the the Kentucky Board of Licensure and Certification for Dietitians & Nutritionists, which they provided. Specifically, the Kentucky Board of Licensure and Certification for Dietitians & Nutritionists informs us that while genetic counseling generally falls outside the scope of practice for dietitians and nutritionists, utilizing a genetic assessment performed by a licensed genetic counselor is within the scope of practice for both dietitians and nutritionists.

KRS Chapter 310 governs dietitians and nutritionists. KRS 310.005(3) defines a "dietitian" as "a health care professional practicing dietetics and licensed pursuant to KRS 310.021," and KRS 310.005(4) defines "nutritionist" as "a health care professional practicing nutrition and certified pursuant to KRS 310.031." Dietitians are thus "licensed," while nutritionists are "certified." KRS 310.015(2) defines the "practice of dietetics or nutrition" as "the integration and application of scientific principles of food, nutrition, biochemistry, physiology, and management, and the behavioral and social sciences in achieving and maintaining the health of people." The "practice of dietetics or nutrition" is thus defined interchangeably between dietitians and nutritionists. KRS 310.015(2) further provides that "methods of practice shall include, but are not limited to,

nutrition assessments; development, implementation, management, and evaluation of nutrition care plans; nutrition counseling and education; and the development and administration of nutrition care standards and systems." While dietitians are "licensed" and nutritionists are "certified," both are authorized to use the principles of food and nutrition to provide for nutritional assessments and plans, which can include genetic assessments and plans. At issue is whether nutritionists are covered under the exemption in S.B. 146 for "any person licensed by the state to practice in a profession other than that of a genetic counselor," given that they are "certified" and not "licensed."

Although S.B. 146 uses only the word "licensed" and not "certified," "the fundamental rule in statutory interpretation is to give effect to the legislative intent. A statute should not be interpreted so as to bring about an absurd or unreasonable result. The policy and purpose of the statute must be considered in determining the meaning of the words used." *Ky. Indus. Util. Customers, Inc. v. Ky. Utils. Co.*, 983 S.W.2d 493, 500 (Ky. 1998) (citations omitted). In reviewing S.B. 146, the intent of the legislature was to exempt other professions which may overlap with some of the practices of genetic counseling. This applies in the case of dietitians and nutritionists, who have the same scope of practice, and differ only as to whether they are "licensed" or "certified." Further, BLACK'S LAW DICTIONARY (10th ed. 2014) defines "licensed" as "having official permission to do something, usu. as evidenced by a written certificate." The plain meaning of "licensed" does not require a document titled a "license" in all cases. Rather, it refers to official permission to engage in certain practices. A person who is "certified" as a nutritionist has official permission to engage in certain practices. Accordingly, to the extent that certified nutritionists are permitted to engage in certain practices involving genetic counseling, they are correspondingly exempted from the requirements of S.B. 146.

In this case, while nutritionists are not licensed to engage in genetic counseling generally, utilizing genetic assessments performed by other licensed professionals is within their scope of practice. Accordingly, we advise that certified nutritionists are covered under the exemption in S.B. 146 for licensed professionals to the extent that they utilize genetic assessments performed by other professionals licensed to perform genetic assessments.

ANDY BESHEAR
ATTORNEY GENERAL

A handwritten signature in cursive script, appearing to read "Matt James".

Matt James
Assistant Attorney General