

IN THE SUPERIOR COURT OF FULTON
STATE OF GEORGIA

MARY NICHOLSON JACKSON; and
REACHING OUR SISTERS
EVERYWHERE, INC.,

Plaintiffs,

v.

BRIAN KEMP; LEAH S. ALDRIDGE;
CHRYSTA B. ANDREWS; MERRILEE
AYNES GOBER; TERESA MCCULLEN;
ARLENE TOOLE; and LISA DURDEN, in
their official and individual capacities,

Defendants.

Civil Action No. _____

**VERIFIED PETITION FOR DECLARATORY JUDGMENT,
TEMPORARY RESTRAINING ORDER, INTERLOCUTORY AND
PERMANENT INJUNCTION, AND ATTORNEYS' FEES**

Plaintiffs Mary Nicholson Jackson and Reaching Our Sisters Everywhere, Inc., bring this civil action for declaratory and injunctive relief against Defendants Secretary of State Brian Kemp, the members of the Lactation Consultant Advisory Group—namely Leah S. Aldridge, Chrysta B. Andrews, Merrilee Aynes Gober, Teresa McCullen, and Arlene Toole—and Director Lisa Durden of the Secretary of State's Professional Licensing Boards Division. All Defendants are sued in their official and individual capacities. Plaintiffs hereby allege as follows:

INTRODUCTION

1. This lawsuit seeks to vindicate the equal protection and due process rights of Georgia's lactation consultants to earn an honest living in the career of their choosing, free from unreasonable governmental interference.

2. Plaintiff Mary Jackson has worked as a lactation consultant for 28 years. She is a Certified Lactation Counselor (“CLC”). On July 1, however, she and hundreds of other lactation consultants will be prohibited from continuing to do their jobs—not because they have done anything wrong—simply because they lack one particular, privately-issued certification, known as an International Board Certified Lactation Consultant (“IBCLC”). On that date, the Georgia Lactation Consultant Practice Act (“Act”), O.C.G.A. §§ 43-22A-1 to -13, will prohibit non-IBCLCs from providing “[l]actation assessment,” “creating a lactation care plan,” or “evaluat[ing] outcomes,” all of which CLCs must do to perform their jobs. As of July 1, only IBCLCs will be allowed to do those things (along with a raft of exempt health-care providers, including dentists and chiropractors) to the exclusion of CLCs and everyone else.

3. For a variety of cultural and socio-economic reasons, minorities and rural Georgians are primarily served by CLCs, rather than IBCLCs. The Act’s disproportionate burden on minorities threatens to undermine the mission of Reaching Our Sisters Everywhere (“ROSE”), the nonprofit that Mary helped found, which provides free breastfeeding support, predominantly to African-American women. Through its outreach to all women of color, ROSE frequently refers rural Georgians to local CLCs. Not only are IBCLCs unavailable in most parts of the state, they are frequently more expensive and associated with hospitals and other intimidating institutions. Many ROSE supporters, members, and employees are CLCs or other non-IBCLC lactation consultants.

4. Only four states license lactation consultants. Of those states, only Georgia restricts the lactation consultant profession to IBCLCs. Plaintiffs will demonstrate that excluding everyone other than IBCLCs from providing breastfeeding support violates the Georgia Constitution’s equal protection and due process guarantees because it lacks a real and

substantial connection to the public health, safety, or welfare. Just the opposite: The Act defeats its own purpose of promoting public health because it will, overnight, put hundreds of highly qualified lactation consultants (like Mary Jackson) out of business. This will dramatically reduce breastfeeding support statewide, particularly in the minority and rural communities where CLCs are most active. As a result, the Act will cause irreparable injury to Mary Jackson, ROSE and its members, and others across the state whose rights to economic liberty will be infringed by the Act's irrational prohibition on continuing the career of their choosing. The Act will also affirmatively harm public health and welfare by reducing access to already hard-to-find breastfeeding support.

5. Accordingly, Plaintiffs urge the Court to enter a temporary restraining order enjoining enforcement of the Act, and an interlocutory injunction pending a final decision on the merits. There is substantial reason to believe that the Court will ultimately strike down the Act and permanently enjoin Defendants from enforcing it facially and as-applied to Plaintiffs. In the meantime, Plaintiffs and Georgia's mothers and children will be harmed, with little or no benefit to Defendants or the state as a whole. For these reasons, the Court should enjoin Defendants before the July 1 effective date.

PARTIES

Plaintiffs Mary Jackson and Reaching Our Sisters Everywhere, Inc.

6. Plaintiff Mary Jackson is a citizen of the United States and a resident of DeKalb County, Georgia. She is a Certified Lactation Counselor ("CLC") who has been working as a professional lactation consultant for 28 years.

7. Mary is employed by Grady Memorial Hospital ("Grady Memorial"). As part of her job, she counsels new mothers about breastfeeding, assesses breastfeeding challenges facing

individual mothers and their babies, evaluates breastfeeding outcomes, assists mothers with babies in the neonatal intensive care with breastfeeding, teaches a variety of breastfeeding topics to doctors and nurses, and provides breastfeeding education to medical school students. Mary is also the co-chair of the Baby Friendly Initiative at Grady Memorial, which educates mothers and supports them in reaching their breastfeeding goals.

8. Plaintiff Reaching Our Sisters Everywhere, Inc. (“ROSE”) is a 501(c)(3), non-profit corporation formed under the laws in the state of Georgia with its principal place of business in DeKalb County. ROSE brings this lawsuit on behalf of itself and on behalf of its members.

9. ROSE was formed in 2011 by Plaintiff Mary Jackson and her lifelong friend Kimarie Bugg. The organization’s mission is to address breastfeeding disparities and improve health care access among African-Americans and people of color through training, education, advocacy, and direct support to individuals.

10. ROSE’s fundamental purpose is to provide evidence-based breastfeeding education and to ensure that mothers have the support they need to meet their individual breastfeeding goals. ROSE accomplishes this goal by paying employees and also by calling on its network of volunteers to provide breastfeeding support across the country.

11. ROSE’s objectives include: (1) providing free breastfeeding assessment, care, and support directly to mothers; (2) facilitating breastfeeding assessment, care, and support to mothers through ROSE’s network of supporters; (3) raising awareness of breastfeeding; (4) empowering advocacy-oriented Community Transformers; (5) educating other health care providers, including doctors and nurses, about the benefits of breastfeeding; (6) advocating

against legislation that will negatively affect ROSE and the population it serves; and

(7) expanding its membership and affiliates.

12. ROSE believes there is no one-size-fits-all approach to lactation care and services. That is why ROSE lives by the motto: “Meet the mothers where they are.” If a mother is unable or otherwise chooses not to breastfeed, ROSE and its employees are still available to provide other support and information about formula feeding.

13. ROSE’s members, supporters, and employees include CLCs, IBCLCs, other non-IBCLC lactation consultants, volunteer lactation consultants without a private certification, experienced moms, and community activists.

14. ROSE’s members and employees include mothers who have benefited from its breastfeeding services and who plan to use those services again in the future.

15. CLCs and other lactation consultants without IBCLC credentials are critical to ROSE’s mission to provide lactation care and services to women throughout Georgia.

Defendants are the Georgia Officials Responsible for Lactation Licensing

16. Defendant Georgia Secretary of State Brian Kemp is responsible for overseeing and enforcing the Act. The office of the Secretary of State is located in Fulton County.

17. Defendant Kemp is sued in his individual and official capacities.

18. Defendants Leah S. Aldridge, Chrysta B. Andrews, Merrilee Aynes Gober, Teresa McCullen, and Arlene Toole are the current members of the Lactation Consultant Advisory Group (“Advisory Group”), created pursuant to O.C.G.A. § 43-22A-4, and appointed by Defendant Secretary of State. *See also* O.C.G.A. § 43-22A-10. Among other powers, the Advisory Group is empowered to review disciplinary actions against licensed and unlicensed lactation consultants. The office of the Advisory Group is located in Fulton County.

19. All of the Advisory Group members are sued in their individual and official capacities.

20. Defendant Georgia Professional Licensing Boards Division Director (“Division Director”), Lisa Durden, is the top official in the Professional Licensing Boards Division, which oversees all state professional licenses in Georgia, including lactation consultant licenses.

O.C.G.A § 43-1-2. The office of the Professional Licensing Boards Division is located in Bibb County.

21. Defendant Durden is sued in her individual and official capacities.

JURISDICTION AND VENUE

22. This action arises under Article I, Section I, Paragraph II of the Georgia Constitution (Equal Protection), Article I, Section I, Paragraph I of the Georgia Constitution (Due Process), and O.C.G.A. §§ 9-4-1 to -10 (Declaratory Judgments). Accordingly, this Court has subject matter jurisdiction over this action.

23. Many of the official actions giving rise to this lawsuit, including the enactment and administration of the Act, have occurred and continue to occur in Fulton County, Georgia.

24. Venue is proper in this Court as it is the county of residence of at least one Defendant. O.C.G.A § 9-10-30.

STATEMENT OF FACTS

The Job of a Lactation Consultant

25. Lactation consultants provide breastfeeding education, assessment, guidance, training, encouragement, and support to expecting and new mothers.

26. For decades, they have done so safely in Georgia and across the country.

27. Lactation consultants do not diagnose or treat medical conditions.

28. Lactation consultants work in many settings, including in hospitals, doctors' offices, clinics, nonprofits like ROSE, in private practice, and directly in people's homes.

29. The CDC and the American Academy of Pediatrics recommend breastfeeding, calling it a "'miracle investment' and advis[ing] that increasing rates of breastfeeding can decrease infant mortality and prevent ailments ranging from respiratory diseases to cancer."

Pamela Laufer-Ukeles & Arianne Renan Barzially, *The Health/care Divide: Breastfeeding in the New Millenium*, 35 Colum. J. Gender & L. 264, 266 (2018); Marian Kousaie, Comment *From Nipples to Powder*, 49 Akron L. Rev. 207, 215 (2016) ("[R]esearch shows that breastfeeding positively impacts the physical health of both infant and mother and additionally provides psychosocial, economic, and environmental benefits."). The State of Georgia also encourages new mothers to breastfeed. See <https://dph.georgia.gov/breastfeeding> (last visited June 25, 2018) (Georgia Department of Public Health recommending breastfeeding as the preferred method of infant feeding for the first year.).

30. Without the help of a lactation consultant, new moms may shorten the duration of breastfeeding or may forego breastfeeding altogether.

31. Even women who have had multiple babies may need or want to work with a lactation consultant. Every baby is different. Merely having previously breastfed does not eliminate the need for access to lactation care and services. And throughout the duration of breastfeeding, new questions and challenges can arise.

32. Women often develop a close relationship with their lactation consultants. The idea of switching lactation consultants might be overwhelming or impossible to many women.

33. Lactation consultants play an especially important role in minority and low-income communities, where family and community members may not be available to counsel

moms on breastfeeding or where family and community members might lack firsthand knowledge of breastfeeding.

34. Lactation consultants in these communities also help women overcome embarrassment associated with breastfeeding. For this reason, it is crucial that moms have access to lactation consultants who they relate to and who understanding their communities.

35. Moms who are unsure about whether or not they will breastfeed also benefit from lactation consultants.

36. There are many types of voluntary, private lactation consultant certifications. Some of the most popular in Georgia are known as CLCs, IBCLCs, Peer Counselor, and Community Transformers, but there are many other trainings and titles in the breastfeeding support world.

37. To become CLC certified, an individual must complete 45 hours of breastfeeding-specific training, demonstrate competency in breastfeeding counseling, assessment, and support skills, and pass an exam.

38. To remain certified, CLCs must take a minimum of 18 hours of continuing education courses every three years.

39. The Academy of Lactation Policy and Practice (“ALPP”) certifies CLCs and several other types of lactation consultants, including Advanced Lactation Consultants and Advanced Nurse Lactation Consultants. ALPP is a division of the Healthy Children Project, Inc. (“Project”), a nonprofit that works to improve child health outcomes in partnership with public, private, and other non-profit agencies. The Project is the largest U.S. provider of lactation-management education for health care providers and is accredited by the American National Standards Institute. Annually, the Project educates more than 4,000 health providers, advocates,

and facilitators through courses, certificate courses, workshops, seminars, self-study modules, and national and international conferences.

40. To become a Peer Counselor, a woman must have breastfed for at least six months. She is then trained through the Women, Infant, and Children (“WIC”) program, which is federally funded. After completing training, a Peer Counselor is paid by WIC to provide breastfeeding support to WIC eligible families.

41. To become a ROSE Community Transformer, a woman must have breastfed for at least six months. She then participates in one of ROSE’s research and evidence-based trainings and is able to provide breastfeeding education to her community. A Community Transformer holds Breastfeeding Clubs, which are an opportunity for members of the community to meet and discuss breastfeeding topics.

42. In contrast, to become IBCLC certified, an individual must complete 8 college level health and science courses, 6 health related continuing education courses, a minimum of 300 hours of supervised clinical experience, and pass an exam.

43. To remain certified, IBCLCs must complete 75 hours of continuing education every five years. IBCLCs must retake and pass the exam every ten years.

44. Although IBCLCs must take college level courses and have a large practical experience component, IBCLCs (like all lactation consultants) are prohibited from diagnosing or treating medical conditions.

45. Most IBCLCs in Georgia are located in metro-Atlanta and other urban areas.

46. In every state other than Georgia, CLCs can legally provide lactation care and services for payment.

The State's Occupational Regulation Review Council Recommended Not Excluding CLCs

47. Georgia's Occupational Regulation Review Council ("Review Council"), O.C.G.A. § 43-1A-4, was established "to ensure that no programs of licensure and certification [are] imposed upon any profession or business unless required for the safety and well-being of the citizens of [Georgia]." O.C.G.A. § 43-1A-2.

48. The Review Council is charged with "[r]eview[ing] *all* bills introduced in the General Assembly to license or certify a profession or business, which is not currently licensed or certified by the state" O.C.G.A. § 43-1A-5 (emphasis added).

49. In reviewing a new licensing scheme, the Review Council shall consider the following factors:

(1) Whether the unregulated practice of the occupation may harm or endanger the health, safety, and welfare of citizens of this state and whether the potential for harm is recognizable and not remote;

(2) Whether the practice of the occupation requires specialized skill or training and whether the public needs and will benefit by assurances of initial and continuing occupational ability;

(3) Whether the citizens of this state are or may be effectively protected by other means;

(4) Whether the overall cost effectiveness and economic impact would be positive for citizens of this state; and

(5) Whether there are means other than state regulation to protect the interests of the state.

O.C.G.A. § 43-1A-6.

50. In 2013, the Georgia General Assembly considered, but never enacted the Georgia Lactation Consultant Practice Act, House Bill 363 (2013), which was the first bill introduced in Georgia to license lactation consultants.

51. House Bill 363 defined “lactation care and services” as “the clinical application of scientific principles and a multidisciplinary body of evidence for the evaluation, problem identification, treatment, education, and consultation to provide lactation care and services to childbearing families.” H.B. 363, § 43-22A-3(5) (proposed).

52. Pursuant to House Bill 363, § 43-22A-3 (proposed), lactation care and services included, but was not limited to the following:

- (A) Lactation assessment through the systematic collection of subjective and objective data;
- (B) Analysis of data and creation of a plan of care;
- (C) Implementation of a lactation care plan with demonstration and instruction to parents and communication to the primary health care provider;
- (D) Evaluation of outcomes;
- (E) Provision of lactation education to parents and health care providers; and
- (F) The recommendation and use of assistive devices.

H.B. 363, § 43-22-A-3(5) (proposed).

53. Under House Bill 363, only licensed lactation consultants could continue providing lactation care and services in Georgia.

54. House Bill 363 would have required all lactation consultants in the state to become IBCLC certified as a prerequisite for obtaining a license from the state. H.B. 363, §§ 43-22A-9, -15 (proposed).

55. Notwithstanding the requirement to become IBCLC certified, House Bill 363 contained an exemption, allowing the following individuals to continue providing lactation care and services without becoming IBCLC certified:

- (1) Persons licensed to practice the professions of dentistry, medicine, osteopathy, chiropractic, nursing, physician assistant, or dietetics . . . ;

(2) Doula and prenatal and childbirth educators from performing nonclinical education functions consistent with the accepted standards of their respective occupations . . . ;

(3) The practice of lactation care and services by students, interns, or persons preparing for the practice of lactation care and services under the qualified supervision of a licensed lactation consultant or any licensed professional listed in paragraph (1) of this Code section;

(4) Employees of the United States government or any bureau, division, or agency thereof while in the discharge of the employee's official duties . . . ;

(5) Employees of a department, agency, or division of state, county, or local government . . . within the discharge of official duties . . . ; [and]

(6) Individual volunteers

H.B. 363, § 43-22A-17 (proposed).

56. In December 2013, the Review Council published its review of the proposed legislation. Ga. Occupational Regulation Review Council, *House Bill 363: Georgia Lactation Consultant Practice Act, LC 33 5015, A Review of the Proposed Legislation* (Dec. 2013) ("Review Council Report"). A true and accurate copy of the Review Council Report is attached hereto as Exhibit 1.

57. The Review Council unanimously recommended against passage of House Bill 363, recognizing that requiring lactation consultants to become licensed "would not improve access to care for the majority of breastfeeding mothers." Review Council Report at 17.

58. The Review Council further concluded:

[B]ecause the general population seeking lactation consultation does not fall in the clinically high-risk category, and is instead seeking general breastfeeding education and assistance, the CLC is equally as qualified to provide care and services as an IBCLC in several settings including hospitals and clinics. If this legislation prohibited CLCs from providing services, the citizens may be at a greater risk of harm because the majority of lactation consultant providers would no longer be able to provide care.

Review Council Report at 13.

59. High-risk situations necessitate the care of a doctor or other qualified health care professional because neither a CLC nor an IBCLC can diagnose or treat medical conditions.

60. The Review Council also concluded that House Bill 363 did not meet the criteria found in O.C.G.A § 43-1A-6. Therefore, the Review Council recommended against passage of House Bill 363. Review Council Report at 1.

61. Several other states have rejected any form of lactation consultant licensing, concluding that licensing does not further public health or safety. *See* Wash. State Dep’t of Health, *Information Summary and Recommendations, Lactation Consultant Sunrise Review*, 3–4 (Dec. 2016) (Washington determined that lactation consultants should not be licensed because there was no “evidence of a clear and easily recognizable threat to public health and safety”; licensing lactation consultants may result in harm by limiting the number of professionals able to provide lactation care; licensure would be costly and create “unnecessary duplication of regulation”[;] and because doing so would increase financial burdens on lactation consultants, “without a corresponding increase in public protection”); House No. 1151 (Mass. Jan. 18, 2017); S.F. No. 1151 (Minn. Feb. 20, 2017); A357A (N.Y. Jan. 5, 2017); and S.B. 763 (Pa. June 14, 2017).

62. House Bill 363 was not enacted after it failed to move out of committee.

The New Georgia Lactation Consultant Practice Act

63. The 2013 legislation was reintroduced and passed in the 2015 legislative session.

64. In April 2016, the Governor signed the Act into law. O.C.G.A. §§ 43-22A-1 to -13.

65. The Review Council did not review the Act and never otherwise updated the findings from the 2013 Review Council Report.

66. The content of the Act is substantially similar to House Bill 363 (2013). The Act uses the same definition of lactation care and services as House Bill 363. The Act contains the same exceptions as were in House Bill 363.

67. The Act appears to have been adopted by people who fundamentally do not understand how lactation care and services are provided on the ground.

68. The Act created the Lactation Consultant Advisory Group within the office of the secretary of state. O.C.G.A. §§ 43-22A-1, -4.

69. The purpose and duties of the Advisory Group are statutorily defined as follows:

(a) The advisory group shall meet at least once per year or as otherwise called by the Secretary.

(b) The Secretary shall consult with the advisory group prior to setting or changing fees as provided for in this chapter.

(c) The advisory group may facilitate the development of materials that the Secretary may utilize to educate the public concerning lactation consultant licensure, the benefits of lactation care and services, and utilization of lactation care and services by individuals and in facilities or institutional settings.

(d) The advisory group may act as a facilitator of state-wide dissemination of information between lactation consultants, the International Board of lactation Consultant Examiners or its successor organization, and the Secretary.

(e) The advisory group shall provide analysis of disciplinary actions taken, appeals, and denials, and revocation of licenses at least once per year.

(f) The Secretary shall seek the advice of the advisory group for issues related to lactation care and services.

O.C.G.A. § 43-22A-5.

70. “‘Lactation care and services’ means the clinical application of scientific principles and a multidisciplinary body of evidence for evaluation, problem identification,

treatment, education, and consultation to childbearing families regarding lactation care and services.” O.C.G.A. § 43-22A-3(5).

71. Lactation care and services includes, but is not limited to:

- (A) Lactation assessment through the systematic collection of subjective and objective data;
- (B) Analysis of data and creation of a lactation care plan;
- (C) Implementation of a lactation care plan with demonstration and instruction to parents and communication to the primary health care provider;
- (D) Evaluation of outcomes;
- (E) Provision of lactation education to parents and health care providers; and
- (F) The recommendation and use of assistive devices.

O.C.G.A. § 43-22A-3(5).

72. The definition of “lactation care and services” is functionally identical to the definition found in House Bill 363 (2013).

73. Like House Bill 363 (2013), the Act includes the following exemptions:

- (1) Persons licensed to practice the professions of dentistry, medicine, osteopathy, chiropractic, nursing, physician assistant, or dietetics from engaging in the practice of lactation care and services when incidental to the practice of their profession, except such persons shall not use the title “licensed lactation consultant” or “licensed L.C.”;
- (2) Doulas and perinatal and childbirth educators from performing education functions consistent with the accepted standards of their respective occupations, except such persons shall not use the title “licensed lactation consultant” or “licensed L.C.” or designate themselves by any other term or title which implies that such person has the clinical skills and education comparable to a licensed lactation consultant;
- (3) The practice of lactation care and services by students, interns, or persons preparing the practice of lactation care and services under the qualified supervision of a lactation consultant or any licensed professional listed in paragraph (1) of this Code section;

(4) Employees of the United States government or any bureau, division, or agency thereof from engaging in the practice of lactation care and services within the discharge of the employees' official duties so long as such employees are performing their duties within the recognized confines of a federal installation regardless of whether jurisdiction is solely federal or concurrent;

(5) Employees of a department, agency, or division of state, county, or local government from engaging in the practice of lactation care and services within the discharge of the employees' official duties, including, but not limited to, peer counselors working within the Special Supplemental Nutrition Program for Women, Infants, and Children;

(6) Individual volunteers from providing lactation care and services, provided that:

(A) Such volunteers shall not use the title "licensed lactation consultant" or "licensed L.C.," shall not state that they are licensed to practice lactation care and services, and shall not designate themselves by any other term or title which implies that such volunteers have the clinical skills and education comparable to a licensed lactation consultant;

(B) Their volunteer service is performed without fee or other form of compensation, monetary or otherwise, from the individuals or groups served; and

(C) Such volunteers receive no form of compensation, monetary or otherwise, except for administrative expenses, such as mileage;

(7) A nonresident IBCLC from practicing lactation care and services in this state for five days without licensure or up to 30 days with licensure from another state if the requirements for licensure in such other state are substantially equal to the requirements contained in this chapter; or

(8) Other health care related professionals from seeking licensure for their professions.

O.C.G.A. § 43-22A-13.

74. As of July 1, 2018, the Act prohibits all persons from providing lactation care and services, except licensed lactation consultants or the individuals otherwise specifically exempt from the Act. O.C.G.A. §§ 43-22A-7, -11.

75. To become a Georgia licensed lactation consultant, an individual must first become an IBCLC. O.C.G.A. §§ 43-22A-6, -7.

76. Violations of the Act, such as engaging in lactation care and services without first becoming licensed, are punishable by civil fines of up to \$500 per violation. O.C.G.A. § 43-1-20.1(b).

The Act's Negative Effects Statewide

77. After the Act was passed, Plaintiffs Mary Jackson and ROSE and others in the lactation consultant community questioned whether CLCs and other non-IBCLC lactation consultants would be allowed to continue working in Georgia after July 1, 2018.

78. The Act exempts “perinatal and childbirth educators from performing *education* functions consistent with the accepted standards of their respective occupations.” O.C.G.A. § 43-22A-13(2) (emphasis added).

79. In response to a request by the Project, by letter dated June 29, 2016, Representative Sharon Cooper, sponsor of the Act, stated that although the Act licenses IBCLCs, “the law specifically allows other professionals and educators, including the ‘certified lactation counselors’ you educate to continue their good work in educating Georgia’s breastfeeding families. This law will expand access to breastfeeding support in Georgia, not reduce it.” Letter dated June 29, 2016, from Representative Sharon Cooper to Karin A. Cadwell, President of the Project. Representative Cooper further provided that she will “follow closely the Secretary of State’s implementation of this law to make sure that it is implemented according to the legislative intent which is to improve access for mothers and babies to clinical breastfeeding help.” *Id.* A true and accurate copy of the letter is attached hereto as Exhibit 2.

80. By opinion dated January 24, 2018 and modified May 11, 2018, the Georgia Department of Law considered the Act and concluded that “the Act prohibits any person, including a CLC, who is not a licensed lactation consultant and who does not fall within one of the Act’s exceptions, from practicing the types of acts and services that the Act defines as ‘lactation care and services.’” Op. Ga. Att’y Gen. 2018-1 (Jan. 24, 2018, modified May 11, 2018). A true and accurate copy of the opinion is attached hereto as Exhibit 3.

81. Thus, despite early assurances that the Act would not prohibit CLCs or other non-IBCLCs from working in Georgia, the Georgia Department of Law conclusively determined that CLCs are not eligible for any of the Act’s many exceptions and thus will be prohibited from providing lactation care and services within Georgia beginning July 1, 2018.

82. As of the date of filing, Defendant Secretary of State has issued fewer than 100 lactation consultant licenses.

83. The licenses that have been issued are all concentrated in urban areas, confirming that rural communities will be disproportionately harmed by the Act.

84. The Review Council Report determined that there were “335 active IBCLCs practicing in the state of Georgia.” Review Council Report at 10. Thus, even if all 335 active IBCLCs had already become licensed (and fewer than 100 have to date), there will be a shortage of lactation consultants in Georgia beginning July 1, 2018.

85. In comparison, there are over 800 active CLCs in Georgia.

86. Worse, many IBCLCs do not practice lactation consulting as their main profession. Many IBCLCs are nurses or other health care professionals who lack the time to provide full-time breastfeeding support to mothers.

87. The U.S. Department of Health and Human Services reports that 130,042 babies were born in Georgia in 2016. https://www.cdc.gov/nchs/data/nvsr/nvsr67/nvsr67_01.pdf at 25. That represents around 10,800 babies per month.

88. Given the current number of licensed lactation consultants in Georgia, on July 1, there will be, fewer than one licensed lactation consultant for every 1,300 babies born annually.

INJURIES TO PLAINTIFFS

89. Plaintiff Mary Jackson wants to continue working in her chosen profession and providing lactation care and services directly to patients as she has done for nearly 30 years, but she will be prohibited by the Act beginning July 1, 2018.

90. Mary has a personal passion for educating women about the benefits of breastfeeding and ensuring that all mothers have access to breastfeeding support.

91. Mary knows firsthand that women need reliable lactation care and support to reach their individual breastfeeding goals.

92. While the Act will not prevent Mary from working with mothers and providing lactation care and services without pay, the Act prohibits Mary from being paid by Grady Memorial, ROSE, or directly by a mother for providing lactation care and services.

93. Mary's employer, Grady Memorial, has told her that she will not lose her job, but she will not be allowed to work directly with mothers and babies as she has done for so many years. Grady Memorial has indicated that Mary will be reassigned. Mary believes her job will be limited to providing educational services to mothers before they give birth. It is also possible Mary could lose her job or have her hours cut if Grady Memorial determines it does not need or a lactation counselor on staff who is limited to an educational role.

94. Restricting Mary's job at Grady Memorial to an educational role does not fulfill Mary's professional goal of helping moms and babies. Telling moms about breastfeeding while they are pregnant is very different from performing assessment and offering hands-on support once their babies are born. She will no longer be able to provide her services through ROSE, which she loves doing. These limits leave Mary unable to continue her passion of working directly with mothers and babies. Thus, Mary is injured by the Act.

95. Plaintiff ROSE's main mission is to support women in meeting their individual breastfeeding goals. The critical days that often determine success with breastfeeding are days three and four of a baby's life. If a new mother cannot find support within those days, she will likely give up on breastfeeding altogether. Up until now, ROSE has taken many steps to provide early breastfeeding support to mothers, including contracting with CLCs or other non-IBCLC lactation consultants to provide lactation support and care to mothers; referring mothers to CLCs and other non-IBCLC lactation consultants; training and organizing networks of Community Transformers in underserved communities; training doctors, nurses, and hospitals on how to give breastfeeding support; and hosting a weekly drop-in clinic, called the Baby Café, for new mothers and paying CLCs who facilitate the Baby Café. Virtually all of ROSE's activities will be terminated, drastically reduced, or otherwise altered if the new law goes into effect on July 1, 2018.

96. Starting on July 1, ROSE will be unable to pay CLCs and other non-licensed lactation consultants to provide breastfeeding care and support.

97. Starting on July 1, ROSE will be unable to refer women to CLCs or other non-licensed lactation consultants. Currently, these CLCs and other lactation consultants are paid for their work. After July 1, they can only work as unpaid volunteers. Most, if not all, of the

lactation consultants that ROSE gives as referrals will not be able to provide regular breastfeeding care and support services for no compensation.

98. Currently, to accomplish its mission of providing individual support to families and increasing breastfeeding rates amongst African Americans, ROSE trains and organizes a network of Community Transformers and other lactation consultants in underserved communities.

99. ROSE trains its network of Community Transformers using research-based curriculum. Community Transformers serve as role models and advocates for mothers and babies. Many Community Transformers go on to become CLCs. ROSE attributes its success in helping mothers breastfeed to the fact that Community Transformers and ROSE-employed lactation consultants look and talk like the mothers who use ROSE's services. ROSE is keenly aware that women are more likely to ask a neighbor or a member of their community for breastfeeding advice than they are to schedule an appointment with an IBCLC at a hospital. As a result of the law, it is unlikely Community Transformers would be willing to go through the expense of becoming CLCs or IBCLCs. Although ROSE will still be able to train Community Transformers after July 1, it expects fewer women to participate, because breastfeeding care and support will no longer be a career option for Community Transformers. And it will no longer make sense for ROSE to recommend that Community Transformers become CLCs. As a result of the law after July 1, ROSE will be severely limited in its use of resources to increase breastfeeding rates in African American communities.

100. Because of its expertise and success in training Community Transformers, ROSE is often asked to speak at hospitals around the country and offer trainings. In fact, ROSE and its employees have trained doctors, nurses, and other health care providers on the benefits of

breastfeeding and on appropriate techniques for encouraging mothers to breastfeed. After July 1, ROSE can continue facilitating trainings for doctors and health care professionals in Georgia and other states; however, most of ROSE's activities are directed toward facilitating lactation care and services outside of a medical setting and those activities will largely be terminated.

101. ROSE hosts a weekly drop-in clinic called the Baby Café. To date, ROSE pays Mary and other CLCs to work at the Baby Café, but as of July 1, 2018, the Act will prevent ROSE from employing any non-licensed consultant to work at the Baby Café. Two ROSE employees are IBCLCs, but many other ROSE employees who often work at the Baby Café are CLCs. Only one ROSE employee is a licensed lactation consultant under the Act. ROSE will no longer be able to employ CLCs to work at the Baby Café. It is also possible that ROSE will be unable to find a licensed IBCLC to work at the Baby Café. ROSE may have to reduce the frequency of the Baby Café after July 1.

102. Due to the Act, if a mother asks ROSE for specific lactation care and support, ROSE will now be forced to refer that mother to less than 100 licensed lactation consultants throughout Georgia. ROSE used to have the option of referring mothers to the more than 800 CLCs and other non-IBCLC lactation consultants throughout the state, but the Act will severely limit ROSE's ability to connect breastfeeding moms with the services they need.

103. Mary Jackson is aware of mothers who will lose access to breastfeeding care and support because of the Act.

104. President and CEO of ROSE, Kimarie Bugg, is aware of mothers who will lose access to breastfeeding care and support because of the Act.

105. NickeySue Christian is a ROSE member and mother who has used ROSE's free services since March 2017, when her son was born. NickeySue planned to breastfeed her son,

but ran into difficulties in the first days of his life. These days are known as the critical days for breastfeeding. NickeySue's husband heard about ROSE. NickeySue was contacted by a ROSE-member CLC over the phone and then attended a ROSE Baby Café with her son before he was even a week old. NickeySue attributes her success in breastfeeding to the assessment, support, and guidance she received from ROSE and ROSE employees. Without ROSE, NickeySue would not have otherwise been able to find breastfeeding support.

106. NickeySue is still breastfeeding and still occasionally consults ROSE and ROSE-employed CLCs. NickeySue will not be allowed to get further breastfeeding support from ROSE-employed CLCs after July 1, 2018. If NickeySue has another baby in the future, she would only want to seek breastfeeding support from ROSE and her same CLC. NickeySue is injured by the Act.

107. ROSE member Tenesha Sellers, is a CLC and is employed as a contractor by ROSE. The Act will prevent Tenesha from continuing to provide breastfeeding care and support as part of her employment for ROSE. The Act will specifically prevent Tenesha from working directly with mothers as she has done for over a decade. Working as a CLC, both for ROSE and independently, has helped Tenesha support her family.

108. Tenesha has a second, part-time job as a Milk Lab Technician in the neonatal intensive care unit ("NICU") at DeKalb Medical. Although Tenesha has previously provided lactation care and support to mothers with babies in the NICU, she will no longer be able to do so as a result of the Act. ROSE employee, Tenesha Sellers, is injured by the act.

109. ROSE member and Community Transformer, Crystal Starr Flowers, is a CLC. As is the case for many CLCs, Crystal has multiple, part-time jobs. The Act will prevent Crystal

from working directly with mothers for payment, which has been her passion for the past four years.

110. Crystal also works as a Milk Lab Technician in the NICU at DeKalb Medical and expect that her job duties will change as a result of the Act. Mothers with babies in the NICU need a lot of support and encouragement to breastfeed their babies. Crystal has seen firsthand how NICU moms have been forced to wait several days for a follow up from IBCLCs. Waiting on answers to breastfeeding questions can make moms give up on breastfeeding altogether. Crystal has also witnessed the important role she can play as a CLC in helping NICU moms overcome breastfeeding challenges. ROSE member, Crystal Starr Flowers, is injured by the Act.

111. Crystal has personal knowledge of moms who will suffer due to lack of access to breastfeeding support beginning July 1, 2018. In particular, Crystal has one friend who is pregnant and due the first week of July. This friend has personally told Crystal that she wants to pay Crystal for Crystal's lactation consultant services. If Crystal's friend has her baby before July 1, 2018, Crystal can provide lactation counseling for payment. If Crystal's friend has her baby after July 1, 2018, Crystal cannot accept any payment for offering lactation counseling. If Crystal's friend gives birth after July 1, 2018, she will be injured by the Act.

112. ROSE member and supporter Dr. Lynette Wilson-Phillips encourages all mothers to breastfeed when possible and can attest to the benefits of breastfeeding for mothers and babies. In Dr. Wilson-Phillips' experience, CLCs and IBCLCs are equally competent to provide lactation care and services to mothers and babies. Dr. Wilson-Phillips regularly refers mothers with questions about breastfeeding to lactation consultants, including CLCs. Dr. Wilson-Phillips has referred patients to ROSE and ROSE-employed CLCs. Dr. Wilson-Phillips has previously employed CLCs at her practice. Dr. Wilson-Phillips is personally concerned that the Act will

greatly decrease the number of available lactation consultants to which she may refer her patients. Dr. Wilson-Phillips plans to continue to refer patients to CLCs in the future, but will be prevented from doing so by the Act. Dr. Wilson-Phillips can attest that mothers and babies will suffer irreparable harm as a result of the Act.

113. ROSE member Amy Smolinsk is the Executive Director of Mom2Mom Global, a nonprofit organized to provide military families with high-quality breastfeeding education and support. Amy has personal knowledge of military families in Georgia who will be harmed by the Act.

114. CLCs with a military spouse are often required to move across the country or around the world without much notice. CLCs have a portable, flexible career path that is always in demand. But CLCs who have moved to Georgia because of their military spouse's obligations can no longer be paid for providing breastfeeding care and support in Georgia.

115. Additionally, many military families lack access to breastfeeding support even though lactation counseling is supposed to be covered by Tricare, the military health care program. Tricare does not require that a provider of lactation counseling services have any lactation-specific training. Tricare even allows primary care practices to bill for lactation counseling services as one part of 20-minute well-baby visits, even though an average lactation initial consultation takes 60–120 minutes to do a complete and thorough assessment. As a result, many military families pay out-of-pocket for breastfeeding care and support. Reducing access to CLCs and other non-IBCLC lactation consultants hurts military families. ROSE member, Amy Smolinski, is injured by the Act.

CAUSES OF ACTION

COUNT I (Equal Protection)

116. Plaintiffs reallege and incorporate by reference the allegations contained in all of the preceding paragraphs.

117. The Equal Protection Clause in the Georgia Constitution, art. I, Section I, Paragraph II, provides “[p]rotection to person and property is the paramount duty of government and shall be impartial and complete. No person shall be denied the equal protection of the laws.”

118. The Equal Protection Clause guarantees the right of similarly situated individuals to be treated similarly.

119. It is “essential” that all government-imposed classifications “bear a direct and real relation to the object or purpose of the legislation.” *State v. Moore*, 259 Ga. 139, 140, 376 S.E.2d 877, 879 (1989).

120. The primary purpose of the Act is to “protect the health, safety, and welfare of the public by providing for the licensure and regulation of the activities of persons engaged in lactation care and services.” O.C.G.A. § 43-22A-2.

121. The secondary purpose of the Act is to increase access to lactation care and services within Georgia.

122. Under the terms of the Act, beginning July 1, 2018, only licensed lactation consultants may provide lactation care and services in Georgia. O.C.G.A. § 43-22A-11.

123. Only IBCLCs may apply to become licensed lactation consultants in Georgia. O.C.G.A. § 43-22A-7.

124. The Act, however, exempts other, unqualified individuals, such as chiropractors, dieticians, government employees, interns and volunteers. These individuals are allowed to provide lactation care and services without obtaining a lactation consultant license or otherwise becoming IBCLCs. O.C.G.A. § 43-22A-13.

125. CLCs and other similarly situated unlicensed lactation consultants cannot apply for or be granted a license under the Act without obtaining IBCLC credentials and enduring all of the education and investment that credential requires.

126. Under the Act, CLCs and other similarly situated unlicensed lactation consultants cannot legally continue to provide lactation care and services for payment.

127. The Review Council Report determined that except in high-risk situations, CLCs and IBCLCs are equally competent to provide lactation care and services.

128. Distinguishing IBCLCs from CLCs and other non-IBCLC lactation consultants is irrational and lacks any real and substantial relationship to the purposes of the Act.

129. Exempting a raft of individuals, many of whom receive no lactation care training, lacks a direct and real relation to the purposes of the Act.

130. It is irrational to classify unlicensed lactation consultants, like CLCs, who wish to provide lactation care and services for pay differently than those who provide lactation care and services for free. Doing so lacks a direct and real relationship to the purposes of the Act. Indeed, there is no reason to think that the quality of lactation care and services provided by a CLC or other unlicensed lactation consultant would change based on whether or not the CLC is paid.

131. Likewise, many CLCs have multiple jobs. For instance, there are CLCs who are WIC Peer Counselors and who also provide independent breastfeeding care and support for payment, outside of WIC facilities. These individuals can continue providing breastfeeding care and support as part of their WIC jobs, since that employment falls within the government employee exception. The exact same CLCs, however, cannot provide identical breastfeeding care and support outside of the WIC office.

132. But for the Act, Plaintiff Mary Jackson could continue to provide lactation care and services, in exchange for payment, as part of her employment with Grady Memorial and ROSE.

133. But for the Act, ROSE employee Tenesha Sellers would continue to provide lactation care and services in Georgia, in exchange for payment.

134. But for the Act, ROSE Community Transformer, Crystal Starr Flowers would continue to provide lactation care and services in Georgia in exchange for payment.

135. But for the Act, NickeySue Christian would continue to receive lactation care and services from CLCs employed by ROSE.

136. But for the Act, ROSE member Dr. Lynette Wilson-Phillips would continue to refer her patients to CLCs and other lactation consultants who do not qualify for a license under the Act.

137. Plaintiffs have no other legal or administrative remedy available to prevent or minimize the harm to their constitutional rights caused by the Act.

138. Unless and until the Act is declared unconstitutional and Defendants are enjoined from enforcing it, Plaintiffs and members of ROSE will continue to suffer great and irreparable harm.

COUNT II (Due Process)

139. Plaintiffs reallege and incorporate by reference the allegations contained in all of the preceding paragraphs.

140. The Due Process guarantee in the Georgia Constitution provides “[n]o person shall be deprived of life, liberty, or property except by due process of law.”

141. This Due Process guarantee protects, among other things, the right to pursue a chosen professional calling free from arbitrary, irrational, unreasonable, or oppressive government interference.

142. In Georgia, to comport with the guarantees of the Due Process Clause, a law “not be unreasonable, arbitrary or capricious, and that the means adopted must have some real and substantial relation to the object to be attained.” *Rockdate Cnty. v. Mitchell’s Used Auto Part’s*, 243 Ga. 465, 465, 254 S.E.2d 846, 847 (1979).

143. The stated purpose of the Act is to “protect the health, safety, and welfare of the public by providing for the licensure and regulation of the activities of persons engaged in lactation care and services.” O.C.G.A. § 43-22A-2.

144. The effect of the Act is irrational and lacks any real and substantial connection to the public health, safety, or welfare because there is no credible evidence that CLCs or other unlicensed lactation consultants have ever harmed the public. CLCs can continue to work in government settings and in every other state. There is no evidence that CLCs or other non-IBCLC lactation consultants have harmed the public health, safety, and welfare.

145. Additionally, the Act affirmatively harms the health, safety, and welfare of the public by putting many qualified and experienced lactation consultants, such as CLCs, out of business and thereby critically decreasing access to lactation care and services statewide.

146. The Act’s many exemptions are irrational and lack any real and substantial connection to protecting the health, safety, and welfare of the public. The individuals exempt from the Act may continue to provide lactation care and services, without any proof that they are competent to do so. It is irrational, arbitrary, and unconstitutional for the state to allow, for

example, a chiropractor (who has no breastfeeding training) to continue providing lactation care and services, while a CLC with decades of experience is legally prohibited from doing so.

147. As legislators repeatedly emphasized, another purpose of the Act is to increase access to lactation care and services in Georgia. Forcing hundreds of lactation consultants out of work, will thwart, not further, this goal.

148. As of the date of this filing, there are fewer than 100 individuals who have received a lactation consultant license. Those licensed individuals must now provide lactation care and services for all of the more than 130,000 babies born annually in Georgia. These numbers demonstrate that the Act does the opposite of what it intended.

149. Excluding everyone exception IBCLCs from earning a living as lactation consultants lacks the constitutionally required real and substantial connection to the public good.

COUNT III (Declaratory Judgment)

150. Plaintiffs reallege and incorporate by reference the allegations contained in all of the preceding paragraphs.

151. Plaintiffs are entitled to a declaratory judgment that the Act is void and without effect because the ends of justice require that such a declaration should be made pursuant to O.C.G.A. § 9-4-2 and there exists a substantial and justiciable controversy with regard to Plaintiffs' rights as guaranteed by the Georgia Constitution.

152. Plaintiffs reallege and incorporate by reference the allegations contained in all of the preceding paragraphs.

153. A temporary restraining order is proper "to preserve the status quo, as well as balance the conveniences of the parties" during litigation. *Byelick v. Herbelin USA, Inc.*, 275 Ga. 505, 506, 570 S.E.2d 307, 308 (2002).

154. Additionally, in considering a temporary restraining order, courts consider whether “(1) there is a substantial threat that the moving party will suffer irreparable injury if the injunction is not granted; (2) the threatened injury to the moving party outweighs the threatened harm that the injunction may do to the party being enjoined; (3) there is a substantial likelihood that the moving party will prevail on the merits of her claims at trial; and (4) granting the [relief requested] will not disserve the public interest.” *City of Waycross v. Pierce Cnty. Bd. Of Comm’rs*, 300 Ga. 109, 111, 793 S.E.2d 389, 391–92 (2016).

155. Plaintiff Mary Jackson will suffer irreparable injury if the Act takes effect on July 1, 2018.

156. Plaintiff ROSE and its members and supporters will suffer irreparable injury if the Act takes effect on July 1, 2018.

157. The threatened injuries to Plaintiffs outweigh the nonexistent (or, at the very least, minimal) harm that may occur if the injunction is granted.

158. There is a substantial likelihood that Plaintiffs will prevail on the merits.

159. Granting the relief requested will serve, not disserve, the public interest.

160. Plaintiff Mary Jackson and others similarly situated have no adequate remedy at law or otherwise from the harm and damage that is certain to occur if the Act takes effect July 1, 2018, or at any other time during the pendency of this lawsuit.

161. Plaintiff ROSE and its members have no adequate remedy at law or otherwise from the harm and damage that will be done to them if the Act takes effect July 1, 2018, or during the pendency of this lawsuit.

162. Granting a temporary restraining order or interlocutory injunction would preserve the status quo while this lawsuit is pending and serve the interests of justice.

COUNT IV
(Permanent Injunction)

163. Plaintiffs reallege and incorporate by reference the allegations contained in all of the preceding paragraphs.

164. Plaintiffs and others similarly situated have no adequate remedy at law that could protect them from the harm and damage that will be done to them if the Act takes effect.

165. Plaintiffs will suffer irreparable harm if the Act takes effect at any time.

RELIEF REQUESTED

Plaintiffs respectfully request that the Court grant the following relief:

A. Declare that the Act violates Article I, Section I, Paragraph II of the Georgia Constitution;

B. Declare that the Act violates Article I, Section I, Paragraph I of the Georgia Constitution;

C. Enter a temporary restraining order barring Defendants from enforcing the Act until such time as the Court may entertain the Plaintiffs' request for an interlocutory injunction;

D. Enter an interlocutory injunction barring Defendants from enforcing the Act while this litigation is pending;

E. Enter a permanent injunction barring Defendants from enforcing the Act in all of its applications;

F. Award Plaintiffs their reasonable attorneys' fees and costs in this action pursuant to O.C.G.A. § 13-6-11 and O.C.G.A. § 9-4-9; and

G. Order such further relief as the Court deems just and proper.

Dated: June 25, 2018

Respectfully submitted,

/s/ Yasha Heidari

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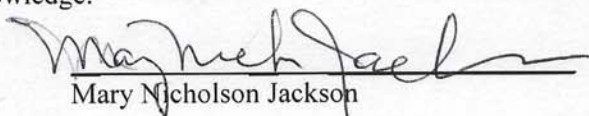
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Attorneys for Plaintiffs

* Motion for admission *pro hac vice*
pending

VERIFICATION

Mary Nicholson Jackson personally appeared before me, the undersigned office duly authorized officer. Having been duly sworn, Mary Nicholson Jackson hereby swears or affirms that the factual statements made in the foregoing Verified Petition for Declaratory Judgment, Temporary Restraining Order, Interlocutory and Permanent Injunction, and Attorneys' Fees are true and correct to the best of her personal knowledge.

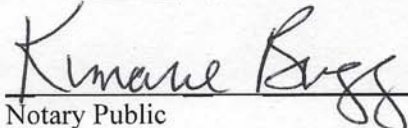

Mary Nicholson Jackson

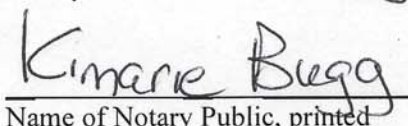
Sworn to and subscribed before me

in the State of Georgia

County of DeKalb

on this 21 day of June 2018.


Notary Public

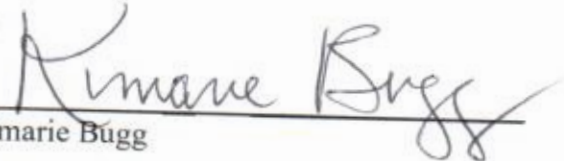

Name of Notary Public, printed

[SEAL]



VERIFICATION

Kimarie Bugg personally appeared before me, the undersigned office duly authorized officer. Having been duly sworn, Kimarie Bugg hereby swears or affirms on behalf of ROSE that the factual statements made in the foregoing Verified Petition for Declaratory Judgment, Temporary Restraining Order, Interlocutory and Permanent Injunction, and Attorneys' Fees are true and correct to the best of her personal knowledge.



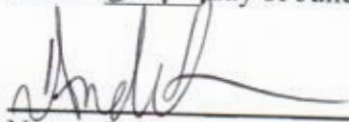
Kimarie Bugg

Sworn to and subscribed before me

in the State of Georgia

County of DeKalb

on this 21 day of June 2018.



Notary Public

Andrea Serano

Name of Notary Public, printed

[SEAL]



Exhibit 1

*Verified Petition for Declaratory
Judgment, Temporary Restraining
Order, Interlocutory and Permanent
Injunction, and Attorneys' Fees*

Georgia Occupational Regulation Review Council

House Bill 363: Georgia Lactation Consultant Practice Act

LC 33 5015

A Review of the Proposed Legislation

December 2013

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APPENDIX A Summary of House Bill 363

APPENDIX B Copy of House Bill 363

APPENDIX C Lactation Support Provider Comparison

EXECUTIVE SUMMARY

As provided in O.C.G.A. 43-1A, the Georgia Occupational Regulation Review Council reviews all bills proposing licensure of a profession or business referred to it by the chairperson of the legislative committee of reference. Accordingly, the Council, at the request of the Chairperson of the House Health and Human Services Committee has reviewed House Bill 363 (LC 33 5015), which proposes to license lactation consultants.

During the course of the study, most information was primarily obtained from the applicant group (Healthy Mothers, Healthy Babies Coalition of Georgia, Inc.), the Department of Community Health, the Department of Public Health, the International Lactation Consultant Association, and other interested parties.

Based on information reviewed and developed by the Council, the Council does not recommend passage of House Bill 363 (LC 33 5015), which proposes to license lactation consultants, because it does not meet all of the criteria set forth in O.C.G.A. 43-1A-6.

INTRODUCTION

House Bill 363 proposes to regulate lactation consultants in Georgia. House Bill 363 provides for the licensing of lactation consultants by the Secretary of State's Office.

Membership of the Georgia Occupational Regulation Review Council (GORRC) is shown in Exhibit 1.

Exhibit 1 Georgia Occupational Regulation Review Council Membership	
Standing Members Trip Addison, Chairperson Shawn Conroy Lauren M. Curry Russell Crutchfield Tim Fleming Christopher Sanders Joan Schoubert Ashley E. Short	Representing Office of Planning and Budget Office of Consumer Protection Department of Natural Resources Department of Public Health Office of Secretary of State Department of Revenue Department of Accounting Department of Agriculture
Legislative Appointees Representative Sharon Cooper Senator Renee Unterman	Representing Georgia House of Representatives Georgia Senate

In reviewing the bill, GORRC solicited input from as many interested parties as possible. A questionnaire was sent to the applicant group, Healthy Mothers Healthy Babies Coalition of Georgia, Inc., requesting background information that would support the need for regulation of lactation consultants. The Council also contacted a number of interested groups and other state agencies, including:

- The legislators authoring the bill
- Georgia Department of Public Health
- Georgia Department of Community Health
- Georgia Secretary of State's Office
- Governor's Office of Consumer Protection
- Georgia Composite Medical Board
- Georgia Chapter- American Academy of Pediatrics
- Grady Memorial Hospital

- Georgia Nurses Association
- Medical Association of Georgia
- Women, Infants, and Children (WIC) – State Office
- International Lactation Consultant Association
- Georgia Association of Health Plans
- The Academy of Lactation Policy and Practice
- Reaching Our Sisters Everywhere (ROSE)

In addition to interviews and requests for information from the organizations listed above, GORRC staff observed the work of lactation consultants in the neonatal intensive care unit, the maternity ward, and the outpatient clinics at Grady Memorial Hospital.

Representatives from all interested parties were given the opportunity to present information to the Council, either by oral presentation and/or through written material. Meeting invitations were sent via email to the applicant group as well as any other potentially interested parties.

DESCRIPTION OF PROPOSED LEGISLATION

House Bill 363 proposes to license individuals that practice lactation consultation. A lactation consultant is someone who provides holistic, evidence-based breastfeeding support, care, and education for women and their families. The bill proposes to amend the current statute regarding professions governed by the *Office of the Secretary of State* to provide for the licensing of lactation consultants.

As a result of the proposed changes, *lactation consultants* would be licensed to provide, but not limited to, the following services:

- ❑ Lactation assessment through the systematic collection of subjective and objective data
- ❑ Analysis of data and creation of a plan of care
- ❑ Implementation of a lactation care plan with demonstration and instruction to parents and communication to the primary health care provider
- ❑ Evaluation of outcomes
- ❑ Provision of lactation education to parents and health care providers; and
- ❑ The recommendation and use of assistive devices.

The proposed regulation would allow licensure for individuals meeting the following requirements:

- ❑ Licensed lactation consultants must:
 - Be at least 18 years of age
 - Complete the application and submit all fees
 - Meet the international education and clinical standards established for International Board Certified Lactation Consultants (IBCLCs) by the International Board of Lactation Consultant Examiners (IBCLE) or other national testing service as approved by the board
 - Provide proof of successful completion of the IBCLE examination or other examination as approved by the board, and
 - Have satisfactory results from a fingerprint record check report conducted by the Georgia Crime Information Center and the Federal Bureau of Investigation, as described by the board.
- ❑ Examinations to determine competence shall be administered to qualified applicants at least once each calendar year. The examinations may be administered by a national testing service. The board shall prescribe or develop examinations which may include an examination given by the International Board of Lactation Consultant Examiners or any other examination approved by two-thirds' vote of the board.
- ❑ The board may waive the examination requirement for applicants who are licensed in another state, political territory, or jurisdiction acceptable to the board if the requirements of that license are substantially equivalent to those here in Georgia, or that are certified by and in good standing with the IBCLE.
- ❑ Renewal of the lactation consultant license shall take place every two years. Renewal requirements include continuing education courses determined by the board.

A brief summary of House Bill 363 and a copy of House Bill 363 are included in Appendices A and B, respectively.

PRESENT PRACTICES

A lactation consultant is someone who provides holistic, evidence-based breastfeeding support, care, and education for women and their families. International Board Certified Lactation Consultants (IBCLC) are the only lactation consultants who are trained to perform “clinical care,” in addition to breastfeeding education and promotion. IBCLC’s work in several settings, including hospitals, physician practices, public health departments, and corporations. A lactation consultant provides specialized knowledge and training in breastfeeding and human lactation. A lactation consultant is responsible for counseling mothers and families on initiation, exclusivity, and duration of breastfeeding, to assist amidst any difficulties or high-risk situations, as well as providing staff and clinical education on the science of lactation and clinical management of breastfeeding. Lactation consultants are found in both the inpatient setting, upon delivery of a baby, as well as in the outpatient setting, as a consultant. Although lactation consultants are not required to be directly supervised by a physician, they are ethically required to report to the mother’s and/or baby’s Primary Care Provider.

A lactation consultant serves several roles:

- Professional
- Clinical expert
- Collaborator
- Educator
- Facilitator
- Investigator
- Policy consultant
- Advocate
- Promoter

As a consultant in the outpatient setting, lactation consultants’ responsibilities include:

- Review of complaint
- Maternal medical history
- Infant medical history
- History of lactation issues
- Physical assessment of infant
- Physical assessment of mother
- Observation of latch and feeding
- Pre and post feed weight checks
- Assessment of issues and instruction of plan and techniques
- Anticipatory guidance and counseling
- Follow up
- Charting, and
- Reporting to infant’s primary care physician.

Lactation consultants are typically responsible for providing breastfeeding education and support to expecting and new mothers. Lactation consultants also are primarily responsible for aiding mothers with any breastfeeding complications, in order to prevent premature cessation of breastfeeding.

An observation of lactation consultants at Grady Memorial Hospital, whose maternity ward delivers about 2,900 babies per year, of which 75-80% are Medicaid paid, revealed the level of responsibility deemed to these professionals in a hospital setting. Lactation consultants in the hospital are primarily responsible for providing breastfeeding education to the expecting mothers, as well as assisting in breastfeeding after birth. Also, lactation consultants are staffed in outpatient offices in the hospital to aid in breastfeeding help or with any complications.

Lactation consultants work in several settings including hospitals, physician offices, private practices, businesses, and federal, state, and local health departments. They can also work in community resource settings or as individual professionals. Because there is no state law regulating the practices of these professionals, education and training are not legally or explicitly required by State law. The IBCLC has a voluntary certification process known as the IBCLC that ensures certified professionals have the necessary skills and experience to practice. Similarly, the Academy of Lactation Policy and Practice offers a voluntary certificate called the Certified Lactation Counselor (CLC) which ensures competency of the lactation consultant. It does, however, remain legal to practice clinical lactation consultation in Georgia, without a minimum standard set for education, training, or experience.

The Potential For Harm

Physical Harm

According to Healthy Mothers Healthy Babies, the potential for harm to patients is significant. Lactation consultants are responsible for the health and well-being of breastfeeding mothers as well as babies, and are the most qualified and trained, and therefore typically primarily responsible should any complications with breastfeeding arise. Human breast milk is important for human development, nutrition, and a healthy immune system and gastrointestinal tract. Breastfeeding has proven to reduce the risk of several childhood diseases and health conditions including sudden infant death syndrome, upper and lower respiratory infection, gastrointestinal infection, ear infections, atopic dermatitis, asthma, gluten intolerance, and Diabetes Type 1 and Type 2. Studies indicate that breastfeeding also reduces the risk of several diseases in mothers, including Diabetes, metabolic syndrome, ovarian cancer, coronary artery disease, and breast cancer. Having access to a lactation consultant can aid in initiation and duration of breastfeeding. If the mother prematurely terminates breastfeeding, she puts herself and her baby at risk of several complications including:

- For the mother:
 - Painful breast engorgement
 - Plugged milk ducts
 - Mastitis
 - Breast abscess
 - Nipple trauma
 - Bacterial and/or candida infections
 - Postpartum depression
 - Early weaning
- For the baby:
 - Reaction to cow's milk or soy based formulas
 - Failure to thrive
 - Child abuse
 - Death
 - Higher disease risks as infants, children, and adults

Financial Harm

There are no data available within Georgia that can accurately report the scope of public harm caused by the uneducated or inexperienced practice of lactation consultation. There is, however, evidence to show that having access to proper lactation support increases the initiation of breastfeeding, and not only prevents the diseases and health conditions noted above, but also reduces cost to families, insurers, and the state. As displayed in several studies in other states across the nation, several entities across the healthcare spectrum including WIC programs, primary care settings, Neonatal Intensive Care Units (NICU), and hospitals have attested to the improvement in either initiation or increased duration of breastfeeding due to the presence of an IBCLC on staff. In Georgia, about 70% of mother's initiate breastfeeding successfully, but only 13% of Georgia's infants are still being exclusively breastfed at six months. In Georgia, an exclusively breastfed WIC infant saves Medicaid and WIC \$160 per month in the first six months of life.

Complaints

Because the lactation consultant profession is not formally regulated by any means, there are no formal processes for complaints. The Better Business Bureau, Office of Consumer Protection, and Department of Insurance were all unable to provide complaints associated with lactation consultants as it is not something that is tracked. The Medicaid division of the Department of Community Health also indicated that it did not have any complaint data regarding the lack of availability of IBCLCs for lactation

consultant services, but that it has received inquiries from advocate groups regarding the availability of lactation consultant services.

Issues Identified

Currently, there is no regulation regarding the use of the title “lactation consultant” or the practice of the profession. There are several courses offered by different educational bodies that teach lactation specific education. The most notable issue that House Bill 363 identifies is the question of distinguishing the different certifications that lactation consultants obtain, and defining their respective scopes of practice, in order to license one group and not another. House Bill 363 states that with the passage of this legislation, “no person without a license as a lactation consultant issued pursuant to this chapter shall use the title ‘lactation consultant,’ ‘lactation specialist,’ ‘breastfeeding consultant,’ or ‘breastfeeding specialist,’ or practice lactation care and services.”

The bill does not affect or prevent the following groups, exempt from this chapter, from engaging in the practice of lactation care and services where incidental to the practice of their profession, so long as they do not use the aforementioned titles: physicians, nurses, physician assistants, dietitians, WIC peer counselors, doulas, childbirth educators, students, interns, federal, state, and local government employees, and volunteers. Only those lactation consultants holding an IBCLC certification, unless otherwise approved by the Board, are eligible to apply for licensure, however. The most common lactation consultant certifications are described on pages 10-11.

PRESENT REQUIREMENTS AND VOLUNTARY EFFORTS

State Law

There currently exists no state law regarding the practice of lactation consultants. Lactation consultants work regularly with other regulated health care professionals such as physicians (pediatricians, gynecologists, and obstetricians), physician-assistants, nurses, and dietitians. The *Composite State Board of Medical Examiners* licenses physicians, physician's assistants, and nurses.

The Medical Board investigates complaints and disciplines those who violate *The Medical Practice Act* or other laws governing the professional behavior of its licensees. Ultimately, the mission of the *Composite State Board of Medical Examiners* is to protect the health of Georgians through the proper licensing of physicians and certain members of the healing arts. Although lactation consultants typically work with healthcare professionals licensed by the Composite State Board of Medical Examiners, however, the proposed legislation would grant the Georgia Lactation Consultant Licensing Board under the Secretary of State's Office the jurisdiction of licensing lactation consultants.

Voluntary

Certification with the International Board of Lactation Consultant Examiners

As mentioned before, lactation consultants can voluntarily complete a certification program administered by the International Board of Lactation Consultant Examiners. This process (and renewal process) is a professional certification process given by an independent credentialing body designed to ensure that the certified professionals meet the qualifications and minimum standards set by associations governing all members of the lactation consulting team. The process of certification includes an educational requirement consisting of eight college courses and six continuing education courses, a specified accumulation of clinical experience hours, and a written examination to determine competency. The comprehensive examinations cover anatomy, physiology, endocrinology, nutrition, biochemistry, immunology and infectious disease, pathology, pharmacology and toxicology, psychology, sociology, and anthropology, as well as growth parameters and developmental milestones, interpretation of research, ethical and legal issues, breastfeeding equipment and technology, techniques, and public health. The test includes a modified practical exam component. Before sitting for certification examination, individuals must show proof of completion of educational requirements and clinical experience.

Training and Experience

There are currently 335 active IBCLCs practicing in the state of Georgia, according to the International Board of Lactation Consultant Examiners. There are about 22,000 IBCLCs practicing in 81 countries, including 13,292 IBCLCs in the United States. IBCLC education requirements include:

- 90 hours of lactation specific education, completed within 5 years of application for licensure AND meet one of the following requirements:
 - A) Be a registered/licensed/recognized health professional in their country
OR
 - B) Have completed both of the following educational requirements:
 - Eight general education health sciences courses of one semester, or equivalent, in length. The eight higher education subjects are: biology, human anatomy, human physiology, infant and child growth and development, nutrition, psychology or counseling or communication skills, introduction to research, sociology or cultural sensitivity or cultural anthropology
 - Six additional continuing education subjects and basic life support e.g. CPR): medical documentation, medical terminology, occupational safety and security for health professionals, professional ethics for health professionals (e.g. Code of Ethics), universal safety precautions and infection control.

The amount of lactation specific clinical hours required is dependent on the applicants other qualifications, but ranges from 500-1,000 hours.

Certified Lactation Counselor

The *Healthy Children's Center for Breastfeeding Program* has educated, and its partner the *Academy of Lactation Policy and Practice* (ALPP) has certified over 13,000 Certified Lactation Counselors (CLCs) in the United States. Both the Healthy Children's Project as well as the ALPP are non-profit organizations. The Healthy Children's Project is the nation's leader in lactation education. The Lactation Counselor Training Course is a week-long course consisting of 45 hours of coursework, which is then followed by an examination administered by the ALPP at the completion of the course. CLC certificates are awarded to those who successfully complete the course and pass the examination. The CLC certificate assures the consumer that the person is competent and trained to provide human lactation support and breastfeeding consultation.

A CLC is a member of the health care team who can provide knowledge and counseling about optimal and sub-optimal breastfeeding. CLCs work in several settings, including hospital maternity units and neonatal intensive care units, outpatient lactation clinics, WIC programs, physician and midwife offices, visiting nurse programs, local, county, and state maternal and child public health programs, and in private practices. WIC programs as well as hospitals have stated that they find it beneficial to have both IBCLCs as well as CLCs on staff because they serve different purposes. There are currently 826 CLCs practicing in Georgia.

WIC Peer Counselors

The Women, Infants, and Children (WIC) Program provides a resource for pregnant and breastfeeding mothers in the WIC program known as WIC Peer Counselors. A WIC peer counselor is a mother who has successfully breastfed her child, and falls into WIC's target population of low-income women. These mothers undergo 20 hours of training through WIC to provide mother-to-mother support in a group setting and one-to-one counseling through telephone calls or visits in the home, clinic, or hospital. WIC has seen their peer counselors as a valuable resource, as WIC clients seem to feel more comfortable with their peer counselors than other health professionals. The peer counselors not only provide education and support, but also serve as role models for current WIC clients.

Other Certification/Counseling Programs

Although these three are the most prominent in healthcare practice, there are several other professionals that consider themselves lactation support providers. These providers include lactation specialists, breastfeeding specialists, lactation educator counselors, certified breastfeeding counselors, and breastfeeding educators. Each of these titles is associated with certain training and skills, but because there is no regulation of the occupation, it is difficult to determine competency and experience of these professionals. A comparison of all the different types of lactation support providers along with their respective training and experience is provided in Appendix C.

OTHER STATES' PROGRAMS

Although no states currently license lactation consultants, some states have chosen to regulate the profession in some fashion. In Louisiana, IBCLCs are “registered” with the State pursuant to statutory law. Oklahoma and New York both permit Medicaid to reimburse IBCLCs if they hold another health profession license (i.e. physician, nurse, dietitian, etc.) Legislation similar to House Bill 363 has been introduced in Massachusetts and Pennsylvania, but neither bill was passed.

FINDINGS

The Georgia Occupational Regulation Review Council is required by O.C.G.A. 43-1A-6 to apply the following criteria when evaluating whether a profession or business should be regulated:

- Whether the unregulated practice of an occupation may harm or endanger the health, safety, and welfare of citizens of the state and whether the potential for harm is recognizable and not remote;
- Whether the practice of an occupation requires specialized skill or training, and whether the public needs and will benefit by assurances of initial and continuing occupational ability;
- Whether the citizens of this state are or may be effectively protected by other means;
- Whether the overall cost effectiveness and economic impact would be positive for citizens of the state; and
- Whether there are currently means other than state regulation to protect the interest of the state.

House Bill 363, presented to the Council for review, proposes to regulate lactation consultants. In this review, the Council has assessed, based on the criteria set forth above, whether or not lactation consultation should be regulated. Findings from this review are presented below.

While There is a Potential Risk of Harm to the Safety and Health of Georgia's Citizens Due to the Unregulated Practice of Lactation Consultants, No Substantive Evidence Of Harm Was Identified.

Because the health of the mother as well as the baby is markedly improved with breastfeeding, and can be jeopardized by the inability to or premature cessation of breastfeeding, the lactation consultant role in facilitating optimal health holds high importance. The practice of lactation consultation by untrained and inadequately educated individuals could cause harm to members of the general public receiving the services of a lactation consultant. Licensure would assure the consumer that the person delivering services is a credible professional with specific knowledge, training, and competency as approved by the state, however, this assurance is also provided through current voluntary certifications.

In most healthcare settings, including hospitals, outpatient offices, and WIC clinics, IBCLCs are typically regarded as the most qualified and trained to treat clinically high-risk populations, due to their extensive coursework and clinical experience. Because they do not hold a health professional license, however, they are unable to treat the Medicaid population, due to the fact that Medicaid only allows licensed providers in their network, unless they have a supervising physician or other health professional holding a license that is able to bill for their combined services. The Medicaid population potentially being unable to access services of an IBCLC that does not hold another healthcare professional license poses a risk of potential harm.

It is important to note, however, that because the general population seeking lactation consultation does not fall in the clinically high-risk category, and is instead seeking general breastfeeding education and assistance, the CLC is equally as qualified to provide care and services as an IBCLC in several settings including hospitals and clinics. If this legislation prohibited CLCs from providing services, the citizens may be at a greater risk of harm because the majority of lactation consultant providers would no longer be able to provide care.

Lactation Consultants need Specialized Training; the Public Currently Benefits from Assurances that Practicing Lactation Consultants are Qualified.

IBCLCs have the more rigorous and comprehensive requirements for obtaining certification. The eight courses that applicants are required to have completed are biology, human anatomy, human physiology, infant and child growth and development, nutrition, psychology or counseling or communication skills, introduction to research, and sociology or cultural sensitivity or cultural anthropology. Six additional continuing education subjects as well as Basic Life Support (ex. CPR) are also required, which include medical documentation, medical terminology, occupational safety and security for health professionals, professional ethics for health professionals, and universal safety precautions and infection control. IBCLCs also require 90 hours of lactation

specific education, which is the most coursework hours required by any certification. Lastly, before sitting for the IBCLC examination, the certification requires that the applicant completes a specified number of clinical experience hours, dependent upon other qualifications, ranging from 300 to 1,000 hours.

Similar to the Board Examination for physicians, physician assistants, and nurses, the IBCLC certification examination is issued by an independent credentialing body not affiliated with any of the educators who provide the coursework. Because the issuers of the examination are not in any way affiliated with the organization, the certification holds more value in distinguishing qualified individuals.

Citizens of the State have a Means of Protection Available to them, but Regulation Would Provide Nominal Additional Protections.

Currently, WIC offers their client population access to lactation services and community options for women seeking help with breastfeeding that is of no cost to the mother. Community resources such as support groups, breastfeeding coalitions, and clinics provide this population additional access to lactation consulting services. The WIC income eligibility requirement is the same as the Medicaid income eligibility requirement, which is at or below 185 percent of the U.S. Poverty Guidelines. Having health insurance through Medicaid is not a requirement for WIC qualification. Because Medicaid does not offer a lactation specific benefit, it recommends its policy holders seeking lactation support to apply to the WIC program.

Additionally, IBCLCs that hold a healthcare provider license are able to serve the Medicaid population, as well as the insured population, and are able to bill for their services. Currently it is known that some IBCLCs hold a healthcare professional license either because they are physicians, nurses, physician assistants, or dietitians, but no data exists as to the exact number. Individuals with a license are able to bill insurance for their services because they have a provider number.

Currently, if an IBCLC does not have a license, their services must be covered out of pocket and may be sent to the insurance provider for reimbursement, but this is not guaranteed. The only insurance company that automatically reimburses for IBCLC services, regardless of whether or not the provider holds a healthcare professional license, is Aetna. As this relates to Medicaid, if IBCLCs obtained licensure through passage of this bill, they would not automatically be able to directly bill Medicaid. Georgia Medicaid would also have to recognize IBCLCs as an eligible provider of services.

The Overall Cost Effectiveness and Economic Impact of Licensing Lactation Consultants on the Citizens of the State Cannot be Determined.

Currently, CLCs are employed in most of the same environments that IBCLCs

are employed in because they offer many of the same services and provide comparable competencies. CLCs are less costly to employers, however, because the cost of their course and exam, as well as their hourly rate, is less than that of an IBCLC. The cost of a CLC course is \$480 and the application and exam fee is \$120 totaling \$600. The cost of an IBCLC course is \$1,095 and the application and exam fee is \$760 totaling \$1,855. The salary of an IBCLC is also typically \$5,000-\$10,000 more per year.

A standard 80 minute office visit (CPT code 99245 E/M) currently reimburses at \$180.61. Hypothetically, if all of the mothers of the 69,638 live born infants covered by Medicaid were referred to a licensed IBCLC for one 80 minute lactation consultant visit, the cost would be \$12.58 million. It can be assumed that not all mothers will utilize this service, and it can also be assumed that a portion of mothers will require more than one consultation. This would cause a potential shift in increased cost to the state if these mothers would otherwise seek care through the WIC program which is entirely federally funded by the United States Department of Agriculture. An estimate of cost savings due to prevented health conditions, illness, or disease, for these services cannot be determined.

It is possible that any licensure that requires paying fees, educational requirements, clinical experience, and/or the passage of an examination will limit the number of individuals that can provide these services. Currently, there are 335 lactation consultants currently practicing in Georgia who are eligible to apply for licensure. Because several of these individuals already hold another health professional license, the impact of licensure will likely have minimal economic impact. It is possible that increasing the number of providers who are able to treat patients through insurance will decrease the cost to insurance of the health conditions associated with lack of access to treatment. It is not possible, however, to determine the effect on the cost of services.

There Are Means Other than State Occupational Regulation Currently to Protect the Interests of the State.

Effective August 1, 2012, the Affordable Care Act (ACA) requires insurers to cover “breastfeeding support, supplies, and counseling” during prenatal and postpartum periods. Insurance providers consider IBCLCs as non-licensed approved lactation care providers, meaning that although they do not hold a license through the State, their services are approved for reimbursement. Generally speaking, the ACA is applicable to insurance that is subject to state mandate, specifically individual, small group, and a portion of large group insurance, meaning that the state currently regulates this issue through the State’s Insurance Commissioner. Although the Affordable Care Act does not provide detail as to the requirements for coverage, it is the Commissioner’s responsibility to interpret and assure compliance with the law. This law is not

applicable to those insurance providers that are federally regulated, specifically ERISA and the majority of large group insurance providers.

Medicaid is also required to cover pregnancy-related services, which include prenatal care, delivery, and postpartum care, as well as family planning services. Although Medicaid does not offer a lactation benefit specifically, the definition of “pregnancy-related services” is broad enough to encompass lactation services as it is required to cover an extended postpartum period of at least 60 days following the termination of pregnancy. Billing codes submitted by approved care providers that are applicable to these pregnancy-related services are accepted to be reimbursed by Medicaid. Each state may choose the amount and scope of coverage it provides for lactation services reimbursable as pregnancy-related services because it is not specifically mentioned in the Medicaid statute or Federal Medicaid regulations.

In addition to pregnancy-related services, certain Georgia hospitals have taken initiative to increase the Medicaid population’s access to lactation support services, by implementing Centering Programs and pursuing “Baby-Friendly” hospital designations. Centering Programs provide breastfeeding and prenatal education for mothers-to-be in a group setting. The Centers for Medicare and Medicaid Services’ (CMS) has provided grant funding to expand Centering Programs to accommodate additional participants in certain hospitals. The Baby-Friendly Hospital Initiative is a global program that encourages and recognizes hospitals and birthing centers that offer an optimal level of care for infant feeding and mother/baby bonding. There is no financial incentive for obtaining this designation, as it is solely meant to elevate the standard of care in regards to breastfeeding support. The Baby-Friendly Hospital Initiative is a non-licensing breastfeeding support model, which seeks to increase the percentage of live births occurring in facilities that provide the recommended care for lactating mother and their babies. There are currently seven hospitals in Georgia actively pursuing Baby-Friendly designation.

RECOMMENDATION

The Council does not recommend passage of House Bill 363 (LC 33 5015), which proposes to license lactation consultants, because it does not meet all of the criteria set forth in O.C.G.A. 43-1A-6. Based on information reviewed and developed by the Council, the Council recognizes the potential benefit of licensing lactation consultants to the citizens of Georgia, but House Bill 363 (LC 33 5015) would not improve access to care for the majority of breastfeeding mothers. The recommendation was reflected in a unanimous vote by the Council members.

APPENDIX A

Section	Key Points
43-22A-1	This chapter is also known as the 'Georgia Laction Consultant Practice Act'
43-22A-2	The General Assembly acknowledges the skill and competency that lactation consultation requires. The purpose of this legislation is to protect the health, safety, and welfare of the citizens of Georgia.
43-22A-3	Definitions Scope of practice of lactation consultants
43-22A-4	Creation and distinction of Georgia Lactation Consultant Licensing Board members
43-22A-5	Requirements of board members
43-22A-6	Board members election of officers
43-22A-7	Power and authority of the Board Granting & enforcing requirements for licensure Implement disciplinary process Establish continuing education requirements
43-22A-8	Instances of licensure granted without examination
43-22A-9	Required qualifications of applicant
43-22A-10	The board may require that all applications be made under oath
43-22A-11	The board will notify applicant after review of application
43-22A-12	Examinations prescribed and approved by two-thirds' vote by the Board to determine competence shall be administered at least once per calendar year
43-22A-13	A license issued by the Board is the property of the Board and must be surrendered on demand Licensee shall display license, and inform Board of address change License shall be renewed biennially
43-22A-14	The board may refuse to grant or renew a license, or impose a fine not to exceed \$500.00 for each violation of a law, rule, or regulation relating to the profession
43-22A-15	On and after 12 months following the effective date of this chapter, no person without a license as a lactation consultant pursuant to this chapter may use the title 'lactation consultant,' 'lactation specialist,' 'breastfeeding consultant,' or 'breastfeeding specialist', or practice lactation care and services, except for those exempt under 43-22A-17.
43-22A-16	Proceedings under this chapter shall be governed by Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'
43-22A-17	Persons exempt from this chapter: Persons licensed to practice dentistry, medicine, osteopathy, chiropractic, nursing, physician assistant, or dietetics from engaging in the practice of lactation care, but may not use the title 'lactation consultant,' 'lactation specialist,' 'breastfeeding consultant,' or 'breastfeeding specialist'. Doula and prenatal and childbirth educators performing nonclinical education functions, and may not use the title 'lactation consultant,' 'lactation specialist,' 'breastfeeding consultant,' or 'breastfeeding specialist'. Students, interns, or persons preparing for the lactation consultant license under the supervision of a licensed lactation consultant. Employees of the United States government performing their duties within the recognized confines of a federal installation Employees of a department, agency, or division of state, county, or local government performing lactation consultant services, including WIC peer counselors. Volunteers not receiving any form of compensation providing lactation care and services. A nonresident IBCLC from practicing lactation care and services in this state for five days without licensure or up to 30 days with licensure from another state.

APPENDIX B HOUSE BILL 363 (LC 33 5015): GEORGIA LACTATION
CONSULTANT PRACTICE ACT

House Bill 363

By: Representatives Cooper of the 43rd, Knight of the 130th, and Clark of the 101st

A BILL TO BE ENTITLED
AN ACT

To amend Title 43 of the Official Code of Georgia Annotated, relating to professions and businesses, so as to require licensure of lactation consultants; to provide for definitions; to provide for establishment of the Georgia Lactation Consultant Licensing Board; to provide for appointment, powers, and membership; to provide for licensure application and qualifications; to provide for license renewal; to provide for disciplinary actions; to provide for applicability of the Georgia Administrative Procedure Act; to provide for exemptions from licensure; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 43 of the Official Code of Georgia Annotated, relating to professions and businesses, is amended by adding a new chapter to read as follows:

"CHAPTER 22A

43-22A-1.

This chapter shall be known and may be cited as the 'Georgia Lactation Consultant Practice Act.'

43-22A-2.

The General Assembly acknowledges that the application of specific knowledge and skill relating to breastfeeding is important to the health of mothers and babies, and acknowledges further that the rendering of sound lactation care and services in hospitals, physician practices, private homes, and other settings requires trained and competent professionals. It is declared, therefore, to be the purpose of this chapter to protect the

health, safety, and welfare of the public by providing for the licensure and regulation of the activities of persons engaged in lactation care and services.

43-22A-3.

As used in this chapter, the term:

(1) 'Applicant' means any person seeking a license under this chapter.

(2) 'Board' means the Georgia Lactation Consultant Licensing Board established pursuant to this chapter.

(3) 'International Board Certified Lactation Consultant (IBCLC)' means an individual who holds current certification from the International Board of Lactation Consultant Examiners (IBLCE) after demonstrating the appropriate education, knowledge, and experience necessary for independent clinical practice.

(4) 'International Board of Lactation Consultant Examiners (IBLCE)' means the international organization that certifies IBCLCs and is independently accredited by the National Commission of Certifying Agencies.

(5) 'Lactation care and services' means the clinical application of scientific principles and a multidisciplinary body of evidence for the evaluation, problem identification, treatment, education, and consultation to provide lactation care and services to childbearing families. Lactation care and services includes but is not limited to:

(A) Lactation assessment through the systematic collection of subjective and objective data;

(B) Analysis of data and creation of a plan of care;

(C) Implementation of a lactation care plan with demonstration and instruction to parents and communication to the primary health care provider;

(D) Evaluation of outcomes;

(E) Provision of lactation education to parents and health care providers; and

(F) The recommendation and use of assistive devices.

(6) 'Lactation consultant' means a person duly licensed under this chapter to practice lactation care and services.

(7) 'Practice' means rendering or offering to render any lactation care and services to any individual, family, or group of individuals.

43-22A-4.

(a) There is created the Georgia Lactation Consultant Licensing Board. The board shall consist of five members as follows:

(1) Four members shall be lactation consultants; and

(2) One member shall represent the public at large.

(b) The members shall be appointed by the Governor with confirmation by the Senate. Any person appointed to the board when the Senate is not in session may serve on the board without Senate confirmation until the Senate acts on that appointment. No member shall serve on the board for more than two consecutive terms. Any vacancy shall be filled by the Governor subject to confirmation of the Senate.

(c) All members of the board shall be reimbursed as provided for in subsection (f) of Code Section 43-1-2.

(d) All members of the board shall take the constitutional oath of office.

43-22A-5.

(a) The members of the board referenced in paragraph (1) of subsection (a) of Code Section 43-22A-4 shall:

(1) Be citizens of the United States and residents of this state;

(2) Have engaged in the practice of lactation care and services for at least one year; and

(3) Be licensed under this chapter.

(b) The member of the board referenced in paragraph (2) of subsection (a) of Code Section 43-22A-4 shall be a citizen of the United States and resident of this state and shall have no connection whatsoever with lactation practice.

(c) The Governor may remove members of the board, after notice and opportunity for hearing, for incompetence, neglect of duty, unprofessional conduct, conviction of any felony, failure to meet the qualifications of this chapter, or committing any act prohibited by this chapter.

43-22A-6.

The board shall meet annually and shall elect from its members a chairperson, vice chairperson, and any other officers as deemed necessary who shall hold office according to the rules adopted by the board. In addition to its annual meeting, the board may hold additional meetings each year as provided by the rules adopted by the board.

43-22A-7.

(a) The board shall perform such duties and possess and exercise such powers relative to the protection of the public health and the control and regulation of lactation consultants as this chapter prescribes and confers upon it.

(b) The board shall have the power and authority to:

(1) Enforce the provisions of this chapter, and it shall be granted all of the necessary duties, powers, and authority to carry out this responsibility;

(2) Draft, adopt, amend, repeal, and enforce such rules as it deems necessary for the administration and enforcement of this chapter in the protection of public health, safety, and welfare;

(3) License duly qualified applicants by examination or reinstatement;

(4) Implement the disciplinary process;

(5) Enforce qualifications for licensure;

(6) Set standards for competency of licensees continuing in or returning to practice;

(7) Issue orders when a license is surrendered to the board while a complaint, investigation, or disciplinary action against such license is pending;

(8) Adopt, revise, and enforce rules regarding the advertising by licensees including, but not limited to, rules to prohibit false, misleading, or deceptive practices;

(9) Adopt, publish in print or electronically, and enforce a code of ethics;

(10) Establish examination and licensing fees;

(11) Request and receive the assistance of state educational institutions or other state agencies;

(12) Prepare information of consumer interest describing the regulatory functions of the board and describing the procedures by which consumer complaints are filed with and resolved by the board;

(13) Establish continuing education requirements; and

(14) Adopt a seal which shall be affixed only in such manner as prescribed by the board.

43-22A-8.

The board may grant, upon application and payment of proper fees, a license without examination to a person who, at the time of application, either:

(1) Holds a valid license as a licensed lactation consultant issued by another state, political territory, or jurisdiction acceptable to the board if, in the board's opinion, the requirements for that license are substantially equal to or greater than the requirements of this chapter; or

(2) Presents evidence satisfactory to the board that the applicant is an IBCLC in good standing with the IBLCE, or its successor organization.

43-22A-9.

Each applicant for a license as a lactation consultant shall be at least 18 years of age, shall have submitted a completed application upon a form and in such manner as the board prescribes, accompanied by applicable fees, and shall be in compliance with the following requirements:

- (1) Meeting the international education and clinical standards established for IBCLCs by the IBLCE or other national testing service as approved by the board;
- (2) Providing proof of successful completion of the IBLCE examination or other examination as approved by the board;
- (3) Having satisfactory results from a fingerprint record check report conducted by the Georgia Crime Information Center and the Federal Bureau of Investigation, as determined by the board. Application for a license under this Code section shall constitute express consent and authorization for the board to perform a criminal background check. Each applicant who submits an application to the board for licensure by examination agrees to provide the board with any and all information necessary to run a criminal background check, including, but not limited to, classifiable sets of fingerprints. The applicant shall be responsible for all fees associated with the performance of such background check; and
- (4) Completion of such other requirements as may be prescribed by the board.

43-22A-10.

The board may require that all applications be made under oath.

43-22A-11.

After evaluation of an application and other evidence submitted, the board shall notify each applicant that the application and evidence submitted are satisfactory and accepted or unsatisfactory and rejected. If rejected, the notice shall state the reasons for the rejection.

43-22A-12.

Examinations to determine competence shall be administered to qualified applicants at least once each calendar year. The examinations may be administered by a national testing service. The board shall prescribe or develop the examinations which may include an examination given by the International Board of Lactation Consultant Examiners or any other examination approved by two-thirds' vote of the board.

43-22A-13.

- (a) A license issued by the board is the property of the board and must be surrendered on demand.
- (b) The licensee shall display the license certificate in an appropriate and public manner.
- (c) The licensee shall inform the board of any change of address.

(d) The license shall be renewed biennially if the licensee is not in violation of this chapter at the time of application for renewal and if the applicant fulfills current requirements of continuing education as established by the board.

(e) Each person licensed under this chapter is responsible for renewing his or her license before the expiration date.

(f) Under procedures and conditions established by the board, a licensee may request that his or her license be declared inactive. The licensee may apply for active status at any time and upon meeting the conditions set by the board shall be declared active.

43-22A-14.

The board may refuse to grant or renew a license to an applicant; administer a public or private reprimand, but a private reprimand shall not be disclosed to any person except the licensee; suspend any licensee for a definite period or for an indefinite period in connection with any condition which may be attached to the restoration of such license; limit or restrict any licensee as the board deems necessary for the protection of the public; revoke any license; condition the penalty upon, or withhold formal disposition pending, the applicant's or licensee's submission to such care, counseling, or treatment as the board may direct; or impose a fine not to exceed \$500.00 for each violation of a law, rule, or regulation relating to the profession regulated by this chapter upon a finding by a majority of the entire board that the licensee or applicant has:

(1) Failed to demonstrate the qualifications or standards for a license contained in this Code section or under the laws, rules, or regulations under which licensure is sought or held; it shall be incumbent upon the applicant to demonstrate to the satisfaction of the board that such applicant meets all the requirements for the issuance of a license, and, if the board is not satisfied as to the applicant's qualifications, it may deny a license without a prior hearing; provided, however, that the applicant shall be allowed to appear before the board if he or she so desires;

(2) Knowingly made misleading, deceptive, untrue, or fraudulent representations in the practice of a business or profession licensed under this title or on any document connected therewith; practiced fraud or deceit or intentionally made a false statement in obtaining a license to practice the licensed business or profession; or made a false statement or deceptive registration with the board;

(3) Been convicted of any felony or of any crime involving moral turpitude in the courts of this state or any other state, territory, or country or in the courts of the United States; as used in this paragraph and paragraph (4) of this Code section, the term 'felony' shall include any offense which, if committed in this state, would be deemed a felony, without regard to its designation elsewhere; and, as used in this paragraph, the term 'conviction'

shall include a finding or verdict of guilty or a plea of guilty, regardless of whether an appeal of the conviction has been sought;

(4) Been arrested, charged, and sentenced for the commission of any felony, or any crime involving moral turpitude, where:

(A) A plea of nolo contendere was entered to the charge;

(B) First offender treatment without adjudication of guilt pursuant to the charge was granted; or

(C) An adjudication or sentence was otherwise withheld or not entered on the charge.

The plea of nolo contendere or the order entered pursuant to the provisions of Article 3 of Chapter 8 of Title 42, relating to probation of first offenders, or other first offender treatment shall be conclusive evidence of arrest and sentencing for such crime;

(5) Had his or her license to practice a business or profession licensed under this title revoked, suspended, or annulled by any lawful licensing authority other than the board; had other disciplinary action taken against him or her by any such lawful licensing authority other than the board; was denied a license by any such lawful licensing authority other than the board, pursuant to disciplinary proceedings; or was refused the renewal of a license by any such lawful licensing authority other than the board, pursuant to disciplinary proceedings;

(6) Engaged in any unprofessional, immoral, unethical, deceptive, or deleterious conduct or practice harmful to the public that materially affects the fitness of the licensee or applicant to practice a business or profession licensed under this title, or is of a nature likely to jeopardize the interest of the public; such conduct or practice need not have resulted in actual injury to any person or be directly related to the practice of the licensed business or profession but shows that the licensee or applicant has committed any act or omission which is indicative of bad moral character or untrustworthiness. Unprofessional conduct shall also include any departure from, or the failure to conform to, the minimal standards of acceptable and prevailing practice of the business or profession licensed under this title;

(7) Knowingly performed any act which in any way aids, assists, procures, advises, or encourages any unlicensed person or any licensee whose license has been suspended or revoked by a professional licensing board to practice a business or profession licensed under this title or to practice outside the scope of any disciplinary limitation placed upon the licensee by the board;

(8) Violated a statute, law, or any rule or regulation of this state, any other state, the professional licensing board regulating the business or profession licensed under this title, the United States, or any other lawful authority, without regard to whether the violation is criminally punishable, when such statute, law, or rule or regulation relates to or in part

regulates the practice of a business or profession licensed under this title and when the licensee or applicant knows or should know that such action violates such statute, law, or rule or regulation; or violated a lawful order of the board previously entered by the board in a disciplinary hearing, consent decree, or license reinstatement;

(9) Been adjudged mentally incompetent by a court of competent jurisdiction within or outside of this state; any such adjudication shall automatically suspend the license of any such person and shall prevent the reissuance or renewal of any license so suspended for so long as the adjudication of incompetence is in effect; or

(10) Displayed an inability to practice a business or profession licensed under this title with reasonable skill and safety to the public or has become unable to practice the licensed business or profession with reasonable skill and safety to the public by reason of illness or the use of alcohol, drugs, narcotics, chemicals, or any other type of material.

43-22A-15.

(a) On and after 12 months following the effective date of this chapter, no person without a license as a lactation consultant issued pursuant to this chapter shall use the title 'lactation consultant,' 'lactation specialist,' 'breastfeeding consultant,' or 'breastfeeding specialist' or practice lactation care and services, provided that this chapter shall not prohibit any practice of lactation care and services that is exempt pursuant to the provisions set forth in Code Section 43-22A-17.

(b) Any person violating the provisions of subsection (a) of this Code section shall be guilty of a misdemeanor.

43-22A-16.

Proceedings under this chapter shall be governed by Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'

43-22A-17.

Nothing in this chapter shall be construed to affect or prevent:

(1) Persons licensed to practice the professions of dentistry, medicine, osteopathy, chiropractic, nursing, physician assistant, or dietetics from engaging in the practice of lactation care and services when incidental to the practice of their profession, except such persons shall not use the title 'lactation consultant,' 'lactation specialist,' 'breastfeeding consultant,' or 'breastfeeding specialist';

(2) Doulas and prenatal and childbirth educators from performing nonclinical education functions consistent with the accepted standards of their respective occupations, except such persons shall not use the title 'lactation consultant,' 'lactation specialist,'

'breastfeeding consultant,' or 'breastfeeding specialist,' or designate themselves by any other term or title which implies that such person has the clinical skills and abilities associated with licensure as a lactation consultant;

(3) The practice of lactation care and services by students, interns, or persons preparing for the practice of lactation care and services under the qualified supervision of a licensed lactation consultant or any licensed professional listed in paragraph (1) of this Code section;

(4) Employees of the United States government or any bureau, division, or agency thereof while in the discharge of the employee's official duties so long as such employees are performing their duties within the recognized confines of a federal installation regardless of whether jurisdiction is solely federal or concurrent;

(5) Employees of a department, agency, or division of state, county, or local government from engaging in the practice of lactation care and services within the discharge of official duties, including, but not limited to, peer counselors working within the Special Supplemental Nutrition Program for Women, Infants, and Children;

(6) Individual volunteers providing lactation care and services provided:

(A) Such persons shall not use the title 'lactation consultant,' 'lactation specialist,' 'breastfeeding consultant,' or 'breastfeeding specialist,' or state that they are licensed to practice lactation care or designate themselves by any other term or title which implies that such persons have the clinical skills and abilities associated with licensure;

(B) Their volunteer service is performed without fee or other form of compensation, monetary or otherwise, from the individuals or groups served; and

(C) The individual volunteer receives no form of compensation, monetary or otherwise, except for administrative expenses such as mileage; and

(7) A nonresident IBCLC from practicing lactation care and services in this state for five days without licensure or up to 30 days with licensure from another state if the requirements for licensure in such other state are substantially equal to the requirements contained in this chapter."

SECTION 2.

All laws and parts of laws in conflict with this Act are repealed.

APPENDIX C

TITLE	TRAINING TIME	SKILLS
International Board Certified Lactation Consultant	Several years	<ul style="list-style-type: none"> • 90 hours lactation specific education, • 8 college level health science courses, • 6 health related continuing education courses, • 500-1000 clinical practice hours • Pass a criterion-reference exam <p>The International Board Certified Lactation Consultant possesses the necessary skills, knowledge, and clinical training to provide quality breastfeeding assistance to babies and mothers. IBCLCs specialize in the clinical management of breastfeeding which includes: preventive health care, patient education, nutrition counseling, and therapeutic treatment.</p>
Lactation Specialist Breastfeeding Specialist	20 hours	Designed for aspiring lactation consultants or nurses, physicians, midwives, dieticians, breastfeeding assistants or others desirous of improving their knowledge base and skills in working with the breastfeeding dyad. This program is a stepping stone to the IBCLC credential. ¹
Community Breastfeeding Educator	20 hours	A course for community workers in maternal child health; curriculum focuses on providing services to pregnant women to encourage the initiation and continuation of breastfeeding. ¹
Certified Lactation Counselor	45 hours	Breastfeeding management course. Prepares participants for professional work helping mothers and babies: this program teaches participants how to gain insight into clients' problems, with a strong focus on counseling skills. ¹ The course concludes with a test
Early Lactation Care Specialist / Doula Breastfeeding Training	10 nursing CEU's	Basic knowledge, practical tips, assessment skills, helpful techniques essential for lactation support. ¹
Baby Friendly Curriculum	20 hours	Used by hospitals to strengthen the knowledge and skills of their staff towards successful implementation of the Ten Steps to Successful Breastfeeding ¹
WIC Peer Counselor	16-26 hours, Varies by state	Must have successfully breastfed their infant. This course teaches the participant how to provide encouragement, information, and support to other WIC mothers. ¹
Lactation Educator Counselor	45 hours	A course for front line staff such as postpartum nurses, labor and delivery nurses, or WIC personnel to obtain consistent, appropriate information for basic patient education. ²
Lamaze Breastfeeding Support Specialist	15 hours	Designed to strengthen the participants' ability to provide breastfeeding mothers with support, build confidence, assist with problem solving, and enhance skills. ³
Certified Breastfeeding Counselor	10-14 months, Provide 30 hours of	A self-evaluation program, the candidate writes one reflective practice paper and does case studies, reads and reviews 5 books, submits one survey on breastfeeding support available

¹ Lactation Education Consultants. Retrieved from the World Wide Web January 4, 2012
http://www.lactationeducationconsultants.com/course_clsc.html

² Lactation Education at UC San Diego. Retrieved from the World Wide Web January 4, 2012 <http://breastfeeding-education.com/bfhils/>

³ Lamaze International. Retrieved from the World Wide Web January 4, 2012
<http://www.lamaze.org/Events/SpecialtyWorkshops/BreastfeedingWorkshops/tabid/492/Default.aspx>

APPENDIX C

	support	in the community, completes an open book online test (multiple choice) to cover physiology & anatomy ⁴
Breastfeeding Educator	1010 hours	Qualified to teach, support, and educate the public on breastfeeding and related issues and policies. Workbook activities, required reading materials, attends eight breastfeeding meetings, writes a research paper, submits a class presentation ⁵
Certified Lactation Educator	20 hours total, some have 8 hours clinical	This course teaches the participant how to teach, support, and educate the public on breastfeeding and related issues. Complete course training, attend support group meetings, observe consultation or videos, review research studies and other requirements, includes a test. ⁶
La Leche League Peer Counselor (volunteer)	18-20 hours	Have successfully breastfed their infants for 6 months, the Program developed to provide support systems within targeted communities that will provide ongoing access to breastfeeding information and support. ⁷
La Leche League Leader (volunteer)	Approximately 1 year of self-study training	An experienced breastfeeding mother, familiar with research and current findings dealing with breastfeeding, who offers practical information and encouragement to nursing mothers through monthly meetings and one-to-one help. ⁸

⁴ Childbirth International. Retrieved from the World Wide Web January 4, 2012
<http://www.childbirthinternational.com/lactation/main.htm>

⁵ Birth Arts International. Retrieved from the World Wide Web January 4, 2012
<http://www.birthearts.com/beced.htm>

⁶ Childbirth and Postpartum Professional Association. Retrieved from the World Wide Web January 4, 2012
<http://www.cappa.net/get-certified.php?lactation-educator>

⁷ La Leche League International. Retrieved from the World Wide Web January 4, 2012
<http://www.llli.org/llleaderweb/lv/lvaugsep99p92.html>

⁸ La Leche League International. Retrieved from the World Wide Web January 4, 2012
<http://www.lalecheleague.org/lad/talll/faq.html#howlong>

Exhibit 2

*Verified Petition for Declaratory
Judgment, Temporary Restraining
Order, Interlocutory and Permanent
Injunction, and Attorneys' Fees*



House of Representatives

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MAJORITY CAUCUS CHAIRMAN - EMERITUS

STANDING COMMITTEES:
HEALTH & HUMAN SERVICES, CHAIRMAN
JUDICIARY-NON-CIVIL
REGULATED INDUSTRIES
RULES

July 8, 2016

Karin A. Cadwell, President
Healthy Children Project, Inc.
327 Quaker Meeting House Road
East Sandwich, Massachusetts 02537

Dear President Cadwell,

In response to our June 21st meeting regarding the Georgia Lactation Consultant Practice Act, I am sending this letter to address, in writing, your concerns about this new law.

This legislation was carefully reviewed and modified over the course of four years before its passage. As the lead sponsor, I collected input from numerous stakeholders and then worked closely with our legislative legal department to carefully craft the bills language. While licensing International Board Certified Lactation Consultants (IBCLC's), the law specifically allows other professionals and educators, including the "certified lactation counselors" you educate to continue their good work in educating Georgia's breastfeeding families. This law will expand access to breastfeeding support in Georgia, not reduce it.

As a registered nurse, I understand, that not every nursing mother needs the same type or level of care when they breastfeed. This bill speaks to increasing access to the clinical provision of lactation care and services offered by IBCLC's. As I discussed with you, some of your CLC's may choose to continue their education and begin clinical training so that they may become IBCLCs. I certainly encourage them to do so if it fits their educational goals.

I trust this letter will bring our conversations about the Georgia Lactation Consultant Practice Act to an end. I plan to follow closely the Secretary of State's implementation of this law to make sure that it is implemented according to the legislative intent which is to improve access for mothers and babies to clinical breastfeeding help.

Sincerely,

Sharon Cooper
Georgia State Representative, District 43
Chairman, House Health and Human Services Committee

SC/lm

Exhibit 3

*Verified Petition for Declaratory
Judgment, Temporary Restraining
Order, Interlocutory and Permanent
Injunction, and Attorneys' Fees*



GEORGIA DEPARTMENT OF LAW

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OFFICIAL OPINION

[Modified May 11, 2018]

The Honorable Brian P. Kemp
Secretary of State
214 State Capitol
Atlanta, Georgia 30334

Re: After July 1, 2018, only persons who are licensed as “lactation consultants” in Georgia or who meet one of the Georgia Lactation Consultant Practice Act’s exceptions to licensure may provide “lactation care and services” as that term is defined by the Act.

Dear Secretary Kemp:

You have requested my opinion regarding whether the Georgia Lactation Consultant Practice Act (“the Act”) (O.C.G.A. §§ 43-22A-1 through 43-22A-13) will allow certified lactation counselors (“CLCs”), who are not certified by the International Board of Lactation Consultant Examiners (“IBLCE”) and who are “not otherwise exempt” under the Act, to “continue doing the work they have been doing” after the effective date of the Act, which is July 1, 2018.¹ Based upon my review of the Act, I conclude that, after July 1, 2018, only persons who are licensed as “lactation consultants” in Georgia or who meet one of the Act’s exceptions to licensure may provide “lactation care and services” as that term is defined by the Act. Accordingly, the Act prohibits any person, including a CLC, who is not a licensed lactation consultant and who does not fall within one of the Act’s exceptions, from practicing the types of acts and services that the Act defines as “lactation care and services.”

It is a fundamental rule of statutory construction that “when a statute contains clear and unambiguous language, such language will be given its plain meaning and will be applied accordingly.” *McKinney v. Fuciarelli*, 298 Ga. 873, 874 (2016) (quoting *Opensided MRI of Atlanta LLC v. Chandler*, 287 Ga. 406, 407 (2010)). Pursuant to O.C.G.A. § 43-22A-11, “[o]n and after July 1, 2018, no person without a license as a lactation consultant issued pursuant to this chapter shall use the title ‘licensed lactation consultant’ or ‘licensed L.C.’ or practice lactation care and services” This provision makes it unlawful to (1) use the title “licensed lactation consultant” or “licensed L.C.” or (2) practice lactation care and services without a lactation consultant license.

¹ In responding to your request, I have reviewed the following material: Scope of Practice for the Certified Lactation Counselor, <https://www.alpp.org> (last visited Jan. 2, 2018)

To obtain a license to be a lactation consultant, in addition to meeting other requirements, the Act requires that applicants must either meet the “international education and clinical standards established . . . by the IBLCE” and “[provide] proof of successful completion of the IBLCE examination . . .” or “[present] evidence satisfactory to the Secretary that the applicant is an [International Board Certified Lactation Consultant (“IBCLC”)] in good standing with the IBLCE.”² O.C.G.A. §§ 43-22A-6 and O.C.G.A. 43-22A- 7.

In addition, the Act defines “Lactation care and services” as:

[T]he clinical application of scientific principles and a multidisciplinary body of evidence for evaluation, problem identification, treatment, education, and consultation to childbearing families regarding lactation care and services. Lactation care and services shall include, but not be limited to:

- (A) Lactation assessment through the systematic collection of subjective and objective data;
- (B) Analysis of data and creation of a lactation care plan;
- (C) Implementation of a lactation care plan with demonstration and instruction to parents and communication to the primary health care provider;
- (D) Evaluation of outcomes;
- (E) Provision of lactation education to parents and health care providers; and
- (F) The recommendation and use of assistive devices.

O.C.G.A. § 43-22A-3 (5). Following the plain language of the Act, a person may be found to engage in the practice of lactation care and services, even though he or she does not use the terms “licensed lactation consultant” or “licensed L.C.”

² The Act also allows the Secretary to grant a license to an applicant who “[h]olds a valid license to practice lactation care and services issued by another state, political territory, or jurisdiction acceptable to the Secretary if, in the Secretary’s opinion, the requirements for that license are substantially equal to or greater than the requirements of this chapter.” O.C.G.A. § 43-22A-6 (1).

In your request, you note that the CLCs for which you are requesting guidance are “not otherwise exempt;” however, you also raise the question as to whether CLCs can “continue doing the work they have been doing.” It is not clear from the materials you provided the capacity in which CLCs are currently working in Georgia. The provided materials, however, do contain examples of the types of acts and services CLCs are trained to perform and include the following: “[counseling] and [educating] pregnant women and mothers regarding breastfeeding”; “[conducting] comprehensive assessment[s] of mother and child related to breastfeeding and human lactation”; and “[developing] an evidence based care plan specific to the needs identified through assessment and counseling and [implementing] it.”³ Inasmuch as the term “lactation care and services” appears to encompass these types of acts, after July 1, 2018, only a person who is a licensed lactation consultant can practice such acts unless that person falls within one of the Act’s exceptions to licensure.

The Act sets forth numerous exceptions that allow persons, who are not licensed lactation consultants, to provide lactation care and services. *See* O.C.G.A. § 43-22A-13 (1) through (8); *see also* O.C.G.A. § 43-22A-3 (6). The types of exempted persons can broadly be categorized as (1) other licensed health care professionals who provide lactation care and services when incidental to the practice of their profession; (2) doulas, perinatal and childbirth educators performing education functions consistent with the accepted standards of their respective professions;⁴ (3) students preparing for the practice of lactation care and services who are practicing under the supervision of a lactation consultant or one of the specified health care professions; (4) federal employees working within a federal installation; (5) state, municipal, and county employees whose official duties include lactation care and services; (6) individual volunteers who receive no compensation for their services; and (7) non-resident IBCLCs for a limited duration of time dependent upon their licensure status in another state. *Id.* Based on the foregoing, to the extent that a CLC or any other person is practicing lactation care and services in the context of one of the Act’s enumerated exceptions, that person does not need to be a licensed lactation consultant.

Therefore, it is my official opinion that, under the Georgia Lactation Consultant Practice Act, after July 1, 2018, only persons who are licensed as “lactation consultants” in Georgia or who meet one of the Act’s exceptions to licensure may provide “lactation care and services” as that term is defined by the Act. Accordingly, the Act prohibits any person, including a CLC, who is not a licensed lactation consultant and who does not fall within one of the Act’s exceptions, from practicing the types of acts and services that the Act defines as “lactation care and services.”

³ *See* Scope of Practice for the Certified Lactation Counselor, <https://www.alpp.org> (last visited Jan. 2, 2018).

⁴ Opinion modified on May 11, 2018, with the following language: “when incidental to the practice of their profession”; and “performing education functions consistent with the accepted standards.”

The Honorable Brian Kemp
Page 4

Issued this 24th day of January, 2018, and modified, May 11, 2018.

Sincerely,



CHRISTOPHER M. CARR
Attorney General

Prepared by:



KIRSTEN S. DAUGHDRIL
Senior Assistant Attorney General