



GEORGIA DEPARTMENT OF LAW

40 Capitol Square SW
Atlanta, Georgia 30334-1300

CHRISTOPHER M. CARR
ATTORNEY GENERAL

www.law.ga.gov
(404) 656-3300

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
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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