

1 21 NCAC 17 .0101 is amended with changes as published in 37:02 NCR 190-201 as follows:

2

3 **21 NCAC 17 .0101 DEFINITIONS, ACRONYMS, AND INITIALISMS**

4 (a) As used in this Chapter, the following terms shall mean:

5 (1) "Act" means Dietetics/Nutrition Practice Act in ~~G.S. 90, Article 25.~~ Article 25 of Chapter 90 of the
6 General Statutes.

7 (2) "Applicant" means any person who has applied to the Board for a license to lawfully do any of the
8 acts listed under G.S. 90-365(a).

9 (3) "Application" means a written request directed to and received by the Board, on forms supplied by
10 the Board, for a license to lawfully do any of the acts listed under G.S. 90-365(a), together with all
11 information, documents, and other materials necessary to demonstrate that the applicant has met the
12 requirements for licensure as specified in the Act.

13 (4) "Degree" means a degree received from a college or university that was regionally accredited at the
14 time the degree was conferred, or a validated foreign equivalent.

15 (5) "Dietitian/nutritionist" or "nutritionist" means one engaged in dietetics or nutrition practice.

16 (6) "Health care practitioner" includes any individual who is licensed under G.S. 90 and whose licensed
17 scope of practice includes dietetics or nutrition.

18 (7) "Nutrition assessment" means:

19 (A) ~~the evaluation of the nutrition needs of individuals and groups by licensed~~
20 ~~dietitians/nutritionists and licensed nutritionists based upon biochemical, anthropometric,~~
21 ~~nutrigenomic, physical, and food and diet history data to determine nutritional needs and~~
22 ~~the initial and ongoing, dynamic, and systematic process of obtaining, verifying, and~~
23 ~~interpreting biochemical, anthropometric, physical, nutrigenomic, clinical, and dietary data~~
24 ~~to [make decisions about the nature and cause of nutrition related problems] determine~~
25 ~~nutritional needs and order therapeutic diets, including enteral and parenteral nutrition; and~~

26 (B) ~~the ordering of laboratory tests related to the practice of nutrition and dietetics; dietetics;~~
27 ~~and~~

28 (C) ~~the conducting of a swallow screen.~~

29 (D) ~~The collection of data does not, by itself, constitute nutrition assessment.~~

30 (8) "Nutrition counseling" ~~[intervention, education, counseling, or management]"~~ means the advice and
31 assistance provided ~~by licensed dietitians/nutritionists and licensed nutritionists~~ to individuals or
32 groups on nutrition intake by integrating information from the nutrition assessment with information
33 on food and other sources of nutrient and meal preparation consistent with therapeutic needs and
34 cultural background, which shall include ethnicity, race, language, religious and spiritual beliefs,
35 education, and socioeconomic status. [The following does not constitute nutrition intervention
36 education, counseling, or management: presenting educational lectures, videos, webinars aimed at
37 mass audiences; writing books, articles, blog posts, or social media content; developing condition-

1 based training programs and treatment protocols not related to a current client; watching or listening
2 to educational lectures, videos, or webinars; teaching classes in academic programs; and conducting
3 research that is not related to a current client.]

4 (9) "Nutrition education" means a formal process to instruct or train a client, patient, or population
5 group in a skill or to impart knowledge to help clients, patients, or population groups voluntarily
6 manage or modify food, nutrition, and physical activity choices and behavior to maintain or improve
7 health.

8 (10) "Nutrition intervention" means planned actions and nutrition counseling by a provider of nutrition
9 care, intended to improve a nutrition-related behavior, risk factor, environmental condition, or
10 aspect of the health status, consistent with therapeutic needs and cultural background.

11 (11) [(9)] "Nutrition monitoring or evaluation" means regular re-evaluation of ~~medical nutrition~~
12 ~~therapy~~ the nutrition care treatment and prevention plan, which may include review of clinical
13 research and standards of care, to compare the outcomes with the patient's previous health status,
14 intervention goals, or reference standards to determine the progress made in achieving desired
15 outcomes of nutrition care and whether planned interventions should be continued or revised.

16 (12) [(10)] "Nutrition services" for purposes of G.S. 90-357.5(c)(2) means the provision of nutrition
17 ~~[assessments;]~~ assessments, nutrition intervention, education, counseling, or ~~[management;]~~
18 management, and nutrition monitoring or evaluation.

19 (13) [(11)] "Swallow screen" means a minimally invasive evaluation procedure conducted by a
20 licensed dietitian/nutritionist that provides for the determination of:

21 (A) the likelihood that dysphagia exists;

22 (B) whether the patient requires referral for further swallowing assessment;

23 (C) whether it is safe to feed the patient orally ~~[(for)]~~ for the purposes of nutrition, hydration,
24 and administration of ~~[medication;]~~ medication; and

25 (D) whether the patient requires referral for nutritional or hydrational support.

26 (14) [(12)] "Alternate supervised experiential learning" means observational hours that do not involve
27 direct patient or client care or the discussion thereof. Such hours are limited to: observing videos of
28 client and practitioner interactions; shadowing an experienced clinician; participating in simulation
29 exercises or role playing; or utilizing case studies to prepare treatment plans.

30 (15) [(13)] ~~["Professional work setting"]~~ "Direct supervised experiential learning" means nutrition
31 care services provided for the benefit of patients or clients. Such hours are limited to: counseling
32 individuals and groups; researching and developing patient or client treatment plans for current
33 patients or clients; researching, preparing, and presenting patient or client workshops; community
34 education ~~[(development)]~~ involving development and delivery of education to a specific
35 ~~[population;]~~ population; supervisor grand rounds and one-on-one meetings with one's supervisor
36 to discuss current patient or client care; or direct hours approved as part of a programmatically
37 accredited supervised practice program.

1 (16) [(14)] "Therapeutic diet" means a nutrition intervention prescribed by a physician or other
2 authorized non-physician practitioner that provides food, fluid, or nutrients via oral, [enteral]
3 enteral, or parenteral routes as part of treatment of disease or clinical conditions to modify,
4 eliminate, decrease, or increase identified micronutrients and macronutrients in the diet, or to
5 provide mechanically altered food when indicated.

6 (17) [(15)] "Weight control services" as used in G.S. 90-368(7) means a general program of instruction
7 with food, supplements, food products, or a food plan designed for one or more healthy population
8 groups in order to achieve or maintain a healthy weight. A weight control program is not
9 individualized to provide medical nutrition therapy as defined in G.S. 90-352(3a) or nutrition care
10 services as defined in G.S. 90-352(4) to manage or treat a medical condition for a specific person or
11 group.

12 (b) As used in this Chapter, the following acronyms and initialisms shall mean:

- 13 (1) "ACBN" means the American Clinical Board of Nutrition, whose Diplomate of the American
14 Clinical Board of Nutrition credential is accredited by the National Commission for Certifying
15 Agencies.
- 16 (2) "ACEND" means the Accreditation Council for Education in Nutrition and Dietetics.
- 17 (3) "AND" means the Academy of Nutrition and Dietetics.
- 18 (4) "BCNS" means the Board for Certification of Nutrition Specialists, whose Certified Nutrition
19 Specialist credential is accredited by the National Commission for Certifying Agencies.
- 20 (5) "CDR" means the Commission on Dietetic Registration, whose Registered Dietitian Nutritionist
21 credential is accredited by the National Commission for Certifying Agencies.
- 22 (6) "LDN" means licensed dietitian/nutritionist.
- 23 (7) "LN" means licensed nutritionist.
- 24 (8) "PLDN" means provisionally licensed dietitian/nutritionist.
- 25 (9) "PLN" means provisionally licensed nutritionist.

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27 *History Note: Authority G.S. 90-352; 90-356;*
28 *Temporary Adoption Eff. March 19, 1992 for a period of 180 days to expire on September 13, 1992;*
29 *Eff. June 1, 1992;*
30 *Recodified from 21 NCAC 17 .0001 Eff. February 1, 1995;*
31 *Amended Eff. December 1, 2011; April 1, 2010; July 18, 2002; March 1, 1996;*
32 *Readopted Eff. December 1, 2019. 2019;*
33 *Amended Eff. December 1, 2022.*

1 21 NCAC 17.0103 is proposed for amendment as follows:

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3 **21 NCAC 17 .0103 QUALIFICATIONS FOR LICENSURE**

4 Each applicant for an initial license as a licensed dietitian/nutritionist shall meet the qualifications as set forth in G.S.
5 ~~90-357. 90-357.5(a)~~ and the Rules of this Chapter. Each applicant for an initial license as a licensed nutritionist shall
6 meet the qualifications as set forth in G.S. 90-357.5(c) and the Rules of this Chapter.

7

8 *History Note: Authority G.S. 90-356; 90-357;*

9 *Temporary Adoption Eff. March 19, 1992 for a Period of 180 Days to Expire on September 13,*
10 *1992;*

11 *Eff. June 1, 1992;*

12 *Recodified from 21 NCAC 17 .0003 Eff. February 1, 1995;*

13 *Amended Eff. December 1, 2011; July 18, 2002;*

14 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4,*
15 *~~2016.~~ 2016;*

16 *Amended Eff. November 1, 2022.*

1 21 NCAC 17 .0104 is amended with changes as published in 37:02 NCR 190-201 as follows:

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3 **21 NCAC 17 .0104 APPLICATIONS**

4 (a) Each applicant for initial licensure shall file a completed application with the Board. Application forms are
5 available at www.ncbdn.org.

6 (b) A complete application shall be:

- 7 (1) typed;
- 8 (2) signed by the applicant affirming that the information on the application is true and releasing to the
9 Board information pertaining to the application;
- 10 (3) accompanied by the application, issuance, and criminal history record check fees; and
- 11 (4) accompanied by evidence, statements, or documents demonstrating the applicant meets the
12 applicable requirements specified in G.S. ~~90-357.5~~, ~~90-357.5~~ and this Rule~~;~~ and the applicant is
13 not in violation of G.S. 90-363.

14 (c) Applicants shall submit a completed application to the North Carolina Board of Dietetics/Nutrition via its website
15 at www.ncbdn.org.

16 (d) The Board shall not review an application until the applicant pays the application fee. The fee may be paid online
17 via credit card, or by check or money order mailed to: North Carolina Board of Dietetics/Nutrition, 1135 Kildaire
18 Farm Road, Suite 200, Cary, NC 27511.

19 (e) Examination information for each of the examinations the Board recognizes may be found on the following
20 websites:

- 21 (1) Information regarding the Registered Dietitian Nutritionist examination offered by the Commission
22 on Dietetic Registration may be found at: [https://www.cdrnet.org/program-director/student-](https://www.cdrnet.org/program-director/student-instructions)
23 [instructions](https://www.cdrnet.org/program-director/student-instructions).
- 24 (2) Information regarding the Certified Nutrition Specialist examination offered by the Board for
25 Certification of Nutrition Specialists may be found at: <https://theana.org/certify/CNScandidate>.
- 26 (3) Information regarding the Diplomate of the American Clinical Board of Nutrition examination
27 offered by the American Clinical Board of Nutrition may be found at:
28 <https://www.acbn.org/handbook.pdf>, <https://www.acbn.org/apply>.

29 (f) Before cancelling an application, the Executive Director shall send notice to an applicant who does not complete
30 the application that lists the additional materials required. An incomplete application shall be valid for a period of ~~six~~
31 four months from the date the application is filed with the Board. Four months after submission of an application,
32 After six [four] months, if an the application and any required documentation has not been completed by the applicant
33 applicant, and ready for Board review, the application shall be considered cancelled due to failure to complete.
34 Complete applications that the Board determines require additional evidence under Paragraph (m) of this Rule shall
35 be eligible for consideration for the timeline set forth in that Paragraph.

1 (g) Applicants providing evidence of current registration as a Registered Dietitian Nutritionist by the CDR in G.S.
2 90-357.5(a)(2) shall submit a photocopy of the applicant's registration identification card, or a copy of a CDR
3 Credential Verification certificate certifying that the applicant is a Registered Dietitian Nutritionist.

4 (h) Applicants providing evidence of completing academic requirements in G.S. 90-357.5(a)(1) shall either:

5 (1) Submit transcripts and a verification statement that includes the original signature of the Program
6 Director of a college or university where the course of study was accredited by the ACEND as
7 meeting the competency requirements of the most current edition of the Accreditation Standards for
8 Nutrition and Dietetic Didactic Programs; or

9 (2) Submit documentation, including official transcripts, demonstrating the course of study met the
10 competency requirements of the most current edition of the ACEND Accreditation Standards for
11 Nutrition and Dietetic Didactic Programs. Programs, which is hereby incorporated by reference.
12 Copies of these standards may be obtained at no charge from ACEND's website at:
13 [https://www.eatrightpro.org/acend/accreditation-standards-fees-and-policies/2022-standards-and-](https://www.eatrightpro.org/acend/accreditation-standards-fees-and-policies/2022-standards-and-templates)
14 [templates.](https://www.eatrightpro.org/acend/accreditation-standards-fees-and-policies/2022-standards-and-templates)

15 (i) Applicants providing evidence of completing academic requirements in G.S. 90-357.5(c) shall submit
16 documentation, including official transcripts, demonstrating completion of the requirements stated in G.S. 90-
17 357.5(c)(1).

18 (j) Applicants providing evidence of completing a Board-approved internship or documented, supervised practice
19 experience in G.S. 90-357.5(a)(1)(b) shall either:

20 (1) Submit a verification statement that includes the original signature of the Program Director of a
21 documented, supervised practice experience that has been accredited by the ACEND as meeting the
22 competency requirements of the most current edition of the Accreditation Standards for Nutrition
23 and Dietetics Internship Programs; or

24 (2) Submit documentation demonstrating at least 1000 hours of documented, supervised practice
25 experience, meeting the competency requirements of the most current edition of the Accreditation
26 Standards for Nutrition and Dietetics Internship Programs issued by ACEND. The scope of activities
27 may include alternate supervised experiential learning such as simulation, case studies, and role
28 playing, but must also include at least 750 hours in a professional work setting, of direct supervised
29 experiential learning. The 1000 hours must be concurrent with or following completion of the
30 academic requirements for licensure and need not be a paid experience. ~~The following shall be~~
31 ~~necessary to determine and verify supervised practice experience:~~

32 (A) ~~The supervisor shall have access to all relevant patient/client records kept during the~~
33 ~~supervised practice experience. The supervisor shall review performance by periodic~~
34 ~~observation, either in real time, or by some recording of the nutrition service.~~

35 (k) The following shall be necessary for applicant's submitting proof of completion of a Board-approved internship
36 or a documented, supervised practice experience in nutrition services under Subparagraph (j)(2) of this Rule;

1 ~~(B)~~(1) If there shall be more than one supervisor or facility for different parts of the supervised practice
2 experience, information and verification of each part part, as provided in (k)(2) and (k)(d) of this
3 Rule, is required.

4 ~~(C)~~(2) The applicant shall provide to the Board for each supervisor/facility:

5 ~~(i)~~(A) the name and address of the facility providing the supervised practice experience;

6 ~~(ii)~~(B) the name, address, phone, and title of the supervisor who supervised the supervised practice
7 experience;

8 ~~(iii)~~(C) a summary of nutrition services performed, along with dates and hours spent performing
9 them;

10 ~~(iv)~~(D) evidence that the supervisor met the requirements stated in G.S. 90-357.5(a)(1)(b) at the
11 time of supervision; and

12 ~~(v)~~(E) an attestation that the supervisor is not related to, married to, or domestic partners with the
13 supervisee.

14 ~~(D)~~(3) Each supervisor ~~shall review the evidence provided by the applicant and verify that the information~~
15 ~~is true, including:~~ shall:

16 (A) regularly, commensurate with the care provided, observe the provision of nutrition care
17 services by the student or trainee supervised, and evaluate, authorize, and approve all
18 nutrition care services of the student or trainee supervised;

19 (B) maintain primary responsibility for and control over all nutrition care services performed
20 by the student or trainee, including clinical record keeping;

21 (C) ensure the student or trainee is designated throughout the supervised practice experience
22 by a title that indicates the individual's status as a student or trainee;

23 ~~(i)~~(D) verify that the applicant participated in nutrition services under his or her supervision,
24 stating the total number of hours;

25 ~~(ii)~~(E) ~~providing~~ provide a summary of the nutrition services ~~provided~~ completed under his or her
26 supervision; and

27 ~~(iii)~~(F) ~~providing~~ provide an evaluation of the applicant for the Board to be able to assess the
28 applicant's performance in completion of the competencies required by ACEND.

29 ~~(k)~~(l) Applicants providing evidence of completing a Board-approved internship or documented, supervised practice
30 experience in G.S. 90-357.5(c)(2) ~~shall~~ must submit documentation demonstrating at least 1000 hours of documented,
31 supervised practice experience, meeting the requirements as stated in G.S. 90-357.5(c)(2). The scope of activities may
32 include alternate supervised experiential learning such as simulation, case studies, and role playing, but must also
33 include at least 750 hours in a professional work setting, of direct supervised experiential learning. The 1000 hours
34 must be concurrent with or following completion of the academic requirements for licensure and need not be a paid
35 experience. Learning experiences must prepare students to [work with] provide nutrition care services for various
36 populations of diverse cultures, genders, and across the life cycle, which may include infants, children, adolescents,
37 adults, pregnant/lactating females, and older adults and to be able to competently formulate actionable medical

1 nutrition therapies and interventions, education, counseling, and ongoing care for the prevention, modulation, and
2 management of a range of acute and chronic medical conditions, including:

- 3 (1) underweight, overweight, malnutrition, and obesity;
- 4 (2) cardiometabolic;
- 5 (3) endocrine;
- 6 (4) immune and autoimmune; and
- 7 (5) gastrointestinal disorders.

8 (m) The following shall be necessary for proof of completion of a Board-approved internship or a documented,
9 supervised practice experience in nutrition services under Paragraph (l) of this Rule: ~~to determine and verify the~~
10 supervised practice experience:

11 ~~(1)~~ The supervisor shall have access to all relevant patient/client records kept during the supervised
12 practice experience. The supervisor shall review performance by periodic observation, either in real-
13 time or by some recording of the nutrition service.

14 ~~(2)~~(1) If there shall be more than one supervisor or facility for different parts of the supervised practice
15 experience, information and verification of each **part part, as provided in (m)(2) and (m)(3) of this**
16 **Rule**, is required.

17 ~~(3)~~(2) The applicant shall provide to the Board for each supervisor/facility:

- 18 (A) the name and address of the facility providing the supervised practice experience;
- 19 (B) the name, address, phone, and title of the supervisor who supervised the supervised practice
20 experience;
- 21 (C) a summary of nutrition services performed, along with dates, and hours spent performing
22 them;
- 23 (D) evidence that the supervisor met the requirements as stated in G.S. 90-357.5(c)(2) at the
24 time of supervision; and
- 25 (E) an attestation that the supervisor is not related to, married to, or domestic partners with the
26 supervisee.

27 ~~(4)~~(3) Each supervisor shall review the evidence provided by the applicant and verify that the information
28 is true, including: shall:

- 29 (A) regularly, commensurate with the care provided, observe the provision of nutrition care
30 services by the student or trainee supervised, and evaluate, authorize, and approve all
31 nutrition care services of the student or trainee supervised;
- 32 (B) maintain primary responsibility for and control over all nutrition care services performed
33 by the student or trainee, including clinical record keeping;
- 34 (C) ensure the student or trainee is designated throughout the supervised practice experience
35 by a title that indicates the individual's status as a student or trainee;
- 36 ~~(A)~~(D) verify that the applicant participated in nutrition services under his or her supervision,
37 stating the total number of hours;

1 ~~(B)(E)~~ ~~providing provide~~ a summary of the nutrition services ~~provided~~ completed under his or her
2 supervision; and

3 ~~(C)(F)~~ ~~providing provide~~ an evaluation of the applicant for the Board to be able to assess the
4 applicant's performance in the ~~areas of nutrition assessment; nutrition intervention,~~
5 ~~education, counseling, or management; and nutrition monitoring or evaluation.~~ provision
6 of nutrition services, as defined in 21 NCAC 17 .0101(10), to address, at a minimum, the
7 acute and chronic medical conditions listed in Paragraph (l) of this Rule.

8 ~~(H)(n)~~ Applicants who have obtained ~~their~~ his or her education outside of the United States and its territories shall:

- 9 (1) Have ~~their~~ his or her academic ~~degree(s)~~ degrees evaluated by a Board-approved foreign credential
10 evaluating service as equivalent to a baccalaureate or higher degree conferred by a U.S. college or
11 university accredited by the regional accrediting agencies recognized by the Council on Higher
12 Education Accreditation and the U.S. Department of Education; and
- 13 (2) All documents submitted in a language other than English shall be accompanied by a certified
14 translation thereof in English from a Board-approved translation service.
- 15 (3) The following foreign credential evaluating and translation services are Board-approved:
 - 16 (A) Academic and Professional International Evaluation, Inc., which may be found at:
17 www.apie.org;
 - 18 (B) Academic Credentials Evaluation Institute, Inc., which may be found at: [https://www.acei-](https://www.acei-global.org/)
19 [global.org/](https://www.acei-global.org/);
 - 20 (C) American Education Research Corporation, Inc., which may be found at: [http://www.aerc-](http://www.aerc-eval.com/)
21 [eval.com/](http://www.aerc-eval.com/);
 - 22 (D) Association of International Credential Evaluators, Inc., which may be found at: [www.aice-](http://www.aice-eval.org/)
23 [eval.org](http://www.aice-eval.org/);
 - 24 (E) Bruscan Educational Information Services, which may be found at:
25 <http://www.bruscan.com/>;
 - 26 (F) Center for Educational Documentation, Inc., which may be found at:
27 <http://www.cedevaluations.com/>;
 - 28 (G) Education Credential Evaluators, Inc., which may be found at: www.ece.org;
 - 29 (H) Educational Perspectives, which may be found at: <https://www.edperspective.org/>;
 - 30 (I) Foundation for International Services, Inc., which may be found at: [https://www.fis-](https://www.fis-web.com/)
31 [web.com/](https://www.fis-web.com/);
 - 32 (J) International Education Research Foundation, which may be found at: www.ierf.org;
 - 33 (K) Josef Silny & Associates, which may be found at: <http://www.jsilny.org/>;
 - 34 (L) SpanTran: The Evaluation Company, which may be found at: <https://www.spantran.com/>;
 - 35 or
 - 36 (M) World Education Services, Inc., which may be found at: <https://www.wes.org/>.

1 ~~(m)~~(o) If the Board determines that the application does not demonstrate satisfaction of the requirements specified in
2 G.S. ~~90-357.5, 90-357.5~~ and this Rule, the Board shall notify the applicant in writing. The notification shall include
3 what is required to demonstrate the applicant meets the statutory requirements, and the applicant shall be:

- 4 (1) offered the ability to place the application on hold for a time period of up to one year from the date
5 of the letter providing the Board's determination, so long as such a request is made in writing within
6 30 days of the date of the letter. During this hold time, the applicant may provide other evidence
7 demonstrating the applicant satisfied the requirements the Board determined were not met;
- 8 (2) offered the opportunity to appear for an interview before the Board. At any time during that
9 interview, the applicant may stop the interview, and request to have all or any part of requested
10 information provided in writing; and
- 11 (3) offered the ability to withdraw the application so long as such a request is made in writing within
12 30 days of the date of the letter. The applicant will be allowed to apply for licensure at a later time.

13 ~~(m)~~(p) If an applicant who received the notice specified in Paragraph ~~(m)~~(o) of this Rule does not provide a written
14 response to the Board within 30 days of the date of the notification requesting that he or she [they] be granted an
15 interview or his or her [their] application be placed on hold or withdrawn, or after the opportunity for an interview the
16 Board determines the applicant has still not demonstrated satisfaction of the requirements specified in G.S. 90-357.5
17 and this Rule and the applicant has not requested [their] his or her application be placed on hold or withdrawn, the
18 Board shall issue the applicant an official rejection as provided in G.S. 90-358.

19 ~~(o)~~(q) A rejected applicant shall have 60 days from the date of official rejection to request ~~an administrative hearing,~~
20 a contested case hearing in accordance with the rules of this Chapter.

21
22 *History Note: Authority G.S. 90-356; 90-357.5; 90-357.6; 90-358;*
23 *Temporary Adoption Eff. March 19, 1992 for a Period of 180 Days to Expire on September 13,*
24 *1992;*
25 *Eff. June 1, 1992;*
26 *Recodified from 21 NCAC 17 .0004 Eff. February 1, 1995;*
27 *Amended Eff. January 1, 2021; December 1, 2011; July 18, 2002; March 1, 1996;*
28 *Readopted Eff. August 1, 2019; 2019;*
29 *Amended Eff. December 1, 2022.*

1 21 NCAC 17 .0106 proposed to be amended as published in 37:02 NCR 190-201 is now repealed as follows:

2

3 **21 NCAC 17 .0106 GRANTING LICENSE WITHOUT EXAMINATION**

4

5 *History Note: Authority G.S. 90-356; 90-360;*

6 *Filed as a Temporary Adoption Eff. March 19, 1992 for a Period of 180 Days to Expire on*
7 *September 13, 1992;*

8 *Eff. June 1, 1992;*

9 *Recodified from 21 NCAC 17 .0006 Eff. February 1, ~~1995~~. 1995;*

10 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4,*
11 *~~2016~~-2016;*

12 *Repealed Eff. December 1, 2022.*

1 21 NCAC 17 .0108 is amended with changes as published in 37:02 NCR 190-201 as follows:

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3 **21 NCAC 17 .0108 DISAPPROVED APPLICATION**

4 The Board shall not approve an applicant for licensure or renewal if the applicant:

- 5 (1) ~~has~~ Has not completed the requirements ~~in G.S. 90-350 through G.S. 90-369 including academic,~~
6 ~~experience and examination requirements;~~ set by Article 25 of **Chapter 90 of the General Statutes**
7 **[G.S. 90]** and the rules of this Chapter.
- 8 (2) ~~has~~ Has failed to remit any applicable fees; **and**
- 9 (3) ~~has~~ Has failed to comply with requests for supporting **documentation; documentation,** and ~~[or]~~
- 10 (4) **[has]** ~~Has presented false information on application documents required by the Board to verify~~
11 **applicant's qualifications for licensure.**

12

13 *History Note: Authority G.S. 90-356; 90-358; **90-363;***
14 *Temporary Adoption Eff. March 19, 1992 for a Period of 180 Days to Expire on September 13,*
15 *1992;*
16 *Eff. June 1, 1992;*
17 *Recodified from 21 NCAC 17 .0008 Eff. February 1, 1995;*
18 *Amended Eff. July 18, 2002;*
19 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4,*
20 *~~2016; 2016;~~*
21 *Amended Eff. December 1, 2022.*

1 21 NCAC 17 .0110 is amended as published in 37:02 NCR 190-201 as follows:

2

3 **21 NCAC 17 .0110 LICENSURE CERTIFICATE**

4 (a) The Board shall ~~prepare and provide~~ issue to each licensee ~~a~~ an electronic license certificate and an electronic
5 license identification card. The identification card shall contain the person's name, license ~~number~~ number, and date
6 of expiration.

7 (b) License certificates shall be signed by the Chair, ~~Secretary~~ Secretary, and Treasurer and be affixed with the seal
8 of the Board. Identification cards shall bear the signature of the Chair.

9 (c) Any certificate or identification card issued by the Board shall remain the property of the Board and shall be
10 surrendered to the Board ~~on~~ upon demand.

11 (d) Licensees shall comply with G.S. 90-640, [Article 37,] which specifies the wearing of a name badge.

12 (e) The license certificate must be displayed in a public manner as follows:

13 (1) The license certificate shall be displayed in the primary place of employment of the licensee; or

14 (2) In the absence of a primary place of employment or when the licensee is employed in multiple
15 locations, the licensee shall print and carry a current, [~~Board-issued~~] Board-issued license
16 identification card.

17 ~~(e) Neither the licensee nor anyone else shall display a photocopy of a license identification card in lieu of the original~~
18 ~~license certificate or license identification card.~~

19 (f) Neither the licensee nor anyone else shall make any alteration on a license certificate or license identification card
20 issued by Board.

21 (g) The Board shall ~~replace a lost, damaged or destroyed license certificate or identification card upon receipt of~~ issue
22 an official licensure certificate upon a written request from the licensee and payment of the ~~duplicate license fee.~~
23 Duplicate License Certificate Fee.

24 (h) ~~The~~ Within 30 days of a name change, the licensee must submit a written request with government-issued
25 documentation reflecting the name change ~~within 30 days of a name change~~ to the ~~Board~~ Board. Upon receipt of the
26 request and documentation the Board ~~who~~ shall re-issue a license certificate and license identification card. ~~Requests~~
27 If an official licensure certificate reflecting the name change is requested, the request shall be accompanied by
28 duplicate license fee and documentation reflecting the change. a Duplicate License Certificate Fee.

29

30 *History Note: Authority G.S. 90-356; 90-362;*

31 *Temporary Adoption Eff. March 19, 1992 for a Period of 180 Days to Expire on September 13,*
32 *1992;*

33 *Eff. June 1, 1992;*

34 *Recodified from 21 NCAC 17 .0010 Eff. February 1, 1995;*

35 *Amended Eff. July 18, 2002;*

36 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4,*
37 *2016. 2016;*

1 21 NCAC 17. 0112 is amended as published in 37:04 NCR 334-340 as follows:

2
3 **21 NCAC 17 .0112 SUSPENSION, REVOCATION AND DENIAL OF LICENSE**

4 (a) The Board may refuse to issue a license, or suspend, ~~revoke-revoke,~~ or impose probationary conditions and
5 restrictions on the license of a person upon a finding of any of the causes provided in Article 25 of Chapter 90 of the
6 General Statutes. [General Statute Chapter 90, Article 25.]

7 (b) When the Board has probable cause to believe that ~~a person, an~~ applicant [~~applicant,~~] or licensee has violated any
8 part of G.S. 90-350 through 90-369 or the rules of ~~the Board, this Chapter,~~ the Board shall so advise the person in
9 writing as referenced in Rule ~~.0116 .0503 and .0504~~ of this Chapter and provide the person with the opportunity for a
10 hearing as referenced in Rule ~~.0116 .0504~~ of this Chapter. The Board's final decision or order shall be made in writing
11 as referenced in Rule ~~.0116 .0514~~ of this Chapter.

12 (c) A suspended license ~~shall be-~~ **is** subject to expiration and may be renewed as provided in this Section, but such
13 renewal shall not entitle the licensee to engage in the licensed activity until ~~he/she~~ **he or she[is]** [~~they are~~] reinstated.
14 If a license revoked on disciplinary grounds is **to be** reinstated, the licensee must reapply and pay all applicable fees.
15 The Board may deny or refuse to reinstate a license or may suspend or impose probationary conditions on a license if
16 the licensee has engaged in conduct listed in G.S. 90-363.

17
18 *History Note: Authority G.S. 90-356; 90-363;*

19 *Temporary Adoption Eff. March 19, 1992 for a Period of 180 Days to Expire on September 13,*
20 *1992;*

21 *Eff. August 3, 1992;*

22 *Recodified from 21 NCAC 17 .0012 Eff. February 1, 1995;*

23 *Amended Eff. January 1, 1996;*

24 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4,*
25 *~~2016.~~ 2016;*

26 *Amended Eff. December 1, 2022.*

1 21 NCAC 17.0114 is amended as published in 37:02 NCR 190-201 as follows:

2
3 **21 NCAC 17 .0114 CODE OF ETHICS FOR PROFESSIONAL PRACTICE AND CONDUCT**

4 (a) Licensees, under the Act, shall comply with the following Code of Ethics in their professional practice and conduct.
5 The Code reflects the ethical principles of the dietetic/nutrition professional and outlines obligations of the licensee to
6 self, ~~client, society~~ client or patient, society, and the profession and sets forth mandatory standards of conduct for all
7 licensees.

- 8 (1) The licensee shall provide professional services with objectivity and with respect for the unique
9 needs and values of individuals as determined through the nutritional assessment.
- 10 (2) The licensee shall conduct all practices of ~~dietics/nutrition~~ dietics or nutrition with honesty and
11 integrity, honesty.
- 12 (3) The licensee shall present substantiated information and assess the validity and applicability of
13 scientific evidence without personal bias. ~~interpret controversial information without personal bias,~~
14 ~~recognizing that legitimate differences of opinion exist.~~
- 15 (4) The licensee shall practice evidence-based ~~dietics/nutrition~~ dietics or [nutrition] nutrition. based
16 on scientific principles and current information.
- 17 (5) The licensee shall assume responsibility and accountability for personal competence in ~~practice.~~
18 practice, continuously develop and enhance expertise through education, and recognize personal
19 limitations.
- 20 (6) The licensee shall inform the public of ~~his/her~~ [their] his or her services by using accurate and
21 truthful information. ~~factual information and shall not advertise in a false or misleading manner.~~
- 22 (7) The licensee shall not exercise undue influence on a ~~client, including~~ client or patient. This includes,
23 not exercising [undue influence] excessive persuasion or improper influence on a client or patient
24 in the promotion or the sale of services or products. The licensee shall be alert to any conflicts of
25 interest and shall provide full disclosure when a real or potential conflict of interest arises.
- 26 (8) The licensee shall not reveal information about a client or patient obtained in a professional capacity,
27 without prior consent of the ~~client, client or patient,~~ except as authorized or required by ~~law~~ law,
28 and shall make full disclosure about any limitations on ~~his/her~~ [their] his or her ability to guarantee
29 this.
- 30 (9) The licensee shall safeguard client or patient confidentiality according to current regulations and
31 laws. ~~[implement appropriate measures to protect personal health information using appropriate~~
32 technology, such as encryption. [encryption, and HIPAA compliant software.]
- 33 ~~(9)~~(10) The licensee shall recognize and exercise professional judgment within the limits of the licensee's
34 qualifications and shall not accept or perform professional responsibilities which the licensee knows
35 or has reason to know that he or she is [they are] not qualified to perform.
- 36 (11) The licensee shall collaborate with ~~[ethers,]~~ others involved in the patient's care, obtain
37 [consultation,] consultation from health care providers when appropriate, and make referrals to

1 health care providers [as appropriate] when the licensee cannot provide the client or patient the
2 services he or she needs.

3 ~~(10)~~(12) The licensee shall take action, with prior consent of the ~~client,~~ client or patient, to inform a ~~client's~~
4 client or patient's physician or other health care practitioner in writing in cases where a ~~client's~~ client
5 or patient's nutritional status indicates a change in health ~~status.~~ status impacting the disease or
6 medical condition for which the physician or other health care practitioner is treating the client or
7 patient.

8 ~~(11)~~(13) The licensee shall ~~give~~ ensure that their client or patient has sufficient information ~~based on the~~
9 ~~client's ability to process information such that the client can make his or her own informed~~
10 ~~decisions.~~ to understand the nutrition diagnosis and the implications of nutrition intervention. [make
11 an informed decision.] The licensee shall not guarantee that nutrition care services will cause any
12 certain outcome or particular result for the ~~client.~~ client or patient.

13 ~~(12)~~(14) The licensee shall permit use of that licensee's name for the purpose of certifying that
14 ~~dietetics/nutrition~~ dietetics or nutrition services have been rendered only if the licensee has provided
15 or supervised those services.

16 (15) The licensee shall document, code, and bill nutrition services to most accurately reflect the character
17 and extent of such delivered services.

18 ~~(13)~~(16) The licensee shall notify the Board in writing within 30 days of the occurrence of any of the
19 following:

20 (A) ~~The Licensee~~ the licensee seeks any medical care or professional treatment for the chronic
21 or persistent use of intoxicants, drugs drugs, or narcotics.

22 (B) ~~The Licensee~~ the licensee is adjudicated to be mentally incompetent.

23 (C) ~~The Licensee~~ the licensee has been convicted or entered into a plea of guilty or nolo
24 contendere to any crime ~~involving moral turpitude.~~ directly related to the duties and
25 responsibilities of a dietitian or nutritionist or that was violent or sexual in nature; or

26 (D) ~~The~~ the licensee has been disciplined by an agency of another state that regulates the
27 practice of dietetics or nutrition.

28 ~~(14)~~(17) The licensee shall comply with all laws and rules concerning the profession.

29 ~~(15)~~(18) The licensee shall uphold the Code of Ethics for professional practice and conduct by reporting
30 ~~suspected violations~~ to the Board inappropriate behavior or treatment of a client or patient by the
31 licensee or others in violation of the Code and the ~~Act to the Board.~~ Act.

32 ~~(16)~~(19) The licensee shall not interfere with an investigation or disciplinary proceeding by willful
33 misrepresentation of facts to the Board or its representative or by the use of threats or harassment
34 against any person.

35 ~~(17)~~(20) The licensee shall not engage in kissing, fondling, touching touching, or in any activities, advances,
36 or comments of a sexual nature with any ~~client [or patient]~~ client, patient, or, while under the

1 licensee's supervision, ~~with any supervisee, student, trainee, or trainee, provisional licensee~~
2 ~~[licensee,] or person aiding the practice of dietetics/nutrition. [dietetics or nutrition.]~~

3 (18)(21) The licensee shall not invite, accept, or offer gifts, monetary incentives, or other considerations that
4 affect or reasonably give an appearance of affecting the licensee's professional judgment.

5 (b) Conduct and circumstances which may result in disciplinary action by the Board include the following:

6 (1) The licensee is a chronic ~~or persistent~~ user of intoxicants, ~~drugs~~ drugs, or narcotics to the extent that
7 the same impairs ~~his/her~~ [their] his or her ability to practice ~~dietetics/nutrition. dietetics or~~
8 [nutrition.] nutrition, as determined by a health care provider licensed to conduct such assessment.

9 (2) The licensee is mentally, emotionally, or physically unfit to practice ~~dietetics/nutrition dietetics or~~
10 nutrition and is afflicted with such a mental, ~~emotional~~ emotional, or physical disability as to be
11 dangerous to the health and welfare of a ~~client. client or~~ [patient.] patient, as determined by a health
12 care provider licensed to conduct such assessment.

13 (3) The licensee has been disciplined by an agency of another state that regulates the practice of dietetics
14 or nutrition and at least one of the grounds for the discipline is the same or substantially equivalent
15 to the grounds for discipline in this state.

16 (4) The licensee has violated any provisions of the Act or any of the ~~rules in~~ rules of this Chapter.

17
18 *History Note: Authority G.S. 90-356(3); 90-356(2);*
19 *Temporary Adoption Eff. March 19, 1992 for a period of 180 days to expire on September 13, 1992;*
20 *Eff. July 1, 1992;*
21 *Recodified from 21 NCAC 17 .0014 Eff. February 1, 1995;*
22 *Amended Eff. April 1, 2010; July 1, 2004; July 18, 2002; March 1, 1996;*
23 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4,*
24 *~~2016.~~ 2016;*
25 *Amended Eff. December 1, 2022.*

1 21 NCAC 17 .0116 is repealed as published in 37:04 NCR 334-340 as follows:

2

3 **21 NCAC 17 .0116 VIOLATIONS, COMPLAINTS, SUBSEQUENT BOARD ACTION, AND**
4 **HEARINGS**

5

6 *History Note: Authority G.S. 90-356; 90-363; 90-370;*
7 *Temporary Adoption Eff. July 16, 1992 for a period of 180 days or until the permanent rule becomes*
8 *effective, whichever is sooner;*
9 *Eff. November 30, 1992;*
10 *Recodified from 21 NCAC 17 .0016 Eff. February 1, 1995;*
11 *Amended Eff. April 1, 2010; July 18, 2002; January 1, 1996;*
12 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4,*
13 *2016;*
14 *Repealed Eff. December 1, 2022.*

1 21 NCAC 17 .0201 is proposed for repeal as follows:

2

3 **21 NCAC 17 .0201** **DEFINITIONS**

4

5 *History Note:* *Authority G.S. 90-356; 90-368;*

6 *Eff. February 1, 1995;*

7 *Amended Eff. December 1, 2011; March 1, 1996;*

8 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4,*

9 ~~*2016-2016;*~~

10 *Repealed Eff. November 1, 2022.*

1 21 NCAC 17 .0202 is proposed for repeal as follows:

2

3 **21 NCAC 17 .0202 REQUIREMENT FOR REVIEW**

4

5 *History Note: Authority G.S. 90-356; 90-368;*

6 *Eff. February 1, 1995;*

7 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4,*

8 *~~2016.~~ 2016.*

9 *Repealed Eff. November 1, 2022.*

1 21 NCAC 17 .0203 is proposed for repeal as follows:

2

3 **21 NCAC 17 .0203 REVIEW AND BOARD ACTION**

4

5 *History Note: Authority G.S. 90-356; 90-368;*

6 *Eff. February 1, 1995;*

7 *Amended Eff. December 1, 2011;*

8 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4,*

9 *~~2016.~~ 2016.*

10 *Repealed Eff. November 1, 2022.*

1 21 NCAC 17.0302 is amended as published in 37:02 NCR 190-201 as follows:

2

3 **21 NCAC 17 .0302 REQUIREMENTS**

4 A student or trainee under direct supervision is exempt pursuant to G.S. ~~90-360(2)~~ 90-368(2) when enrolled in a course
5 of study or completing a ~~[documented]~~ documented, supervised practice experience as required under G.S. 90-357.5,
6 not to exceed five years. The Board may approve or disapprove a ~~[request]~~ request, submitted to the Board
7 electronically or via postal mail, for an extension of the period of time if the delay is not the result of a willful or
8 negligent act, error, or omission, or a failure to exercise reasonable diligence. ~~[based upon circumstances beyond the~~
9 ~~control of the student or trainee.]~~

10

11 *History Note: Authority G.S. 90-357.5; 90-356(2); 90-368(2);*

12 *Eff. March 1, 1996;*

13 *Amended Eff. July 18, 2002;*

14 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4,*
15 *~~2016.~~ 2016.*

16 *Amended Eff. December 1, 2022.*

1 21 NCAC 17 .0303 is amended as published in 37:02 NCR 190-201 as follows:

2
3 **21 NCAC 17 .0303 SUPERVISION**

4 For purposes of G.S. 90-368(2), "direct supervision" means the supervising practitioner:

- 5 (1) ~~discusses and recommends, with the student or trainee, nutrition care services undertaken by the~~
6 ~~student or trainee, which are appropriate to the level of nutrition care; develop and carry out a~~
7 ~~program for advancing and optimizing the quality of care provided by a supervisee. together with~~
8 ~~the supervisee, shall identify and document document: competency goals for the supervised practice~~
9 ~~experience described in G.S. 90-357.5; the supervisee's scope of practice; the assignment of clinical~~
10 ~~tasks as appropriate to the supervisee's level of competence; the supervisee's relationship and access~~
11 ~~to the supervisor; and an evaluation process for the supervisee's performance.~~
- 12 (2) ~~is available for consultation on nutrition care services being performed by the student or trainee,~~
13 ~~either through on site or through electronic communication; is physically onsite and available for~~
14 ~~[immediate] physical intervention where the student or trainee is providing nutrition care that~~
15 ~~requires physically touching the patient and is either physically onsite and available for [immediate]~~
16 ~~physical intervention or [immediately and] continuously available by means of two-way real-time~~
17 ~~audiovisual technology that allows for the direct, contemporaneous interaction by sight and sound~~
18 ~~between the qualified supervisor and the supervisee where the student or trainee is providing~~
19 ~~medical nutrition therapy not requiring touching of the patient;~~
- 20 (3) shall be available to render [immediate] assistance during the provision of nutrition care when
21 requested by ~~the student or trainee or~~ the patient or client, or shall have arranged for another qualified
22 practitioner lawfully able render nutrition care services, to be available in the absence of the
23 supervising practitioner;
- 24 (4) ~~periodically~~ regularly, commensurate with the care provided, observes the nutrition care services of
25 the student or trainee supervised, and evaluates, authorizes, evaluates and approves all nutrition care
26 services medical nutrition therapy provided by the student or trainee supervised, and [supervised,]
27 supervised;
- 28 (5) maintains primary ~~shall maintain~~ responsibility for ~~the~~ and control over all nutrition care ~~activities~~
29 services performed by the student or trainee, trainee, including countersigning all clinical encounter
30 notes; and
- 31 (6) ensures the student or trainee is designated throughout the supervised practice experience by a title
32 that indicates the individual's status as a student or trainee.

33
34 *History Note:* Authority G.S. 90-356(2); 90-357.5; 90-368(2);
35 Eff. March 1, 1996;
36 Amended Eff. December 1, 2011; July 18, 2002;
37 Readopted Eff. December 1, 2019; 2019;

1 21 NCAC 17.0304 is amended as published in 37:02 NCR 190-201 as follows:

2

3 **21 NCAC 17 .0304 RECORDS AND REPORTS**

4 ~~(a)~~ Permanent and current records from ~~approved clinical practice programs~~ internships or documented, supervised
5 practice experiences in nutrition services shall be available for review by representatives of the Board. The Board may
6 ~~make use of facts supplied~~ use such records in determining compliance with G.S. ~~90-368~~ 90-368(2) and in approving
7 applications for a license.

8 [(b) The Board may require additional such records and reports for review at any time throughout the period of
9 completing an individual's internship or documented, supervised practice experience in nutrition services required
10 under G.S. 90-357.5 and throughout the period of application review and to provide evidence and substantiate
11 compliance with standards of education, the law [law.] Article 25 of Chapter 90 of the General Statutes and the rules
12 of the Board. this Chapter.

13

14 *History Note: Authority G.S. 90-356(2); 90-368(2); 90-357;*

15 *Eff. March 1, 1996;*

16 *Amended Eff. July 18, 2002;*

17 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4,*

18 *~~2016- 2016;~~*

19 *Amended Eff. December 1, 2022.*

1 21 NCAC 17 .0401 is amended as published in 37:02 NCR 190-201 as follows:

2
3 **SECTION .0400 - UNLICENSED INDIVIDUALS**

4
5 **21 NCAC 17 .0401 INDIVIDUALS AIDING THE PRACTICE OF ~~DIETETICS/NUTRITION~~**
6 **DIETETICS OR NUTRITION**

7 (a) As used in this Section, the following terms and phrases, which have not already been defined in G.S. 90, Article
8 25, Article 25 of Chapter 90 of the General Statutes shall have the meanings specified:

9 (1) ~~"Certified Dietary Manager" means an individual who is certified by the Certifying Board of the~~
10 ~~Dietary Managers.~~

11 (2) ~~"Dietetic Technician Registered" or "DTR" means an individual who is registered by the~~
12 ~~Commission on Dietetic Registration of the American Dietetic Association.~~

13 (3)(1) "Direct supervision" as referenced in G.S. 90-368(4) means that a licensed ~~dietitian/nutritionist~~
14 ~~dietitian/nutritionist, licensed nutritionist, or other licensed health care practitioner whose licensed~~
15 ~~scope of practice includes the practice of dietetics or nutrition~~ shall:

16 (A) be available for consultation on delegated nutrition care activities being performed by the
17 person being supervised, either through on-site or through electronic communication, and
18 shall be available to render assistance when needed to the unlicensed personnel and patient
19 or client, or shall have arranged for another licensee to be available in the absence of the
20 licensed ~~dietitian/nutritionist, dietitian/nutritionist, licensed nutritionist, or other licensed~~
21 ~~health care practitioner whose licensed scope of practice includes the practice of dietetics~~
22 ~~or [nutrition.] nutrition;~~ provided that the licensed dietitian/nutritionist shall be on site at
23 the service delivery site and within audible and visual range of any unlicensed personnel
24 person described in Subparagraph (b)(3) of this Rule for the provision of any nutrition care
25 activities;

26 (B) directly and personally examine, ~~evaluate~~ evaluate, and approve the acts or functions of the
27 person supervised; and

28 (C) ~~[meet with the unlicensed personnel in a joint effort to establish,] maintain [maintain,] and~~
29 ~~elevate a level of performance to ensure the health, safety and welfare of clients or patients~~
30 ~~during the provision of nutrition care activities, and~~ provide sufficient guidance and
31 direction as to enable the unlicensed personnel to ~~competently~~ perform the delegated
32 activity or function.

33 (4)(2) "Nutrition care activities" means activities performed by unlicensed personnel ~~which that~~ are
34 delegated by licensed ~~dietitians/nutritionists dietitians/nutritionists, licensed nutritionists, or other~~
35 ~~licensed health care practitioners whose licensed scope of practice includes the practice of dietetics~~
36 ~~or nutrition~~ in accordance with Paragraphs ~~(e)(b), and (d)(c), and (d)~~ of this Rule and ~~which that~~
37 support the provision of ~~nutrition care services~~ medical nutrition therapy as referenced in G.S. 90-

1 352(4). ~~90-352(3a)~~. Nutrition care activities include the provision of nutrition care to address and
2 mitigate a medical condition, illness or injury and the provision of weight control programs or
3 services, as well as community nutrition, food service, and nutrition information or education.

4 ~~(b)~~ Unlicensed personnel aiding the practice of dietetics/nutrition may include the following:

- 5 (1) a Certified Dietary Manager;
- 6 (2) a Dietetic Technician Registered; or
- 7 (3) an individual who has met the academic requirements as referenced in G.S. 90-357(3)b.1, c.1 and
8 ~~d.~~

9 ~~(e)~~(b) The licensed ~~dietitian/nutritionist~~ dietitian/nutritionist, licensed nutritionist, or other licensed health care
10 practitioner whose licensed scope of practice includes the practice of dietetics or nutrition:

- 11 (1) may delegate nutrition care activities to unlicensed personnel that are appropriate to the level of
12 knowledge and skill of the unlicensed ~~personnel.~~ personnel. ~~The licensed dietitian/nutritionist~~
- 13 (2) shall be responsible for the initial and ongoing determination of the competence of the unlicensed
14 personnel to perform any delegated acts or functions. Delegation of nutrition care activities shall be
15 in writing and shall identify the patient or client and the act or function assigned to the unlicensed
16 ~~personnel.~~ personnel. ~~The licensed dietitian/nutritionist~~
- 17 (3) shall supervise the nutrition care activities of the unlicensed personnel and maintain responsibility
18 for nutrition care activities performed by all personnel to whom the care is ~~delegated.~~ delegated;
19 ~~The licensed dietitian/nutritionist~~
- 20 (4) shall not delegate the entire spectrum of ~~nutrition care services,~~ medical nutrition therapy but may
21 delegate specific acts and functions which support the licensed ~~dietitian/nutritionist's~~ professional's
22 provision of ~~nutrition care services.~~ medical nutrition [therapy.] therapy; and ~~The licensed~~
23 ~~dietitian/nutritionist~~
- 24 (5) shall have the responsibility for clinical record ~~keeping,~~ documentation. ~~and shall ensure that case~~
25 ~~notes and other records of services identify whether the licensed dietitian/nutritionist or the~~
26 ~~unlicensed personnel was the direct provider of the service.~~

27 ~~(d)~~(c) The following variables shall be considered by the licensed ~~dietitian/nutritionist~~ dietitian/nutritionist, licensed
28 nutritionist, or other licensed health care practitioner whose licensed scope of practice includes the practice of dietetics
29 or nutrition in determining whether or not an activity or function may be delegated to unlicensed personnel:

- 30 (1) knowledge and skills of the unlicensed personnel which include both basic educational and
31 experience preparation and continuing education and experience;
- 32 (2) the competence of the unlicensed personnel for the activity or function;
- 33 (3) the variables in each service setting which include:
 - 34 (A) the complexity and frequency of nutrition care needed by a given client population;
 - 35 (B) the acuity and stability of the client's condition; and
 - 36 (C) established policies, procedures, practices, and channels of communication of the facilities
37 where the delegated activities or functions are being performed which lend support to the

1 types of nutrition care activities being delegated, or not delegated, to unlicensed personnel;
2 and
3 (4) whether the licensed ~~dietitian/nutritionist~~ dietitian/nutritionist, licensed nutritionist, or other
4 licensed health care practitioner whose licensed scope of practice includes the practice of dietetics
5 or nutrition has the skills, ~~experience~~ experience, and ability to ~~competently~~ supervise the unlicensed
6 personnel for the activity or function.

7 (d) Tasks, treatments, or interventions that may not be delegated include, but are not limited to:

- 8 (1) assessments of data, problem identification, and outcome evaluation;
9 (2) tasks, treatments, or intervention that require a license; and
10 (3) any and all aspects of care or activities that require independent clinical judgment or [knowledge,]
11 knowledge by a licensee.

12
13 *History Note: Authority G.S. 90-356(2); 90-368(4);*
14 *Eff. March 1, 1996;*
15 *Amended Eff. May 1, 2010; July 18, 2002;*
16 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4,*
17 *~~2016.~~ 2016;*
18 *Amended Eff. December 1, 2022.*

21 NCAC 17.0402 is amended as published in 37:02 NCR 190-201 as follows:

21 NCAC 17 .0402 INDIVIDUALS PROVIDING NUTRITION INFORMATION

(a) The following terms and phrases shall have the meanings specified:

- (1) "Nutrition information" means ~~nonfraudulent~~ nutrition information related to food, food materials, or dietary supplements which is designed for one or more healthy population groups and is based on ~~valid scientific evidence, reports [reports,] and studies. evidence.~~ Nutrition information is not ~~based on an individual nutrition assessment as referenced in G.S. 90-352 or medical nutrition therapy as referenced in 21 NCAC 17 .0101(11) and is not individualized to provide nutrition care services to prevent, manage, treat, cure or rehabilitate a for the purpose of managing or treating a medical condition, illness, or injury~~ condition for a specific person or group as referenced in G.S. 90-352 and 21 NCAC 17 .0101(12). 90-352(3a).
- (2) "Reported or historical use" means information about food, food ~~materials~~ materials, or dietary supplements which is based ~~on the following:~~ on:
 - (A) historical or methodological studies or research conducted by experts in the field using sound scientific methods with randomized controlled clinical trials; or
 - (B) reports on ~~valid~~ scientific studies published in peer-reviewed medical or dietetics and nutrition journals or publications.

(b) The Board shall deem an individual who provides nutrition information or education to be in compliance with G.S. 90-368(9) when:

- (1) The person does not hold ~~himself/herself~~ himself or herself [themselves] out to be a dietitian or nutritionist or imply orally or in writing or indicate in any way that ~~he/she [they are] he or she is a dietitian/nutritionist; dietitian or nutritionist;~~
- (2) The person does not provide ~~nutrition care services or nutrition care activities~~ medical nutrition therapy support activities which have not been delegated to ~~him/her~~ him or her [them] by a licensed ~~dietitian/nutritionist; dietitian/nutritionist, licensed nutritionist, or other licensed health care practitioner whose licensed scope of practice includes the practice of dietetics or nutrition;~~
- (3) The person provides nutrition information on or about food, food ~~materials~~ materials, or dietary supplements, and does not provide nutrition information on the nutritional needs of the ~~consumer; consumer as related to managing or treating a medical condition;~~
- (4) The person provides nutrition information in connection with the marketing and distribution of the food, food materials, dietary ~~supplements~~ supplements, or other goods to be provided or sold, and does not provide nutrition information in connection with the marketing and distribution of ~~nutrition~~ medical nutrition therapy services;
- (5) The person provides nonfraudulent nutrition information which is based on scientific reports and studies, is not false or misleading, and is safe; and

1 (6)(5) The person provides the nutrition information on food, food materials, nutraceuticals, dietary
2 ~~supplements~~ supplements, or other goods in accordance with federal, ~~state~~ State, and local laws,
3 ~~regulations~~ regulations, and ordinances, including but not limited to G.S. 90, Article 25.
4

5 *History Note: Authority G.S. 90-356(2); 90-368;*
6 *Eff. March 1, 1996;*
7 *Amended Eff. July 18, 2002;*
8 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4,*
9 *~~2016.~~ 2016;*
10 *Amended Eff. December 1, 2022.*

1 21 NCAC 17.0403 is amended as published in 37:02 NCR 190-201 as follows:

2

3 **21 NCAC 17 .0403 ~~ELECTRONIC PRACTICE-TELEPRACTICE~~**

4 Any person, whether residing in this ~~state~~ State or not, who by use of electronic or other medium performs any of the
5 acts described as the practice of ~~dietetics/nutrition~~, medical nutrition therapy with a client or patient located in this
6 State, but is not licensed pursuant to ~~Article 25 of G.S. 90~~ Article 25 of Chapter 90 of the General Statutes shall be
7 deemed by the Board as being engaged in the practice of ~~dietetics/nutrition~~ medical nutrition therapy and subject to
8 the enforcement provisions available to the Board. Among other remedies, the Board shall report violations of this
9 Rule to any occupational licensing board having issued an occupational license to a person who violates this Rule.
10 This Rule does not apply to persons licensed pursuant to, or exempt from licensure pursuant to, Article 25 of G.S. 90.

11

12 *History Note: Authority G.S. 90-356;*
13 *Eff. February 1, 2006;*
14 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4,*
15 *~~2016.~~ 2016.*
16 *Amended Eff. December 1, 2022.*

1 21 NCAC 17 .0501 is proposed for adoption as follows:

2
3 **SECTION .0500 – INVESTIGATIVE PROCESS, COMPLAINTS, AND ADMINISTRATIVE HEARINGS**

4
5 **21 NCAC 17 .0501 DEFINITIONS**

6 As used in this Section:

7 (1) “Good cause” related to motions or requests to continue or for additional time for responding
8 includes:

9 (a) death or incapacitating illness of a party, or attorney of a party;

10 (b) a court order requiring a continuance;

11 (c) lack of proper notice of the hearing;

12 (d) a substitution of the representative or attorney of a party if the substitution is shown to be
13 required;

14 (e) a change in the parties or pleadings requiring postponement; and agreement for a
15 continuance by all parties if either more time is necessary to complete mandatory
16 preparation for the case, such as authorized discovery, and the parties and the

17 Board have agreed to new hearing date or parties have agreed to a settlement of the case
18 that has been or is likely to be approved by the final decision maker;

19 (f) where, for any other reason, either party has shown that the interests of justice require a
20 continuance or additional time.

21 (2) “Good cause” related to motions or requests to continue or for additional time for responding shall
22 not include:

23 (a) intentional delay;

24 (b) unavailability of a witness if the witness testimony can be taken by deposition; and

25 (c) failure of the attorney or representative to properly utilize the statutory notice period to
26 prepare for the hearing.

27 (3) “Investigative Committee” means a Board committee composed of one licensed dietitian/nutritionist
28 member of the Board, one licensed nutritionist member of the Board, and the public member of the
29 Board. This Committee is charged with the duty of reviewing cases and complaints involving
30 licensees, applicants for licensure, and all other allegations involving violations of the
31 Dietetics/Nutrition Practice Act. The Investigative Committee shall be responsible for directing
32 investigations and making recommendations to the Board regarding unresolved cases or complaints
33 at regularly scheduled meetings.

34 (4) “Licensee” means all persons to whom the Board has issued a license under [Article 25 of G.S. 90.]
35 Article 25 of Chapter 90 of the General Statutes.

36
37 History Note: Authority G.S. 90-356; G.S. 150B-38;

1 21 NCAC 17 .0502 is adopted as published in 37:04 NCR 334-340 as follows:

2
3 **21 NCAC 17 .0502 COMPLAINTS**
4

5 (a) Anyone may complain to the Board alleging that a person, applicant, or licensee has committed an action
6 prohibited by [~~Article 25, Chapter 90 of the North Carolina~~] Article 25 of Chapter 90 of the General Statutes or the
7 rules of the Board.

8 (b) Complaints may be submitted to the Board by completing the Board's complaint form online at
9 www.ncbdcn.org/file-a-complaint or a paper form may be requested by contacting the Board office. Paper forms may
10 be delivered to the Board by mail or hand-delivery at 1135 Kildaire Farm Road, Suite 200, Cary, NC 27511.

11 (c) Each complaint submitted shall set forth specific facts and circumstances known to the complainant relating to
12 the Dietetics/Nutrition Practice Act or the Board's rules, and the conduct or competence of each person who is the
13 subject of the complaint.

14 (d) Anonymous complaints are not investigated unless, if upon preliminary review of the contents of the complaint
15 by Board staff, it appears the allegation(s) indicate a violation of the Dietetics/Nutrition Practice Act or the Board's
16 rules, sufficient identification information for the person who is the subject of the complaint is provided, and there is
17 sufficient information to substantiate allegation(s).

18 (e) Investigations may be conducted by the Board staff or by other persons authorized by the Board.

19 (f) Upon receipt of a complaint, the Board shall confirm receipt of the complaint to the complainant.

20 (g) The Board staff, or its authorized Investigator, shall assign a complaint number to the initial complaint, review
21 the contents of the complaint, and conduct a preliminary review of information to determine whether an individual's
22 conduct or competence relates to the Dietetics/Nutrition Practice Act or the Board's rules.

23 (h) If preliminary information in the complaint does not relate to an individual's conduct or competence under the
24 authority of the Dietetics/Nutrition Practice Act or the Board's rules, the Board staff, or its authorized Investigator,
25 shall close the complaint and send notice to the complainant. If applicable, the Board staff may refer the complainant
26 to the appropriate governmental agency for handling such complaints. No further action shall be taken by the Board.

27 (i) If the information about an individual's conduct or competence appears to be under the authority of the
28 Dietetics/Nutrition Practice Act or the Board's rules, Board staff, or its authorized Investigator, shall open an
29 investigative case and begin an investigation of the matters described in the complaint.

30
31 History Note: Authority G.S. 90-356; 90-363;

32 Eff. December 1, 2022.

1 21 NCAC 17 .0503 is adopted as published in 37:04 NCR 334-340 as follows:

2
3 **21 NCAC 17 .0503 INVESTIGATIONS**
4

5 (a) Once an investigative case is created, the Board staff, or its authorized Investigator, shall send each person who
6 is the subject of an investigation, using the mail or electronic mail address of record in the Board's records for each
7 person, or the mail or electronic mail address provided on the complaint form if the person is not in the Board's records,
8 a summary of the complaint and a request for a written response.

9 (b) Licensees shall submit a written response to a complaint received by the Board within 45 days from the date the
10 Board confirms the licensee's receipt of notice of the complaint. The Board shall grant up to an additional 30 days for
11 the response where the licensee demonstrates good cause for the extension of time. The response shall contain accurate
12 and complete information. Where a licensee fails to respond in the time and manner provided herein, the Board may
13 proceed with making its decision in the absence of the licensee or information from the licensee, and the licensee may
14 be held by the Board to be interfering with an investigation by willful misrepresentation of facts under 21 NCAC 17
15 .0114(16) in violation of G.S. 90-363(7).

16 (c) A summary of the complaint and a request for a written response sent to a person who is not an applicant for
17 licensure or a licensee of the Board shall be accompanied by the following statement:

18 "You are hereby notified that the opinion expressed herein is not a legal determination. An occupational
19 licensing board does not have the authority to order you to discontinue your current practices. Only a court
20 may determine that you have violated or are violating any law and, if appropriate, impose a remedy or penalty
21 for the violation. Further, pursuant to G.S. 150B-4, you may have the right, prior to initiation of any court
22 action by the Board, to request a declaratory ruling regarding whether your particular conduct is lawful. You
23 are further notified that any right to a declaratory ruling supplements any other legal rights that you may
24 already have to establish the legality of your conduct with respect to the goods or services you offer or
25 provide."

26 (d) The Board staff, or its authorized Investigator, shall investigate a complaint and shall provide the Board's
27 Investigation Committee with an investigation report. The Investigative Committee shall review the report and shall
28 determine to:

- 29 (1) request further investigation of particular aspects of the matter;
30 (2) request the individual who is the subject of the complaint meet with members of the Board to be
31 interviewed if ~~they are~~ he or she is are willing to be interviewed; or
32 (3) accept the report and make a recommendation to the Board.

33 (e) The Board shall authorize the Investigative Committee to make a recommendation to the Board if an investigation
34 is complete and the complaint is unresolved.

35 (f) The Board shall consider the Investigative Committee's recommendation and shall determine whether to:

- 36 (1) conduct further investigation of particular aspects of the matter;
37 (2) close or dismiss the case or issue a non-disciplinary letter of caution;

1 (3) issue a consent order to the subject of an investigation, specifying any disciplinary sanctions to be
2 applied and, if the consent order is not accepted, issue a notice of hearing;

3 (4) issue a notice of hearing to a subject, specifying any disciplinary sanctions; or

4 (5) apply to the courts for injunctive relief, refer a matter to a district attorney for prosecution, or take
5 other actions, including reporting the matter to appropriate state or federal agencies.

6 (g) A copy of a notice of hearing shall be sent to the complainant.

7 (h) Whenever a complaint is dismissed or a complaint file is closed, notification of the Board's final decision shall be
8 sent to the complainant, and the accused party.

9

10 History Note: Authority G.S. 90-356; 90-363;

11 Eff. December 1, 2022.

1 21 NCAC 17 .0504 is adopted as published in 37:04 NCR 334-340 as follows:

2

3 **21 NCAC 17 .0504 RIGHT TO HEARING**

4

5 (a) When the Board acts or proposes to act, other than in rule-making or declaratory ruling proceedings, in a manner
6 which will affect the rights, duties, or privileges of a specific, identifiable licensee or applicant for a license, such
7 person has the right to an administrative hearing. When the Board proposes to act in such a manner, it shall give any
8 such affected person notice of the right to a hearing by mailing to the person, by certified mail at the person's last
9 known address, a notice of the proposed action and a notice of a right to a hearing. Notice of a right to a hearing may
10 also be given by any method of service permitted in G.S. 150B-38(c), by a signed acceptance of service from such
11 person, or by delivery to the person's attorney of record who accepts service on behalf of the person.

12

13 *History Note: Authority G.S. 90-356; 150B-38(h);*

14 *Eff. December 1, 2022.*

1 21 NCAC 17 .0505 is adopted as published in 37:04 NCR 334-340 as follows:

2

3 **21 NCAC 17 .0505 REQUEST FOR HEARING**

4

5 (a) An individual who believes that individual's rights, duties, or privileges have been affected by the Board's
6 administrative action, but who has not received notice of a right to an administrative hearing, may file a formal request
7 for a hearing.

8 (b) The individual may submit a request to the Board's office, with the request bearing the notation: "REQUEST FOR
9 ADMINISTRATIVE HEARING." The request shall contain the following information:

10 (1) name and address of the petitioner;

11 (2) a concise statement of the action taken by the Board which is challenged;

12 (3) a concise statement of the way in which the petitioner has been aggrieved; and

13 (4) a clear and specific statement of request for a hearing.

14 (c) In order to preserve a person's rights with respect to a Board action, the person shall file a request for hearing with
15 the Board within 60 days after the person receives notice of the Board action that the person challenges.

16

17 *History Note:* Authority G.S. 90-356; 150B-38;

18 Eff. December 1, 2022.

1 21 NCAC 17 .0506 is adopted as published in 37:04 NCR 334-340 as follows:

2

3 **21 NCAC 17 .0506 GRANTING OR DENYING HEARING REQUEST**

4

5 (a) The Board shall grant a request for a hearing if it determines that the party requesting the hearing is a "person
6 aggrieved" within the meaning of G.S. 150B-2(6). Whenever the Board proposes to deny, suspend, or revoke a license,
7 or issue a letter of reprimand to a licensee, the licensee shall be deemed to be a person aggrieved.

8 (b) If the Board determines the petitioner is not a person aggrieved, the Board shall issue a denial that shall constitute
9 a final agency decision.

10 (c) Approval of a request for a hearing shall be signified by issuing a notice as required by G.S. 150B-38(b) and
11 explained in Rule .0507 of this Section.

12

13 *History Note: Authority G.S. 90-356; 150B-38; 150B-42;*

14 *Eff. December 1, 2022.*

1 21 NCAC 17 .0507 is adopted as published in 37:04 NCR 334-340 as follows:

2

3 **21 NCAC 17 .0507 NOTICE OF HEARING**

4

5 (a) The Board shall give the party or parties in a contested case a notice of hearing not less than 15 days before the
6 hearing. Said notice shall contain the following information, in addition to the items specified in G.S. 150B-38(b):

7 (1) the name, position, address, and telephone number of a person from the Board to contact for further
8 information or discussion;

9 (2) the date, time, and place for a pre-hearing conference, if any; and

10 (3) any other information deemed relevant to informing the parties as to the procedure of the hearing.

11 (b) A party who has been served with a notice of hearing may file a written response with the Board in accordance
12 with G.S. 150B-38(d). If the party desires to submit a written response instead of personally appearing at the hearing,
13 the party shall state that desire in the written response, and the Board shall consider the written response in lieu of a
14 personal appearance.

15 (c) If the party who has been given proper notice in accordance with Paragraph (a) of this Rule neither appears
16 pursuant to the notice nor files and serves a written response as set out in Paragraph (b) of this Rule, the Board shall
17 find the allegations of the notice admitted. The Board may continue the hearing or proceed with the hearing and make
18 its decision based on the evidence presented.

19 (d) If the Board determines that the public health, safety or welfare requires such action, it may issue an order
20 summarily suspending a license pursuant to G.S. 150B-3. Upon service of the order, the licensee to whom the order
21 is directed shall immediately cease the practice of medical nutrition therapy in North Carolina. The suspension shall
22 remain in effect pending issuance by the Board of a final agency decision pursuant to G.S. 150B-42. However,
23 pursuant to this Rule and Rule .0506 of this Section, a person subject to a summary suspension may request a hearing
24 on whether the public health, safety, or welfare permits terminating or modifying the terms of the summary suspension
25 pending a final agency decision. Neither an order of summary suspension nor a decision on whether the summary
26 suspension order shall be terminated or modified is a final agency decision.

27

28 *History Note: Authority G.S. 90-356; 150B-3; 150B-38; 150B-40; 150B-42;*

29 *Eff. December 1, 2022.*

1 21 NCAC 17 .0508 is adopted as published in 37:04 NCR 334-340 as follows:

2

3 **21 NCAC 17 .0508 CONTESTED CASES**

4

5 All administrative hearings shall be conducted by a majority of the Board as set forth in G.S. 150B-40(b) or an
6 administrative law judge designated to hear the case pursuant to G.S. 150B-40(e).

7

8 History Note: Authority G.S. 90-356; 150B-38; 150B-40;

9 Eff. December 1, 2022.

1 21 NCAC 17 .0509 is adopted as published in 37:04 NCR 334-340 as follows:

2

3 **21 NCAC 17 .0509** **INFORMAL PROCEDURES**

4

5 (a) Before issuing a notice of hearing, the Board may designate one or more of its members, but in all cases less than
6 a majority of the currently serving members of the Board, to meet informally via one or more conferences with the
7 party or parties and attempt to reach an informal resolution of the dispute or any other matters as may aid in the
8 disposition of the dispute. The designated Board member or members may direct one or more of the following
9 dispositions:

- 10 (1) Submission to the Board with a recommendation to dismiss with no action;
11 (2) Submission to the Board with a recommendation that Board staff provide informal, non-disciplinary
12 guidance to resolve the dispute;
13 (3) Submission to the Board with a recommendation to resolve the dispute or to expedite the hearing
14 by consent order; or
15 (4) Scheduling, with appropriate notice, for contested case hearing.

16 The majority of the Board must approve all recommendations under Subparagraph (1), (2), and (3) of this Paragraph.
17 Each Board member who is designated to serve in this capacity with regard to a party or parties' matter, whether the
18 Board member actually meets with the individual or not, may participate in Board discussions concerning any
19 recommendations made but may not vote upon the recommendation. The Board member or members who participated
20 in the informal conferences shall be disqualified from hearing any contested case when the matter designated for
21 informal resolution is any part of the subject matter of the contested case.

22 (b) The Board and the party or parties may agree to simplify the hearing by stipulation, or any other method provided
23 by G.S. 150B-41(c).

24

25 *History Note:* Authority G.S. 90-356; 150B-41;
26 Eff. December 1, 2022.

1 21 NCAC 17 .0510 is adopted as published in 37:04 NCR 334-340 as follows:

2

3 **21 NCAC 17 .0510 INFORMAL RESOLUTION**

4

5 (a) Informal disposition may be made of a dispute, contested case, or an issue in a contested case by any method
6 specified in G.S. 150B-41(c) during the hearing of a contested case.

7 (b) All recommendations of dismissal must be approved by a majority of the Board.

8 (c) All matters contained in a consent order, which disposes of a dispute, must be agreed to by the party or parties,
9 and approved by a majority of the Board.

10

11 *History Note: Authority G.S. 90-356; 150B-41;*

12 *Eff. December 1, 2022.*

1 21 NCAC 17 .0511 is adopted as published in 37:04 NCR 334-340 as follows:

2

3 **21 NCAC 17 .0511 DISQUALIFICATION OF BOARD MEMBERS**

4

5 (a) Self-disqualification. If for any reason a Board member determines that personal bias or other factors render that
6 member unable to hear a contested case and perform all duties in an impartial manner, that Board member shall
7 voluntarily decline to participate in the hearing or decision.

8 (b) Petition for Disqualification. If for any reason any party in a contested case believes that a Board member is
9 personally biased or otherwise unable to hear a contested case and perform all duties in an impartial manner, the party
10 may file a sworn, notarized affidavit with the Board. The title of such affidavit shall bear the notation: "AFFIDAVIT
11 OF DISQUALIFICATION OF BOARD MEMBER IN THE CASE OF (name of case)."

12 (c) Contents of Affidavit. The affidavit must state all facts the party deems to be relevant to the disqualification of
13 the Board member.

14 (d) Timeliness and Effect of Affidavit. An affidavit of disqualification shall be considered timely if filed 10 days
15 before commencement of the hearing.

16 (e) A party may file and serve a motion for disqualification less than ten days before or during a hearing only when
17 the motion is based on newly discovered evidence that by due diligence could not have been discovered in time to file
18 a timely motion. Under these circumstances, the hearing shall continue with the challenged Board member sitting.
19 Petitioner shall have the opportunity to present evidence supporting their petition, and the petition and any evidence
20 relative thereto presented at the hearing shall be made a part of the record. The Board, before rendering its final
21 decision, shall decide whether the evidence justifies disqualification. The decision about the disqualification of a Board
22 member shall be made by the other Board members who are not the subject of the disqualification. The Board is not
23 required to grant a new hearing if a Board member is disqualified during the course of a hearing.

24 (f) The presiding officer, in their discretion, may determine the method of resolving the motion for disqualification
25 under G.S. 150B-40. This may include the authority to direct that the Board's Executive Director oversee an
26 investigation of the allegations and report the findings to the Board.

27 (g) In the event of disqualification, the disqualified member shall not participate in further deliberation or decision of
28 the case but may be called on to furnish information to the other members of the Board.

29 (h) If four or more members of the Board are disqualified pursuant to this Rule, the Board shall petition the Office of
30 Administrative Hearings to appoint an administrative law judge to hear the contested case pursuant to G.S. 150B-
31 40(e).

32

33 *History Note: Authority G.S. 90-356; 150B-40;*

34 *Eff. December 1, 2022.*

1 21 NCAC 17 .0512 is adopted as published in 37:04 NCR 334-340 as follows:

2

3 **21 NCAC 17 .0512 SUBPOENAS**

4

5 (a) A party shall file and serve a request for a subpoena, attaching a proposed subpoena. The Board may issue the
6 subpoena in accordance with G.S. 150B-39(c). Issued subpoenas must be signed by the Presiding Officer, the Board's
7 Executive Director, the Board's legal counsel, or a Board staff member designated by the Executive Director.

8 (b) Subpoenas shall be served as permitted by Rule 45 of the North Carolina Rules of Civil Procedure, as set forth in
9 G.S. 1A-1.

10 (c) After service of the subpoena, the party serving the subpoena shall file and serve sworn proof of the method of
11 service, demonstrating compliance with G.S. 150B-39(c).

12 (d) G.S. 150B-39(c) governs the recipients' duties in responding to subpoenas. A party to the case or person subject
13 to the subpoena may object to a subpoena. Any objection to a subpoena shall be served on the party who requested
14 the subpoena simultaneously with the filing of the objection with the Board. Motions to override an objection or quash
15 or modify a subpoena shall be filed in accordance with G.S. 150B-39(c). The Board shall hear and rule on motions to
16 override an objection or quash or modify a subpoena as provided in G.S. 150B-39(c).

17

18 *History Note: Authority G.S. 90-356; 150B-39;*

19 *Eff. December 1, 2022.*

1 21 NCAC 17 .0513 is adopted as published in 37:04 NCR 334-340 as follows:

2

3 **21 NCAC 17 .0513 WITNESSES**

4

5 All testimony at the hearing shall be under oath or affirmation and shall be recorded. The presiding officer may exclude
6 witnesses from the hearing room so that they cannot hear the testimony of other witnesses.

7

8 *History Note: Authority G.S. 90-356; 150B-42;*

9 *Eff. December 1, 2022.*

1 21 NCAC 17 .0514 is adopted as published in 37:04 NCR 334-340 as follows:

2

3 **21 NCAC 17 .0514 FINAL DECISION**

4

5 In a contested case, the Board shall issue a final agency decision in compliance with G.S. 150B-42. To obtain judicial
6 review, the person seeking review must file a petition with the court in accordance with the provisions of G.S. 150B-
7 45.

8

9 *History Note: Authority G.S. 90-356; 150B-42; 150B-45;*

10 *Eff. December 1, 2022.*

1 21 NCAC 17 .0515 is adopted as published in 37:04 NCR 334-340 as follows:

2

3 **21 NCAC 17 .0515 PROPOSALS FOR DECISION**

4

5 (a) When an administrative law judge conducts a hearing pursuant to G.S. 150B-40(e), a "proposal for decision" shall
6 be rendered. The parties may file written exceptions to this "proposal for decision" and submit their own proposed
7 findings of fact and conclusions of law. The exceptions and alternative proposals must be filed within 10 days after
8 the party has received the "proposal for decision" as drafted by the administrative law judge.

9 (b) Any exceptions to the procedure during the hearing, the handling of the hearing by the administrative law judge,
10 rulings on evidence, or any other matter must be written and refer specifically to pages of the record or otherwise
11 precisely identify the occurrence to which exception is taken. The exceptions and alternative proposals must be filed
12 with the Board within 10 days of the receipt of the proposal for decision. The written exceptions shall bear the notation:
13 "EXCEPTIONS TO THE PROCEEDINGS IN THE CASE OF (name of case)."

14 (c) Any party may present oral argument to the Board upon request. The request must be included with the written
15 exceptions.

16 (d) Upon receipt of request for further oral argument, notice shall be issued promptly to all parties designating the
17 time and place for such oral argument.

18 (e) Giving due consideration to the proposal for decision and the exceptions and arguments of the parties, the Board
19 may adopt the proposal for decision or may modify it as the Board deems necessary. The decision rendered shall be a
20 part of the record and a copy thereof given to all parties. The decision as adopted or modified becomes the "final
21 agency decision" for the right to judicial review. Said decision shall be rendered by the Board within 60 days of the
22 next regularly scheduled meeting following the oral arguments, if any. If there are no oral arguments presented, the
23 decision shall be rendered within 60 days of the next regularly scheduled Board meeting following receipt of the
24 written exceptions and alternative proposals.

25

26 *History Note: Authority G.S. 90-356; 150B-40;*

27 *Eff. December 1, 2022.*

1 21 NCAC 17 .0516 is adopted as published in 37:04 NCR 334-340 as follows:

2

3 **21 NCAC 17 .0516 DISCIPLINARY COSTS**

4

5 (a) The Board may recover against a licensee or license applicant, found to be in violation of the Act or rules adopted
6 by the Board, the following costs of disciplinary actions incurred by the Board for the investigation, prosecution,
7 hearing, or other administrative action:

8 (1) witness fees and statutorily-allowed expenses for witnesses;

9 (2) direct costs of the Board in taking or obtaining of depositions of witnesses;

10 (3) costs incurred by reason of administrative or staff time of employees of the Board directly
11 attributable to the action leading to the final decision or order; and

12 (4) costs incurred by reason of legal fees charged to the Board directly attributable to the action leading
13 to the final decision or order.

14 These costs may be assessed by the Board pursuant to final decisions or orders of the Board following an
15 administrative hearing pursuant to Article 3A of Chapter 150B of the [North Carolina]General Statutes. These costs
16 may also be assessed against a licensee or license applicant for an investigation or action in the nature of disciplinary
17 action, pursuant to the express consent by the person in a consent order approved by the Board.

18

19 *History Note: Authority G.S. 90-356; 90-370;*

20 *Eff. December 1, 2022.*

1 21 NCAC 17 .0517 is adopted as published in 37:04 NCR 334-340 as follows:

2
3 **21 NCAC 17 .0517 DRUG TESTING AND INTERVENTION**
4

5 (a) When information of suspected impairment of a licensee is received by the Board, the Board shall conduct an
6 investigation and routine inquiries to determine the validity of the report.

7 (b) Licensees suspected of impairment may be required to submit to personal interviews if the investigation and
8 inquiries indicate the report may be valid.

9 (c) The Board shall have authority to compel a licensee to submit to a mental or physical examination, including drug
10 and blood alcohol testing, by physicians designated by the Board, if there is a reasonable suspicion that the licensee
11 is consuming drugs or alcohol to such an extent or with such frequency as to impair the licensee's ability to practice
12 dietetics or nutrition. The cost of examination shall be borne by the licensee being examined. The failure of a
13 dietitian/nutritionist or nutritionist to submit to such an examination when so directed constitutes an admission that
14 the licensee is unable to deliver dietetics or nutrition services with reasonable skill and safety, upon which a default
15 and a final order may be entered without the taking of testimony or presentation of evidence, unless the failure was
16 due to circumstances beyond the licensee's control. A licensee affected under this Paragraph shall at reasonable
17 intervals be afforded an opportunity to demonstrate that the licensee can resume the competent delivery of dietetics
18 or nutrition services with reasonable skill and safety. Neither the record of the proceedings nor any order of the Board
19 based solely on a licensee's failure to submit to an examination shall be deemed by the Board to constitute a conclusive
20 determination that the licensee engaged in any particular conduct.

21 (d) Information received by the Board related to a mental or physical examination of a licensee conducted by a
22 licensed health professional shall remain confidential as a medical record but shall be freely exchanged with the Board
23 or its authorized agents, for the purposes of the investigation.

24 (e) Information gathered shall be used to determine whether the licensee is a chronic or persistent user of intoxicants,
25 drugs, or narcotics to the extent that the same impairs their ability to practice dietetics or nutrition.

26 (f) The Board may make arrangements for a licensee with impairments to participate in intervention, treatment, and
27 a monitoring program without disciplinary action.

28
29 *History Note: Authority G.S. 90-356;*
30 *Eff. December 1, 2022.*