

## Burgos, Alexander N

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**From:** Charla Burill <director@ncbdn.org>  
**Sent:** Thursday, November 10, 2022 5:51 PM  
**To:** Duke, Lawrence; rrc.comments  
**Cc:** hjones@jordanprice.com  
**Subject:** [External] FW: Comments to the RRC November Agenda - Board of Nutrition and Dietetics  
**Attachments:** Cindy\_Schwalb\_Response\_NCGS150B\_21.2(h)\_2022.pdf; Response\_Speech\_Board\_Swallow\_Screen\_2021.pdf; Follow\_Response\_Speech\_Pathology\_Board.pdf

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Lawrence,

Please note, the Board received a copy of comments submitted to the RRC from Ms. Schwalb this afternoon.

Upon advice of legal counsel, to the extent it may provide clarity, please find attached a response, along with supplemental documents, the Board provided to Ms. Schwalb under G.S. 150B-21.2(h).

Of note, our legal counsel, Henry Jones, has been copied on this correspondence.

Sincerely,

Charla

Charla M. Burill  
Executive Director/Secretary  
1135 Kildaire Farm Road, Suite 200  
Cary, NC 27511  
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**From:** Cindy Schwalb <cindyschwalb@gmail.com>  
**Sent:** Thursday, November 10, 2022 4:45 PM  
**To:** rrc.comments@oah.nc.gov  
**Cc:** Nancy Ruberto-Beachler <nrubertobeachler@gmail.com>; Marnie Jones <info@ncbdn.org>; Charla Burill <director@ncbdn.org>; Ananya Sen <sensananya@gmail.com>; Analia Camarasa <analia.camarasa@gmail.com>; Karen Thomas <karenthomas77@gmail.com>; FoodandYou@aol.com; Holliday, Amanda S <amanda\_holliday@unc.edu>; sarahct26@gmail.com; pprncgrf@gmail.com  
**Subject:** Comments to the RRC November Agenda - Board of Nutrition and Dietetics

Please accept these comments for review from Cindy Schwalb and Nancy Ruberto Beachler.

Contact information is provided on the comment submission.

Thank you,  
Cindy



## North Carolina Board of Dietetics/Nutrition

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*Via Electronic Mail*

November 7, 2022

Cindy Schwalb  
1121 Lupine Court  
Raleigh, NC 27606

Re: Request for Explanation pursuant to North Carolina Gen. Stat. § 150B-21.2(h)

Dear Ms. Schwalb:

We are writing to provide a response regarding your request for explanation pursuant to North Carolina Gen. Stat. § 150B-21.2(h). This section of the North Carolina Administrative Procedure Act provides the following:

*(h) Explanation. – An agency must issue a concise written statement explaining why the agency adopted a rule if, within 15 days after the agency adopts the rule, a person asks the agency to do so. The explanation must state the principal reasons for and against adopting the rule and must discuss why the agency rejected any arguments made or considerations urged against the adoption of the rule. The agency must issue the explanation within 15 days after receipt of the request for an explanation.*

Before specifically addressing your request for explanation, the North Carolina Board of Dietetics/Nutrition (hereinafter “the NCBDN”) believes it is important to address the following statements provided in your request dated October 23, 2022:

From your October 23, 2022 email correspondence:

One concern in submitting this request is that Board members did not discuss my comments, arguments or proposed alternative amendments, despite a legal obligation to do so. Therefore, because there is no consensus from Board discussion to provide a single Board response, the only way to satisfy 150B-21.2, is through individual responses to each rule adoption and the rejection of my comments and proposed amendments. Further details may be found in the attached submission, including a request for reasons for abstaining from voting on rules or participating in the rules discussion.

My comments and proposed amendments essentially asked the Board to engage in critical thinking, to remove bias and conflicts of interest, to engage with integrity, fairness, honesty and ethics. The discussion could not take place because this Board was not up to the task.

From your “Request for Explanation” attached to your email dated October 23, 2022:

Because recordings of the September 16, 2022 Board meeting; September 30, 2022 Rules meeting; and the October 17, 2022 Board meeting establish that my comments were not discussed, as set forth in North Carolina statutes, I am therefore requesting each Board member to share their individual explanation for the principal reasons for and against adopting each rule and why each rejected my arguments and suggested amendments. Since these explanations were not shared for the public, I request this now. For members who chose to leave after the Board's closed meeting with legal counsel, please state if abstaining from public discussion and rules voting is related to legal strategy related to an impending hearing or future legal actions against NCBDN.

North Carolina Gen. Stat. § 150B-21.2(f) requires an agency to receive comment on text of a proposed rule for at least 60 days after the text is published, and if such comment is received, "an agency must consider fully all written and oral comments received."

The comment period for the rules published on July 15, 2022, closed on September 13, 2022. The NCBDN was scheduled to review the rules published on July 15, 2022 at its September 16, 2022 regularly scheduled board meeting. The only comments received during the official comment period were submitted by you and another public member on September 13, 2022. It is noted, in response to your comments, the NCBDN received an additional set of comments from the Board for Certification of Nutrition Specialists on September 15, 2022. No other comments were received in response to the rules published on July 15, 2022. All comments were shared promptly with the NCBDN board members for their consideration.

Appreciating the breadth of the comments received and the need for adequate time for review, in order to consider fully all comments received, the Board decided to postpone adoption of all but one of the rules published on July 15, 2022. The only rule changes adopted by the NCBDN on September 16, 2022 involved amendments to 21 NCAC 17 .0113, proposed changes for which the NCBDN received no comment. Although time was allowed for public comment at the NCBDN's board meeting on September 16, 2022, no public comment was received.

To ensure consideration of all comments received, the NCBDN charged its Rules Committee with holding an official meeting to review and consider all comments submitted. At a public meeting on September 30, 2022, the Rules Committee met and discussed any thoughts, concerns, and ideas any Rules Committee members had regarding the comments received. Time was once again allowed at this meeting for public comment, but no public comment was received.

On October 21, 2022, the NCBDN received recommendations from its Rules Committee addressing proposed edits the NCBDN's Rules Committee suggested, based on comments received. With ample time allowed for all board members to review and consider comments received, on October 21, 2022, the NCBDN adopted the rest of the rules published on July 15, 2022, incorporating the Rules Committee's recommended changes, which took into consideration comments received. Again, although time was allowed, no additional public comment was received at this meeting.

Below is the NCBDN's response to your request for explanation.

## **21 NCAC 17 .0101 DEFINITION, ACRONYMS AND INITIALISMS**

It is important to keep in mind that the definitions provided for in this section are aimed at addressing practice of all licensees as well as applicants for licensure.

The definitions provided in this section were amended to provide clarity.

Regarding specific terms and your concerns, please note the following:

## *Nutrition Assessment*

A nutrition assessment may occur in a single session but often is an ongoing act (reassessment) should a patient receive ongoing treatment. Based on comments received, the NCBDN amended its proposed language to add the word “initial” to make clear that a “nutrition assessment” can occur in an initial appointment. “Nutrition assessment” and “monitoring and evaluation” inherently overlap to the extent a patient is being provided ongoing treatment. Regarding applicants seeking licensure under North Carolina Gen. Stat. § 90-357.5(c), as has always been the case, some patient treatment hours may fall under “nutrition assessment” and “nutrition monitoring and evaluation.” This definition does not change that fact.

Regarding the elements of the definition of “nutrition assessment,” which include “obtaining, verifying, and interpreting biochemical, anthropometric, physical, nutrigenomic, clinical, and dietary data to determine nutritional needs and order therapeutic diets,” for dietitian/nutritionists licensed under North Carolina Gen. Stat. § 90-357.5(a)(1) & (2), the following required competencies under the current Accreditation Council for Education in Nutrition and Dietetics (hereinafter “ACEND”)<sup>1</sup> accreditation education standards include:

Domain 3. Clinical and Client Services: Development and delivery of information, products and services to individuals, groups and populations.

Knowledge Upon completion of the program, graduates are able to:

KRON 3.1 Use the Nutrition Care Process and clinical workflow elements to assess nutritional parameters, diagnose nutrition related problems, determine appropriate nutrition interventions and develop plans to monitor the effectiveness of these interventions.

KRON 3.2 Develop an educational session or program/educational strategy for a target population.

KRON 3.3 Demonstrate counseling and education methods to facilitate behavior change and enhance wellness for diverse individuals and groups.

KRON 3.4 Practice routine health screening assessments, including measuring blood pressure and conducting waived point-of-care laboratory testing (such as blood glucose or cholesterol).

KRON 3.5 Describe concepts of nutritional genomics and how they relate to medical nutrition therapy, health and disease.

KRON 3.6 Develop nutritionally sound meals, menus and meal plans that promote health and disease management and meet client's/patient's needs.

Additionally, the current ACEND accreditation standards for dietitian/nutritionist students completing the supervised practice requirements include:

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<sup>1</sup> The Accreditation Council for Education in Nutrition and Dietetics (ACEND) is the credentialing arm of the Academy and serves as the accrediting agency for education programs preparing students for careers as registered dietitian nutritionists or nutrition and dietetics technicians, registered. The ACEND standards for programmatic accreditation of didactic and internship programs may be found here: <https://www.eatrightpro.org/acend/accreditation-standards-fees-and-policies/2022-standards> (last accessed October 31, 2022).

Domain 3. Clinical and Client Services: Development and delivery of information, products and services to individuals, groups and populations.

Competencies Upon completion of the program, graduates are able to:

CRDN 3.1 Perform Medical Nutrition Therapy by utilizing the Nutrition Care Process including use of standardized nutrition terminology as a part of the clinical workflow elements for individuals, groups and populations of differing ages and health status, in a variety of settings.

CRDN 3.2 Conduct nutrition focused physical exams.

CRDN 3.3 Perform routine health screening assessments including measuring blood pressure, conducting waived point-of-care laboratory testing (such as blood glucose or cholesterol), recommending and/or initiating nutrition-related pharmacotherapy plans (such as modifications to bowel regimens, carbohydrate to insulin ratio, B12 or iron supplementation)

CRDN 3.4 Provide instruction to clients/patients for self-monitoring blood glucose, considering diabetes medication and medical nutrition therapy plan.

CRDN 3.5 Explain the steps involved and observe the placement of nasogastric or nasoenteric feeding tubes; if available, assist in the process of placing nasogastric or nasoenteric feeding tubes.

CRDN 3.6 Conduct a swallow screen and refer to the appropriate health care professional for full swallow evaluation when needed.

CRDN 3.7 Demonstrate effective communication and documentation skills for clinical and client services in a variety of formats and settings, which include telehealth and other information technologies and digital media.

CRDN 3.8 Design, implement and evaluate presentations to a target audience.

CRDN 3.9 Develop nutrition education materials that are culturally and age appropriate and designed for the literacy level of the audience.

CRDN 3.10 Use effective education and counseling skills to facilitate behavior change.

CRDN 3.11 Develop and deliver products, programs or services that promote consumer health, wellness and lifestyle management.

CRDN 3.12 Deliver respectful, science-based answers to client/patient questions concerning emerging trends.

CRDN 3.13 Coordinate procurement, production, distribution and service of goods and services, demonstrating and promoting responsible use of resources.

CRDN 3.14 Develop and evaluate recipes, formulas and menus for acceptability and affordability that accommodate the cultural diversity and health needs of various populations, groups and individuals.

In contrast, the Board for Certification of Nutrition Specialists does not require the completion of a programmatically accredited academic or supervised practice program and does not require the attainment of any specified competency in nutrigenomics or clinical laboratory testing.

With the above stated, all licensees, under 21 NCAC 17 .0114, among other duties, have a duty to “practice dietetics/nutrition based on scientific principles and current information;” “assume responsibility and accountability for personal competence in practice;” and “recognize and exercise professional judgment within the limits of the licensee's qualifications and shall not accept or perform professional responsibilities which the licensee knows or has reason to know that he or she is not qualified to perform.”

It is the NCBDN’s understanding that the described elements of the definition of “nutrition assessment” fall within the education, experience, and training of dietitian/nutritionists. As with all professions, to the extent licensees’ training did not incorporate current standards of practice, it is the licensee’s duty to accept responsibility for personal competence and to recognize and exercise professional judgement within the limits of the licensee’s qualifications. In line with this requirement, as with most professions, licensed dietitian/nutritionists in North Carolina are required to meet the continuing education requirements provided under 21 NCAC 17. 0109.

Your comments addressing the documentation the NCBDN must receive from Registered Dietitian Nutritionist (hereinafter “RDN”) applicants is not in line with the statute. Under North Carolina Gen. Stat. § 90-357.5(a), for an applicant who holds the RDN credential to become licensed as a dietitian/nutritionist, the applicant must demonstrate “[t]he applicant has a valid current registration with the Commission on Dietetic Registration that gives the applicant the right to use the term “Registered Dietitian Nutritionist” or “RDN.” No additional proof of education, supervised practice, or examination is required, because obtainment of the RDN credential demonstrates successful completion of a programmatically accredited academic and programmatically accredited supervised practice program and successful completion of an examination accepted under North Carolina Gen. Stat. § 90-359. See discussion regarding the significance of programmatic accreditation under 21 NCAC 17 .0104 Applications for further understanding.

### ***Nutrition Counseling***

Regarding your suggestions addressing the definition of “nutrition counseling,” the NCBDN made changes consistent with your recommendations.

### ***Nutrition Monitoring or Evaluation***

Regarding your suggestions addressing the definition of “nutrition monitoring or evaluation,” the NCBDN made changes consistent with your recommendations.

### ***Nutrition Services***

The statute defines *nutrition care services* in North Carolina Gen. Stat. § 90-352(4), not *nutrition services*. The statute refers to *nutrition services* in North Carolina Gen. Stat. § 90-357.5(c)(2) indicating that applicants must have completed “a Board-approved internship or a documented, supervised practice experience in ***nutrition services*** of not less than 1000 hours involving at least 200 hours of nutrition assessment, 200 hours of nutrition intervention, education, counseling, or management, and 200 hours of nutrition monitoring or evaluation under the supervision of . . .” (emphasis added). The intent of this rule is to give guidance as to the other 400 hours not clearly delineated. Right now, the NCBDN looks to the definition of *nutrition care services* when determining whether applicants have met their 1000-hour requirement, but because the statute does not use the term *nutrition care services*, there is a current lack of clarity. By defining “nutrition services,” for purposes of North Carolina Gen. Stat. § 90-357.5(c)(2) as the three categories laid out in the statute, the NCBDN aims to ensure applicants have clear guidance as to how their remaining 400 supervised practice hours must be completed.

## ***Swallow Screen***

Although swallow screens are a service dietitian/nutritionists have completed for many years in the clinical setting, the NCBDN proposed this rule after ACEND updated its competency standards to require students to receive training on performing swallow screens. The Board does not consider the addition of this definition as expanding the scope of practice. Rather it is a clarification. Before proposing this rule, the NCBDN consulted with the Speech Pathology Board regarding this amendment. Attached for your reference and understanding is correspondence between the NCBDN and the North Carolina Speech Pathology Board indicating, based on the intent of this rule, they do not take issue with this language.

## ***Professional Work Setting***

The NCBDN took note of your comment and another public member's comment that this definition does not actually describe a setting. Thus, in consideration of your comment, which indicated this definition described activities and requirements rather than a setting, the NCBDN revised the term to define "direct supervised experiential learning." This definition aims to provide clarity for applicants as to activities that would qualify as "direct" supervised practice hours, for which applicants must have at least 750 hours, as opposed to "observational" learning experiences. The NCBDN deemed this rule as necessary as many applicants have demonstrated confusion as to activities that may qualify as direct supervised practice hours.

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

The comments submitted addressing 21 NCAC 17 .0103 suggest that the proposed language would require applicants to meet requirements that the rules themselves do not specify. In accord with North Carolina Gen. Stat. § 90-356, which bestows on the NCBDN the *power and responsibility* of determining "the qualifications and fitness of applicants for licenses, renewal of licenses, and reciprocal licenses," and the *power and responsibility* of "adopt[ing] rules necessary to conduct its business, carry out its duties and administer [the] Article," upon advice of legal counsel, the NCBDN is confident it has authority to adopt this rule. The adopted language simply makes clear, that to the extent a particular rule applies, qualified applicants shall meet the requirements of the rule. Particular to 21 NCAC 17 .0104, for RDN applicants, 21 NCAC 17 .0104 requires such applicants to "submit a photocopy of the applicant's registration identification card, or a copy of a CDR Credential Verification certificate certifying that the applicant is a Registered Dietitian Nutritionist;" this is consistent with the statute and is not an "unattainable" requirement.

The NCBDN deemed this language as necessary to clarify, in line with the NCBDN's authority under North Carolina Gen. Stat. § 90-356, for an applicant to demonstrate an applicant has met the qualifications for licensure, an applicant must meet the qualifications as set forth in the statute *and the rules*.

## **21 NCAC 17 .0104 APPLICATION**

In comments received, you state, "[t]he CDR, CNS and DACBN are all NCCA accredited – a credentialing gold standard." This statement is fraught with errors. The RDN (not the Commission on Dietetic Registration), Certified Nutrition Specialist (hereinafter "CNS"), and Diplomate, American Clinical Board of Nutrition (hereinafter "DACBN") **examinations** are all accredited by the National Commission for Certifying Agencies. However, the only credential of these three that requires programmatic accreditation of the academic and supervised practice programs necessary to obtain the credential is the RDN credential.

Following these comments, you address the "Category C pathway," stating, "[h]owever, neither the NCBDN director nor Kim Iles tells them the truth about the C pathway: that **no applicant has ever been**



licensed under the “rigors” of the Category C pathway since its inception in 1992.” This also is simply not true.<sup>2</sup>

Your suggested comments to amend the language in 21 NCAC 17 .0104 to provide a licensure pathway for applicants who hold the CNS or DACBN credential by demonstration of holding such a credential circumvents the intent of the law. Under North Carolina Gen. Stat. § 90-357.5(a)(2) legislators provided a pathway to licensure as a dietitian/nutritionist through demonstration that one “has a valid current registration with the Commission on Dietetic Registration that gives the applicant the right to use the term “Registered Dietitian Nutritionist” or “RDN.”” Intentionally, no such pathway was provided for holders of the CNS or DACBN credential. Rather North Carolina Gen. Stat. § 90-357.5(c) requires such applicants to demonstrate completion of the educational, supervised practice, and examination requirements. Under North Carolina Gen. Stat. § 90-357.5(c)(3), the CNS and DACBN credentials may only be utilized by the NCBDN to determine if an applicant has met the examination requirements.

As has been shared with other applicants, some context may be helpful to your understanding. When the Board began considering amending the North Carolina Dietetics/Nutrition Practice Act back in 2013 it acknowledged that the North Carolina Dietetics/Nutrition Practice Act and its corresponding regulations, in their current state, were patterned after the educational, practice, and examination requirements of RDNs. This was so because the law in North Carolina (and in many other states regulating the practice of dietetics) licenses individuals as dietitians/nutritionists. The American Dietetic Association (now the Academy of Nutrition and Dietetics, hereafter referred to as “the Academy”), founded in 1917, was and is the only accredited body that had (and has) established a dietitian/nutritionist credential that requires passage of an examination accredited by the National Commission for Certifying Agencies AND completion of a *programmatically accredited* academic and supervised practice program. As such, when the law was originally written, close to thirty years ago, legislators looked to the Academy’s programmatic accreditation requirements and examination requirements as proxies for competence.

Fast-forward to 2013. Acknowledging that licensure is about protecting the public, and that if the law was limiting the public’s access to care, by not recognizing all qualified providers of nutrition care services, the NCBDN set out to examine all current training that might lead one to become a qualified nutrition practitioner. After thorough research of the many nutrition credentials in existence, the NCBDN determined that although other means of becoming a qualified nutrition practitioner appeared to exist, the only nutrition credential that set forth objective ways of measuring academic programs, and individual competencies, was the RDN credential. As previously noted above, the RDN credential is the only dietetics/nutrition credential that requires programmatic accreditation of *both* the academic component and supervised practice component required to obtain the credential. Programmatic accreditation (not just accreditation of the school itself) verifies the content and quality of academic programs, through a review and auditing process, to ensure graduates have received the requisite knowledge preparing them to practice the profession with competence.<sup>3</sup>

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<sup>2</sup> Although not relevant to the regulations, you also stated in your comments that upon passage of House Bill 357, “Ms. Bur[ ]ill became the in-house counsel. It gave her the authority to tell Board members what could and could not be done.” Ms. Burill did not “become the in-house counsel,” upon passage of House Bill 357. Ms. Burill was hired as the NCBDN’s Executive Director in 2010 and to this day maintains that title. Since its inception the NCBDN’s legal counsel has been Jordan, Price, Wall, Gray, Jones, & Carlton, PLLC.

<sup>3</sup> It is the Board’s understanding that to be eligible for reimbursement under Medicare (in addition to other requirements), a nutrition professional must have obtained “a baccalaureate or higher degree granted by a regionally accredited college or university in the United States (or an equivalent foreign degree) with completion of the academic requirements of a program in *nutrition or dietetics, as accredited by an appropriate national accreditation organization recognized by the Secretary for this purpose.*” 42 U.S.C. 1395(w)(2) (emphasis added) ACEND meets this standard and has been recognized by the Secretary of Health and Human Services as an appropriate organization. At the time the 2018 amendment to the NC Dietetics/Nutrition Practice Act was passed, no other nutrition organization recognized by the Secretary had the authority to accredit academic programs. Since 2018, the Board for Certification of Nutrition Specialists (the BCNS) has created a body to accredit academic programs that meet its standards (the

With a solid understanding of the legitimate nutrition credentials in existence, in 2014 the NCBDN reached out to the Academy and the Board for Certification of Nutrition Specialists (the BCNS), the credentialing body for the CNS credential, to inquire about interest in collaborating on an amendment to the North Carolina Dietetics/Nutrition Practice Act. Many hours were spent by leaders of the Academy, leaders of BCNS, and leaders of the NCBDN drafting what would become House Bill 796 in the 2015 session and later in the 2017 session, HB 357. Licensure by endorsement for the CNS credential was discussed in these sessions. However, for the reasons laid out above, all involved in drafting accepted that licensure by endorsement for the CNS credential was not appropriate. Thus, the law was written to, in many ways, parallel the requirements for the CNS credential, but require the Board to independently verify applicants' attainment of the academic and supervised practice requirements. As previously stated, the only reliance the law placed on the CNS credential was to recognize passage of the examination required to obtain the CNS credential as satisfaction of the examination requirement.<sup>4</sup> It is telling that this intentional drafting was not anticompetitive, but rather, in the best interest of the public, as much of what was drafted in North Carolina has become a model practice act for the country. In fact, it is our understanding, the Academy, working with the BCNS in Illinois, Nebraska, New Jersey, New Mexico, New York, North Dakota, Pennsylvania, Michigan, Montana, and Wisconsin, have filed or are working to file similar bills, NONE of which recognize the CNS credential by endorsement.

Acknowledging that the BCNS has made many changes in its application process for the CNS credential since North Carolina changed its law in 2018, for the record, it is important to acknowledge that prior to 2018 the CNS application did not inquire at all as to what activities were completed to achieve 200 hours of nutrition assessment, 200 hours of nutrition intervention, education, counseling, or management, and 200 hours of nutrition monitoring or evaluation. Rather, the BCNS only asked that a supervisor, one single person, sign-off that an applicant met such requirements. Unlike the BCNS, the NCBDN has never found one person's statement that an applicant met the supervised practice requirements to be sufficient proof that an applicant met the law's requirements. Rather, what the statute provides under North Carolina Gen. Stat. § 90-357.5 is that the applicant submit proof of completion of "a Board-approved internship or a documented, supervised practice experience in nutrition services of not less than 1000 hours involving at least 200 hours of nutrition assessment, 200 hours of nutrition intervention, education, counseling, or management, and 200 hours of nutrition monitoring or evaluation . . . ." It is for this reason that the Board requires documentation demonstrating at least 1000 hours of documented, supervised practice experience.

The importance of requiring a tracking log and description of activities was demonstrated to the Board in the early stages of implementing the new licensed nutritionist pathway. Initially, the Board considered accepting copies of BCNS application documents submitted by individuals to obtain the CNS credential, but when it became apparent that detailed information was not in these documents, the Board sought additional information. What the Board learned, and what BCNS would have learned had it required documentation of activities completed, was that for some applicants, the activities completed did not meet the requirements of the statute (which again, parallels the requirements of the CNS credential). This was alarming to the Board and gave more reason to require documentation demonstrating at least 1000 hours of supervised practice experience to ensure the Board met its duties under the statute.

Although someday it may become possible to license CNS credentialed applicants by endorsement, more work must be done by BCNS to ensure competency and quality of the supervised practice experience before that can be considered. Moreover, this would require a statutory change. Thus, your suggestions were not incorporated.

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*Accreditation Council for Nutrition Professional Education*), but at this point, students **are not required** to graduate from a programmatically accredited academic program to obtain the CNS credential. Additionally, BCNS has not yet formed a body to accredit supervised practice programs. See *Accreditation Council for Nutrition Professional Education*, <https://acnpe.org/> (last accessed October 25, 2022).

<sup>4</sup> It is recognized that the CNS examination became an examination accredited by the National Commission for Certifying Agencies in 2014.

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

Your suggested comments on this rule do not align with the authority of the statute. Regardless, upon closer examination, the NCBDN, upon advice of legal counsel, decided this regulation was not necessary given the clear authority provided in North Carolina Gen. Stat. § 90-356 and North Carolina Gen. Stat. § 90-360. Thus, the NCBDN decided to repeal this rule.

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

**See explanation to 21 NCAC 17 .0103 above.**

Additionally, regarding 21 NCAC 17 .0108, this rule is aimed at addressing initial applications and renewal. Renewal is not specifically addressed in the statute and is only specifically addressed in the regulations.

## **21 NCAC 17 .0302 REQUIREMENTS**

The NCBDN found its language to provide greater clarity than what you suggested in your comments, and thus, the NCBDN did not implement your recommended changes.

## **21 NCAC 17 .0303 SUPERVISION**

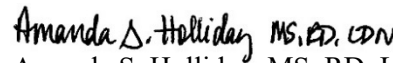
The intent of this rule is to define what is meant by “direct supervision” as provided for in North Carolina Gen. Stat. § 90-368(2). Although some of the requirements of “direct supervision” are applicable to all applicants who have completed a supervised practice experience, this rule is aimed at not only ensuring students receive adequate supervision to support their learning, but it is also aimed at protecting the citizens of North Carolina. North Carolina Gen. Stat. § 90-368(2) provides a licensure exemption for students completing their supervised practice in North Carolina so long as they are under “direct supervision.” Although the NCBDN would desire that all applicants applying for licensure have been under “direct supervision” as defined in 21 NCAC 17 .0303, and although there are minimum standards as to what may be deemed supervised practice (as laid out in 21 NCAC 17. 0104), the NCBDN’s definition of “direct supervision” is not meant to pertain only to applicants who are seeing North Carolina patients as part of their supervised practice experience. Thus, your suggestions were not adopted by the NCBDN.

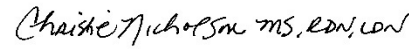
This letter of explanation is provided to satisfy the requirements under North Carolina Gen. Stat. §150B-21.2(h). The NCBDN believes these explanations provide you with clarity and context. Some of your comments and requests do not require a response under North Carolina Gen. Stat. §150B-21.2(h); however, please be advised, the NCBDN confirms that the Board, staff, and legal counsel spent substantial time, effort, and expense in the drafting, research, study, and consideration of the proposed rules and comments received. Furthermore, the Board acted as a whole in promulgating the proposed rules and did so without bias or conflict of interest and attempted to do so with integrity, fairness, honesty, and ethics. At all times, the members of the NCBDN acted in compliance with the law and without any other ulterior purpose or motivation. The entire Board signs this letter to acknowledge each member’s agreement with the contents hereof.


The Board and our legal counsel have in the past offered to meet with you and explain why the Board has been constrained by law to arrive at different positions from yours in rulemaking; but you have chosen not to take advantage of those opportunities to bridge our differences. Nevertheless, to the extent you have additional questions regarding the rules adopted by the NCBDN on October 21, 2022, please contact the NCBDN’s General Counsel, Henry W. Jones, at [hjones@jordanprice.com](mailto:hjones@jordanprice.com).

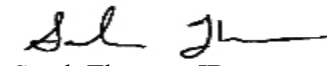
The NCBDN thanks you for taking the time to participate in its rule-making process.

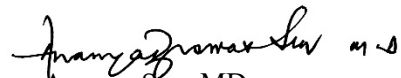
Sincerely,

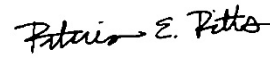
  
Amanda S. Holliday, MS, RD, LDN  
NCBDN Chair

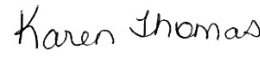
  
Christie Nicholson, MS, RD, LDN  
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Enclosure: *Copy of Correspondence with NC Speech Pathology Board*

Cc: *Henry W. Jones, Jr.*

## Charla Burill

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**From:** Denise Brown <dsherwood@ncboeslpa.org>  
**Sent:** Monday, September 13, 2021 10:05 AM  
**To:** Charla Burill  
**Subject:** Re: Dietetics Practice & Swallow Studies

Good morning, Ms. Burill:

The Board thanks the Dietetics/Nutrition Board for their thorough response to their questions. All of the NC Board of Examiners for SLP & Aud's questions were answered in the attached letter that you provided. The Board feels confident that LDNs with appropriate training and oversight conducting only swallowing screening and NOT swallowing studies, does not constitute an encroachment of Speech and Language Pathology scope of practice.

Again, the Board appreciates you taking the time to answer their questions.

Sincerely,  
C. Denise Brown  
Executive Director, NC Board of Examiners for SLP & Aud.  
336-272-1828

On Tue, Aug 31, 2021 at 8:15 AM Charla Burill <[director@ncbdn.org](mailto:director@ncbdn.org)> wrote:

Ms. Brown:

Please note, at its recent August meeting the NC Board of Dietetics/Nutrition was able to give consideration to the questions the Board of Examiners for Speech and Language Pathologists and Audiologists posed at the end of July. Please find attached a letter addressing the questions asked. Please let me know if there are any additional questions or concerns. If not, the NCBDN's Rules Committee will likely add this to its agenda of rule changes that need to be addressed.

Thank you again for your time and consideration.

Sincerely,

Charla

Charla M. Burill

Executive Director/Secretary

North Carolina Board of Dietetics/Nutrition

1135 Kildaire Farm Rd, Suite 200

Cary, NC 27511

919-678-7609 (office)

919-882-1776 (fax)

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**From:** Charla Burill

**Sent:** Friday, July 30, 2021 4:12 PM

**To:** Denise Brown <[dsherwood@ncboeslpa.org](mailto:dsherwood@ncboeslpa.org)>

**Subject:** RE: Dietetics Practice & Swallow Studies

Ms. Brown:

Thank you to you and your Board for this review. I will review these questions with the NC Board of Dietetics/Nutrition and also with the national accrediting body that is recommending the change in competency standards to include beside swallow screenings, to gain further insight. I will be in touch once I have more complete information.

Thank you again, and have a nice weekend.

Charla

Charla M. Burill

Executive Director/Secretary

North Carolina Board of Dietetics/Nutrition

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**From:** Denise Brown <[dsherwood@ncboeslpa.org](mailto:dsherwood@ncboeslpa.org)>  
**Sent:** Friday, July 30, 2021 3:56 PM  
**To:** Charla Burill <[director@ncbdn.org](mailto:director@ncbdn.org)>  
**Subject:** Re: Dietetics Practice & Swallow Studies

Hi Ms. Burill,

The Board of Examiners for Speech and Language Pathologists and Audiologists discussed your inquiry at their recent meeting. They would like more information and have the following questions for the Board for Dietitians/Nutritionists and Licensed Nutritionists. Again, we appreciate the Dietitians/Nutritionists Board's efforts to remain transparent during this process.

1. What are the parameters of the screenings that are to be initiated and conducted by Registered Dietitian Nutritionists?
2. What is the Board for Dietitians/Nutritionists and Licensed Nutritionists' definition of 'bedside swallow screening'?
3. What is the goal of the screening and algorithm for SLP consultation?
4. What training is required?
5. What are the limitations to the screening that ensure it does not cross over into formal evaluation or treatment?
6. Please clarify whether this inquiry is solely regarding screening or if it would encompass a formal evaluation.

Sincerely,

C. Denise Brown

Executive Director, NC Board of Examiners for SLP & Aud.

336-272-1828

On Mon, Jun 14, 2021 at 4:04 PM Charla Burill <[director@ncbdn.org](mailto:director@ncbdn.org)> wrote:

Dear Ms. Brown:

I am reaching out as the director of the licensing board for dietitians/nutritionists and licensed nutritionists. Recently, the Accreditation for Education in Nutrition and Dietetics released its proposed 2022 supervised practice standards for students seeking to become Registered Dietitian Nutritionists. These standards include: "Initiate and conduct bedside swallow screenings." These proposed standards may be found here: <https://www.eatrightpro.org/-/media/eatrightpro-files/acend/accreditation-standards/secdraft-2022standardsditrack-41420212.pdf?la=en&hash=9D8B852B7B826B8E5AF3F8AA71BA7F3D7C0EEC74>. The Nutrition Support Standards of Practice/Professional Performance also already provide for this. Recently, I received a question from a licensee asking if taking such action would be within a licensee's scope of practice.

Swallow screenings are not directly addressed in the Dietetics/Nutrition Practice Act, but I could see them falling under the nutrition assessment if our regulations were amended to address this. However, reviewing Article 22 it would appear to me that a licensed dietitian/nutritionist or licensed nutritionist would be in violation of practicing speech without a license unless a specific exemption is provided under the Speech & Language Practice Act. Specifically, under N.C. Gen. Stat. § 90-294, I see the following provided: "(i) Nothing in this Article shall apply to a licensed physical therapy or occupational therapy practitioner providing evaluation and treatment of swallowing disorders, cognitive/communication deficits, and balance functions within the context of his or her licensed practice." Do you or your board have any initial thoughts on this? I have not yet had any discussion with my board, but thought it would be most prudent and efficient to start a conversation with you first.

Thank you in advance for any thoughts and insight.

Sincerely,

Charla M. Burill

Executive Director/Secretary

North Carolina Board of Dietetics/Nutrition

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# North Carolina Board of Dietetics/Nutrition

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August 31, 2021

Denise Brown  
Executive Director  
NC Board of Examiners for SLP & Aud.  
P Box 16885  
Greensboro, NC 27416

Dear Ms. Brown:

Thank you again to you and your board for reviewing the NC Board of Dietetics/Nutrition's (NCBDN) inquiry regarding "bedside swallow screenings." This letter, reviewed and approved by the NCBDN, addresses the questions submitted by the NC Board of Examiners for Speech Language Pathology & Audiology on July 30, 2021 regarding bedside swallow screenings and the definition, parameters, and training.

By way of background, it is likely important to note that the NCBDN licenses dietitian/nutritionists (G.S. § 90-357.5(a)) as LDNs and nutritionists (G.S. § 90-357.5(c)) as LNs. Under the LDN pathway Registered Dietitian Nutritionists (RDN - a national credential issued by the Commission on Dietetic Registration) may become licensed by endorsement as obtainment of the RDN credential demonstrates that applicants have met the requirements for licensure as LDNs. Additionally, non-RDNs seeking to become LDNs may become licensed under G.S. § 90-357.5(a) by completing a course of study and a supervised practice program that meets the competency requirements of an ACEND (Accreditation Council for Education in Nutrition and Dietetics)<sup>1</sup> accredited academic program and supervised practice program, and passing the same examination as required of RDNs. At this time, the NCBDN envisions bedside swallow screenings would only be conducted by LDNs and their trainees and not by LNs as LNs have not demonstrated or indicated this is or will be a required competency.

Upon receiving your questions, we reached out to ACEND, and also the Academy of Nutrition and Dietetics (the Academy)<sup>2</sup> for further insight into this competency. It is important to note, as demonstrated by the

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<sup>1</sup>The Accreditation Council for Education in Nutrition and Dietetics is the accrediting body for education programs (academic and supervised practice) preparing students for careers as registered dietitian nutritionists. ACEND, Academy of Nutrition and Dietetics, <https://www.eatrightpro.org/acend>.

<sup>2</sup> According to the Academy of Nutrition and Dietetics:

The Academy of Nutrition and Dietetics is the world's largest organization of food and nutrition professionals founded in Cleveland, Ohio, in 1917, by a visionary group of women dedicated to helping the government conserve food and improve the public's health and nutrition during World War I. Today, the Academy represents more than 112,000 credentialed practitioners — registered dietitian nutritionists, dietetic technicians, registered, and other dietetics and nutrition professionals holding undergraduate and advanced degrees in nutrition and dietetics, and students — and is

documentation received from the Academy (and which is attached), that although bedside swallow screens are not specifically addressed in the NC Dietetics/Nutrition Practice Act or regulations, on the national level, bedside swallow screens have been a part of the RDN scope of practice for some time (depending on the practitioner's skills/training). The present movement by ACEND to clarify a competency addressing swallow screens is aimed at ensuring all RDNs have base level competency in swallow screens coming out of their legally required supervised practice and to make it clear such training only qualifies them to complete screenings. With that said, please find below, direct responses to your various questions.

1. What are the parameters of the screenings that are to be initiated and conducted by Registered Dietitian Nutritionists?

The screening would be part of the Board's definition of "nutrition assessment," and thus in theory would be something the licensed nutrition practitioner (and student trainees) would consider with all inpatients as appropriate. For some patients it would not be relevant at all, and for others additional action would be required. The present definition found in 21 NCAC 17. 0101 provides:

"Nutrition assessment" means:

- (a) the evaluation of the nutrition needs of individuals and groups by licensed dietitians/nutritionists and licensed nutritionists based upon biochemical, anthropometric, nutrigenomic, physical, and food and diet history data to determine nutritional needs and order therapeutic diets, including enteral and parenteral nutrition; and
- (b) the ordering of laboratory tests related to the practice of nutrition and dietetics.

Arguably, a bedside swallow screen could already fall under this definition, but to make it clearer for our licensees and the public, we propose amending it to provide:

"Nutrition assessment" means:

- (a) the evaluation of the nutrition needs of individuals and groups by licensed dietitians/nutritionists and licensed nutritionists based upon biochemical, anthropometric, nutrigenomic, physical, and food and diet history data to determine nutritional needs and order therapeutic diets, including enteral and parenteral nutrition; ~~and~~
- (b) the ordering of laboratory tests related to the practice of nutrition and ~~dietetics.~~ dietetics;  
and
- (c) the conducting of a bedside swallow screen.

We then envision that we would add to the definitions section a definition for "bedside swallow screen."

Regarding specific parameters, we learned from ACEND that the accrediting body intends to follow a typical nursing bedside swallow screen (*i.e. Massey Bedside Swallowing Screen*). Students and interns will

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committed to improving the nation's health and advancing the profession of dietetics through research, education and advocacy.

About Us, Academy of Nutrition and Dietetics, <https://www.eatrightpro.org/about-us>.

be working within the parameters of such a tool as should licensees. The example that ACEND provided may be found here: [https://aann.org/uploads/Bedside\\_Swallow\\_Screen.pdf](https://aann.org/uploads/Bedside_Swallow_Screen.pdf).

2. What is the Board for Dietitians/Nutritionists and Licensed Nutritionists' definition of 'bedside swallow screening'?

Noting that the Board has multiple pathways to licensure, and it is only the RDN pathway or the equivalent thereto (G.S. § 90-357.5(a), which provides the requirements for the LDN credential) that will include swallow screens as a required competency, the Board would seek to align its definition with the definition from the American Speech-Hearing Association's definition, but specifically limit it to LDNs. Thus, the definition proposed would read:

For purposes of this section, the term swallow screen is used to refer to a minimally invasive evaluation procedure conducted by licensed dietitians/nutritionists that provides quick determination of:

- the likelihood that dysphagia exists;
- whether the patient requires referral for further swallowing assessment;
- whether it is safe to feed the patient orally (for the purposes of nutrition, hydration, and administration of medication);
- whether the patient requires referral for nutritional or hydrational support.

See, *Swallowing and Swallowing Disorders (Dysphagia)*, American Speech-Language-Hearing Association, <https://www.asha.org/siteassets/uploadedFiles/FAQs-on-Swallowing-Screening.pdf>.

3. What is the goal of the screening and algorithm for SLP consultation?

As provided in the definition noted above, the goal of the screening would be to determine:

- the likelihood that dysphagia exists;
- whether the patient requires referral for further swallowing assessment;
- whether it is safe to feed the patient orally (for the purposes of nutrition, hydration, and administration of medication); or
- whether the patient requires referral for nutritional or hydrational support.

Ultimately, the goal is to support the management of patients with swallowing problems. By conducting bedside swallow screens dietitians aim to help ensure patient safety, allow for appropriate early intervention and timely referrals, reduce the time that patients waste without nutrition and hydration, prevent future health complications, and increase good clinical outcomes for patients.

4. What training is required?

ACEND expects faculty to train their students/interns first through didactic education in their academic program, then in their supervised practice using simulations or real-life experience to demonstrate competence. The expectation is that students/interns will perform this screening on patients during their clinical, long-term care, and other rotations.

Additionally, the Academy provided the attached document addressing the present scope of practice for RDNs, and the continuing education opportunities available. Under the NC Code of Ethics for licensed

nutrition practitioners, licensees are responsible for practicing within their level of competency. Thus, if training in swallow screenings has not been obtained, before seeking to provide such services, licensees must seek out appropriate training through continuing education.

5. What are the limitations to the screening that ensure it does not cross over into formal evaluation or treatment?

ACEND indicated that the example screening provided at [https://aann.org/uploads/Bedside\\_Swallow\\_Screen.pdf](https://aann.org/uploads/Bedside_Swallow_Screen.pdf) delineates ACEND's expectations of what is included in a swallow screen.<sup>3</sup>

Again, the aims of the screen align with the definition provided above.

6. Please clarify whether this inquiry is solely regarding screening or if it would encompass a formal evaluation.

This inquiry is solely focused on screenings. At present, the scope of practice for RDNs (as a national credential) allows for bedside swallow screens if the practitioner is competent to provide such care. All dietitians were not necessarily required to have this training, rather, only if conducting screenings was part of their job responsibilities. However, the ACEND Board voted during its July 28-30<sup>th</sup> meeting to release the 2022 Accreditation Standards on September 1, 2021. Within these Standards, the swallow screening competency was revised for added clarity to provide:

“Conduct a swallow screen and refer to the appropriate health care professional for full swallow evaluation when needed.”

It is this competency the NCBDN is aiming to address to ensure licensees and the public are clear that it is within a licensee's scope of practice to provide such screenings and to ensure an understanding that regarding swallow studies, without further education/credentialing, a dietitian's role is limited to a screening. The aim is not to expand the scope of practice, but rather provide more clarity in this area of practice, and eventually ensure all licensed dietitians/nutritionists are able to provide this care through obtainment of appropriate training.

Thank you for your consideration of the above. Should you have any additional questions, please feel free to contact me at [director@ncbdn.org](mailto:director@ncbdn.org) or by phone at 919-678-7609.

Sincerely,



Charla M. Burill  
Executive Director/Secretary

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<sup>3</sup> Of note, the example provided is not necessarily the exact tool that will be utilized by clinicians and their trainees but does represent the level/type of assessment dietitians would be trained to provide.