



**\*Board-of-Dietetics-Untimely Comments in Opposition\***

BOARD *for* CERTIFICATION  
*of* NUTRITION SPECIALISTS<sup>SM</sup>

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July 16, 2019

Chairman Dunklin and Members of the Rules Review Commission:

On behalf of the Board for Certification of Nutrition Specialists<sup>SM</sup> (BCNS<sup>SM</sup>), I submit this comment on the proposed 21 NCAC 17 .0303 SUPERVISION Board of Dietetics/Nutrition (NCBDN) rule published in the April 15, 2019 North Carolina Register (Volume 33, Issue 20).

BCNS is a premier certification entity that grants the Certified Nutrition Specialist<sup>®</sup> (CNS<sup>®</sup>) credential. Our CNS certificants earn an advanced degree in nutrition or clinical healthcare, complete a robust nutrition science curriculum, perform 1000 hours of documented nutrition practice experience, and pass the rigorous BCNS Certification Examination for Certified Nutrition Specialists<sup>SM</sup>. The CNS certification is fully accredited by the National Commission for Certifying Agencies, the preeminent accrediting organization for certifying programs. CNSs are one group of advanced degreed nutritionists eligible to apply for licensure to NCBDN.

***Background on SL 2018-91***

*G.S. § 90-357.5. License Requirements*

SL 2018-91 created a Licensed Nutritionist (LN) licensure pathway for advanced degree nutritionists. This pathway, codified in G.S. § 90-357.5. License Requirements, Subsection (c), set forth robust education, supervised practice experience, and examination requirements. G.S. § 90-357.5.(c)(2) codifies the supervised practice experience requirements for LNs and includes a list of individuals who may qualify as supervisors for LNs:

The applicant 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 a Certified Nutrition Specialist, a Diplomate of the American Clinical Board of Nutrition, a Registered Dietitian Nutritionist, a licensed dietitian/nutritionist, a licensed nutritionist, a State-licensed health care practitioner whose licensed scope of*



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*practice includes dietetics or nutrition, or an individual with a doctoral degree conferred by a United States regionally accredited college or university with a major course of study in human nutrition, foods and nutrition, dietetics, community nutrition, public health nutrition, nutrition education, nutrition, nutrition science, clinical nutrition, applied clinical nutrition, nutrition counseling, nutrition and functional medicine, nutritional biochemistry, nutrition and integrative health, or an equivalent course of study, with a reasonable threshold of academic credits in nutrition and nutrition sciences as described in subdivision (1) of this subsection. [emphasis added]*

These supervisors are also listed under the LDN pathway in G.S. § 90-357.5.(a)(1)b. The supervisors listed in these subsections include individuals with a range of qualifications including: doctoral degrees in specified fields with a certain threshold of academic credits; individuals with specified private certifications (Certified Nutrition Specialists, Diplomates of the American Clinical Board of Nutrition [DACBN], and Registered Dietitian Nutritionists); and finally, licensed dietitian/nutritionists, licensed nutritionists, or State-licensed health care practitioners who have a scope of practice in dietetics or nutrition.

The plain language of these provisions indicate that not all supervisors must be state licensed, in North Carolina or elsewhere. If a supervisor holds one of the listed private credentials, or a specified doctorate, they need not hold a state license. If they do *not* hold one of these credentials, they must be a licensed dietitian/nutritionist, licensed nutritionist, or State-licensed health care practitioner.

By including these groups among the permitted supervisors, the legislature has explicitly provided that they are not subject to a licensure requirement for supervising the activities in the scope of practice outlined in the statute, and all the activities that such supervision entails.

Prior to the passage of SL 2018-91, the statute that governed the supervisor requirements for LDNs, G.S. § 90-357(3)(a)(2)<sup>1</sup>, required the supervisor for an LDN student or trainee be an LDN. While that statute and NCBDN's implementing rules<sup>2</sup> required the supervisor be *licensed*, neither text specified that the supervisor must be licensed specifically in the state of North Carolina, regardless of the location of an LDN student or trainee's client. It is only now, with the addition of a licensure pathway for non-dietitian nutritionists that this new restrictive requirement is proposed for rulemaking.

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<sup>1</sup> G.S. § 90-357, 2017. "Each applicant for a license as a licensed dietitian/nutritionist shall meet the following requirements: ... Have completed a planned, continuous program in approved clinical practice of not less than 900 hours under the supervision of a licensed dietitian/nutritionist as approved by the Board;"

<sup>2</sup> 21 NCAC 17 .0303 SUPERVISION. "(a) A planned, continuous program in clinical practice pursuant to G.S. 90-357(3)b.2. shall designate a licensed dietitian/nutritionist who shall supervise a student or trainee ..."



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### *G.S. § 90-368 Persons and Practices Not Affected*

Through changes to G.S. § 90-368 Persons and Practices Not Affected, Section (2), SL 2018-91 ensured that the exemption for students or trainees completing supervised practice experience would apply to trainees receiving supervision from those supervisors newly specified in G.S. § 90-357.5(a)(1)b and G.S. § 90-357.5(c)(2), and not just LDNs, as was previously the case. See the bill mark-up below:

§ 90-368. Persons and practices not affected.

The requirements of this Article shall not apply to: ...

(2) A student or trainee, working under the direct supervision of ~~a licensed dietitian/nutritionist~~ an individual who meets the criteria outlined in G.S. 90-357.5(a)(1)b. or G.S. 90-357.5(c)(2) while fulfilling an experience requirement or pursuing a course of study to meet requirements for licensure, for a limited period of time as determined by the Board.

### ***Proposed Supervision Rule***

NCBDN's Proposed SECTION .0300 - DIETETIC/NUTRITION STUDENTS OR TRAINEES, 21 NCAC 17 .0303 SUPERVISION rule would contravene the intent and effect of the supervised practice experience requirements listed in statute, in this rule provision:

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

...

(5) shall maintain responsibility for the nutrition care activities performed by the student or trainee. For patients or clients receiving medical nutrition therapy in NC, the supervising practitioner shall be licensed in the State to provide the medical nutrition therapy he or she is supervising. For patients or clients outside of NC, the supervising practitioner shall be lawfully allowed to provide the nutrition care activities in the state where the patients or clients are located.

The proposed rule, by seemingly requiring that the individual be licensed in North Carolina, would render it *impossible* for many of the groups explicitly included by the legislature in statute to indeed legally supervise.

### ***Rules Review Commission Counsel Comments***

This particular rule and subsection is addressed in the [Request for Technical Changes](#) the Rules Review Commission's Counsel, Ms. Amanda Reeder, submitted to NCBDN. On page 21 of this document, Ms. Reeder includes the following:



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*In (5), line 31, I note that G.S. 90-375.5 refers to different categories of opportunity to practice in this State, including “certification” and “Diplomat of the American Clinical Board.” Do you mean the term “licensed” as used in G.S. 93B-1?*

### **§ 93B-1. Definitions.**

As used in this Chapter:

"License" means any license (other than a privilege license), certificate, or other evidence of qualification which an individual is required to obtain before he may engage in or represent himself to be a member of a particular profession or occupation. ...

NCBDN responded in writing<sup>3</sup> to Ms. Reeder that they did intend the word “licensed” to mean the term as defined in G.S. 93B-1, but in that communication also state that “not all of these types of supervisors would lawfully be able to get licensed in NC to provide ‘medical nutrition therapy’ in this State, and thus approve/take responsibility for such care.” BCNS remains concerned that NCBDN intends “licensed” to mean the term as used in G.S. 93B-1, but only for supervision that occurs with clients/patients outside of the state of North Carolina. This would remain a contravention of the legislative intent to authorize individuals who have the stated private credentials and education to supervise nutrition care services provided to NC clients.

We ask that NCBDN’s rules be revised to clarify that individuals who do not hold a North Carolina license but do hold the specified private certifications and doctoral degrees may in fact supervise LDN and LN applicant trainees.

### ***Revised BCNS Requested Rule Amendment***

We respectfully request that Section 5 of 21 NCAC 17 .0303 SUPERVISION be amended as follows:

(5) shall maintain responsibility for the nutrition care activities performed by the student or trainee. For patients or clients receiving medical nutrition therapy in NC, the supervising practitioner shall be licensed, as defined in G.S. 93B-1, in the State to provide the medical nutrition therapy he or she is supervising. For patients or clients outside of NC, the supervising practitioner shall be lawfully allowed to provide the nutrition care activities in the state where the patients or clients are located.

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<sup>3</sup> Public Information Request- NCBDN Response to RRC Request for Technical Changes.



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***Conclusion***

We appreciate the Rules Review Commission's commitment to North Carolinians and your thoughtful consideration of these comments. Please contact me if you have further questions.

Sincerely,

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