



STATE OF NORTH CAROLINA  
OFFICE OF ADMINISTRATIVE HEARINGS

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Street address:  
1711 New Hope Church Rd  
Raleigh, NC 27609-6285

July 19, 2019

Charla Burill, Rulemaking Coordinator  
Board of Dietetics/Nutrition  
**Sent via email only: [director@ncbdn.org](mailto:director@ncbdn.org)**

Re: Objection to Rules 21 NCAC 17 .0101 and .0303

Dear Ms. Burill:

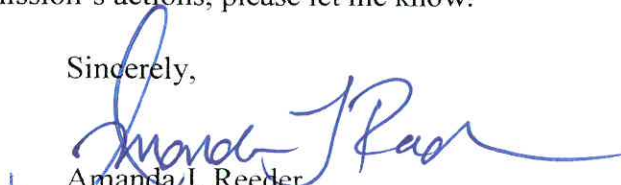
At its meeting yesterday, the Rules Review Commission objected to the above-captioned rules in accordance with G.S. 150B-21.10.

The Commission objected to Rule 21 NCAC 17 .0101 for lack of statutory authority. Specifically, the Commission found that the agency lacks statutory authority to narrow the terms to solely "medical nutrition therapy" in Subparagraphs (a)(2) and (3). Further, the Commission noted that Paragraph (b) contains both acronyms and initialisms.

The Commission objected to Rule 21 NCAC 17 .0303 for lack of statutory authority. The Commission found that the agency lacks authority to contradict G.S. 90-368(2), which allows for supervision by those meeting the criteria in G.S. 90-357.5(a)(1)b and (c)(2).

Please respond to this letter in accordance with the provisions of G.S. 150B-21.12. If you have any questions regarding the Commission's actions, please let me know.

Sincerely,



Amanda J. Reeder  
Commission Counsel

Administration  
919/431-3000  
fax: 919/431-3100

Rules Division  
919/431-3000  
fax: 919/431-3104

Judges and  
Assistants  
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Rules Review  
Commission  
919/431-3000  
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Civil Rights  
Division  
919/431-3036  
fax: 919/431-3103

21 NCAC 17.0101 is readopted with changes as published in 33:20 NCR 2049-2056 as follows:

## **21 NCAC 17.0101        DEFINITIONS AND ACRONYMS**

(a) As used in this Chapter, the following terms and phrases, which have not already been defined in the Practice Act, G.S. 90-350 through 90-369, ~~shall have the meanings specified:~~ mean:

(1) "Act" means Dietetics/Nutrition Practice ~~Act.~~ Act in G.S. 90, Article 25.

~~(2) "ADA" means The American Dietetic Association.~~

~~(2)(3)~~ (3) "Applicant" means any person who has applied to the Board for a license to ~~practice~~ dietetics/nutrition provide medical nutrition therapy in the State of North Carolina.

~~(3)(4)~~ (4) "Application" means a written request directed to and received by the Board, on forms supplied by the Board, for a license to ~~practice dietetics/nutrition provide medical nutrition therapy in the State of North Carolina,~~ together with all information, ~~documents~~ documents, and other materials necessary ~~for the Board to act on that application.~~ to demonstrate that the applicant has met the requirements for licensure as specified in G.S. 90, Article 25; the Act.

~~(5) "CDR" means the Commission on Dietetic Registration which is a member of the National Commission for Health Certifying Agencies.~~

~~(6) "CADE" means the Commission on Accreditation for Dietetics Education.~~

~~(4)(7)~~ (7) "Degree" means a degree received from a college or university that was regionally accredited at the time the degree was ~~conferred.~~ conferred, or a validated foreign equivalent.

~~(5)(8)~~ (8) "Dietitian/nutritionist" or "nutritionist" means one engaged in ~~dietetics/nutrition~~ dietetics or nutrition practice.

~~(9) "Executive Secretary" means the person employed to carry out the administrative functions of the Board.~~

~~(6)(10)~~ (10) "Health care practitioner" includes any individual who is licensed under G.S. ~~90,~~ 90 and whose licensed scope of practice includes dietetics or nutrition.

~~(7)(11)~~ (11) "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 ~~recommend appropriate nutrition intake~~ order therapeutic diets, including, including enteral and parenteral nutrition; and

(b) the ordering of laboratory tests related to the practice of nutrition and dietetics.

~~(8)(12)~~ (12) "Nutrition counseling" means the advice and assistance provided by licensed dietitians/nutritionists and licensed nutritionists to individuals or groups on nutrition intake by integrating information from the nutrition assessment with information on food and other sources of nutrient and meal preparation consistent with therapeutic needs and cultural background, which shall include ethnicity, race, language, religious and spiritual beliefs, education, and socioeconomic status ~~status.~~ and therapeutic needs.

- (13) ~~"Provisionally licensed dietitian/nutritionist" means a person provisionally licensed under the act.~~
- (14) ~~"Equivalent major course of study" means one which meets the knowledge requirements of the ADA Approved Didactic Program in Dietetics as referenced in the most current edition of the "Eligibility Requirements and Accreditation Standards for Didactic Programs in Dietetics (DPD)" which is hereby incorporated by reference including any subsequent amendments and editions of the referenced material. Copies of this manual are available at no charge through the ADA's website at: <http://www.eatright.org/CADE/content.aspx?id=57>.~~
- (15) ~~"Supervised practice program" means one which meets the standards of the ADA accredited Dietetic Internship Program as referenced in the most current edition of the "Eligibility Requirements and Accreditation Standards for Dietetic Internship Programs (DI)" which is hereby incorporated by reference including any subsequent amendments and editions of the referenced material. Copies of this manual are available at no charge through the ADA's website at: <http://www.eatright.org/CADE/content.aspx?id=57>.~~
- (16) ~~"Medical nutrition therapy" (MNT) is an evidence based application of the Nutrition Care Process, as currently defined by the ADA, AND, focused on prevention, delay or management of diseases and conditions, and involves an in depth assessment, periodic reassessment and intervention. The ADA's AND's definition of "Nutrition Care Process," which is listed in the ADA's AND's "Definition of Terms List," is hereby incorporated by reference including any subsequent amendments and editions of the referenced material. Copies of this publication can be found on the ADA's AND's website at: <http://www.eatright.org/HealthProfessionals/content.aspx?id=6867>. <http://www.eatrightpro.org/-/media/eatrightpro%20files/practice/scope%20of%20practice/definition%20of%20terms%20list.ashx>.~~

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

- (1) [ACBN:] "ACBN" means the American Clinical Board of Nutrition, whose Diplomate of the American Clinical Board of Nutrition credential is accredited by the National Commission for Certifying Agencies. [ACEND: the Accreditation Council for Education in Nutrition and Dietetics.]
- (2) [ACEND:] "ACEND" means the Accreditation Council for Education in Nutrition and Dietetics. [AND: the Academy of Nutrition and Dietetics.]
- (3) [AND:] "AND" means the Academy of Nutrition and Dietetics. [BCNS: the Board for Certification of Nutrition Specialists, whose Certified Nutrition Specialist credential is accredited by the National Commission for Certifying Agencies.]
- (4) [BCNS:] "BCNS" means the Board for Certification of Nutrition Specialists, whose Certified Nutrition Specialist credential is accredited by the National Commission for Certifying Agencies. [CDR: the Commission on Dietetic Registration, whose Registered Dietitian Nutritionist credential is accredited by the National Commission for Certifying Agencies.]
- (5) [CDR:] "CDR" means the Commission on Dietetic Registration, whose Registered Dietitian Nutritionist credential is accredited by the National Commission for Certifying Agencies. [ACBN:

1 ~~the American Clinical Board of Nutrition, whose Diplomate of the American Clinical Board of~~  
2 ~~Nutrition credential is accredited by the National Commission for Certifying Agencies.]~~

3 (6) ~~[LDN:]~~ “LDN” means licensed dietitian/nutritionist.

4 (7) ~~[LN:]~~ “LN” means licensed nutritionist.

5 (8) ~~[PLDN:]~~ “PLDN” means provisionally licensed dietitian/nutritionist.

6 (9) ~~[PLN:]~~ “PLN” means provisionally licensed nutritionist.

7  
8 *History Note: Authority G.S. 90-352; 90-356;*  
9 *Temporary Adoption Eff. March 19, 1992 for a period of 180 days to expire on September 13, 1992;*  
10 *Eff. June 1, 1992;*  
11 *Recodified from 21 NCAC 17 .0001 Eff. February 1, 1995;*  
12 *Amended Eff. December 1, 2011; April 1, 2010; July 18, 2002; March 1, ~~1996~~ 1996;*  
13 *Readopted Eff. August 1, 2019.*

21 NCAC 17 .0303 is readopted as published in 33:20 NCR 2049-2056 as follows:

### 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; and~~

~~(1) shall meet the qualifications of the current standards of education as referenced in the most current edition of the "Eligibility Requirements and Accreditation Standards for Dietetic Internship Programs (DI)" which is hereby incorporated by reference including any subsequent amendments and editions of the referenced material. Copies of this manual are available at no charge through the ADA's website at: <http://www.eatright.org/CADE/content.aspx?id=57>; and~~

~~(2) shall meet his/her employment qualifications of the sponsoring institution, if any.~~

~~(b) In accordance with the current standards of education referenced in this Rule, a Program Director shall:~~

~~(1) provide student/trainee advisement, evaluation, counseling and supervision;~~

~~(2) provide academic or supervised practice program assessment, planning, implementation and evaluation;~~

~~(3) inform student(s)/trainee(s) of laws, regulations and standards affecting the practice of dietetics/nutrition, including the Dietetics/Nutrition Practice Act and its Rules; and~~

~~(4) advise student(s)/trainee(s) on meeting the requirements to be licensed to practice dietetics/nutrition.~~

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

(1) discusses and recommends, with the student or trainee, nutrition care services undertaken by the student or trainee, which are appropriate to the level of nutrition care;

(2) is available for consultation on nutrition care ~~activities~~ services being performed by the student or trainee, either through on-site or through electronic communication;

(3) shall be available to render assistance when requested by the student or trainee or the patient or client, or shall have arranged for another practitioner to be available in the absence of the supervising practitioner;

(4) ~~personally observes, evaluates,~~ periodically observes the nutrition care services of the student or trainee supervised, and evaluates and approves all ~~the acts or functions~~ nutrition care services of the student or trainee supervised; and

(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.

*History Note: Authority G.S. 90-356(2); ~~90-357~~; ~~90-357.5~~; 90-368(2); Eff. March 1, 1996;*

1                    *Amended Eff. December 1, 2011; July 18, ~~2002~~, 2002;*  
2                    *Readopted Eff. August 1, 2019.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Dietetics/Nutrition

RULE CITATION: 21 NCAC 17 .0101

**DEADLINE FOR RECEIPT: Friday, July 12, 2019**

**PLEASE NOTE:** *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*In (a)(1), line 6, consider adding a citation, so it reads: "Act" means Dietetics/Nutrition Act in G.S. 90, Article 25." If you do so, you can replace the citation in (a)(3), line 14 with "the Act."*

*In (a)(3), line 10, are the contents of these forms addressed by other rules or law, as addressed in G.S. 150B-2(8a)(d)?*

*In (a)(4), lines 18 and 19, I take it the Rule uses the terms "regionally accredited" and "validated" to conform with the language in G.S. 90-375.1?*

*In (7)(b), line 31, insert an "or" after "ordering"*

*In (b), Page 2, line 23, to be consistent with (a), please insert a "shall" before "mean:"*

*In (b)(1) through (9), so that I'm clear – the Board is purposely not using quotation marks?*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: June 27, 2019

21 NCAC 17.0101 is readopted with changes as published in 33:20 NCR 2049-2056 as follows:

## **21 NCAC 17.0101        DEFINITIONS AND ACRONYMS**

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~~Practice Act, G.S. 90-350 through 90-369, shall have the meanings specified:~~ mean:

(1) "Act" means Dietetics/Nutrition Practice Act.

~~(2) "ADA" means The American Dietetic Association.~~

~~(2)(3)~~ "Applicant" means any person who has applied to the Board for a license to ~~practice~~  
~~dietetics/nutrition~~ provide medical nutrition therapy in the State of North Carolina.

~~(3)(4)~~ "Application" means a written request directed to and received by the Board, on forms supplied by  
the Board, for a license to ~~practice dietetics/nutrition~~ provide medical nutrition therapy in the State  
of North Carolina, together with all information, ~~documents~~ documents, and other materials  
necessary ~~for the Board to act on that application.~~ to demonstrate that the applicant has met the  
requirements for licensure as specified in G.S. 90, Article 25.

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~~Commission for Health Certifying Agencies.~~

~~(6) "CADE" means the Commission on Accreditation for Dietetics Education.~~

~~(4)(7)~~ "Degree" means a degree received from a college or university that was regionally accredited at the  
time the degree was ~~conferred.~~ conferred, or a validated foreign equivalent.

~~(5)(8)~~ "Dietitian/nutritionist" or "nutritionist" means one engaged in ~~dietetics/nutrition~~ dietetics or  
nutrition practice.

~~(9) "Executive Secretary" means the person employed to carry out the administrative functions of the~~  
~~Board.~~

~~(6)(10)~~ "Health care practitioner" includes any individual who is licensed under G.S. ~~90,~~ 90 and whose  
licensed scope of practice includes dietetics or nutrition.

~~(7)(11)~~ "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 ~~recommend appropriate nutrition intake~~  
order therapeutic diets, including, including enteral and parenteral nutrition. ~~nutrition; and~~

(b) the ordering laboratory tests related to the practice of nutrition and dietetics.

~~(8)(12)~~ "Nutrition counseling" means the advice and assistance provided by licensed dietitians/nutritionists  
and licensed nutritionists to individuals or groups on nutrition intake by integrating information  
from the nutrition assessment with information on food and other sources of nutrient and meal  
preparation consistent with therapeutic needs and cultural background, which shall include  
ethnicity, race, language, religious and spiritual beliefs, education, and socioeconomic status ~~status.~~  
~~and therapeutic needs.~~



- (13) ~~"Provisionally licensed dietitian/nutritionist" means a person provisionally licensed under the act.~~
- (14) ~~"Equivalent major course of study" means one which meets the knowledge requirements of the ADA Approved Didactic Program in Dietetics as referenced in the most current edition of the "Eligibility Requirements and Accreditation Standards for Didactic Programs in Dietetics (DPD)" which is hereby incorporated by reference including any subsequent amendments and editions of the referenced material. Copies of this manual are available at no charge through the ADA's website at: <http://www.eatright.org/CADE/content.aspx?id=57>.~~
- (15) ~~"Supervised practice program" means one which meets the standards of the ADA accredited Dietetic Internship Program as referenced in the most current edition of the "Eligibility Requirements and Accreditation Standards for Dietetic Internship Programs (DI)" which is hereby incorporated by reference including any subsequent amendments and editions of the referenced material. Copies of this manual are available at no charge through the ADA's website at: <http://www.eatright.org/CADE/content.aspx?id=57>.~~
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(b) As used in this Chapter, the following acronyms mean:

- (1) ACBN: the American Clinical Board of Nutrition, whose Diplomate of the American Clinical Board of Nutrition credential is accredited by the National Commission for Certifying Agencies. ACEND: the Accreditation Council for Education in Nutrition and Dietetics.
- (2) ACEND: the Accreditation Council for Education in Nutrition and Dietetics. AND: the Academy of Nutrition and Dietetics.
- (3) AND: the Academy of Nutrition and Dietetics. BCNS: the Board for Certification of Nutrition Specialists, whose Certified Nutrition Specialist credential is accredited by the National Commission for Certifying Agencies.
- (4) BCNS: the Board for Certification of Nutrition Specialists, whose Certified Nutrition Specialist credential is accredited by the National Commission for Certifying Agencies. CDR: the Commission on Dietetic Registration, whose Registered Dietitian Nutritionist credential is accredited by the National Commission for Certifying Agencies.
- (5) CDR: the Commission on Dietetic Registration, whose Registered Dietitian Nutritionist credential is accredited by the National Commission for Certifying Agencies. ACBN: the American Clinical

Board of Nutrition, whose Diplomate of the American Clinical Board of Nutrition credential is  
accredited by the National Commission for Certifying Agencies.

(6) LDN: licensed dietitian/nutritionist.

(7) LN: licensed nutritionist.

(8) PLDN: provisionally licensed dietitian/nutritionist.

(9) PLN: provisionally licensed nutritionist.

*History Note: Authority G.S. 90-352; 90-356;  
Temporary Adoption Eff. March 19, 1992 for a period of 180 days to expire on September 13, 1992;  
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## REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Dietetics/Nutrition

RULE CITATION: 21 NCAC 17 .0303

**DEADLINE FOR RECEIPT: Friday, July 12, 2019**

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*In (1), line 20, I take it you mean the term "nutrition care services" as defined in G.S. 90-352?*

*In (4), line 27, what are the "acts and functions" you are referring to? I note that Item (2) requires only availability for nutrition care activities. Is what is addressed in (4) different from that?*

*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.

"Occupational licensing board" means any board, committee, commission, or other agency in North Carolina which is established for the primary purpose of regulating the entry of persons into, and/or the conduct of persons within, a particular profession or occupation, and which is authorized to issue licenses; "occupational licensing board" does not include State agencies, staffed by full-time State employees, which as a part of their regular functions may issue licenses. (1957, c. 1377, s. 1.)

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: June 27, 2019

21 NCAC 17 .0303 is readopted as published in 33:20 NCR 2049-2056 as follows:

### 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; and~~

~~(1) shall meet the qualifications of the current standards of education as referenced in the most current edition of the "Eligibility Requirements and Accreditation Standards for Dietetic Internship Programs (DI)" which is hereby incorporated by reference including any subsequent amendments and editions of the referenced material. Copies of this manual are available at no charge through the ADA's website at: <http://www.eatright.org/CADE/content.aspx?id=57>; and~~

~~(2) shall meet his/her employment qualifications of the sponsoring institution, if any.~~

~~(b) In accordance with the current standards of education referenced in this Rule, a Program Director shall:~~

~~(1) provide student/trainee advisement, evaluation, counseling and supervision;~~

~~(2) provide academic or supervised practice program assessment, planning, implementation and evaluation;~~

~~(3) inform student(s)/trainee(s) of laws, regulations and standards affecting the practice of dietetics/nutrition, including the Dietetics/Nutrition Practice Act and its Rules; and~~

~~(4) advise student(s)/trainee(s) on meeting the requirements to be licensed to practice dietetics/nutrition.~~

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

(1) discusses and recommends, with the student or trainee, nutrition care services undertaken by the student or trainee, which are appropriate to the level of nutrition care;

(2) is available for consultation on nutrition care activities being performed by the student or trainee, either through on-site or through electronic communication;

(3) shall be available to render assistance when requested by the student or trainee or the patient or client, or shall have arranged for another practitioner to be available in the absence of the supervising practitioner;

(4) personally observes, evaluates, and approves the acts or functions of the student or trainee supervised; and

(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.

*History Note: Authority G.S. 90-356(2); ~~90-357~~; ~~90-357.5~~; 90-368(2);*

*Eff. March 1, 1996;*

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

