

# Regulatory Analysis Form

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(1) Agency

**Department of State, Bureau of Professional and Occupational Affairs, State Board of Nursing**

(2) I.D. Number (Governor's Office Use)

16A-5120

IRRC Number: 2457

(3) Short Title

**Dietitian-Nutritionists**

(4) PA Code Cite

**49 Pa. Code, §§ 21.701 – 21.705, 21.711, 21.721-21.726**

(5) Agency Contacts & Telephone Numbers

Primary Contact: **Teresa Lazo-Miller, Counsel  
State Board of Nursing (717) 783-7200**

Secondary Contact: **Joyce McKeever, Deputy Chief  
Counsel, Department of State (717) 783-7200**

(6) Type of Rulemaking (check one)

Proposed Rulemaking  
 Final Order Adopting Regulation  
 Policy Statement

(7) Is a 120-Day Emergency Certification Attached?

No  
 Yes: By the Attorney General  
 Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

**The rulemaking provides rules for the application, licensure and conduct of licensed dietitian-nutritionists (LDNs).**

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

**Section 2.1(k) of the Professional Nursing Law (63 P.S. § 212.1(k) authorizes the Board to establish regulations related to LDNs.**

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(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

**Although the regulation is not mandated by federal or state law, section 2.1(k) of the act (63 P.S. § 212.1(k)) requires the Board to promulgate regulations to regulate LDNs.**

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

**The public interest is protected by having clear rules of conduct for LDNs.**

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

**The lack of standards of conduct could threaten the public health and general welfare.**

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

**The regulation will benefit the public who can be assured of the qualifications of licensed individuals and their standards of conduct.**

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(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

**The Board has identified no group or subset of a group that will be adversely affected by the regulation.**

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

**All LDNs of the Commonwealth will be required to comply with the regulations. There are currently approximately 2000 LDNs in the Commonwealth.**

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

**The rulemaking was published in the Pennsylvania Bulletin and subject to a public comment period. The Board worked extensively with the Pennsylvania Dietetic Association in developing the proposed rulemaking.**

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

**LDNs will be required to pay a \$45 application fee and \$45 biennial renewal fee.**

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(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

**There are no known costs or savings to local governments associated with compliance.**

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

**There are no known costs or savings anticipated to state government in implementing the regulation.**

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(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
<b>SAVINGS:</b>	<b>\$ 0</b>	<b>\$ 0</b>	<b>\$ 0</b>	<b>\$ 0</b>	<b>\$ 0</b>	<b>\$ 0</b>
<b>Regulated Community</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Local Government</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>State Government</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Total Savings</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>COSTS:</b>						
<b>Regulated Community</b>	<b>0</b>	<b>90,000</b>	<b>4,500</b>	<b>94,500</b>	<b>4,500</b>	<b>99,000</b>
<b>Local Government</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>State Government</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Total Costs</b>						
<b>REVENUE LOSSES:</b>						
<b>Regulated Community</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Local Government</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>State Government</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Total Revenue Losses</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

(20a) Explain how the cost estimates listed above were derived.

**LDNs will renew their licenses in 2006. There are approximately 2000 LDNs in the Commonwealth. 2000 X \$45 = \$90,000. The above estimates anticipate 100 new LDN applications per year.**

**Regulatory Analysis Form**

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
State Board of Nursing	\$3,922,622.16	\$4,514,839.67	\$4,934,157.00	\$4,827,000.00

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

**As there are no costs associated with the regulation; the benefit of having published standards outweighs the cost of the regulation.**

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

**Because the Professional Nursing Law mandates that the Board implement binding standards of conduct through the promulgation of regulations, no non-regulatory alternatives were considered.**

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

**The Board worked extensively with the Pennsylvania Dietetic Association in drafting the proposed rulemaking.**

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(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

**No federal standards exist for LDNs.**

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

**The regulation is comparable to the regulations in Delaware, Maryland, New York, Ohio and West Virginia. New Jersey does not license dietitians-nutritionists. See 24 Del. Code 3805 and regulations promulgated thereunder ([www.state.di.us/research/profreg/nutrition.htm](http://www.state.di.us/research/profreg/nutrition.htm)); MD. CODE ANN., (HEALTH OCC.) §§ 5-205, 5-301 and 5-302; MD. REGS. CODE tit. 10, subtitle 56, Board of Dietetic Practice; OHIO REV. CODE ANN. § 4759.01 *et seq.* (Anderson 2002); OHIO ADMIN. CODE § 4759-1-01 *et seq.*; N.Y. [EDUC.] ARTICLE 157, §§ 8000 *et seq.*; N.Y. COMP. CODES R. & REGS. § 79-6.1 *et seq.* The regulation will not put Pennsylvania at a competitive disadvantage.**

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

**The regulation will not affect any existing or proposed regulation of the Board or other state agencies.**

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

**The Board meets monthly and publishes the dates and times of its meeting on its web site, [www.dos.state.pa.us/nursing](http://www.dos.state.pa.us/nursing).**

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(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

**LDNs will be required to renew their licenses biennially.**

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

**The Board has not identified any particularly affected groups and has, therefore, not developed any special provisions related to the particular needs of an affected group.**

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

**The regulation would become effective upon final publication in the Pennsylvania Bulletin.**

(31) Provide the schedule for continual review of the regulation.

**The Board continuously monitors its regulations, and the LDN Committee of the Board meets at least 4 times per year to review regulations related to LDNs.**



## FEE REPORT FORM

**Agency:** State - BPOA

**Date:** 6/2/2004

**Contact:** Basil Merenda

**Phone No.** 783-7192

### Fee Title, Rate and Estimated Collections:

Verification of Dietitian/Nutritionist License: \$15.00

Estimated Biennial Revenue: \$75.00 (5 verifications x \$15.00)

### Fee Description:

The fee will be charged to every applicant who requests verification of license.

### Fee Objective:

The fee should (1) offset the identifiable costs incurred by the State Board of Nursing to review and process a request for verification and (2) defray a portion of the Board's administrative overhead.

### Fee-Related Activities and Costs:

Staff time- process request for verification	(.08 hr)	1.62
Bureau Average Administrative Overhead:		<u>9.76</u>
	Total Estimated Cost:	11.38
	Proposed Fee:	\$15.00

### Analysis, Comment, and Recommendation:

It is recommended that a fee of \$15.00 be established for verification of Dietitian/Nutritionist license.

Board Staff: Reviews request for verification, researches computer, microfilm or other files to retrieve pertinent information, transfers that information onto document submitted by requester, affixes Bureau seal onto documents, forwards as instructed by applicant.

## FEE REPORT FORM

Agency: State - BPOA

Date: 6/2/2004

Contact: Basil Merenda

Phone No. 783-7192

### Fee Title, Rate and Estimated Collections:

**Reactivation Fee-Lapsed Dietitian/Nutritionist License-(after 5 years): \$50.00**

Estimated Biennial Revenue: \$100.00 (2 applications x \$50.00)

### Fee Description:

The fee will be charged to every person who applies to reactivate an expired license following five years of inactive (lapsed) status in Pennsylvania. **This fee is charged in addition to the appropriate biennial renewal fee.**

### Fee Objective:

The fee should (1) offset the identifiable costs incurred by the State Board of Nursing to review and process an application for reactivating a license and (2) defray a portion of the Board's administrative overhead.

### Fee-Related Activities and Costs:

Staff time- review and prepare examination application (.17 hr)	3.38
Board administrator - process application (.17 hr)	10.03
Professional staff -evaluate application (.17 hr)	6.56
Attorney-avg. time to review legal issues (.03 hr)	1.71
Board Meeting - avg. time to review/vote (.03 hr)	20.00
Exec. Sec. - avg. time per app: (.02 hr)	.75
Administrative Overhead:	<u>8.21</u>
Total Estimated Cost:	50.64
Proposed Fee:	\$50.00

### Analysis, Comment, and Recommendation:

It is recommended that a fee of \$50.00 be established to review and evaluate an application for reactivation of a Dietitian/Nutritionist license after five (5) years of lapsed status.

**Page 2 Reactivation Fee (after five years of lapsed/inactive status)**

Board staff reviews application for completeness, verifies that supporting documents are attached, contacts applicant to request any missing information. Application is forwarded to professional staff for review to ensure that legal questions and board criteria for reactivation have been met. Information provided on the application regarding criminal conviction/chemical dependency/etc. may necessitate further research and review. Time to cover review and action by legal office, executive secretary and board meeting review has been averaged over total number of applications anticipated in a biennial cycle.

## FEE REPORT FORM

Agency: State - BPOA

Date: 6/2/2004

Contact Basil Merenda

Phone No. 783-7192

### Fee Title, Rate and Estimated Collections:

Certification of Scores-Dietitian/Nutritionist License: \$25.00

Estimated Biennial Revenue: \$50.00 (2 certifications x \$25.00)

### Fee Description:

The fee will be charged to every applicant who requests certification of scores.

### Fee Objective:

The fee should (1) offset the identifiable costs incurred by the State Board of Nursing to review and process a request for certification and (2) defray a portion of the Board's administrative overhead.

### Fee-Related Activities and Costs:

Staff time- process request for certification (.75 hr)	15.23
Bureau Average Administrative Overhead:	<u>9.76</u>
Total Estimated Cost:	\$24.99
Proposed Fee:	\$25.00

### Analysis, Comment, and Recommendation:

It is recommended that a fee of \$25.00 be established for certification of scores.

**Page 2            Certification of Scores-Dietitian/Nutritionist License**

Board Staff: Reviews request for certification of scores; researches computer and microfilm files to retrieve pertinent information, transfers that information onto document submitted by requester, affixes Bureau seal onto documents, forwards as instructed by applicant.

## FEE REPORT FORM

Agency: State - BPOA .

Date: 6/2/2004

Contact: Basil Merenda

Phone No. 783-7192

### Fee Title, Rate and Estimated Collections:

**Application Fee- Dietitian/Nutritionists License: (with RD certification or education and experience qualification):**  
**\$45.00**

#### First Biennial Cycle Only:

Estimate Biennial Revenue: \$146,250 (3,250 applications x \$45.00)

#### Thereafter:

Estimated Biennial Revenue: (\$33,750 (750 applications x \$45.00)

### Fee Description:

The fee will be charged to every person who applies for licensure as a Dietitian-Nutritionist.

### Fee Objective:

The fee should (1) offset the identifiable costs incurred by the State Board of Nursing to review and process an application for licensure as a Dietitian /Nutritionists and (2) defray a portion of the Board's administrative overhead.

### Fee-Related Activities and Costs:

Staff time-(CT2) review/prepare application	(.80 hr)	19.90
Attorney: avg. per applicant cost to review legal issues		4.27
Nurse Practice Education Advisor: avg. cost per app		3.70
Exec. Secretary: avg. cost per app		3.70
Administrative Overhead:		<u>9.70</u>
	Total Estimated Cost	41.27
	Proposed Fee:	\$ 45.00

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**Analysis, Comment, and Recommendation:**

It is recommended that a fee of \$45.00 be established to process an application for licensure as a Dietitian/Nutritionist.

**Dietitian/Nutritionist License Application Fee**

Staff receives application, reviews for completeness, verifies that supporting documents are attached, contacts applicant to request any missing information, enters data into computer system, issues license if all requirements are met or letter of discrepancy if unmet.



## FEE REPORT FORM

**Agency:** State - BPOA

**Date:** 6/2/2004

**Contact:** Basil Merenda

**Phone No.** 783-7192

### **Fee Title, Rate and Estimated Collections:**

**Biennial Renewal Fee- Dietitian/Nutritionist License:** **\$45.00**

Estimate Biennial Revenue: \$135,000 (3,000 applications x \$45.00)

### **Fee Description:**

The fee will be charged biennially to every licensee who applies for renewal of their Dietitian-Nutritionist license.

### **Fee Objective:**

The fee should defray a portion of the general operation costs of the State Board of Nursing.

### **Analysis, Comment, and Recommendation:**

It is recommended that a renewal fee of \$45.00 be for renewal of Dietitian/Nutritionist Licenses, thereby causing those licensees to contribute to the general operational costs of the State Board of Nursing.

(2) Advise the patient of the results of the medical diagnostic examination and the treatment alternatives.

(3) Place conditions or restrictions on the course of treatment in acupuncture to be provided by the acupuncturist, if conditions or restrictions are required as a matter of sound medical practice.

(4) Advise the patient in writing that he is available at reasonable times for consultation by appointment or by telephone. The written notice shall contain an address and telephone number at which the acupuncture supervisor can be reached.

(5) If he is not an acupuncturist, advise the patient in writing that he is not an acupuncturist, that he is not qualified to direct the course of acupuncture treatment and that he does not have responsibility for the course of acupuncture treatment.

(6) Monitor the patient's progress under acupuncture treatment and comply with normal responsibilities to a patient if the patient does not respond to treatment within the anticipated time.

(b) *Responsibility to acupuncturist.* In relation to the supervised acupuncturist, the acupuncturist supervisor shall satisfy the following:

(1) Advise the acupuncturist of the results of the medical diagnostic examination that are relevant to acupuncture treatment and of conditions or restrictions that are to be placed on the course of acupuncture treatment.

(2) Not delegate to the acupuncturist the right to prescribe or dispense drugs or the responsibility for diagnosing a physical or mental ailment or condition.

(3) Confer promptly with the acupuncturist in the event of the following:

(i) The acupuncturist supervisor decides to impose conditions or restrictions on the course of acupuncture treatment.

(ii) The patient has requested further consultation with the acupuncturist supervisor.

(iii) The patient's condition is not improving or the patient requires emergency medical treatment.

(4) Designate an alternative acupuncturist supervisor to provide general supervision of the acupuncturist during periods in which the acupuncturist supervisor is unable to provide general supervision, if the substitute acupuncturist supervisor agrees to accept the responsibility set forth in this section.

(c) *Scope of acupuncturist supervisor's responsibility.*

(1) In providing general supervision to the acupuncturist, the acupuncturist supervisor maintains the diagnostic responsibility and the medical doctor-patient relationship. It is the responsibility of the acupuncturist and not of the acupuncturist supervisor to conduct an acupuncture evaluation and to perform acupuncture treatment.

(2) An acupuncturist supervisor may not provide general supervision to more than two acupuncturists without applying for and receiving specific approval from the Board. ]

§ 18.17. [ Notice responsibilities ] (Reserved).

[ (a) The nonmedical doctor acupuncturist and the acupuncturist supervisor shall provide written notice to the Board prior to the date when the acupuncturist supervisor is to begin general supervision of the acupuncturist. The written notice shall comply with the following:

(1) Be filled out on a form supplied by the Board.

(2) Provide the name of the acupuncturist supervisor and the acupuncturist and a current address and the telephone number at which each can be reached.

(3) Contain an acknowledgement by the acupuncturist supervisor that he understands and agrees to accept his responsibilities to the supervised acupuncturist and the acupuncture patient as set forth in this subchapter.

(4) Contain an acknowledgement by the acupuncturist that he understands and accepts his responsibility to the acupuncturist supervisor and the acupuncture patient as set forth in this subchapter.

(5) Contain the verified signatures of the acupuncturist supervisor and the supervised acupuncturist.

(b) Written notice of termination of an arrangement between an acupuncturist supervisor and an acupuncturist shall be given to the Board by both individuals within 10 days following termination of the relationship. Notice may be provided by both through one document or by each through separate documents. ]

§ 18.19. [ Registration during transitional period ] (Reserved).

[ Acceptance of applications to register as acupuncturists and acupuncturist supervisors will begin on January 3, 1987. After July 1, 1987, no person may serve as an acupuncturist or as an acupuncturist supervisor unless registered as such with the Board. ]

[Pa.B. Doc. No. 05-279. Filed for public inspection February 11, 2005, 9:00 a.m.]

## STATE BOARD OF NURSING

[49 PA. CODE CH. 21]  
Dietitian-Nutritionists

The State Board of Nursing (Board) proposes to add Subchapter G (relating to dietitian-nutritionists) to read as set forth in Annex A.

### *Effective Date*

The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*.

### *Statutory Authority*

The proposed rulemaking implements the act of June 29, 2002 (P.L. 651, No. 99) (Act 99), which grants the Board authority to regulate the practice of dietetics and nutrition and licensing of dietitian-nutritionists in this

Commonwealth. The proposed rulemaking is authorized under section 2.1(k) of the Professional Nursing Law (act) (63 P.S. § 212.1(k)), which authorizes the Board to establish regulations for the practice of dietetics-nutrition.

#### *Background and Need for the Proposed Rulemaking*

Act 99 became effective on September 29, 2002. Until September 27, 2003, persons registered by the American Dietetic Association (ADA) as registered dietitians (RD) were eligible for licensure under the grandfathering provision of section 5(e) of the act (63 P.S. § 215(e)) without evidence of examination. In addition, until September 27, 2003, persons who met the requirements of section 6 of the act (63 P.S. § 216) who had been engaged in the practice for 5 of the preceding 7 years were eligible for licensure without examination. The Board proposes to add Subchapter G to establish procedures for issuance and biennial renewal of dietitian-nutritionist licenses and for the establishment of standards of professional conduct of licensed dietitian-nutritionists (LDNs).

#### *Description of Proposed Amendments*

The following is a summary of the sections of Subchapter G and, when appropriate, an explanation of the Board's rationale for the regulations.

#### *Proposed General Provisions*

Section 21.701 (relating to definitions) provides definitions for key terms used throughout the proposed rulemaking that are not defined in the act. Section 21.702 (relating to scope) provides a general statement of the scope of subchapter G. Subchapter G is limited to LDN licensees and applicants.

Section 21.703 (relating to applicability of general rules) provides for the applicability of the general rules of administrative practice and procedure to the activities of and proceedings before the Board regarding Subchapter G. This section is included to direct applicants and licensees to the procedural provisions that govern the Board's actions.

Section 21.704 (relating to matters related to allegations of sexual impropriety or violation) provides for specific procedural rules relevant in cases involving allegations of sexual impropriety or violation. These rules regarding defenses and presentation of opinion or reputation evidence protect alleged victims of sexual impropriety or violation and are consistent with the procedural rules applied in those cases involving a professional or practical nurse.

Section 21.705(a) (relating to fees) provides for fees related to the Board's administration of licensing and disciplining LDNs. These fees are consistent with the fees charged to professional nurses, who have similar educational levels and levels of practice as LDNs. The fees for certification and verification of licensure are established by the Bureau of Professional and Occupational Affairs fees. Section 21.705(b) and (c) provides instructions to applicants regarding the two examinations approved by the Board under section 6(b)(4) of the act.

#### *Proposed Sections Regarding Responsibilities of LDNs*

Section 21.711 (relating to professional conduct) provides rules of professional conduct for LDNs. Generally, the rules of professional conduct provide for the provision of information to clients, the objectivity of the LDN, the use of the title LDN and recordkeeping. The regulation prohibits: aiding the violation of law or Board regulation; discrimination in providing services; knowingly permit-

ting another to use the licensee's license; misappropriating from an employer or patient; soliciting, borrowing or misappropriating from a patient or patient's family; leaving an assignment without proper notification; falsifying records; sexual improprieties or violations; misleading or false advertising; practicing while affected by a drug, emotional or mental disability that could affect practice; accepting or treating a client or patient unnecessarily; and accepting or receiving compensation for referrals. The rules of professional conduct are consistent with the professional conduct guidelines of the ADA and represent the acceptable and prevailing standards of conduct for LDNs Nationwide. Some representatives of the profession suggested that the Board adopt the guidelines of the ADA. Because the Board has no control over how the ADA might alter its guidelines, the Board has proposed setting forth standards of professional practice in its regulations.

#### *Proposed Licensure Requirements*

Sections 21.721—21.723 and 21.725 concern education and the examination for licensure, inactive status, renewal of licensure and continuing education. Sections 5(b) and (c) and 6(b)(2) of the act require the Board to approve educational programs in dietetics-nutrition. Section 6(b)(4) of the act requires the Board to approve an examination for licensure. In § 21.721 (relating to education and examination of applicants), the Board adopts as approved educational programs those educational programs approved by the Commission on Accreditation for Dietetics Education or the American College of Nutrition.

Section 6(b)(4) of the act requires the Board to approve an examination for licensure as an LDN. Section 21.721 adopts the Registration Examination for Registered Dietitians (RD examination) and the Examination of the Certification Board for Nutrition Specialists (CBNS examination) as the examinations approved by the Board for licensure. These examinations are widely accepted. The RD examination is taken by persons with an undergraduate degree in nutrition, whereas the CBNS examination is taken by persons with a graduate degree in nutrition.

Section 21.722 (relating to license renewal) sets forth the requirements for biennial license renewal. LDN licenses will expire September 30 of even numbered years. This date was chosen based on the renewal cycles of the Board's approximately 250,000 nurse licensees to enable LDNs to have their license renewal applications processed in a timely and efficient manner and to give LDNs a maximum period of initial licensure prior to biennial renewal. The requirements for license renewal are consistent with the act and the regulations governing nurses. See §§ 21.29 and 21.156 (relating to expiration and renewal of license; and renewal of license).

Section 21.723 (relating to continuing education) sets forth the Board's requirements for continuing education. Section 21.723(a) provides that one credit will be given for each 50-minute clock hour of continuing education activity because a 50-minute clock hour is the standard time period for 1 hour of academic instruction in American universities. Thirty hours of continuing education biennially is the licensure renewal requirement set forth in section 11(c) of the act (63 P.S. § 221(c)). Section 11(c) of the act provides for Board approval of continuing education for LDNs. Section 21.723(b) sets forth the requirements that continuing education courses must meet to be accepted by the Board for licensure renewal.

During the development of the proposed rulemaking, several representatives of the dietetic profession ex-

pressed concern about the continuing education requirements in the act and this proposed rulemaking. First, concerns were raised because the requirement of 30 hours of continuing education for biennial renewal is not identical to the continuing education requirement for current registration by the Commission on Dietetic Registration (CDR) for RDs. Both RDs and certified nutrition specialists shall complete 75 hours of continuing education every 5 years. The Board explained to these commentators that it does not have the authority to alter the statutory requirement.

Second, a question was raised as to why all continuing education courses that would meet the requirement for maintaining current RD registration were not Board-approved. The Board approved only the continuing education courses which are substantive learning experiences relating to the field of nutrition and dietetics including case presentations, patient case studies, certain certificate programs or individual study programs, interactive workshops, lectures and seminars, and postbaccalaureate residency and fellowship programs. The Board specifically did not approve certain types and subjects of continuing education that are approved for maintenance of the RD including courses on office management or computer skills, experiential skill development, journal clubs, poster presentations, professional leadership positions or courses and professional reading. The Board's determination was based on its evaluation of the types and subject matter of continuing education that offer substantive learning experiences related directly to the practice of dietetics-nutrition.

Section 21.723(c) requires licensees to retain documentation evidencing their completion of Board-approved continuing education for at least 5 years and to submit this documentation to the Board upon request. The dietitian commentators informed the Board that all continuing education courses for RDs issue certificates of completion, as these certificates are required for RD renewal. In addition, all CNSs shall submit documentation of their attendance certificates to the CBNS when applying for recertification. Therefore, the Board anticipates no difficulties in licensees being able to comply with this provision.

Subsection 21.723(d) permits an LDN to request a waiver of all or part of the continuing education requirement in cases of verified hardship. The Board acknowledges that there is no specific statutory section that provides that the Board may grant a waiver of the continuing education requirement. The CDR and the CBNS do not grant waivers of the continuing education requirement for renewal of the RD or CNS; however, the continuing education requirements for these bodies must be fulfilled over a period of 5 years. The Board is generally granted discretion in matters involving licensure. When a continuing education requirement must be completed in 2 years, and given individual circumstances such as illness, pregnancy or military service, the Board believes it should exercise discretion in granting a waiver of the continuing education requirement. Only in rare cases of extreme hardship would a waiver encompass elimination of the continuing education requirement; it is more likely the Board would grant an extension of time in which to complete the requirement. Continuing education provides an important safeguard to the citizens of this Commonwealth. The Board believes that it should exercise its statutory discretion in licensure matters in considering requests for waivers when balanced against protection of the citizens of this Commonwealth accorded in the continuing education requirement.

Section 21.724 is left open for future use by the Board.

Section 21.725 (relating to inactive status) sets forth the rules related to a licensee placing his license on inactive status and later returning the license to active status. A license that has been on inactive status cannot be renewed unless the licensee submits proof of completing the continuing education requirement during the biennial period preceding reactivation. Consistent with the requirements for nurses, licensees who have had their licenses on inactive status for 5 consecutive years are required to retake the licensure examination or demonstrate they have held an active license in another state for at least 2 out of the last 5 years. These provisions ensure licensees will possess current knowledge, thereby protecting the citizens of this Commonwealth.

The Board sent these proposed regulations to numerous nursing and dietetics associations and individuals and hospital systems. These organizations were: Pennsylvania Dietetic Association, American Association of Neuroscience Nurses, Emergency Nurses Association, GPC-Oncology Nursing Society, The Hospital and Healthsystem Association of Pennsylvania, Intravenous Nurse Society, Licensed Practical Nurses Association of Pennsylvania, Pennsylvania Association of Home Health Agencies, Pennsylvania Association of Private School Administrators, Pennsylvania Association of Non-Profit Homes for the Aging, Pennsylvania Association of Nurse Anesthetists, Pennsylvania Association of Practical Nursing Program Administrators, Pennsylvania Coalition of Nurse Practitioners, Pennsylvania College of Associate Degree Nursing, Pennsylvania Council of Operating Room Nurses, Pennsylvania Department of Health—Bureau of CH Systems, Pennsylvania Health Care Association, Pennsylvania Higher Education Nursing Schools Association, Pennsylvania League for Nursing, Inc., Pennsylvania Organization of Nurse Leaders, Pennsylvania Society of Gastroenterology Nurses and Associates, Pennsylvania State Nurses Association, School Nurse Section, Southwestern Pennsylvania Organization for Nurse Leaders, Pennsylvania Medical Society, Nurses of Pennsylvania, Pennsylvania Association of School Nurses and Practitioners, Pennsylvania Nurses Association and Professional Nursing Resources, Inc. The draft regulations were also sent to individuals who expressed an interest in commenting on the regulations. In addition, the Board considered the impact the regulations would have on the regulated community and on public safety and welfare. The Board finds that the proposed regulations address a compelling public interest as described in this Preamble.

#### *Fiscal Impact and Paperwork Requirements*

The proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The Board is self-supporting. The Board will experience an increase in paperwork due to processing applications and renewals and pursuing disciplinary actions. However, the cost of providing these services will be borne by the licensees and applicants.

#### *Sunset Date*

The Board continuously monitors the cost effectiveness of its regulations. Therefore, no sunset date has been assigned.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 2, 2005, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of

the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

#### Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Ann Steffanic, Board Administrator, State Board of Nursing, P. O. Box 2649, Harrisburg, PA 17105-2649, [www.dos.state.pa.us](http://www.dos.state.pa.us) within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

JANET HUNTER SHIELDS, MSN, CRNP, CS,  
Chairperson

**Fiscal Note:** 16A-5120. No fiscal impact; (8) recommends adoption.

#### Annex A

### TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

#### PART I. DEPARTMENT OF STATE

#### Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

#### CHAPTER 21. STATE BOARD OF NURSING

#### Subchapter G. DIETITIAN-NUTRITIONISTS

##### GENERAL PROVISIONS

Sec.	
21.701.	Definitions.
21.702.	Scope.
21.703.	Applicability of general rules.
21.704.	Matters related to allegations of sexual impropriety or violation.
21.705.	Fees.

##### RESPONSIBILITIES OF THE LICENSED DIETITIAN-NUTRITIONIST

21.711.	Professional conduct.
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##### LICENSURE REQUIREMENTS

21.721.	Education and examination of applicants.
21.722.	License renewal.
21.723.	Continuing education.
21.725.	Inactive status.

##### GENERAL PROVISIONS

#### § 21.701. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

*ADA*—American Dietetic Association.

*ACN*—American College of Nutrition.

*Act*—The Professional Nursing Law (63 P. S. §§ 211—225), which provides for the licensing of Licensed Dietitian-Nutritionists.

*Approved*—Approved by the Board.

*Approved program*—Those educational programs accredited by the Commission on Accreditation for Dietetics Education or the American Council on Education for dietetics-nutrition education.

*Board*—The State Board of Nursing of the Commonwealth.

*CADE*—*Commission on Accreditation for Dietetics Education*—The organization recognized by the Council on Higher Education Accreditation and the United States Department of Education as the accrediting agency for education programs that prepare individuals for the practice of dietetics-nutrition.

*CBNS*—*Certification Board for Nutrition Specialists*—The certification body of the American College of Nutrition (ACN).

*CDR*—*Commission on Dietetic Registration*—The credentialing agency for the American Dietetic Association.

*CNS*—*Certified Nutrition Specialist*—The title given to individuals who meet the requirements of the CBNS.

*CPE*—Continuing professional education, required by the act for biennial license renewal.

*LDN*—*Licensed dietitian-nutritionist*—A person holding a current license under this subchapter to practice dietetics-nutrition in this Commonwealth.

*Patient*—A person upon whom or with whom an LDN is practicing dietetics-nutrition.

*RD*—*Registered Dietitian*—The title given to an individual who meets the requirements set forth by CDR.

*Registration Examination for Registered Dietitians*—A written academic examination developed, prepared, administered and scored by CDR.

*Sexual impropriety*—The term includes the following offenses:

(i) Making sexually demeaning or sexually suggestive comments about or to a patient, including comments about a patient's body or undergarments.

(ii) Exposing unnecessarily a patient's body or watching a patient dress or undress, unless the patient specifically requests assistance.

(iii) Examining or touching genitals or breasts of a patient.

(iv) Discussing or commenting on a patient's potential sexual history or preferences during consultation, except when the consultation is pertinent to the issue of sexual function or dysfunction or reproductive healthcare. Discussion of a patient's sexual practices and preferences shall be fully documented in the patient's chart.

(v) Soliciting a date from a patient.

(vi) Volunteering information to a patient about one's sexual problems, preferences or fantasies.

*Sexual violation*—The term includes the following offenses:

(i) Engaging in sexual intercourse with a patient during the professional relationship.

(ii) Engaging in genital to genital contact with a patient during the professional relationship.

(iii) Engaging in oral to genital contact with a patient during the professional relationship.

(iv) Encouraging the patient to masturbate in the presence of the dietitian-nutritionist or masturbating while a patient is present.

(v) Providing or offering to provide drugs, herbs, nutritional supplements or treatment in exchange for sexual favors.

(vi) Using or causing the use of any herb, nutritional supplement or drug affecting consciousness for the purpose of engaging in conduct that would constitute a sexual impropriety or sexual violation.

**§ 21.702. Scope.**

In this subchapter the Board:

(1) Provides for licensure of dietitian-nutritionists who meet the qualifications set forth in the act.

(2) Administers the act by providing rules and regulations for the practice of dietetics-nutrition.

(3) Provides rules and regulations for the conduct of licensees.

(4) Regulates the practice of LDNs.

**§ 21.703. Applicability of general rules.**

The provisions of 1 Pa. Code § 31.1 (relating to scope of part) and 1 Pa. Code Part II (relating to the general rules of administrative practice and procedure) apply to the activities of and proceedings before the Board.

**§ 21.704. Matters related to allegations of sexual impropriety or violation.**

(a) The consent of the patient to any sexual impropriety or violation is not a defense to any disciplinary charge for violation of the act or this subchapter.

(b) Evidence of specific instances, opinion evidence or reputation evidence of a patient's past sexual conduct is not admissible in proceedings brought under § 21.711 (relating to standards of professional conduct). The Board may consider sexual relationships between the dietitian-nutritionist and the patient occurring prior to the professional relationship.

(c) A dietitian-nutritionist who attempts to raise as a defense an argument that conduct prohibited as a sexual violation or sexual impropriety was necessary or appropriate to the treatment of any patient shall be required to demonstrate competency in practice which relates directly to the treatment of sexual function or dysfunction. This competence may be demonstrated through educational training and supervised clinical experience. Appropriate discussions of sexual matters between a dietitian-nutritionist and a patient shall be fully documented in the patient records.

**§ 21.705. Fees.**

(a) The following fees are charged by the Board:

Application for licensure.....	\$45
Renewal fee .....	\$45
Reactivation of inactive or lapsed license .....	\$50
License verification fee .....	\$15
License certification fee .....	\$25
Restoration after suspension or revocation .....	\$50

(b) In addition to the application fee prescribed in subsection (a), which is payable directly to the Board, a candidate for the Registration Examination for Registered Dietitians will also pay an additional examination fee. A candidate may contact the Commission on Dietetic Registration, 216 West Jackson Blvd., Chicago, Illinois 60606-

6995, www.cdrnet.org, for more information regarding the examination and examination fee.

(c) In addition to the application fee prescribed in subsection (a), which is payable directly to the Board, a candidate for the Certification Board for Nutrition Specialists examination for Certified Nutrition Specialists will also pay an additional examination fee. A candidate may contact the Certification Board for Nutrition Specialists, 300 S. Duncan Avenue, Suite 225, Clearwater, Florida 33755, www.cert-nutrition.org, for more information regarding the examination and examination fee.

**RESPONSIBILITIES OF THE LICENSED DIETITIAN-NUTRITIONIST**

**§ 21.711. Professional conduct.**

(a) Licensed dietitian-nutritionists shall:

(1) Conduct themselves with honesty, integrity and fairness.

(2) Practice dietetics based on scientific principles and current information.

(3) Present substantiated information and interpret controversial information without personal bias, recognizing that legitimate differences of opinion exist.

(4) Provide information that will enable clients to make their own informed decisions regarding nutrition and dietetic therapy, including:

(i) The purpose and nature of any evaluation, treatment, educational or training procedure.

(ii) The estimated cost of each stage of a procedure or of the entire treatment.

(iii) The reasonable expectations of the professional relationship.

(iv) The right to withdraw from treatment at any time.

(5) Safeguard the patient's dignity, the right to privacy and the confidentiality of patient information and make full disclosure about any limitations on the LDN's abilities to guarantee full confidentiality. This standard does not prohibit or affect reporting responsibilities under 23 Pa.C.S. Chapter 63 (relating to Child Protective Services law), the Older Adults Protective Services Act (35 P.S. §§ 10211—10224) and other statutes which may mandate reporting of this information.

(6) Provide professional services with objectivity and with respect for the unique needs and values of individuals.

(7) Be alert to situations that might cause a conflict of interest or have the appearance of a conflict. The LDN shall provide full disclosure when a real or potential conflict of interest arises.

(8) Permit the use of their names for the purpose of certifying that dietetic services have been rendered only if they provided or supervised the provision of those services.

(9) Accurately present professional qualifications and credentials.

(i) Dietitian-nutritionists may use the title "Licensed Dietitian-Nutritionist" or abbreviation LDN only when they hold a current license issued by the Board.

(ii) LDNs are subject to disciplinary action for aiding another person in violating any Board requirement or aiding another person in representing himself as a Licensed Dietitian Nutritionist or LDN when that person is not currently licensed.

(10) Document and maintain accurate records in accordance with the acceptable and prevailing standard of recordkeeping.

(b) The licensed dietitian-nutritionist may not:

(1) Knowingly aid, abet or assist another person to violate or circumvent a law or Board regulation.

(2) Discriminate, while providing dietitian-nutritionist services, on the basis of age, marital status, gender, sexual preference, race, ethnicity, religion, diagnosis, socioeconomic status or disability.

(3) Knowingly permit another individual to use his license for any purpose.

(4) Misappropriate equipment, materials, property, drugs or money from an employer or patient.

(5) Solicit, borrow or misappropriate money, materials or property from a client or the client's family.

(6) Leave an assignment prior to the proper reporting and notification to the appropriate department head or personnel.

(7) Falsify or knowingly make incorrect entries into the patient's record or other related documents.

(8) Engage in conduct defined as a sexual violation or sexual impropriety in the course of a professional relationship.

(9) Advertise in a false or misleading manner. Statements which qualify as false or misleading include the following:

(i) Statements containing a misrepresentation of facts.

(ii) Statements likely to mislead or deceive because in context the statement makes only a partial disclosure of the relevant facts.

(iii) Statements intended to, or likely to, create false or unjustified expectations of favorable results.

(iv) Statements relating to fees without reasonable disclosure of all relevant variables so that the statement would be misunderstood or would be deceptive to a layperson.

(v) Statements conveying the impression that the LDN could influence improperly any public body, official, corporation or any person on behalf of the patient.

(vi) Statements containing a representation or implication that is likely to cause a reasonable person to misunderstand or to be deceived, or fails to contain reasonable warnings or disclaimers necessary to make a representation or implication not deceptive.

(vii) Statements containing representations that the LDN is willing to perform any procedure that is illegal under the laws or regulations of the Commonwealth or the United States.

(10) Practice when:

(i) The LDN has engaged in any substance abuse that could affect his practice.

(ii) The LDN has been adjudged by a court to be mentally incompetent.

(iii) The LDN has an emotional or mental disability that affects his practice in a manner that could harm the client or others.

(11) Accept a client or patient for treatment or continue treatment unnecessarily, if benefit cannot reasonably be expected to accrue.

(12) Accept or receive, or both, remuneration for making or accepting referrals.

#### LICENSURE REQUIREMENTS

##### § 21.721. Education and examination of applicants.

The Board approves educational programs that meet the requirements of section 6(b)(2) of the act (63 P. S. § 216(b)(2)) that are approved by CADE or the ACN. The Board approves the Registration Examination for Registered Dietitians and Examination of the Certification Board for Nutrition Specialists as the examinations which an applicant may complete to satisfy section 6(b)(4) of the act.

##### § 21.722. License renewal.

(a) A license issued under section 5(e) of the act (63 P. S. § 215(e)) or under this subchapter will be valid from the date of issuance through September 30, 2006, following the issuance of the license. Each subsequent license renewal will be valid for 2 years from October 1 through September 30.

(b) A dietitian-nutritionist license issued under the act will be renewed if the licensee applying for the renewal:

(1) Completes the renewal application, including disclosing a license to practice dietetics-nutrition in any other state, territory, possession or country.

(2) Pays the required fee as set forth in § 21.705 (relating to fees).

(3) Submits proof to the Board that he has satisfactorily completed a minimum of 30 hours of CPE approved by the Board in accordance with § 21.723 (relating to continuing education) during the 2 calendar years immediately preceding the application for renewal.

(4) Discloses any discipline imposed by any state licensing board in the previous biennial period or any criminal charges pending or criminal conviction, plea of guilty or nolo contendere, or admission into a probation without verdict or accelerated rehabilitative disposition program during the previous biennial period.

##### § 21.723. Continuing education.

(a) *Prior to renewal.* One hour of CPE credit will be given for each 50-minute clock hour of CPE activity. Each LDN shall complete 30 CPE credits during the 2 calendar years immediately preceding the application for license renewal. If an activity overlaps two renewal periods, the date of completion of the activity determines the date in which the activity can be reported.

(b) *Board-approved continuing professional education.* The Board will accept for completion of the CPE requirement substantive learning experiences, subject to the limitations in paragraph (2), relating to the field of nutrition and dietetics which are not designed for the public and which are sponsored by the ADA, the ACN, by individual state dietetic associations, if the association is a member of the ADA or ACN, by approved college or dietetic programs where a certificate of attendance is issued, and courses related to the practice of dietetics-nutrition offered by the Accreditation Council for Continuing Medical Education, the Accreditation Council on Pharmaceutical Education, the American Osteopathic Association and the American Medical Association.

(1) In addition to lecture-based CPE courses, the Board will accept documentation of the following:

- (i) Case presentations, such as grand rounds or patient case studies.
- (ii) Academic coursework and research studies approved by an institutional review board.
- (iii) Interactive workshops.
- (iv) Lectures and seminars.
- (v) Residency and Fellowship programs which are at the postbaccalaureate level, and are sponsored by a United States regionally accredited college or university, or an institution accredited/approved by the Joint Committee on Accreditation of Healthcare Organizations (JCAHO) or the National Committee for Quality Assurance (NCQA).

(2) The Board will not accept for completion of the CPE requirement the following:

- (i) Academic coursework or programs on office management skills, or entrepreneurship, strategic business planning, computer skills, except courses directly related to the practice of dietetics-nutrition such as accessing nutrient analysis databases.
- (ii) Attendance at exhibits manned by detail personnel.
- (iii) Journal clubs.
- (iv) Professional leadership, such as holding an elective office in a dietetics or dietetics-related organization.
- (v) Professional reading for which there is no evaluative test submitted and no certificate of completion or CPE unit awarded.

(c) *Documentation.* The licensee shall retain documentation of completion of Board-approved continuing education (as set forth in subsection (b)) for at least 5 years and shall submit this documentation upon request of the Board.

(d) *Waiver.* An LDN who can demonstrate to the Board a verified hardship may request a waiver of CPE requirements for a single biennial period. It shall be the duty of each licensee seeking waiver to notify the Board in writing and request the waiver, at least 60 days prior to the end of the biennial renewal period, which will be granted, denied or granted in part.

**§ 21.725. Inactive status.**

An LDN may request that his license be placed on inactive status. The licensee will not be required to remit the biennial renewal fee during the period when the license is on inactive status. To return to active status, the licensee shall submit proof of completion of a minimum of 30 hours of approved CPE in the biennial period preceding the request for reactivation and pay any applicable fees. A person who requests an active status license who has been on inactive status for 5 consecutive years shall satisfy the requirements of section 6(b)(4) of the act (63 P. S. § 216(b)(4)), unless the person demonstrates that he has held an active license to practice in another state, an RD registration, or a CNS certification for at least 2 out of the last 5 years.

[Pa.B. Doc. No. 05-280. Filed for public inspection February 11, 2005, 9:00 a.m.]

# STATE BOARD OF PHARMACY

## [49 PA. CODE CH. 27] Biennial Renewal Fees

The State Board of Pharmacy (Board) proposes to amend § 27.91 (relating to schedule of fees) to read as set forth in Annex A. The proposed rulemaking would increase the biennial license renewal fee for pharmacists from \$120 to \$150 and the pharmacy permit biennial renewal fee from \$75 to \$100.

*Effective Date*

The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*. The new fees will take effect for the pharmacist biennial period beginning October 1, 2006.

*Statutory Authority*

The proposed rulemaking is authorized under section 8.2(a) of the Pharmacy Act (act) (63 P. S. § 390-8.2(a)). In addition, section 8.2(b) of the act requires the Board to increase fees by regulation in an amount adequate to meet the minimum enforcement efforts required by the act.

*Background and Need for Amendment*

The Board is required by law to support its operations from revenue it generates from fees, fines and civil penalties. In accordance with section 8.2 of the act, if the Board anticipates that its revenue will not meet its expenditures, the Board must increase its revenue. The Board raises virtually all of its operating revenue through fees. The biennial license renewal fees are the most substantial revenue generating fees of all the fees charged by the Board. The Board's current biennial license renewal fees were established by regulation in 1998.

At its February 17, 2004, Board meeting and again at its April 20, 2004, Board meeting, the Bureau of Finance and Operations (BFO) presented a summary of the Board's revenues and expenses for Fiscal Years (FY) 2001-2002 and 2002-2003 and projected revenues and expenses for FY 2003-2004 through FY 2010-2011. The summary, presented in the following table, demonstrated that the Board must raise fees to meet or exceed projected expenditures to comply with section 8.2(b) of the act.

2001-2002 beginning balance	\$1,047,957.15
FY 01-02 revenue	456,056.98
Prior year returned funds	153,857.90
FY 01-02 expenses	1,207,000.00
Remaining balance	450,872.03
2002-2003 beginning balance	450,872.03
FY 02-03 revenue	2,093,691.14
FY 02-03 expenses	1,270,000.00
Remaining balance	1,274,563.17
2003-2004 beginning balance	1,274,563.17
FY 03-04 projected revenue	478,000.00
FY 03-04 projected expenses	1,495,000.00
Prior year expenses	169,515.61
Remaining balance	88,047.56
2004-2005 beginning balance	88,047.56
FY 04-05 projected revenue	2,094,000.00
FY 04-05 projected expenses	1,540,000.00
Remaining balance	642,047.56



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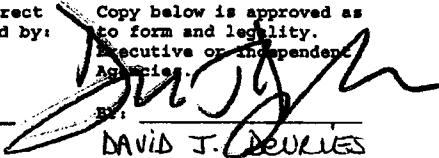
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BY: \_\_\_\_\_  
(DEPUTY ATTORNEY GENERAL)

State Board of Nursing  
(AGENCY)

BY:   
DAVID J. DEUKIES

DOCUMENT/FISCAL NOTE NO. 16A-5120

FEB 13 2006

\_\_\_\_\_  
DATE OF APPROVAL

DATE OF ADOPTION: \_\_\_\_\_

\_\_\_\_\_  
DATE OF APPROVAL

BY: Janet Hunter Shields  
Janet Hunter Shields, MSN, CRNP, CS

**EXECUTIVE**  
(Deputy General Counsel  
(Chief Counsel,  
Independent Agency  
Strike-inapplicable  
title)

TITLE: Chairperson  
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

- Check if applicable  
Copy not approved.  
Objections attached.
- Check if applicable. No Attorney  
General approval or  
objection within 30 day  
after submission.

FINAL RULEMAKING  
COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS  
STATE BOARD OF NURSING  
49 PA. CODE, SECTIONS 21.701 - 21.726  
LICENSED DIETITIAN-NUTRITIONISTS

The State Board of Nursing (Board) hereby adopts Subchapter G (relating to dietitian-nutritionists) to read as set forth in Annex A.

### **Statutory Authority**

Sections 2.1(k) and 11(c) of the Professional Nursing Law (act) (63 P.S. §§ 212(k), 221(c)) authorize the Board to establish regulations regarding licensed dietitian-nutritionists (LDNs).

### **Background and Purpose**

The regulations implement the act of June 29, 2002 (P.L. 651, No. 99), requiring the Board to regulate the practice of dietetics and nutrition in the Commonwealth and providing for the licensing of dietitian-nutritionists by the Board.

### **Summary of Comments and Responses to Proposed Rulemaking**

Notice of Proposed Rulemaking was published at 35 Pa.B. 1213 (February 12, 2005). Publication was followed by a 30-day public comment period; however the Board did not receive comments from the general public. On March 16, 2005, the House Professional Licensure Committee (HPLC) submitted comments and suggestions and on April 13, 2005, the Independent Regulatory Review Commission (IRRC) submitted comments and suggestions.

#### **§ 21.701 (relating to definitions)**

The HPLC submitted several comments to this section. The HPLC suggested revisions in the definition of sexual impropriety because subparagraph (iii) did not prohibit touching a patient's buttocks; subparagraph (iv) did not prohibit accepting a date from a patient and subparagraph (vi) allowed a licensee to provide certain information if asked by the patient. These subparagraphs were rewritten.

The HPLC asked the Board to clarify the subparagraphs defining a sexual violation. Specifically, the HPLC asked the Board to define the term "during the professional relationship." IRRC also asked that the Board make this change. The Board has added this definition to § 21.701. The HPLC also asked that the Board make subparagraphs (ii) and (iii) under sexual violation more encompassing, and suggested that the Board borrow from the Pennsylvania Crimes Code. The Board has adopted the suggestion and made appropriate amendments. Third, the HPLC asked the Board to define "sexual favors" as used in subparagraph (v). The Board has amended the language to broadly encompass sexual activity.

The HPLC (and IRRC) pointed out that the Board uses both the term “patient” and “client” and questioned whether such distinction was appropriate. Upon further review, the Board determined that the word “patient” should be used and that the term should encompass patients (hospitalized individuals), clients (non-hospitalized individuals) and family members. Therefore, the Board amended the definition of “patient.”

IRRC noted with confusion that the definition of sexual impropriety included discussing or commenting on “potential sexual history.” The Board has eliminated the word “potential.” In addition, IRRC recommended that the Board broaden the definition of sexual impropriety. The Board has done so.

§ 21.704 (relating to matters related to allegations of sexual impropriety or violation)

The HPLC suggested additions to § 21.704 to clearly prohibit sexual violations and sexual improprieties and to provide that such conduct constitutes unprofessional conduct. The Board has adopted these suggestions and added two subsections (a) and (b) and renumbered the remaining subsections (c) – (e).

The HPLC asked the Board to clarify subsection (b) of § 21.704, noting that the second sentence allowed the Board to consider a past sexual relationship between a licensee and a patient, while the first sentence provides that specific instances of a patient’s sexual conduct are inadmissible in proceedings before the Board. The Board intended to allow consideration of a past sexual relationship between a licensee and a patient. For example, if an LDN is involved with an individual prior to the individual becoming the LDN’s patient, the Board believes this information is relevant in determining whether the LDN committed misconduct. The Board has added language to clarify that evidence of specific instances of a patient’s sexual contact with individuals other than the licensee may not be presented in a disciplinary hearing.

§ 21.711 (relating to standards of professional conduct)

The HPLC questioned whether subparagraph (a)(4) should apply to both a patient and a client. Because physicians prescribe patients diets, the Board originally intended this subparagraph to apply only to clients, as patients do not have discretion in refusing to follow a prescribed diet. In a broader sense, however, a patient has the right to refuse any medical regimen. Therefore, the Board amended subparagraph (a)(4) to refer to a patient, as defined in § 21.701. In practice, however, an LDN would not tell a patient that the LDN disagreed with a prescribed diet. Instead, an LDN would discuss any concerns about a prescribed diet with the patient’s physician.

The HPLC recommended that § 21.711(b)(8) apply to both patients and clients. Because the Board has redefined patient to include patients, clients and family members, the section does now apply to both patients and clients.

The HPLC noted a drafting error in § 21.711(b)(9), which has been corrected.

Revised §21.721 (relating to qualifications for licensure)

The HPLC recommended that § 21.721 include language regarding the statutory requirement of 900 hours of supervised experience. IRRC recommended that the Board add a section which sets forth all of the initial licensure requirements and the application process. The Board believes that if its regulations are to duplicate statutory provisions, they should not repeat only certain qualifications for licensure set forth in the act. The Board has added a new § 21.721 (relating to qualifications for licensure) that includes all of the statutory requirements for licensure, and renumbered the following sections accordingly. The Board declines to add a section related to application procedures, as the procedure is simply to file an application as with all other licenses in the Bureau of Professional and Occupational Affairs.

IRRC also suggested that the final-form regulation include a cross-reference to section 6(c) of the act, related to the prohibition on licensing individuals convicted of a felony under the Drug Act. The Board does not find that it is necessary to duplicate this section of the act in its regulations.

§ 21.723 (formerly § 21.722) (relating to license renewal)

The HPLC suggested that the Board rewrite § 21.722(b), now renumbered as 21.723(b), to avoid giving licensees and members of the public the impression that LDNs will retain their licenses in spite of criminal convictions or other wrongful behavior. IRRC also noted that the subsection appeared to guarantee license renewal regardless of criminal convictions. Because the renewal of a license is a ministerial act and the Board cannot refuse to renew a license without adhering to the constitutional mandates of notice and hearing before deprivation of property, the subsection was technically correct as drafted. Nevertheless, the Board has redrafted the subsection.

IRRC also questioned the Board's statutory authority to require a licensee to disclose pending criminal charges. The Board has determined that this information is necessary in administering and enforcing section 14(a)(5) of the act (63 P.S. § 224(a)(5)) and that the Board is authorized to require this information under section 2.1(k) of the act (63 P.S. § 212.1(k)).

§ 21.724 (formerly § 21.723) (relating to continuing education)

IRRC noted that the Pennsylvania Dietetic Association (PDA) had provided comments directly to IRRC asserting that "there are other reputable groups which provide CPE but are not

listed in the regulation.” The list provided by the PDA (medical centers, Amerinet, etc.) are either already approved (medical centers) or ADA approved, and therefore Board-approved, or would qualify for ADA approval if they applied for ADA approval. The Board cannot list every possible existing and potential provider of CPE and declines to amend its list of pre-approved providers.

IRRC next suggested that the Board insert in the regulations a process by which an organization or individual can apply to become a Board-approved CPE provider. Persons or entities may petition the Board at any time to amend its regulations to include them as providers under 1 Pa. Code § 35.18. Given this process, the Board sees no need to include in its regulations a process or procedure by which it will hear such requests.

IRRC then suggested that subsection (b)(1) be amended to clearly state that an LDN may apply to the Board for CPE credit. The Board has made this amendment. IRRC then asked that the Board list the criteria the Board will use in deciding whether or not to grant CPE credits. The Board believes that the criteria for approval are sufficiently stated in § 21.723 and declines to further specify the qualities of acceptable CPE.

Finally, IRRC asked by what authority the Board proposes waiver of CPE requirements at subsection (d). The Board relies upon that authority conferred under § 2.1(k) (63 P.S. § 212(k)) which grants the Board authority to adopt regulations for the practice of dietetics-nutrition and for the administration of the act. Coincident with practice is the continuing education requirement of biennial renewal. In administering the act, the Board by subsection (d) would recognize the hardship imposed on certain licensees who are unable to complete the required continuing education. If the Board were not able to recognize a hardship waiver, a licensee would have to withdraw from their employment or practice. If § 11(c) of the act (63 P.S. § 221(c)) were construed strictly as a statutory mandate, the Board would have neither the authority to grant a waiver or the authority to extend the time for compliance. The Board does not believe the Legislature intended such a harsh result.

### **Fiscal Impact and Paperwork Requirements**

The amendments will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The amendments will impose no additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector.

### **Regulatory Review**

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), the Board submitted copies of the notice of proposed rulemaking, published at 35 Pa.B. 1213, on February 12, 2005, to

IRRC, the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) and the HPLC for review and comment.

Publication of the notice of proposed rulemaking was followed by a 30-day public comment period during which the Board received no written comments from the public. In preparing the final-form rulemaking, the Board has considered the comments received from IRRC and the HPLC. The SCP/PLC did not submit comments.

Under section 5.1(d) of the Regulatory Review Act (71 P.S. §745.5a(d)), this final-form regulation was approved by the HPLC on \_\_\_\_\_, 2006, and was (deemed) approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act (71 P.S. § 745.5a(e)), IRRC met on \_\_\_\_\_, 2006, and approved the final-form regulation.

### **Additional Information**

Further information may be obtained by contacting Ann Steffanic, Administrative Assistant, State Board of Nursing, P.O. Box 2649, Harrisburg, PA 17105-2649, or from the Department website, [www.dos.state.pa.us](http://www.dos.state.pa.us).

### **Findings**

The Board finds that:

1. Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240), (45 P.S. §§ 1201 – 1202), and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 – 7.2.
2. A public comment period was provided as required by law and all comments were considered.
3. The amendments to this final-form rulemaking do not enlarge the purpose of proposed rulemaking published at 35 Pa.B. 1213.
4. This final-form rulemaking is necessary and appropriate for administering and enforcing the authorizing act identified in this Preamble.

The Board, acting under its authorizing statute, orders that:

- (A) The regulations of the Board, 49 Pa. Code §§ 21.701-21.725, are amended to read as set forth in Annex A.
- (B) The Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General as required by law.
- (C) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.
- (D) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

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Janet Hunter Shields, CRNP, MSN, CS

**ANNEX A**

**PENNSYLVANIA CODE  
TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

**PART I. DEPARTMENT OF STATE**

**Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

**CHAPTER 21. STATE BOARD OF NURSING**

**Subchapter G. DIETITIAN-NUTRITIONISTS**

**GENERAL PROVISIONS**

**§ 21.701. Definitions.**

The following words and terms, when used in this subchapter, have the following meanings, unless the content clearly indicates otherwise:

ADA – American Dietetic Association.

ACN – American College of Nutrition.

Act – The Professional Nursing Law (63 P.S. §§ 211-225), which provides for the licensing of Licensed Dietitian-Nutritionists.

Approved – Approved by the Board.

Approved program – Those educational programs accredited by the Commission on Accreditation for Dietetics Education or the American Council on Education for dietetics-nutrition education.



Board – The State Board of Nursing of the Commonwealth.

CADE – Commission on Accreditation for Dietetics Education – The organization recognized by the Council on Higher Education Accreditation and the United States Department of Education as the accrediting agency for education programs that prepare individuals for the practice of dietetics-nutrition.

CBNS – Certification Board for Nutrition Specialists – The certification body of the American College of Nutrition (ACN).

CDR – Commission on Dietetic Registration - The credentialing agency for the American Dietetic Association.

CNS – Certified Nutrition Specialist – The title given to individuals who meet the requirements of the CBNS.

CPE – Continuing professional education, required by the act for biennial license renewal.

LDN – Licensed dietitian-nutritionist – A person holding a current license under this subchapter to practice dietetics-nutrition in this Commonwealth.

*Patient* – A person upon whom or with whom an LDN is practicing dietetics-nutrition,

INCLUDING A CLIENT. FOR PURPOSES OF § 21.704, ANY CONDUCT PROHIBITED WITH A PATIENT IS ALSO PROHIBITED WITH AN IMMEDIATE FAMILY MEMBER OR SPOUSE OF A PATIENT.

*PROFESSIONAL RELATIONSHIP* – THE RELATIONSHIP THROUGH WHICH A LICENSED DIETITIAN-NUTRITIONIST PROVIDES PROFESSIONAL FOOD AND NUTRITION SERVICES TO A PATIENT. THE RELATIONSHIP CONTINUES, FOR PURPOSES OF § 21.704 FOR 30 DAYS AFTER TERMINATION OF PROFESSIONAL SERVICES BY EITHER THE LICENSED DIETITIAN-NUTRITIONIST OR THE PATIENT.

*RD – Registered Dietitian* – The title given to an individual who meets the requirements set forth by CDR.

*Registration Examination for Registered Dietitians* – A written academic examination developed, prepared, administered and scored by CDR.

*SEXUAL INTERCOURSE, DEVIATE SEXUAL INTERCOURSE, INDECENT CONTACT*  
– AS USED IN THIS SUBCHAPTER, THESE TERMS ARE AS DEFINED IN 18 Pa. C.S. § 3101.

*Sexual impropriety* – The term includes the following offenses:

(i) Making sexually demeaning or sexually suggestive comments about or to a patient, including comments about a patient's body or undergarments.

(ii) Exposing ~~unnecessarily~~ a patient's body or watching a patient dress or undress, unless the patient specifically requests assistance.

(iii) Examining or touching ~~genitals or breasts~~ THE BODY of a patient EXCEPT IN THE APPROPRIATE PERFORMANCE OF THE LDN'S PRACTICE.

(iv) Discussing or commenting on a patient's ~~potential~~ sexual history, ~~or~~ preference OR PERFORMANCE during consultation, except when the consultation is pertinent to the issue of sexual function or dysfunction or reproductive healthcare. ~~Discussion of a patient's sexual practices and preferences shall be fully documented in the patient's chart.~~

(v) Soliciting OR ACCEPTING a date from a patient.

(vi) ~~Volunteering~~ DISCUSSING information to a patient about one's sexual problems, preferences or fantasies.

Sexual violation – The term includes the following offenses:

(i) Engaging in sexual intercourse, INDECENT CONTACT OR DEVIATE SEXUAL INTERCOURSE with a patient during the professional relationship.

(ii) Engaging in genital to genital contact with a patient during the professional relationship.

(iii) Engaging in oral to genital contact with a patient during the professional relationship.

(iv) Encouraging the patient to masturbate in the presence of the dietitian-nutritionist or masturbating while a patient is present.

(v)(iii) Providing or offering to provide drugs, herbs, nutritional supplements or treatment in exchange for sexual favors. INDECENT CONTACT, SEXUAL INTERCOURSE OR DEVIATE SEXUAL INTERCOURSE.

(vi)(iv) Using or causing the use of any herb, nutritional supplement or drug affecting consciousness for the purpose of engaging in conduct that would constitute a sexual impropriety or sexual violation.

**§ 21.702. Scope.**

In this subchapter the Board:

(1) Provides for licensure of dietitian-nutritionists who meet the qualifications set forth in the act.

(2) Administers the act by providing rules and regulations for the practice of dietetics-nutrition.

(3) Provides rules and regulations for the conduct of licensees.

(4) Regulates the practice of LDNs.

**§ 21.703. Applicability of general rules.**

The provisions of 1 Pa. Code § 31.1 (relating to scope of part) and 1 Pa. Code Part II (relating to the general rules of administrative practice and procedure) apply to the activities of and proceedings before the Board.

**§ 21.704. Matters related to allegations of sexual impropriety or violation.**

(a) A LICENSEE SHALL NOT ENGAGE IN CONDUCT CONSTITUTING A SEXUAL VIOLATION OR SEXUAL IMPROPRIETY.

(b) ENGAGING IN CONDUCT CONSTITUTING A SEXUAL VIOLATION OR SEXUAL IMPROPRIETY IS UNPROFESSIONAL CONDUCT AND

WILL SUBJECT THE LICENSEE TO DISCIPLINARY ACTION UNDER SECTION  
14 OF THE ACT.

(c) The consent of the patient to any sexual impropriety or SEXUAL violation is not a defense to any disciplinary charge for violation of the act or this subchapter.

(b)(d) Evidence of specific instances WITH INDIVIDUALS OTHER THAN THE LICENSEE, opinion evidence or reputation evidence of a patient's past sexual conduct is not admissible in proceedings brought under § 21.711 (relating to standards of professional conduct). The Board may consider sexual relationships between the dietitian-nutritionist and the patient occurring prior to the professional relationship.

(e)(e) A dietitian-nutritionist who attempts to raise as a defense an argument that conduct prohibited as a sexual violation or sexual impropriety was necessary or appropriate to the treatment of any patient shall be required to demonstrate competency in practice which relates directly to the treatment of sexual function or dysfunction. This competence may be demonstrated through educational training and supervised clinical experience. ~~Appropriate discussions of sexual matters between a dietitian nutritionist and a patient shall be fully documented in the patient records.~~

**§ 21.705. Fees.**

(a) The following fees are charged by the Board:

Application for licensure.....\$45

<u>Renewal fee.....</u>	<u>\$45</u>
<u>Reactivation of inactive or lapsed license.....</u>	<u>\$50</u>
<u>License verification fee.....</u>	<u>\$15</u>
<u>License certification fee.....</u>	<u>\$25</u>
<u>Restoration after suspension or revocation.....</u>	<u>\$50</u>

(b) In addition to the application fee prescribed in subsection (a), which is payable directly to the Board, a candidate for the Registration Examination for Registered Dietitians will also pay an additional examination fee. A candidate may contact the Commission on Dietetic Registration, 216 West Jackson Blvd., Chicago, IL 60606-6995, [www.cdrnet.org](http://www.cdrnet.org), for more information regarding the examination and examination fee.

(c) In addition to the application fee prescribed in subsection (a), which is payable directly to the Board, a candidate for the Certification Board for Nutrition Specialists examination for Certified Nutrition Specialists will also pay an additional examination fee. A candidate may contact the Certification Board for Nutrition Specialists, 300 S. Duncan Avenue, Suite 225, Clearwater, FL 33755, [www.cert-nutrition.org](http://www.cert-nutrition.org), for more information regarding the examination and examination fee.

**RESPONSIBILITIES OF THE LICENSED DIETITIAN-NUTRITIONIST**

**§ 21.711. Professional Conduct.**

(a) Licensed dietitian-nutritionists shall:

- (1) Conduct themselves with honesty, integrity and fairness.
  
- (2) Practice dietetics based on scientific principles and current information.
  
- (3) Present substantiated information and interpret controversial information without personal bias, recognizing that legitimate differences of opinion exist.
  
- (4) Provide information which will enable ~~clients~~ PATIENTS to make their own informed decisions regarding nutrition and dietetic therapy, including:
  - (i) The purpose and nature of any evaluation, treatment, educational or training procedure.
  
  - (ii) The estimated cost of each stage of a procedure or of the entire treatment.
  
  - (iii) The reasonable expectations of the professional relationship.
  
  - (iv) The right to withdraw from treatment at any time.
  
- (5) Safeguard the patient's dignity, the right to privacy and the confidentiality of patient information and make full disclosure about any limitations on the LDN's abilities to guarantee full confidentiality. This standard does not prohibit or affect reporting responsibilities under THE CHILD



PROTECTIVE SERVICES LAW (23 Pa. C.S. Chapter 63) (~~relating to Child Protective Services law~~), the Older Adults Protective Services Act (35 P.S. §§ 10211-10224) and other statutes which may mandate reporting of this information.

(6) Provide professional services with objectivity and with respect for the unique needs and values of individuals.

(7) Be alert to situations that might cause a conflict of interest or have the appearance of a conflict. The LDN shall provide full disclosure when a real or potential conflict of interest arises.

(8) Permit the use of their names for the purpose of certifying that dietetic services have been rendered only if they provided or supervised the provision of those services.

(9) Accurately present professional qualifications and credentials.

(i) Dietitian-nutritionists may use the title "Licensed Dietitian-Nutritionist" or abbreviation LDN only when they hold a current license issued by the Board.

(ii) LDNs are subject to disciplinary action for aiding another person in violating any Board requirement or aiding another person in

representing himself as a Licensed Dietitian Nutritionist or LDN when that person is not currently licensed.

(10) Document and maintain accurate records in accordance with the acceptable and prevailing standard of record-keeping. DISCUSSION OF A PATIENT'S SEXUAL PRACTICES, PREFERENCES AND PERFORMANCE SHALL BE FULLY DOCUMENTED IN THE PATIENT'S CHART, WHEN APPLICABLE.

(b) The licensed dietitian-nutritionist may not:

(1) Knowingly aid, abet or assist another person to violate or circumvent a law or Board regulation.

(2) Discriminate, while providing dietitian-nutritionist services, on the basis of age, marital status, gender, sexual preferences, race, ethnicity, religion, diagnosis, socioeconomic status or disability.

(3) Knowingly permit another individual to use his license for any purpose.

(4) Misappropriate equipment, materials, property, drugs or money from an employer or patient.

(5) Solicit, borrow or misappropriate money, materials or property from a client or the client's family. PATIENT.

(6) Leave an assignment prior to the proper reporting and notification to the appropriate department head or personnel.

(7) Falsify or knowingly make incorrect entries into the patient's record or other related documents.

(8) Engage in conduct defined as a sexual violation or sexual impropriety in the course of a professional relationship.

(9) Advertise in a false or misleading manner. Statements which qualify as false or misleading include the following:

(i) Statements containing a misrepresentation of facts.

(ii) Statements likely to mislead or deceive because in context the statement makes only a partial disclosure of the relevant facts.

(iii) Statements intended to, or likely to, create false or unjustified expectations of favorable results.

(iv) Statements relating to fees without reasonable disclosure of all relevant variables so that the statement would be misunderstood BY or would be deceptive to a layperson.

(v) Statements conveying the impression that the LDN could influence improperly any public body, official, corporation or any person on behalf of the patient.

(vi) Statements containing a representation or implication that is likely to cause a reasonable person to misunderstand or to be deceived, or fails to contain

reasonable warnings or disclaimers necessary to make a representation or implication not deceptive.

(vii) Statements containing representations that the LDN is willing to perform any procedure that is illegal under the laws or regulations of the Commonwealth or the United States.

(10) Practice when:

(i) The LDN has engaged in any substance abuse that could affect his practice.

(ii) The LDN has been adjudged by a court to be mentally incompetent.

(iii) The LDN has an emotional or mental disability that affects his practice in a manner that could harm the ~~client or others~~ PATIENT.

(11) Accept a client or patient for treatment or continue treatment unnecessarily, if benefit cannot reasonably be expected to accrue.

(12) Accept or receive, or both, remuneration for making or accepting referrals.

## **LICENSURE REQUIREMENTS**

### **§ 21.721. QUALIFICATIONS FOR LICENSURE**

**(A) AN INDIVIDUAL MAY APPLY FOR LICENSURE AS A DIETITIAN-NUTRITIONIST BY SUBMITTING A WRITTEN APPLICATION ON FORMS**

PROVIDED BY THE BOARD AND REMITTING THE APPLICATION FEE SET FORTH IN § 21.705 (RELATING TO FEES).

(B) IN ORDER TO OBTAIN LICENSURE, AN APPLICANT MUST MEET THE QUALIFICATIONS SET FORTH IN §§ 6(B)(1)-(4) OF THE ACT, WHICH INCLUDE:

- (1) EVIDENCING GOOD MORAL CHARACTER.
- (2) RECEIPT OF A BACCALAUREATE OR HIGHER DEGREE FROM A BOARD-APPROVED PROGRAM OR EQUIVALENT PROGRAM AS SET FORTH IN SECTIONS 5(B) AND (C) OF THE ACT.
- (3) COMPLETION OF A PLANNED CONTINUOUS PREPROFESSIONAL EXPERIENCE OF AT LEAST 900 HOURS UNDER APPROPRIATE SUPERVISION.
- (4) SUCCESSFUL COMPLETION OF ONE OF THE EXAMINATIONS SPECIFIED IN § 21.722 (RELATED TO EDUCATION AND EXAMINATION OF APPLICANTS).

**§ 21.721, 21.722. Education and examination of applicants.**

The Board approves educational programs that meet the requirements of section 6(b)(2) of the act (63 P.S. § 216(b)(2)) that are approved by CADE or the ACN. The Board approves the Registration Examination for Registered Dietitians and Examination of the Certification Board for Nutrition Specialists as the examinations which an applicant may complete to satisfy section 6(b)(4) of the act.

§ ~~21.722~~, 21.723. License renewal.

(a) A license issued under section 5(e) of the act (63 P.S. § 215(e)) or under this subchapter will be valid from the date of issuance through September 30, 2006, following the issuance of the license. Each subsequent license renewal will be valid for 2 years from October 1 through September 30.

(b) ~~A dietitian nutritionist license issued under the act will be renewed if the licensee applying for the renewal:~~ . WHEN APPLYING FOR RENEWAL OF LICENSURE, A LICENSED DIETITIAN-NUTRITIONIST SHALL:

(1) ~~Completes~~ COMPLETE the renewal application, including disclosing a license to practice dietetics-nutrition in any other state, territory, possession or country.

(2) ~~Pays~~ PAY the required fee as set forth in § 21.705 (relating to fees).

(3) ~~Submits~~ SUBMIT proof to the Board that he has satisfactorily completed a minimum of 30 hours of CPE approved by the Board in accordance with § ~~21.723~~ 21.724 (relating to continuing education) during the 2 calendar years immediately preceding the application for renewal.

(4) ~~Discloses~~ DISCLOSE any discipline imposed by any state licensing board in the previous biennial period or any criminal charges pending or

criminal conviction, plea of guilty or nolo contendere, or admission into a probation without verdict or accelerated rehabilitative disposition program during the previous biennial period.

**§ 21.723, 21.724. Continuing education.**

(a) Prior to renewal. One hour of CPE credit will be given for each 50-minute clock hour of CPE activity. Each LDN shall complete 30 CPE credits during the 2 calendar years immediately preceding the application for license renewal. If any activity overlaps two renewal periods, the date of completion of the activity determines the date in which the activity can be reported.

(b) Board-approved continuing professional education. The Board will accept for completion of the CPE requirement substantive learning experiences, subject to the limitations in paragraph (2) relating to the field of nutrition and dietetics which are not designed for the public and which are sponsored by the ADA, the ACN, by individual state dietetic associations, if the association is a member of the ADA or ACN, by approved college or dietetic programs UNDER § 21.722 (RELATING TO EDUCATION AND EXAMINATION OF APPLICANTS) where a certificate of attendance is issued, and courses related to the practice of dietetics-nutrition offered by the Accreditation Council for Continuing Medical Education, the Accreditation Council on Pharmaceutical Education, the American Osteopathic Association and the American Medical Association.

(1) In addition to lecture-based CPE courses, LDNS MAY APPLY TO the Board will accept documentation of FOR APPROVAL OF CPE CREDIT AND THE BOARD MAY, UPON REVIEW BY THE LDN COMMITTEE, GRANT CREDIT FOR the following:

(i) Case presentations, such as grand rounds or patient case studies.

(ii) Academic coursework and research studies approved by an institutional review board.

(iii) Interactive workshops.

(iv) Lecturers and seminars.

(v) Residency and Fellowship programs which are at the post baccalaureate level, and are sponsored by a United States regionally accredited college or university, or an institution accredited/approved by the Joint Committee on Accreditation of Healthcare Organizations (JCAHO) or the National Committee for Quality Assurance (NCQA).

(2) The Board will not accept for completion of the CPE requirement the following:



(i) Academic coursework or programs on office management skills, or entrepreneurship, strategic business planning, computer skills, except courses directly related to the practice of dietetics-nutrition such as accessing nutrient analysis databases.

(ii) Attendance at exhibits manned by detail personnel.

(iii) Journal clubs.

(iv) Professional leadership, such as holding an elective office in a dietetics or dietetics-related organization.

(v) Professional reading for which there is no evaluative test submitted and no certificate of completion or CPE unit awarded.

(c) Documentation. The licensee shall retain documentation of completion of Board-approved continuing education (as set forth in subsection (b)) for at least 5 years and shall submit this documentation upon request of the Board.

(d) Waiver. An LDN who can demonstrate to the Board a verified hardship may request a waiver of CPE requirements for a single biennial period. It shall be the duty of each licensee seeking waiver to notify the Board in writing and request such waiver, at least 60 days prior to the end of the biennial renewal period, which will be granted, denied, or granted in part.

~~§ 21.725.~~ 21.276. Inactive status.

An LDN may request that his license be placed on inactive status. The licensee will not be required to remit the biennial renewal fee during the period when the license is on inactive status. In order to return to active status, the licensee shall submit proof of completion of a minimum of 30 hours of approved CPE in the biennial period preceding the request for reactivation and pay any applicable fees. A person who requests an active status license who has been on inactive status for a period of 5 consecutive years shall satisfy the requirements of section 6(b)(4) of the act (63 P.S. § 216(b)(4)), unless the person demonstrates that he has an active license to practice in another state, OR HAS HAD an RD registration, or a CNS certification for at least 2 out of the last 5 years.



COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS  
STATE BOARD OF NURSING  
Post Office Box 2649  
Harrisburg, Pennsylvania 17105-2649  
(717) 783-7142  
February 23, 2006

The Honorable John R. McGinley, Jr., Chairman  
INDEPENDENT REGULATORY REVIEW COMMISSION  
14<sup>th</sup> Floor, Harristown 2, 333 Market Street  
Harrisburg, Pennsylvania 17101


Re: Final Regulation  
State Board of Nursing  
16A-5120: Dietitian-Nutritionists

Dear Chairman McGinley:

Enclosed is a copy of a final rulemaking package of the State Board of Nursing pertaining to dietitian-nutritionists. The Board did not receive any comments from the public on the rulemaking.

The Board will be pleased to provide whatever information the Commission may require during the course of its review of the rulemaking.

Sincerely,

  
Joanne L. Sorensen, RN, MS, Chairperson  
State Board of Nursing

JLS/TLM/apm

Enclosure

cc: Albert H. Masland, Chief Counsel  
Department of State  
Basil L. Merenda, Commissioner  
Bureau of Professional and Occupational Affairs  
Joyce McKeever, Deputy Chief Counsel  
Department of State  
Cynthia Montgomery, Regulatory Counsel  
Department of State  
Herbert Abramson, Senior Counsel in Charge  
Department of State  
Teresa Lazo-Miller, Counsel  
State Board of Nursing  
State Board of Nursing

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE  
REGULATORY REVIEW ACT**

I.D. NUMBER: 16A-5120  
 SUBJECT: State Board of Nursing: Licensed Dietition - Nutritionists  
 AGENCY: DEPARTMENT OF STATE

**TYPE OF REGULATION**

- Proposed Regulation
- X Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
  - a. With Revisions
  - b. Without Revisions

**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
2/23/06	<i>Sandra J. Harper</i>	HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
2/23/06	<i>Mary Welmer</i>	SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
2/23/06	<i>J. Helms</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
		LEGISLATIVE REFERENCE BUREAU (for Proposed only)