

# Regulatory Analysis Form

This space for use by IRRC

(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

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HUMAN RESOURCES  
REVIEW COMMISSION

(3) Short Title

Dietitian-Nutritionists

(4) PA Code Cite

49 Pa. Code, §§ 21.701 – 21.705, 21.711, 21.721-21.723 and 21.725

(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 proposed regulation provides for the administration of the amendments to the Professional Nursing Law made by Act 99 of 2002, relating to the licensing of dietitian-nutritionists.

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

The proposed regulation is authorized by section 2.1(k) of the Professional Nursing Law (63 P.S. § 212.1(k)) authorizing the Board to establish rules and regulations for the practice of dietetics-nutrition.

## Regulatory Analysis Form

(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.

**The proposed regulation is mandated by the amendments to the Professional Nursing Law in Act 99 of 2002. The amendments do not specify any deadline for action.**

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

**The public interest is served by providing rules for the professional conduct of licensed dietitians-nutritionists, a new category of licensed professional in the Commonwealth.**

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

**Failure to provide regulations related to the professional conduct and continuing education of licensees may harm the public by allowing for practice by unscrupulous or unqualified persons.**

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

**Both licensees and the general public will benefit from having specified standards of professional conduct, discipline and continuing education. The Board anticipates it will license between 3,000 and 5,000 dietitians-nutritionists.**

## Regulatory Analysis Form

(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 knows of no individual or 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 individuals who desire to become licensed dietitians-nutritionists will be required to comply with the regulation. The Board anticipates between 3,000 and 5,000 persons will seek licensure.**

(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 Board received input from several Registered Dietitians at its public meetings prior to the passage of the amendments. In addition, the Board sent a draft of its proposed regulation to nursing and dietitian groups for comment.**

(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.

**The regulated community will be required to pay an initial licensure fee and biennial license renewal fee to cover the costs associated with licensure. The initial licensure fee will be assessed with the first biennial renewal.**

## Regulatory Analysis Form

(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 costs or savings to local governments associated with compliance with the proposed regulation.**

(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.

**Because licensing Boards are self-supporting, there are no costs or savings to state government associated with the implementation of the regulation.**

## Regulatory Analysis Form

(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>	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
<b>Total Savings</b>	0	0	0	0	0	0
<b>COSTS:</b>						
Regulated Community	0	146,250 <sup>1</sup>	16,875 <sup>3</sup>	180,000 <sup>2</sup>	16,875 <sup>3</sup>	196,875 <sup>2+3</sup>
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
<b>Total Costs</b>						
<b>REVENUE LOSSES:</b>						
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
<b>Total Revenue Losses</b>	0	0	0	0	0	0

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

- (1) Estimated 3,250 applications for licensure x \$45 (estimated application fee)
- (2) Estimated 3,200 applications for biennial renewal x \$45 (plus 375 new applications)
- (3) Estimated 750 new applications for licensure biennially x \$35 (estimated application fee)

### 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.

**Dietitian-nutritionists in Pennsylvania lobbied for the passage of Act 99. The regulated community's benefit and general public good arising from the licensure of dietitians-nutritionists outweigh the cost of licensure.**

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

**Because the amendments specify that the Board establish rules for the conduct of licensed dietitians-nutritionists, no nonregulatory alternatives were considered.**

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

**No alternative regulatory schemes were considered as the proposed regulation was developed with input from the soon-to-be regulated community.**

## Regulatory Analysis Form

(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 apply.**

(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 regulations of the promulgating agency.**

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

**The Board reviews its regulations at its regularly-scheduled meetings on an as-needed basis and welcomes public input. A schedule of Board meetings can be found at the Department of State's website at [www.dos.state.pa.us/bpoa](http://www.dos.state.pa.us/bpoa).**

## Regulatory Analysis Form

(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.

**The regulation will require the Board to maintain licensure records for LDNs and to amend its annual report to include LDNs.**

(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.

**No particularly affected groups have been identified.**

(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 will be effective upon publication of final-form rulemaking in the Pennsylvania Bulletin.**

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

**The Board continuously monitors its regulations.**



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REVIEW COMMISSION

# 2457

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality. Attorney General

*[Signature]*

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

OCT 15 2004

DATE OF APPROVAL

Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:

State Board of Nursing  
(AGENCY)

DOCUMENT/FISCAL NOTE NO. 16A-5120

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

BY: *[Signature]*  
Janet Hunter Shields, MSN, CRNP, CS

TITLE: Chairperson  
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

Copy below is approved as to form and legality Executive or Independent Agency

*[Signature]*

BY: \_\_\_\_\_

8.25.04

DATE OF APPROVAL

Asst.  
Deputy General Counsel  
(Chief Counsel  
Independent Agency  
Strike Inapplicable  
title)

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

PROPOSED RULEMAKING  
COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS  
STATE BOARD OF NURSING  
49 PA. CODE, CHAPTER 21, Subchapter G  
DIETITIAN-NUTRITIONISTS

The State Board of Nursing (Board) proposes to amend its regulations by adding a new Subchapter G relating to the licensing and regulation of dietitian-nutritionists at 49 Pa. Code §§ 21.701 – 21.705, 21.711, 21.721-21.723 and 21.725, to read as set forth in Annex A.

**Effective Date**

The amendments will be effective upon publication of the final-form rulemaking in the Pennsylvania Bulletin.

**Statutory Authority**

The amendments implement 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 the Commonwealth. 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 Amendment**

Act 99 became effective on September 29, 2002. Until September 27, 2003, persons registered by the American Dietetic Association as Registered Dietitians were eligible for licensure under the grandparent 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) and who had been engaged in the practice for 5 of the preceding 7 years were eligible for licensure without examination. The Board now proposes these regulations 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 new sections of the proposed subchapter and, where appropriate, an explanation of the Board's rationale for the regulation.

## PROPOSED GENERAL PROVISIONS

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

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

Section 21.704 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 such cases involving a professional or practical nurse.

Section 21.705(a) 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 Bureau-wide fees. Sections 21.705(b) and 21.705(c) provide instructions to applicants regarding the two examinations approved by the Board under section 6(b)(4) of the act (63 P.S. § 216(b)(4)).

## PROPOSED PROVISIONS RELATED TO RESPONSIBILITIES OF THE LICENSED DIETITIAN-NUTRITIONIST

Section 21.711 provides rules of professional conduct for licensed dietitian-nutritionists. Generally, the rules provide for the provision of information to clients, the objectivity of the licensed dietitian-nutritionist, the use of the title licensed dietitian-nutritionist and record-keeping. The regulation prohibits aiding the violation of law or Board regulation; discrimination in providing services; knowingly permitting 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 American Dietetic Association (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 relate to education and the examination for licensure, inactive status, renewal of licensure, and continuing education. Sections 5(b), 5(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, the Board adopts as approved educational programs those educational programs approved by the Commission on Accreditation for Dietetics Education (CADE) or the American College of Nutrition (ACN).

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 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 (relating to license renewal for professional nurses) and §21.156 (relating to license renewal for practical nurses).

Section 21.723 sets forth the Board's requirements for continuing education. Subsection 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) provides for Board approval of continuing education for LDNs. Subsection 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 regulation, several representatives of the dietetic profession expressed concern about the continuing education requirements set forth 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 Registered Dietitians (RDs.) Both RDs and Certified Nutrition Specialists (CNSs) must

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 those 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 post-baccalaureate 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.

Subsection 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 must 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 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. Where 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 the 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 the Commonwealth accorded in the continuing education requirement.

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

Section 21.725 sets forth the rules related to a licensee placing his or her 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 re-take 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 the Commonwealth.

### **Compliance with Executive Order 1996-1**

The Board sent this proposed amendment to numerous nursing and dietetics associations and individuals and hospital systems as required under the directives of Executive Order 1996-1. 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 regulation would have on the regulated community and on public safety and welfare. The Board finds that the proposed amendments address a compelling public interest as described in this Preamble and otherwise comply with Executive Order 1996-1.

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

The amendments 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, related 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 or the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that 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  
State Board of Nursing

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:

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

ADA - American Dietetic Association.

ACN – American College of Nutrition.

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.

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

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

Commission on Accreditation for Dietetics Education (CADE) - 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.

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

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

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

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

Registered Dietitian (RD) – 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:**

(a) The Board provides for licensure of dietitian-nutritionists who meet the qualifications set forth in the act.

(b) The Board administers the act by providing rules and regulations for the practice of dietetics-nutrition.

(c) The Board provides rules and regulations for the conduct of licensees.

(d) The Board 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:

<u>Application for licensure.....</u>	<u>\$45.00</u>
<u>Renewal fee.....</u>	<u>\$45.00</u>
<u>Reactivation of inactive or lapsed license.....</u>	<u>\$50.00</u>
<u>License verification fee.....</u>	<u>\$15.00</u>
<u>License certification fee.....</u>	<u>\$25.00</u>
<u>Restoration after suspension or revocation.....</u>	<u>\$50.00</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, 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 Pennsylvania State Board of Nursing 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.

(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 or her 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 or her 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 or her 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 (63 P.S. § 216(b)(4)).

#### **§ 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 or she 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 must 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) below, relating to the field of nutrition and dietetics which are not designed for the lay 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 post-baccalaureate level, and are sponsored by a U.S. 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 §21.723(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 Inactive status.**

An LDN may request that his or her 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 must 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 § 6(b)(4) of the act (63 P.S. §216(b)(4)), unless the person demonstrates that they have 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.



## 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.



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COMMONWEALTH OF PENNSYLVANIA INDEPENDENT REGULATORY  
DEPARTMENT OF STATE REVIEW COMMISSION  
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS  
STATE BOARD OF NURSING

Post Office Box 2649  
Harrisburg, Pennsylvania 17105-2649  
(717) 783-7142

February 2, 2005

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

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

Dear Chairman McGinley:

Enclosed is a copy of a proposed rulemaking package of the State Board of Nursing pertaining to dietitian-nutritionists.

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

Sincerely,

*Janet Hunter Shields, MSN, CRNP, CS*

Janet Hunter Shields, MSN, CRNP, CS, Chairperson  
State Board of Nursing

JHS/TLM/kmh

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 - Dietition-Nutritionists  
 AGENCY: DEPARTMENT OF STATE

**TYPE OF REGULATION**

- X Proposed Regulation
- 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

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 INDEPENDENT REGULATORY  
 REVIEW COMMISSION

# 2457

**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
2/2/05	<i>Sandra J. Harper</i>	HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
2/3/05	<i>Mary Walmer</i>	SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
2/2/05	<i>Kerry</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
2/2/05	<i>C. Lee</i>	LEGISLATIVE REFERENCE BUREAU (for Proposed only)