

NORTH CAROLINA ADMINISTRATIVE CODE, TITLE 21, CHAPTER 17 – DIETETICS/NUTRITION

SECTION .0100 – LICENSURE

21 NCAC 17 .0101 DEFINITIONS

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

- (1) "Act" means Dietetics/Nutrition Practice Act.
- (2) "ADA" means The American Dietetic Association.
- (3) "Applicant" means any person who has applied to the Board for a license to practice dietetics/nutrition in the State of North Carolina.
- (4) "Application" means a written request directed to and received by the Board, on forms supplied by the Board, for a license to practice dietetics/nutrition in the State of North Carolina, together with all information, documents and other materials necessary for the Board to act on that application.
- (5) "CDR" means the Commission on Dietetic Registration which is a member of the National Commission for Health Certifying Agencies.
- (6) "CADE" means the Commission on Accreditation for Dietetics Education.
- (7) "Degree" means a degree received from a college or university that was regionally accredited at the time the degree was conferred.
- (8) "Dietitian/nutritionist" means one engaged in dietetics/nutrition practice.
- (9) "Executive Secretary" means the person employed to carry out the administrative functions of the Board.
- (10) "Health care practitioner" includes any individual who is licensed under G.S. 90.
- (11) "Nutrition assessment" means the evaluation of the nutrition needs of individuals and groups based upon biochemical, anthropometric, physical, and food intake and diet history data to determine nutritional needs and recommend appropriate nutrition intake including enteral and parenteral nutrition.
- (12) "Nutrition counseling" means the advice and assistance provided by licensed dietitians/nutritionists to individuals or groups on nutrition intake by integrating information from the nutrition assessment with information on food and other sources of nutrient and meal preparation consistent with cultural background, socioeconomic status and therapeutic needs.
- (13) "Provisionally licensed dietitian/nutritionist" means a person provisionally licensed under the act.
- (14) "Equivalent major course of study" means one which meets the knowledge requirements of the ADA-Approved Didactic Program in Dietetics as referenced in the most current edition of the "Eligibility Requirements and Accreditation Standards for Didactic Programs in Dietetics (DPD)" which is hereby incorporated by reference including any subsequent amendments and editions of the referenced material. Copies of this manual are available at no charge through the ADA's website at: <http://www.eatright.org/CADE/content.aspx?id=57>.
- (15) "Supervised practice program" means one which meets the standards of the ADA-accredited Dietetic Internship Program as referenced in the most current edition of the "Eligibility Requirements and Accreditation Standards for Dietetic Internship Programs (DI)" which is hereby incorporated by reference including any subsequent amendments and editions of the referenced material. Copies of this manual are available at no charge through the ADA's website at: <http://www.eatright.org/CADE/content.aspx?id=57>.
- (16) "Medical nutrition therapy" (MNT) is an evidence-based application of the Nutrition Care Process, as currently defined by the ADA, focused on prevention, delay or management of diseases and conditions, and involves an in-depth assessment, periodic reassessment and intervention. The ADA's definition of "Nutrition Care Process," which is listed in the ADA's "Definition of Terms List," is hereby incorporated by reference including any subsequent amendments and editions of the referenced material. Copies of this publication can be found on the ADA's website at: <http://www.eatright.org/HealthProfessionals/content.aspx?id=6867>.

*History Note: Authority G.S. 90-352; 90-356;
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21 NCAC 17 .0102 REQUIREMENT OF LICENSE

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21 NCAC 17 .0103 QUALIFICATIONS FOR LICENSURE

Each applicant for an initial license as a licensed dietitian/nutritionist shall meet the qualifications as set forth in G.S. 90-357.

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21 NCAC 17 .0104 APPLICATIONS

- (a) Each applicant for initial licensure or renewal shall file a completed application with the Board.
- (b) Applicants shall submit an application that is typed or written in ink, signed by the applicant under the penalty of perjury and accompanied by the appropriate nonrefundable fees and by such evidence, statements or documents showing to the satisfaction of the Board that applicant meets requirements.
- (c) Applicants shall submit a completed application to: North Carolina Board of Dietetics/Nutrition, 1000 Centre Green Way, Suite 200, Cary, NC 27513.
- (d) Applications and all documents filed in support thereof shall become the property of the Board upon receipt.
- (e) The Board shall not consider an application until the applicant pays the application fee.
- (f) Applicants seeking examination eligibility from the Board must submit the application at least 60 days prior to the date the applicant wishes to take the examination.
- (g) The Executive Secretary shall send a notice to an applicant who does not complete the application which lists the additional materials required.
- (h) Applicants, who must provide evidence of current registration as a Registered Dietitian by the CDR in G.S. 90-357(3)a, shall submit a notarized photocopy of the applicant's signed registration identification card.
- (i) Applicants, who must provide evidence of completing academic requirements in G.S. 90-357(3) b.1, c.1 and d, shall either:
 - (1) Submit transcripts and a verification statement which includes the original signature of the Program Director of a college or university in which the course of study has been approved by the Commission on Accreditation for Dietetics Education as meeting the current knowledge requirements of the ADA; or
 - (2) Submit sufficient documentation for the Board to determine if the equivalent major course of study meets the ADA requirements as referenced in 21 NCAC 17 .0101(14).
- (j) Applicants, who must provide evidence of completing supervised practice program in G.S. 90-357(3)b.2 and c.2, shall either:
 - (1) Submit a verification statement which includes the original signature of the Program Director or Sponsor of a supervised practice program; or
 - (2) Submit sufficient documentation for the Board to determine if the supervised practice program meets the ADA requirements as referenced in 21 NCAC 17.0101(15).
- (k) Applicants who have obtained their education outside of the United States and its territories must:
 - (1) Have their academic degree evaluated by CDR, as equivalent to the baccalaureate or higher degree conferred by a U.S. college or university accredited by the regional accrediting agencies

recognized by the Council on Postsecondary Accreditation and the U.S. Department of Education;
and

- (2) Have any Board required documents submitted in a language other than English be accompanied by a certified translation thereof in English from World Education Services, Inc.

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21 NCAC 17 .0105 EXAMINATION FOR LICENSURE

- (a) The Board approves the examination offered by the Commission on Dietetic Registration (CDR).
- (b) The examination shall be offered by ACT year round at designated ACT testing centers to qualified applicants for licensing.
- (c) The Board recognizes the passing score set by the CDR.

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21 NCAC 17 .0106 GRANTING LICENSE WITHOUT EXAMINATION

If an applicant seeks licensure on the basis that the applicant currently holds a valid license as a licensed dietitian/nutritionist issued by another state, political territory or jurisdiction with equivalent requirements, the applicant shall attach to the application evidence that:

- (1) The applicant currently holds a license in good standing; and
- (2) The requirements of the state, political territory or jurisdiction are equivalent to those of this state.

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21 NCAC 17 .0107 PROVISIONAL LICENSE

- (a) Applicants for a provisional license shall provide evidence of completing academic requirements by:
 - (1) Submitting transcripts and a verification statement which includes the original signature of the Program Director of a college or university in which the course of study has been approved by the Commission on Accreditation for Dietetics Education as meeting the current knowledge requirements of the ADA; or
 - (2) Submit sufficient documentation for the Board to determine if the equivalent major course of study meets the ADA requirements as referenced in 21 NCAC 17.0101(14).
- (b) Applicants shall provide evidence of completing a supervised practice program by:
 - (1) Submitting a verification statement which includes the original signature of the Program Director or Sponsor of a supervised practice program which has been approved by CDR to meet the dietetic practice requirements of ADA; or
 - (2) Submit sufficient documentation for the Board to determine if the supervised practice program meets the ADA requirements as referenced in 21 NCAC 17.0101(15).
- (c) Applicants shall provide evidence of making application to take the examination.
- (d) A provisional license shall be issued for a period not exceeding one year upon the applicant completing the following:
 - (1) payment of issuance fees;

- (2) submission of a completed application as provided by the Board; and
 - (3) provision of evidence of being under the supervision of licensed dietitian(s)/nutritionist(s).
- (e) Following the successful completion of the licensing examination, the provisionally licensed dietitian/nutritionist shall remit completed application for upgrading license, payment of fees, and evidence of passing examination referenced in 21 NCAC 17 .0105. If the provisionally licensed dietitian/nutritionist successfully completes the licensing examination and obtains a license pursuant to G.S. 90-357 within six months of the date that the provisional license became effective, the provisional license or renewal fee shall be deducted from the issuance fee.

*History Note: Authority G.S. 90-356; 90-361;
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21 NCAC 17 .0108 DISAPPROVED APPLICATION

The Board shall not approve an applicant for licensure if the applicant:

- (1) Has not completed the requirements in G.S. 90-350 through G.S. 90-369 including academic, experience and examination requirements;
- (2) Has failed to remit any applicable fees;
- (3) Has failed to comply with requests for supporting documentation; and
- (4) Has presented false information on application documents required by the Board to verify applicant's qualifications for licensure.

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21 NCAC 17 .0109 ISSUANCE AND RENEWAL OF LICENSE

- (a) An applicant shall be issued a license based on compliance with requirements stated in G.S. 90-357 and the rules in this Chapter.
- (b) A licensee shall notify the Board of any change in the licensee's personal or professional address within 30 days of that change.
- (c) Licenses shall expire on March 31 of every year. Beginning in 1993, the licenses shall be issued for a period of one year beginning April 1 and ending March 31.
- (d) At least 60 days prior to the expiration date of the license, the Board shall send the licensee written notice of the amount of renewal fee due, and instructions on how to obtain a license renewal form which must be submitted with the required fee.
- (e) A licensee's renewal application must be postmarked prior to the expiration date in order to avoid the late renewal fee. Failure to receive renewal notice is not justification for late renewal.
- (f) The Board may not renew the license of a person who is in violation of the Act, or Board rules at the time of application for renewal.
- (g) Applicants for renewal of licenses shall provide documentation of having met continuing education requirements by submitting either:
 - (1) Evidence of completing continuing education hours to maintain certification as a Registered Dietitian by the Commission on Dietetic Registration. These standards are contained in the "Professional Development Portfolio Guide", which is hereby incorporated by reference including subsequent amendments or additions of reference material. Copies of this standard may be obtained at no charge from the Commission on Dietetic Registration's website at: <http://www.cdrnet.org/pdrcenter/>; or
 - (2) A summary of continuing education on the form provided by the Board documenting completion of 30 hours of continuing education for a two year period. The continuing education hours must meet the standards contained in the "Professional Development Portfolio Guide."

- (h) A renewal license shall be furnished to each licensee who meets all renewal requirements by the expiration date.
- (i) The Board shall renew a license upon the payment of a late fee within 60 days of the expiration date of March 31. If the license has been expired for 60 days or less, the license may be renewed by returning the license renewal form with all appropriate fees and documentation to the Board, postmarked on or before the end of the 60-day grace period.

*History Note: Authority G.S. 90-356; 90-362; 90-363;
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21 NCAC 17 .0110 LICENSURE CERTIFICATE

- (a) The Board shall prepare and provide to each licensee a license certificate and license identification card. The identification card shall contain the person's name, license number and date of expiration.
- (b) License certificates shall be signed by the Chair, Secretary and Treasurer and be affixed with the seal of the Board. Identification cards shall bear the signature of the Chair.
- (c) Any certificate or identification card issued by the Board shall remain the property of the Board and shall be surrendered to the Board on demand.
- (d) Licensees shall comply with G.S. 90-640, Article 37, which specifies the wearing of a name badge. The license certificate must be displayed in a public manner as follows:
 - (1) The license certificate shall be displayed in the primary place of employment of the licensee; or
 - (2) In the absence of a primary place of employment or when the licensee is employed in multiple locations, the licensee shall carry a current, Board issued license identification card.
- (e) Neither the licensee nor anyone else shall display a photocopy of a license identification card in lieu of the original license certificate or license identification card.
- (f) Neither the licensee nor anyone else shall make any alteration on a license certificate or license identification card issued by Board.
- (g) The Board shall replace a lost, damaged or destroyed license certificate or identification card upon receipt of a written request from the licensee and payment of the duplicate license fee.
- (h) The licensee must submit a written request within 30 days of a name change to the Board who shall re-issue a license certificate and license identification card. Requests shall be accompanied by duplicate license fee and documentation reflecting the change.

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21 NCAC 17 .0111 INACTIVE STATUS

- (a) A licensee may have a license placed in inactive status by written request to the Board, signed by the holder of the license or the holder's legal guardian.
- (b) While a license is in an inactive status, the licensee shall meet the continuing education requirements each year as required by the Board's rules, but is not required to pay the renewal fee.
- (c) A license may be withdrawn from inactive status by written request of the holder, completion of a renewal application, compliance with continuing education requirements and payment of the current licensing fee.

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21 NCAC 17 .0112 SUSPENSION, REVOCATION AND DENIAL OF LICENSE

- (a) The Board may refuse to issue a license, or suspend, revoke or impose probationary conditions and restrictions on the license of a person upon a finding of any of the causes provided in General Statute Chapter 90, Article 25.
- (b) When the Board has probable cause to believe that a person, applicant or licensee has violated any part of G.S. 90-350 through 90-369 or the rules of the Board, the Board shall so advise the person in writing as referenced in Rule .0116 of this Chapter and provide the person with the opportunity for a hearing as referenced in Rule .0116 of this Chapter. The Board's final decision or order shall be made in writing as referenced in Rule .0116 of this Chapter.
- (c) A suspended license shall be subject to expiration and may be renewed as provided in this Section, but such renewal shall not entitle the licensee to engage in the licensed activity until he/she is reinstated. If a license revoked on disciplinary grounds is reinstated, the licensee must reapply and pay all applicable fees.

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21 NCAC 17 .0113 FEES

In accordance with the provisions of the Act, the following fees, where applicable, are payable to the Board by check or money order. Fees are nonrefundable, except for the Issuance Fee, if application is not approved.

Application Fee	\$ 50.00
Issuance Fee	125.00
License Renewal Fee	75.00
Late Renewal Fee	75.00
Examination Fee	150.00
Provisional License Fee	35.00
Duplicate License Certificate Fee	30.00
Duplicate License Identification Card Fee	20.00
Training Program	150.00

*History Note: Authority G.S. 90-356(2),(9); 90-361; 90-364;
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21 NCAC 17 .0114 CODE OF ETHICS FOR PROFESSIONAL PRACTICE AND CONDUCT

- (a) Licensees, under the Act, shall comply with the following Code of Ethics in their professional practice and conduct. The Code reflects the ethical principles of the dietetic/nutrition professional and outlines obligations of the licensee to self, client, society and the profession and sets forth mandatory standards of conduct for all licensees.
 - (1) The licensee shall provide professional services with objectivity and with respect for the unique needs and values of individuals as determined through the nutritional assessment.
 - (2) The licensee shall conduct all practices of dietetics/nutrition with honesty and integrity.
 - (3) The licensee shall present substantiated information and interpret controversial information without personal bias, recognizing that legitimate differences of opinion exist.
 - (4) The licensee shall practice dietetics/nutrition based on scientific principles and current information.
 - (5) The licensee shall assume responsibility and accountability for personal competence in practice.
 - (6) The licensee shall inform the public of his/her services by using factual information and shall not advertise in a false or misleading manner.

- (7) The licensee shall not exercise undue influence on a client, including the promotion or the sale of services or products. The licensee shall be alert to any conflicts of interest and shall provide full disclosure when a real or potential conflict of interest arises.
 - (8) The licensee shall not reveal information about a client obtained in a professional capacity, without prior consent of the client, except as authorized or required by law and shall make full disclosure about any limitations on his/her ability to guarantee this.
 - (9) The licensee shall recognize and exercise professional judgment within the limits of the licensee's qualifications and shall not accept or perform professional responsibilities which the licensee knows or has reason to know that he or she is not qualified to perform.
 - (10) The licensee shall take action, with prior consent of the client, to inform a client's physician or other health care practitioner in writing in cases where a client's nutritional status indicates a change in health status.
 - (11) The licensee shall give sufficient information based on the client's ability to process information such that the client can make his or her own informed decisions. The licensee shall not guarantee that nutrition care services will cause any certain outcome or particular result for the client.
 - (12) The licensee shall permit use of that licensee's name for the purpose of certifying that dietetic/nutrition services have been rendered only if the licensee has provided or supervised those services.
 - (13) The licensee shall notify the Board in writing within 30 days of the occurrence of any of the following:
 - (A) The Licensee seeks any medical care or professional treatment for the chronic or persistent use of intoxicants, drugs or narcotics.
 - (B) The Licensee is adjudicated to be mentally incompetent.
 - (C) The Licensee has been convicted or entered into a plea of guilty or nolo contendere to any crime involving moral turpitude.
 - (D) The licensee has been disciplined by an agency of another state that regulates the practice of dietetics or nutrition.
 - (14) The licensee shall comply with all laws and rules concerning the profession.
 - (15) The licensee shall uphold the Code of Ethics for professional practice and conduct by reporting suspected violations of the Code and the Act to the Board.
 - (16) The licensee shall not interfere with an investigation or disciplinary proceeding by willful misrepresentation of facts to the Board or its representative or by the use of threats or harassment against any person.
 - (17) The licensee shall not engage in kissing, fondling, touching or in any activities, advances, or comments of a sexual nature with any client or, while under the licensee's supervision, with any student, trainee, provisional licensee or person aiding the practice of dietetics/nutrition.
 - (18) The licensee shall not invite, accept, or offer gifts, monetary incentives, or other considerations that affect or reasonably give an appearance of affecting the licensee's professional judgment.
- (b) Conduct and circumstances which may result in disciplinary action by the Board include the following:
- (1) The licensee is a chronic or persistent user of intoxicants, drugs or narcotics to the extent that the same impairs his/her ability to practice dietetics/nutrition.
 - (2) The licensee is mentally, emotionally, or physically unfit to practice dietetics/nutrition and is afflicted with such a mental, emotional or physical disability as to be dangerous to the health and welfare of a client.
 - (3) The licensee has been disciplined by an agency of another state that regulates the practice of dietetics or nutrition and at least one of the grounds for the discipline is the same or substantially equivalent to the grounds for discipline in this state.
 - (4) The licensee has violated any provisions of the Act or any of the rules in this Chapter.

*History Note: Authority G.S. 90-356(3); 90-356(2);
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21 NCAC 17 .0115 EXEMPTIONS

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21 NCAC 17 .0116 VIOLATIONS, COMPLAINTS, SUBSEQUENT BOARD ACTION, AND HEARINGS

(a) The definitions contained in G.S. 150B-2 (1), (2), (2b), (4a), (4b), (5), (8), (8a), (8b) are incorporated by reference within this Rule. In addition, the following definitions apply:

- (1) "Administrative Law Counsel" means an attorney whom the Board has retained to serve as procedural counsel to advise the hearing officer concerning questions of procedure for contested cases.
- (2) "Prosecuting Attorney" means the attorney retained by the Board to prepare and prosecute contested cases.

(b) Before the North Carolina Board of Dietetics/Nutrition makes a final decision in any contested case, the person, applicant or licensee affected by such decision shall be afforded an administrative hearing pursuant to the provisions of Article 3A, Chapter 150B of the North Carolina General Statutes. This Rule applies to the conduct of all contested cases heard before or for the North Carolina Board of Dietetics/Nutrition. The following general statutes, rules, and procedures apply and are incorporated by reference within this Rule, unless another specific statute or rule of the North Carolina Board of Dietetics/Nutrition provides otherwise:

- (1) the Rules of Civil Procedure as contained in G.S. 1A-1;
- (2) the Rules of Evidence pursuant to G.S. Chapter 8C;
- (3) the General Rules of Practice for the Superior and District Courts as authorized by G.S. 7A-34 and found in the Rules Volume of the North Carolina General Statutes; and
- (4) Canons 1, 2 and 3 of the Code of Judicial Conduct adopted in accordance with G.S. 7A-10.1.

Every document filed with the Board shall be signed by the person, applicant, licensee, or the attorney who prepared the document, if it was prepared by an attorney, and shall contain his name, title/position, address, and telephone number. If the individual involved is a licensed dietitian/nutritionist, the license number shall appear on all correspondence with the Board. An original and one copy of each document shall be filed.

(c) Anyone may complain to the Board alleging that a person, applicant or licensee has committed an action prohibited by G.S. 90-350 through G.S. 90-369 or the rules of the Board. A person wishing to complain about an alleged violation of G.S. 90-350 through G.S. 90-369 or the rules of the Board may notify the Executive Secretary. A complaint regarding the Executive Secretary, the staff or the Board may be directed to the chair of the Board or any Board member. The initial notification of a complaint may be in writing, by telephone, or by personal visit to the Executive Secretary's office.

Upon receipt of a complaint, the Executive Secretary, unless the health and safety of the public otherwise requires, shall send to the complainant an acknowledgement letter, and request the complainant complete and file a complaint form before further action shall be taken.

(d) An Investigator or other authorized Board staff shall investigate a complaint and shall take one or more of the following actions:

- (1) determine that an allegation is groundless and dismiss the complaint;
- (2) determine that the complaint does not come within the Board's jurisdiction, advise the complainant and, if possible, refer the complainant to the appropriate governmental agency for handling such complaints;
- (3) determine that a nonlicensed person has committed a prohibited action and take appropriate legal action against the violator; or
- (4) determine that a licensee has violated the Act or the rules of the Board and propose an enforcement action authorized by law.

(e) Whenever a complaint is dismissed or a complaint file closed, the Executive Secretary shall give a summary report of the final action to the Board, the complainant, and the accused party.

(f) In accordance with G.S. 150B-3(c), a license may be summarily suspended if Board finds that the public health, safety, or welfare requires emergency action. Such a finding shall be incorporated with the order of the Board and

the order shall be effective on the date specified in the order or on service of the certified copy of the order at the last known address of the licensee, whichever is later, and shall continue to be effective during the proceedings. Failure to receive the order because of refusal of service or unknown address does not invalidate the order. Proceedings shall be promptly commenced.

(g) The Board, through its staff, shall issue a Letter of Charges only upon completion of an investigation of a written complaint and review with legal counsel or prosecuting attorney. Subsequent to an investigation and validation of a complaint, a Letter of Charges shall be sent on behalf of the Board to the person, applicant or licensee who is the subject of the complaint. The Letter of Charges shall be served in accordance with G.S. 1A-1, Rule 4, Rules of Civil Procedure. The Letter of Charges shall serve as the Board's formal notification to the person that an allegation of possible violation(s) of the Act or the rules of the Board has been initiated. The Letter of Charges does not constitute a contested case. The Letter of Charges shall include the following:

- (1) a statement of the factual allegations;
- (2) a citation of the relevant sections of the statutes or rules involved;
- (3) notification that a settlement conference will be scheduled upon request;
- (4) explanation of the procedure used to govern the settlement conference;
- (5) notification that if a settlement conference is not requested, or if held, does not result in resolution of the case, a contested case hearing will be scheduled; and
- (6) an offer of voluntary surrender for alleged violations of the Act.

A case becomes a contested case after the agency and the person, applicant or licensee do not agree to a resolution of the dispute through a settlement conference or either the agency or the person, applicant or licensee requests a contested case hearing.

(h) No Board member shall discuss with any party the merits of any case pending before the Board. If a party files in good faith an affidavit of personal bias or other reason for disqualification of any member of the Board, the Board shall determine the matter as part of the record in the case.

(i) A settlement conference, if requested by the applicant or licensee, shall be held for the purpose of attempting to resolve a dispute through informal procedures prior to the commencement of formal administrative proceedings. The conference shall be held in the offices of the Board, unless another site is designated by mutual agreement of all involved parties. All parties shall attend or be represented at the settlement conference. The parties shall be prepared to discuss the alleged violations and the incidents on which these are based. At the conclusion of the day during which the settlement conference is held, a form must be signed by all parties which indicates whether the settlement offer is accepted or rejected. Subsequent to this decision:

- (1) if a settlement is reached, the Board shall forward a written settlement agreement containing all conditions of the settlement to the other party(ies); or
- (2) if a settlement cannot be reached, the case shall proceed to a contested case hearing by the filing of a petition with the Board by the agency, person, applicant, or licensee.

(j) Informal disposition may be made of a contested case or an issue in a contested case by stipulation, agreement or consent order at any time prior to or during the hearing of a contested case.

(k) The Board shall give the parties in a contested case a Notice of Hearing not less than 15 calendar days before the hearing. The Notice shall be given in accordance with G.S. 150B-38(b) and (c). The Notice shall include:

- (1) acknowledgement of service, or attempted service, of the Letter of Charges in compliance with Paragraph (g) of this Rule;
- (2) date, time, and place of the hearing;
- (3) a short and plain statement of the factual allegations;
- (4) a citation of the relevant sections of the statutes or rules involved;
- (5) notification of the right of a party to represent himself or to be represented by an attorney;
- (6) a statement that, pursuant to Paragraph (n) of this Rule, subpoenas may be requested by the licensee to compel the attendance of witnesses or the production of documents;
- (7) a statement advising the licensee that a notice of representation, containing the name of licensee's counsel, if any, shall be filed with the Board not less than 10 calendar days prior to the scheduled date of the hearing;
- (8) a statement advising the licensee that a list of witnesses for the licensee shall be filed with the Board not less than 10 calendar days prior to the scheduled date of the hearing; and
- (9) a statement advising the licensee that failure to appear at the hearing may result in the allegations of the Letter of Charges being taken as true and that the Board may proceed on that assumption.

(l) Prehearing conferences may be held to simplify the issues to be determined, to obtain stipulations in regards to foundations for testimony or exhibits, to obtain stipulations of agreement on nondisputed facts or the application of

particular laws, to consider the proposed witnesses for each party, to identify and exchange documentary evidence intended to be introduced at the hearing, and to consider such other matters that may be necessary or advisable for the efficient and expeditious conduct of the hearing. The prehearing conference shall be conducted in the offices of the Board, unless another site is designated by mutual agreement of all parties. The prehearing conference shall be an informal proceeding and shall be conducted by a Board-designated member. All agreements, stipulations, amendments, or other matters resulting from the prehearing conference shall be in writing, signed by all parties, and introduced into the record at the beginning of the formal administrative hearing.

(m) Prehearing conferences or administrative hearings conducted before a majority of Board members shall be held in the county where the Board maintains its principal office, or by mutual consent in another location which will better promote the ends of justice or better serve the convenience of witnesses or the Board. For those proceedings conducted by an Administrative Law Judge, the venue shall be determined in accordance with G.S. 150B-38(e). All hearings conducted by the Board shall be open to the public.

(n) The Board may issue subpoenas for the Board or a licensee, in preparation for, or in the conduct of, a contested case. Subpoenas for the attendance and testimony of witnesses or the production of documents or information, either at the hearing or for the purposes of discovery, shall be issued in accordance with G.S. 150B-39 and G.S. 1A-1, Rule 45. Requests by a licensee for subpoenas shall be made in writing to the Board and shall include the following:

- (1) the full name and home or business address of all persons to be subpoenaed; and
- (2) the identification, with specificity, of any documents or information being sought.

Subpoenas shall include the date, time, and place of the hearing and the name and address of the party requesting the subpoena. In the case of subpoenas for the purpose of discovery, the subpoena shall include the date, time, and place for responding to the subpoena.

Subpoenas shall be served as in the manner provided by G.S. 150B-39 and G.S. 1A-1, Rule 45. The cost of service, fees, and expenses of any witnesses or documents subpoenaed shall be paid in accordance with G.S. 150B-39(c) and G.S. 7A-314. Objections to subpoenas shall be heard in accordance with G.S. 150B-39 and G.S. 1A-1, Rule 45.

(o) All motions related to a contested case, except motions for continuance and those made during the hearing, shall be in writing and submitted to the Board at least 10 calendar days before the hearing, if any, is to be held either on the motion or the merits of the case. Prehearing motions shall be heard at a prehearing conference or at the contested case hearing prior to the commencement of testimony. The Board-designated hearing officer shall hear the motions and the response from the non-moving party pursuant to Rule 6 of the General Rules of Practice for the Superior and District Courts and rule on such motions. If the prehearing motions are heard by an Administrative Law Judge from Office of Administrative Hearings, the provisions of G.S. 150B-40(e) shall govern the proceedings.

(p) Motions for a continuance of a hearing may be granted upon a showing of good cause. Unless time does not permit, a request for a continuance of a hearing shall be made in writing and received by the office of the Board no less than seven calendar days before the hearing date. In determining whether good cause exists, consideration shall be given to the ability of the party requesting a continuance to proceed effectively without a continuance. A motion for a continuance filed less than seven calendar days from the date of the hearing shall be denied unless the reason for the motion could not have been ascertained earlier. Motions for continuance filed prior to the date of the hearing shall be ruled on by the hearing officer or the Administrative Law Judge. All other motions for continuance shall be ruled on by the majority of the Board members or Administrative Law Judge sitting at the hearing. As used in this Rule:

- (1) "Good cause" includes death or incapacitating illness of a party, representative, or attorney of a party; a court order requiring a continuance; lack of proper notice of the hearing; a substitution of the representative or attorney of a party if the substitution is shown to be required; a change in the parties or pleadings requiring postponement; and agreement for a continuance by all parties if either more time is necessary to complete mandatory preparation for the case, such as authorized discovery, and the parties and the administrative law judge have agreed to new hearing date or parties have agreed to a settlement of the case that has been or is likely to be approved by the final decision maker.
- (2) "Good cause" does not include intentional delay; unavailability of counsel or other representative because of engagement in another judicial or administrative proceeding unless all other members of the attorney's or representative's firm familiar with the case are similarly engaged; unavailability of a witness if the witness testimony can be taken by deposition, and failure of the attorney or representative to properly utilize the statutory notice period to prepare for the hearing.

During a hearing, if it appears in the interest of justice that further testimony should be received and sufficient time does not remain to conclude the testimony, the Board shall either order the additional testimony taken by deposition or continue the hearing to a future date for which oral notice on the record is sufficient. In such situations and to

such extent as possible, the seated members of the Board and the Board-designated hearing officer shall receive the additional testimony. If new members of the Board or a different hearing officer must participate, a copy of the transcript of the hearing shall be provided to them prior to the receipt of the additional testimony. A continuance shall not be granted when to do so would prevent the case from being concluded within any statutory or regulatory deadline.

(q) All hearings by the Board shall be conducted by a majority of members of the Board, except as provided in this Paragraph. The Board shall designate one of its members to preside at the hearing. The Board shall designate an administrative law counsel as procedural officer to conduct the proceedings of the hearing. The seated members of the Board shall hear all evidence, make findings of fact and conclusions of law, and issue an order reflecting a majority decision of the Board. When a majority of the members of the Board is unable or elects not to hear a contested case, the Board shall request the designation of an administrative law judge from the Office of Administrative Hearings to preside at the hearing. The provisions of G.S. 150B, Article 3A and 21 NCAC 17 .0116 govern a contested case in which an administrative law judge is designated as the Hearing Officer. In the event that any party or attorney at law or other representative of a party engages in behavior that obstructs the orderly conduct of proceedings or would constitute contempt if done in the General Court of Justice, the Board may apply to the applicable superior court for an order to show cause why the person(s) should not be held in contempt of the Board and its processes.

(r) All parties may present evidence, rebuttal testimony, and argument with respect to the issues of law and policy, and to cross-examine witnesses. The North Carolina Rules of Evidence as found in Chapter 8C of the General Statutes applies to contested case proceedings, except as provided otherwise in this Rule and G.S. 150B-41. Sworn affidavits may be introduced by mutual agreement from all parties. All oral testimony shall be under oath or affirmation and shall be recorded. Unless otherwise stipulated by all parties, witnesses are excluded from the hearing room until such time that they have completed their testimony and have been released.

(s) Upon compliance with the provisions of G.S. 150B-40(e), if applicable, and G.S. 150B-42, and review of the official record, as defined in G.S. 150B-42(b) and (c), the Board shall make a written final decision or order in a contested case. The final decision or order shall be rendered by the Board meeting in quorum and by a majority of those present and voting. The decision or order shall be made based on:

- (1) competent evidence and arguments presented during the hearing and made a part of the official record in accordance with G.S. 150B-41 and Paragraph (r) of this Rule;
- (2) stipulations of fact;
- (3) matters officially noticed; and
- (4) other items in the official record that are not excluded by G.S. 150B-41 and Paragraph (r) of this Rule.

All final decisions or orders shall be signed by the Executive Secretary and the Chair of the Board. A copy of the decision or order shall be served as in the manner provided by G.S. 150B-41(a). The cost of service, fees, and expenses of any witnesses or documents subpoenaed shall be paid in accordance with G.S. 150B-39(c) and G.S. 7A-314.

(t) The official record of a contested case is available for public inspection upon reasonable request. The official record shall be prepared in accordance with G.S. 150B-42(b) and (c). Contested case hearings shall be recorded either by a magnetic type recording system or a professional court reporter using stenomask or stenotype. Transcripts of proceedings during which oral evidence is presented shall be made only upon request of a party. Transcript costs shall include the cost of an original for the Board. Cost of the transcript or part thereof or copy of said transcript or part thereof which a party requests shall be divided equally among the party(ies) requesting a transcript. Cost shall be determined under supervision of the Executive Secretary.

(u) The Board may recover against a licensee or person found to be in violation of the Act or rules adopted by the Board the following costs of disciplinary actions incurred by the Board for the investigation, prosecution, hearing or other administrative action:

- (1) witness fees and statutorily-allowed expenses for witnesses;
- (2) direct costs of the Board in taking or obtaining of depositions of witnesses; and
- (3) costs incurred by reason of administrative or staff time of employees of the Board directly attributable to the action leading to the final decision or order.

These costs may be assessed by the Board pursuant to final decisions or orders of the Board following an administrative hearing pursuant to Article 3A of Chapter 150B of the North Carolina General Statutes. These costs may be assessed against a person or licensee for an investigation or action in the nature of disciplinary action, other than a final decision or order of the Board, pursuant to the express consent by the person in a consent order approved by the Board.

History Note: Authority G.S. 90-356; 90-363; 90-370;
Temporary Adoption Eff. July 16, 1992 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. November 30, 1992;
Recodified from 21 NCAC 17 .0016 Eff. February 1, 1995;
Amended Eff. April 1, 2010; July 18, 2002; January 1, 1996.

21 NCAC 17 .0117 SUSPENSION OF AUTHORITY AND ESCROW OF FUNDS

Not later than October 31 of each year, the Board shall file the reports required by G.S. 93B-2. In the event the reports required by G.S. 93B-2 are not timely filed and the Board's authority to expend any funds is therefore suspended, the Board shall deposit any fees or funds received during the period of suspension to an escrow account established by the Board solely for this purpose, and shall not expend such fees or funds until such time as the required reports are filed in accordance with G.S. 93B-2.

History Note: Authority G.S. 90-356; 93B-2;
Eff. April 1, 2010.

21 NCAC 17 .0118 ARMED SERVICES LICENSEES

Upon receipt of a written request on or behalf of a licensee who is currently in good standing with the Board, is serving in the armed forces of the United States, and to whom G.S. 105-249 grants an extension of time to file a tax return, the Board shall waive or postpone renewal fees, renewal application deadlines, continuing education requirements and any other requirement or conditions related to the maintenance of the license issued by the Board or to the renewal thereof for a period of time not less than the extended period of time to file a tax return that is granted pursuant to G.S. 93B-15.

History Note: Authority G.S. 90-356; 93B-15;
Eff. April 1, 2010.

SECTION .0200 - REVIEW AND APPROVAL OF WEIGHT CONTROL SERVICES

21 NCAC 17 .0201 DEFINITIONS

As used in G.S. 90-368(7) and this Section, the following terms and phrases, which have not already been defined in the Practice Act, G.S. 90-350 through 90-369, shall have the meanings specified:

- (1) A "weight control program or service" means a general program of instruction with food, supplements, food products or a food plan designed for one or more healthy population groups in order to achieve or maintain a healthy weight. A weight control program is not based on an individual nutrition assessment as referenced in G.S. 90-352 and 21 NCAC 17.0101(11) and is not individualized to provide medical nutrition therapy as defined in 21 NCAC 17.0101(16) or nutrition care services as defined in G.S. 90-352 to manage, treat or rehabilitate a medical condition, illness, or injury for a specific person or group;
- (2) A "review" means the consideration and evaluation of a weight control program or service, in accordance with this Section, which results in either an approval or a disapproval of the program by a reviewer, as defined in this Rule;
- (3) "Reviewer" means a person who is:
 - (a) a licensed dietitian/nutritionist;
 - (b) a dietitian/nutritionist licensed in another state that has licensure requirements that are at least as stringent as under G.S. 90, Article 25; or
 - (c) a dietitian registered by the Commission on Dietetic Registration of the ADA;
- (4) "Weight control provider" means a person who provides weight control services through a weight control program as referenced in G.S. 90-368(7) .
- (5) "Written assessment" means a written review and approval by a reviewer of weight control program and weight control services with respect to the following:
 - (a) the screening process;
 - (b) the weight control food plan, supplements, food, or food products for the program's clients;

- (c) nutritional adequacy and scientific evidence-based nutrition practices;
- (d) materials, which include written nutrition education handouts, recorded education materials, lesson or instructional plans, food plans and screening tools;
- (e) rate of weight change promoted; and
- (f) provision of a maintenance or follow up program.

History Note: Authority G.S. 90-356; 90-368;
 Eff. February 1, 1995;
 Amended Eff. December 1, 2011; March 1, 1996.

21 NCAC 17 .0202 REQUIREMENT FOR REVIEW

A person who provides a weight control program or service shall be in compliance with G.S. 90-368 provided that:

- (1) The person does not hold himself/herself out to be a dietitian or nutritionist or imply orally or in writing or indicate in any way that he/she is a dietitian/nutritionist; and
- (2) The person providing the program follows the program that is reviewed and shall not initiate any program change without prior approval.

History Note: Authority G.S. 90-356; 90-368;
 Eff. February 1, 1995.

21 NCAC 17 .0203 REVIEW AND BOARD ACTION

(a) In order to create a presumption of compliance with the exemption provided in G.S. 90-368(7) a weight control provider may submit to the Board the information referenced in paragraphs (b) and (c) of this rule. Submission of such information is not a prerequisite for meeting the exemption.

(b) A weight control provider shall be presumed to be in compliance with the exemption if the provider submits to the Board:

- (1) a written statement that is signed and dated by the weight control provider that provides and certifies the following information:
 - (A) the name and address of the weight control provider and physical location of the weight control program;
 - (B) the name and address of a reviewer that has provided a written assessment and approval of the weight control program and weight control services as provided by this rule;
 - (C) that a reviewer has provided a written assessment of the weight control program and weight control services and approved the program and services as provided by 21 NCAC 17. 0201(5);
 - (D) that no program change can be initiated without prior approval of a reviewer;
 - (E) that the weight control provider agrees to adhere to the weight control program, including program changes, that has been reviewed and approved by a reviewer; and
 - (F) that the weight control provider agrees that if the program is changed in relation to any of the elements of the written assessment provided by a reviewer pursuant to this rule that the weight control provider shall submit to the Board a signed statement of a reviewer indicating a reviewer’s approval of the program change;
- (2) a copy of a reviewer’s written assessment and approval as provided by 21 NCAC 17. 0201(5) that is dated not more than 90 days prior to the date that the weight control provider’s written statement referenced in subparagraph (a)(1) of this rule is submitted to the Board; and
- (3) a copy of a written statement signed by a reviewer that consultation is available to the weight control provider from the reviewer and that states the name and address of that person.

(c) If there is a program change, after a reviewer’s written assessment and approval as provided by 21 NCAC 17. 0201(5), a weight control provider is presumed to be in compliance with the exemption provided in G.S. 90-368(7) if the provider submits to the Board a written statement that provides and certifies the information required by subparagraph (b)(1) of this rule and a copy of a reviewer’s written assessment and approval of the program change that is dated not more than 90 days prior to the date the weight control provider’s written statement is submitted to the Board.

History Note: Authority G.S. 90-356; 90-368;
 Eff. February 1, 1995. 1995;

Amended Eff. December 1, 2011.

SECTION .0300 - DIETETIC/NUTRITION STUDENTS OR TRAINEES

21 NCAC 17 .0301 DEFINITIONS

*History Note: Authority G.S. 90-356(2); 90-368(2);
Eff. March 1, 1996;
Repealed Eff. July 18, 2002.*

21 NCAC 17 .0302 REQUIREMENTS

A student or trainee is exempt pursuant to G.S. 90-360(2) when enrolled in a course of study not to exceed five years. The Board may approve or disapprove a request for an extension of the period of time based upon circumstances beyond the control of the student or trainee.

*History Note: Authority G.S. 90-356(2); 90-368(2);
Eff. March 1, 1996;
Amended Eff. July 18, 2002.*

21 NCAC 17 .0303 SUPERVISION

(a) A planned, continuous program in clinical practice pursuant to G.S. 90-357(3)b.2. shall designate a licensed dietitian/nutritionist who shall supervise a student or trainee; and

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

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

- (1) provide student/trainee advisement, evaluation, counseling and supervision;
- (2) provide academic or supervised practice program assessment, planning, implementation and evaluation;
- (3) inform student(s)/trainee(s) of laws, regulations and standards affecting the practice of dietetics/nutrition, including the Dietetics/Nutrition Practice Act and its Rules; and
- (4) advise student(s)/trainee(s) on meeting the requirements to be licensed to practice dietetics/nutrition.

*History Note: Authority G.S. 90-356(2); 90-357;
Eff. March 1, 1996;
Amended Eff. December 1, 2011; July 18, 2002.*

21 NCAC 17 .0304 RECORDS AND REPORTS

(a) Permanent and current records from approved clinical practice programs shall be available for review by representatives of the Board. The Board may make use of facts supplied in determining compliance with G.S. 90-368 and in approving applications for a license.

(b) The Board may require additional records and reports for review at any time to provide evidence and substantiate compliance with standards of education, the law and the rules of the Board.

*History Note: Authority G.S. 90-356(2); 90-368(2); 90-357;
Eff. March 1, 1996;
Amended Eff. July 18, 2002.*

SECTION .0400 - UNLICENSED INDIVIDUALS

21 NCAC 17 .0401 INDIVIDUALS AIDING THE PRACTICE OF DIETETICS/NUTRITION

(a) As used in this Section, the following terms and phrases, which have not already been defined in G.S. 90, Article 25, shall have the meanings specified:

- (1) "Certified Dietary Manager" means an individual who is certified by the Certifying Board of the Dietary Managers.
 - (2) "Dietetic Technician Registered" or "DTR" means an individual who is registered by the Commission on Dietetic Registration of the American Dietetic Association.
 - (3) "Direct supervision" as referenced in G.S. 90-368(4) means that a licensed dietitian/nutritionist shall:
 - (A) be available for consultation on delegated nutrition care activities being performed by the person being supervised, either through on-site or through electronic communication, and shall be available to render assistance when needed to the unlicensed personnel and patient or client, or shall have arranged for another licensee to be available in the absence of the licensed dietitian/nutritionist; provided that the licensed dietitian/nutritionist shall be on-site at the service delivery site and within audible and visual range of any unlicensed personnel person described in Subparagraph (b)(3) of this Rule for the provision of any nutrition care activities;
 - (B) directly and personally examine, evaluate and approve the acts or functions of the person supervised; and
 - (C) meet with the unlicensed personnel in a joint effort to establish, maintain and elevate a level of performance to ensure the health, safety and welfare of clients or patients during the provision of nutrition care activities, and provide sufficient guidance and direction as to enable the unlicensed personnel to competently perform the delegated activity or function.
 - (4) "Nutrition care activities" means activities performed by unlicensed personnel which are delegated by licensed dietitians/nutritionists in accordance with Paragraphs (c) and (d) of this Rule and which support the provision of nutrition care services as referenced in G.S. 90-352(4). Nutrition care activities include the provision of nutrition care to address and mitigate a medical condition, illness or injury and the provision of weight control programs or services, as well as community nutrition, food service, and nutrition information or education.
- (b) Unlicensed personnel aiding the practice of dietetics/nutrition may include the following:
- (1) a Certified Dietary Manager;
 - (2) a Dietetic Technician Registered; or
 - (3) an individual who has met the academic requirements as referenced in G.S. 90-357(3)b.1, c.1 and d.
- (c) The licensed dietitian/nutritionist may delegate nutrition care activities to unlicensed personnel that are appropriate to the level of knowledge and skill of the unlicensed personnel. The licensed dietitian/nutritionist shall be responsible for the initial and ongoing determination of the competence of the unlicensed personnel to perform any delegated acts or functions. Delegation of nutrition care activities shall be in writing and shall identify the patient or client and the act or function assigned to the unlicensed personnel. The licensed dietitian/nutritionist shall supervise the nutrition care activities of the unlicensed personnel and maintain responsibility for nutrition care activities performed by all personnel to whom the care is delegated. The licensed dietitian/nutritionist shall not delegate the entire spectrum of nutrition care services, but may delegate specific acts and functions which support the licensed dietitian/nutritionist's provision of nutrition care services. The licensed dietitian/nutritionist shall have the responsibility for clinical record keeping, and shall ensure that case notes and other records of services identify whether the licensed dietitian/nutritionist or the unlicensed personnel was the direct provider of the service.
- (d) The following variables shall be considered by the licensed dietitian/nutritionist in determining whether or not an activity or function may be delegated to unlicensed personnel:
- (1) knowledge and skills of the unlicensed personnel which include both basic educational and experience preparation and continuing education and experience;
 - (2) the competence of the unlicensed personnel for the activity or function;
 - (3) the variables in each service setting which include:
 - (A) the complexity and frequency of nutrition care needed by a given client population;
 - (B) the acuity and stability of the client's condition; and
 - (C) established policies, procedures, practices, and channels of communication of the facilities where the delegated activities or functions are being performed which lend support to the types of nutrition care activities being delegated, or not delegated, to unlicensed personnel; and

- (4) whether the licensed dietitian/nutritionist has the skills, experience and ability to competently supervise the unlicensed personnel for the activity or function.

*History Note: Authority G.S. 90-356(2); 90-368(4);
Eff. March 1, 1996;
Amended Eff. May 1, 2010; July 18, 2002.*

21 NCAC 17 .0402 INDIVIDUALS PROVIDING NUTRITION INFORMATION

(a) The following terms and phrases shall have the meanings specified:

- (1) "Nutrition information" means nonfraudulent nutrition information related to food, food materials, or dietary supplements which is designed for one or more healthy population groups and is based on valid scientific evidence, reports and studies. Nutrition information is not based on an individual nutrition assessment as referenced in G.S. 90-352 or medical nutrition therapy as referenced in 21 NCAC 17 .0101(11) and is not individualized to provide nutrition care services to prevent, manage, treat, cure or rehabilitate a medical condition, illness, or injury for a specific person or group as referenced in G.S. 90-352 and 21 NCAC 17 .0101(12).
- (2) "Reported or historical use" means information about food, food materials or dietary supplements which is based on the following:
 - (A) historical or methodological studies or research conducted by experts in the field using sound scientific methods with randomized controlled clinical trials; or
 - (B) reports on valid scientific studies published in peer-reviewed medical or dietetics and nutrition journals or publications.

(b) The Board shall deem an individual who provides nutrition information or education to be in compliance with G.S. 90-368(9) when:

- (1) The person does not hold himself/herself out to be a dietitian or nutritionist or imply orally or in writing or indicate in any way that he/she is a dietitian/nutritionist;
- (2) The person does not provide nutrition care services or nutrition care activities which have not been delegated to him/her by a licensed dietitian/nutritionist;
- (3) The person provides nutrition information on or about food, food materials or dietary supplements, and does not provide nutrition information on the nutritional needs of the consumer;
- (4) The person provides nutrition information in connection with the marketing and distribution of the food, food materials, dietary supplements or other goods to be provided or sold, and does not provide nutrition information in connection with the marketing and distribution of nutrition services;
- (5) The person provides nonfraudulent nutrition information which is based on scientific reports and studies, is not false or misleading, and is safe; and
- (6) The person provides the nutrition information on food, food materials, nutraceuticals, dietary supplements or other goods in accordance with federal, state and local laws, regulations and ordinances, including but not limited to G.S. 90, Article 25.

*History Note: Authority G.S. 90-356(2); 90-368;
Eff. March 1, 1996;
Amended Eff. July 18, 2002.*

21 NCAC 17 .0403 ELECTRONIC PRACTICE

Any person, whether residing in this state or not, who by use of electronic or other medium performs any of the acts described as the practice of dietetics/nutrition, but is not licensed pursuant to Article 25 of G.S. 90 shall be deemed by the Board as being engaged in the practice of dietetics/nutrition and subject to the enforcement provisions available to the Board. Among other remedies, the Board shall report violations of this Rule to any occupational licensing board having issued an occupational license to a person who violates this Rule. This Rule does not apply to persons licensed pursuant to, or exempt from licensure pursuant to, Article 25 of G.S. 90.

*History Note: Authority G.S. 90-356;
Eff. February 1, 2006.*