

TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 17 – BOARD OF DIETETICS, NUTRITION

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Dietetics/Nutrition intends to adopt the rules cited as 21 NCAC 17 .0501-.0517, amend the rule cited as 21 NCAC 17 .0112, and repeal the rule cited as 21 NCAC 17 .0116.

Pursuant to G.S. 150B-21.17, the Codifier has determined it impractical to publish the text of rules proposed for repeal unless the agency requests otherwise. The text of the rule(s) are available on the OAH website at <http://reports.oah.state.nc.us/ncac.asp>.

Link to agency website pursuant to G.S. 150B-19.1(c): <https://www.ncbdn.org/proposed-rule-changes>

Proposed Effective Date: *December 1, 2022*

Public Hearing:

Date: *September 7, 2022*

Time: *1:00 p.m.*

Location:

Join Zoom Meeting

<https://us02web.zoom.us/j/7654191653?pwd=UFNzajJYR2lWmVJaThFUEJibkt2UT09>

Meeting ID: 765 419 1653

Passcode: i2dHgH

One tap mobile

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Dial by your location

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+1 301 715 8592 US (Washington DC)

+1 312 626 6799 US (Chicago)

+1 646 931 3860 US

+1 346 248 7799 US (Houston)

+1 386 347 5053 US

+1 564 217 2000 US

+1 669 444 9171 US

+1 669 900 6833 US (San Jose)

+1 253 215 8782 US (Tacoma)

Meeting ID: 765 419 1653

Passcode: 238510

Reason for Proposed Action: *The proposed rules are being amended, repealed, or adopted in order to align the investigation and complaint rules with current processes. Rule 21 NCAC 17 .0116, which is proposed for repeal, addressed investigations, complaints, and hearings all in one rule. It has not been updated since 2010. The aims of these adoptions are to clarify the investigative process and the procedures followed when a matter proceeds to a hearing.*

Additionally, it is noted, Rule 21 NCAC 17 .0116 provided for fees that may be recovered against licensees or person found in violation of the Act or Rules. Noting 21 NCAC 17 .0116 is proposed for repeal, 21 NCAC 17 .0516 is proposed to address these same disciplinary costs. The one addition proposed Rule 21 NCAC 17 .0516 would make is to allow for the recovery of "costs incurred by reason of legal fees charged to the Board directly attributable to the action leading to the final decision or order." It is also noted, in Rule 21 NCAC 17 .0517, the Board aims to address the situation of licensee impairment and provide authority to allow the Board to assist licensees through the development of non-disciplinary interventions, treatment, and monitoring programs.

Comments may be submitted to: *Charla M. Burill, 1135 Kildaire Farm Road, Suite 200, Cary, NC 27511; phone (919) 678-7609; fax (919) 882-1776; email info@ncbdn.org*

Comment period ends: *October 15, 2022*

Procedure for Subjecting a Proposed Rule to Legislative Review: *If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 984-236-1850.*

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- State funds affected
- Local funds affected
- Substantial economic impact (\geq \$1,000,000)
- Approved by OSBM
- No fiscal note required

SECTION .0100 – LICENSURE

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~~ applicant, or licensee has violated any part of G.S. 90-350 through 90-369 or the rules of ~~the Board, this Chapter~~, the Board shall so advise the person in writing as referenced in Rule ~~.0116 .0503~~ and .0504 of this Chapter and provide the person with the opportunity for a hearing as referenced in Rule ~~.0116 .0504~~ of this Chapter. The Board's final decision or order shall be made in writing as referenced in Rule ~~.0116 .0514~~ 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~~ they are reinstated. If a license revoked on disciplinary grounds is reinstated, the licensee must reapply and pay all applicable fees.

History Note: Authority G.S. 90-356; 90-363;
 Temporary Adoption Eff. March 19, 1992 for a Period of 180 Days to Expire on September 13, 1992;
 Eff. August 3, 1992;
 Recodified from 21 NCAC 17 .0012 Eff. February 1, 1995;
 Amended Eff. January 1, 1996;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4, ~~2016~~ 2016;
 Amended Eff. December 1, 2022.

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

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;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4, 2016;
 Repealed Eff. December 1, 2022.

SECTION .0500 – INVESTIGATIVE PROCESS, COMPLAINTS, AND ADMINISTRATIVE HEARINGS

21 NCAC 17 .0501 DEFINITIONS

As used in this Section:

- (1) "Good cause" related to motions or requests to continue or for additional time for responding includes:
 - (a) death or incapacitating illness of a party, or attorney of a party;
 - (b) a court order requiring a continuance;
 - (c) lack of proper notice of the hearing;
 - (d) a substitution of the representative or attorney of a party if the substitution is shown to be required;
 - (e) 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 Board have agreed to a 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;
 - (f) where, for any other reason, either party has shown that the interests of justice require a continuance or additional time.
- (2) "Good cause" related to motions or requests to continue or for additional time for responding shall not include:
 - (a) intentional delay;
 - (b) unavailability of a witness if the witness testimony can be taken by deposition; and
 - (c) failure of the attorney or representative to properly utilize the statutory notice period to prepare for the hearing.
- (3) "Investigative Committee" means a Board committee composed of one licensed dietitian/nutritionist member of the Board, one licensed nutritionist member of the Board, and the public member of the Board. This Committee is charged with the duty of reviewing cases and complaints involving licensees, applicants for licensure, and all other allegations involving violations of the Dietetics/Nutrition Practice Act. The Investigative Committee shall be responsible for directing investigations and making recommendations to the Board regarding unresolved cases or complaints at regularly scheduled meetings.
- (4) "Licensee" means all persons to whom the Board has issued a license under Article 25 of G.S. 90.

*History Note: Authority G.S. 90-356; 150B-38;
Eff. December 1, 2022.*

21 NCAC 17 .0502 COMPLAINTS

- (a) Anyone may complain to the Board alleging that a person, applicant, or licensee has committed an action prohibited by Article 25, Chapter 90 of the North Carolina General Statutes or the rules of the Board.
- (b) Complaints may be submitted to the Board by completing the Board's complaint form online at www.ncbdn.org/file-a-complaint or a paper form may be requested by contacting the Board office. Paper forms may be delivered to the Board by mail or hand-delivery at 1135 Kildaire Farm Road, Suite 200, Cary, NC 27511.
- (c) Each complaint submitted shall set forth specific facts and circumstances known to the complainant relating to the Dietetics/Nutrition Practice Act or the Board's rules, and the conduct or competence of each person who is the subject of the complaint.
- (d) Anonymous complaints are not investigated unless, if upon preliminary review of the contents of the complaint by Board staff, it appears the allegation(s) indicate a violation of the Dietetics/Nutrition Practice Act or the Board's rules, sufficient identification information for the person who is the subject of the complaint is provided, and there is sufficient information to substantiate allegation(s).
- (e) Investigations may be conducted by the Board staff or by other persons authorized by the Board.
- (f) Upon receipt of a complaint, the Board shall confirm receipt of the complaint to the complainant.
- (g) The Board staff, or its authorized Investigator, shall assign a complaint number to the initial complaint, review the contents of the complaint, and conduct a preliminary review of information to determine whether an individual's conduct or competence relates to the Dietetics/Nutrition Practice Act or the Board's rules.
- (h) If preliminary information in the complaint does not relate to an individual's conduct or competence under the authority of the Dietetics/Nutrition Practice Act or the Board's rules, the Board staff, or its authorized Investigator, shall close the complaint and send notice to the complainant. If applicable, the Board staff may refer the complainant to the appropriate governmental agency for handling such complaints. No further action shall be taken by the Board.
- (i) If the information about an individual's conduct or competence appears to be under the authority of the Dietetics/Nutrition Practice Act or the Board's rules, Board staff, or its authorized Investigator, shall open an investigative case and begin an investigation of the matters described in the complaint.

*History Note: Authority G.S. 90-356; 90-363;
Eff. December 1, 2022.*

21 NCAC 17 .0503 INVESTIGATIONS

- (a) Once an investigative case is created, the Board staff, or its authorized Investigator, shall send each person who is the subject of an investigation, using the mail or electronic mail address of record in the Board's records for each person, or the mail or electronic mail address provided on the complaint form if the person is not in the Board's records, a summary of the complaint and a request for a written response.
- (b) Licensees shall submit a written response to a complaint received by the Board within 45 days from the date the Board confirms the licensee's receipt of notice of the complaint. The Board shall grant up to an additional 30 days for the response where the licensee demonstrates good cause for the extension of time. The response shall contain accurate and complete information. Where a licensee fails to respond in the time and manner provided herein, the Board may proceed with making its decision in the absence of the licensee or information from the licensee, and the licensee may be held by the Board to be interfering with an investigation by willful misrepresentation of facts under 21 NCAC 17 .0114(16) in violation of G.S. 90-363(7).
- (c) A summary of the complaint and a request for a written response sent to a person who is not an applicant for licensure or a licensee of the Board shall be accompanied by the following statement:
- "You are hereby notified that the opinion expressed herein is not a legal determination. An occupational licensing board does not have the authority to order you to discontinue your current practices. Only a court may determine that you have violated or are violating any law and, if appropriate, impose a remedy or penalty for the violation. Further, pursuant to G.S. 150B-4, you may have the right, prior to initiation of any court action by the Board, to request a declaratory ruling regarding whether your particular conduct is lawful. You are further notified that any right to a declaratory ruling supplements any other legal rights that you may already have to establish the legality of your conduct with respect to the goods or services you offer or provide."
- (d) The Board staff, or its authorized Investigator, shall investigate a complaint and shall provide the Board's Investigation Committee with an investigation report. The Investigative Committee shall review the report and shall determine to:
- (1) request further investigation of particular aspects of the matter;
 - (2) request the individual who is the subject of the complaint meet with members of the Board to be interviewed if they are willing to be interviewed; or
 - (3) accept the report and make a recommendation to the Board.
- (e) The Board shall authorize the Investigative Committee to make a recommendation to the Board if an investigation is complete and the complaint is unresolved.
- (f) The Board shall consider the Investigative Committee's recommendation and shall determine whether to:
- (1) conduct further investigation of particular aspects of the matter;
 - (2) close or dismiss the case or issue a non-disciplinary letter of caution;
 - (3) issue a consent order to the subject of an investigation, specifying any disciplinary sanctions to be applied and, if the consent order is not accepted, issue a notice of hearing;
 - (4) issue a notice of hearing to a subject, specifying any disciplinary sanctions; or

- (5) apply to the courts for injunctive relief, refer a matter to a district attorney for prosecution, or take other actions, including reporting the matter to appropriate state or federal agencies.

(g) A copy of a notice of hearing shall be sent to the complainant.

(h) Whenever a complaint is dismissed or a complaint file is closed, notification of the Board's final decision shall be sent to the complainant, and the accused party.

History Note: Authority G.S. 90-356: 90-363;
Eff. December 1, 2022.

21 NCAC 17 .0504 RIGHT TO HEARING

(a) When the Board acts or proposes to act, other than in rule-making or declaratory ruling proceedings, in a manner which will affect the rights, duties, or privileges of a specific, identifiable licensee or applicant for a license, such person has the right to an administrative hearing. When the Board proposes to act in such a manner, it shall give any such affected person notice of the right to a hearing by mailing to the person, by certified mail at the person's last known address, a notice of the proposed action and a notice of a right to a hearing. Notice of a right to a hearing may also be given by any method of service permitted in G.S. 150B-38(c), by a signed acceptance of service from such person, or by delivery to the person's attorney of record who accepts service on behalf of the person.

History Note: Authority G.S. 90-356: 150B-38(h);
Eff. December 1, 2022.

21 NCAC 17 .0505 REQUEST FOR HEARING

(a) An individual who believes that individual's rights, duties, or privileges have been affected by the Board's administrative action, but who has not received notice of a right to an administrative hearing, may file a formal request for a hearing.

(b) The individual may submit a request to the Board's office, with the request bearing the notation: "REQUEST FOR ADMINISTRATIVE HEARING." The request shall contain the following information:

- (1) name and address of the petitioner;
- (2) a concise statement of the action taken by the Board which is challenged;
- (3) a concise statement of the way in which the petitioner has been aggrieved; and
- (4) a clear and specific statement of request for a hearing.

(c) In order to preserve a person's rights with respect to a Board action, the person shall file a request for hearing with the Board within 60 days after the person receives notice of the Board action that the person challenges.

History Note: Authority G.S. 90-356: 150B-38;
Eff. December 1, 2022.

21 NCAC 17 .0506 GRANTING OR DENYING HEARING REQUEST

(a) The Board shall grant a request for a hearing if it determines that the party requesting the hearing is a "person aggrieved" within the meaning of G.S. 150B-2(6). Whenever the Board proposes to deny, suspend, or revoke a license, or issue a letter of reprimand to a licensee, the licensee shall be deemed to be a person aggrieved.

(b) If the Board determines the petitioner is not a person aggrieved, the Board shall issue a denial that shall constitute a final agency decision.

(c) Approval of a request for a hearing shall be signified by issuing a notice as required by G.S. 150B-38(b) and explained in Rule .0507 of this Section.

History Note: Authority G.S. 90-356: 150B-38; 150B-42;
Eff. December 1, 2022.

21 NCAC 17 .0507 NOTICE OF HEARING

(a) The Board shall give the party or parties in a contested case a notice of hearing not less than 15 days before the hearing. Said notice shall contain the following information, in addition to the items specified in G.S. 150B-38(b):

- (1) the name, position, address, and telephone number of a person from the Board to contact for further information or discussion;
- (2) the date, time, and place for a pre-hearing conference, if any; and
- (3) any other information deemed relevant to informing the parties as to the procedure of the hearing.

(b) A party who has been served with a notice of hearing may file a written response with the Board in accordance with G.S. 150B-38(d). If the party desires to submit a written response instead of personally appearing at the hearing, the party shall state that desire in the written response, and the Board shall consider the written response in lieu of a personal appearance.

(c) If the party who has been given proper notice in accordance with Paragraph (a) of this Rule neither appears pursuant to the notice nor files and serves a written response as set out in Paragraph (b) of this Rule, the Board shall find the allegations of the notice admitted. The Board may continue the hearing or proceed with the hearing and make its decision based on the evidence presented.

(d) If the Board determines that the public health, safety or welfare requires such action, it may issue an order summarily suspending a license pursuant to G.S. 150B-3. Upon service of the order, the licensee to whom the order is directed shall immediately cease the practice of medical nutrition therapy in North Carolina. The suspension shall remain in effect pending issuance by the Board of a final agency decision pursuant to G.S. 150B-42. However, pursuant to this Rule and Rule .0506 of this Section, a person subject to a summary suspension may request a hearing on whether the public health, safety, or welfare permits terminating or modifying the terms of the

summary suspension pending a final agency decision. Neither an order of summary suspension nor a decision on whether the summary suspension order shall be terminated or modified is a final agency decision.

History Note: Authority G.S. 90-356; 150B-3; 150B-38; 150B-40; 150B-42;
Eff. December 1, 2022.

21 NCAC 17 .0508 CONTESTED CASES

All administrative hearings shall be conducted by a majority of the Board as set forth in G.S. 150B-40(b) or an administrative law judge designated to hear the case pursuant to G.S. 150B-40(e).

History Note: Authority G.S. 90-356; 150B-38; 150B-40;
Eff. December 1, 2022.

21 NCAC 17 .0509 INFORMAL PROCEDURES

(a) Before issuing a notice of hearing, the Board may designate one or more of its members, but in all cases less than a majority of the currently serving members of the Board, to meet informally via one or more conferences with the party or parties and attempt to reach an informal resolution of the dispute or any other matters as may aid in the disposition of the dispute. The designated Board member or members may direct one or more of the following dispositions:

- (1) Submission to the Board with a recommendation to dismiss with no action;
- (2) Submission to the Board with a recommendation that Board staff provide informal, non-disciplinary guidance to resolve the dispute;
- (3) Submission to the Board with a recommendation to resolve the dispute or to expedite the hearing by consent order; or
- (4) Scheduling, with appropriate notice, for contested case hearing.

The majority of the Board must approve all recommendations under Subparagraph (1), (2), and (3) of this Paragraph. Each Board member who is designated to serve in this capacity with regard to a party or parties' matter, whether the Board member actually meets with the individual or not, may participate in Board discussions concerning any recommendations made but may not vote upon the recommendation. The Board member or members who participated in the informal conferences shall be disqualified from hearing any contested case when the matter designated for informal resolution is any part of the subject matter of the contested case.

(b) The Board and the party or parties may agree to simplify the hearing by stipulation, or any other method provided by G.S. 150B-41(c).

History Note: Authority G.S. 90-356; 150B-41;
Eff. December 1, 2022.

21 NCAC 17 .0510 INFORMAL RESOLUTION

(a) Informal disposition may be made of a dispute, contested case, or an issue in a contested case by any method specified in G.S. 150B-41(c) during the hearing of a contested case.

(b) All recommendations of dismissal must be approved by a majority of the Board.

(c) All matters contained in a consent order, which disposes of a dispute, must be agreed to by the party or parties, and approved by a majority of the Board.

History Note: Authority G.S. 90-356; 150B-41;
Eff. December 1, 2022.

21 NCAC 17 .0511 DISQUALIFICATION OF BOARD MEMBERS

(a) Self-disqualification. If for any reason a Board member determines that personal bias or other factors render that member unable to hear a contested case and perform all duties in an impartial manner, that Board member shall voluntarily decline to participate in the hearing or decision.

(b) Petition for Disqualification. If for any reason any party in a contested case believes that a Board member is personally biased or otherwise unable to hear a contested case and perform all duties in an impartial manner, the party may file a sworn, notarized affidavit with the Board. The title of such affidavit shall bear the notation: "AFFIDAVIT OF DISQUALIFICATION OF BOARD MEMBER IN THE CASE OF (name of case)."

(c) Contents of Affidavit. The affidavit must state all facts the party deems to be relevant to the disqualification of the Board member.

(d) Timeliness and Effect of Affidavit. An affidavit of disqualification shall be considered timely if filed 10 days before commencement of the hearing.

(e) A party may file and serve a motion for disqualification less than ten days before or during a hearing only when the motion is based on newly discovered evidence that by due diligence could not have been discovered in time to file a timely motion. Under these circumstances, the hearing shall continue with the challenged Board member sitting. Petitioner shall have the opportunity to present evidence supporting their petition, and the petition and any evidence relative thereto presented at the hearing shall be made a part of the record. The Board, before rendering its final decision, shall decide whether the evidence justifies disqualification. The decision about the disqualification of a Board member shall be made by the other Board members who are not the subject of the disqualification. The Board is not required to grant a new hearing if a Board member is disqualified during the course of a hearing.

(f) The presiding officer, in their discretion, may determine the method of resolving the motion for disqualification under G.S. 150B-40. This may include the authority to direct that the Board's Executive Director oversee an investigation of the allegations and report the findings to the Board.

(g) In the event of disqualification, the disqualified member shall not participate in further deliberation or decision of the case but may be called on to furnish information to the other members of the Board.

(h) If four or more members of the Board are disqualified pursuant to this Rule, the Board shall petition the Office of Administrative Hearings to appoint an administrative law judge to hear the contested case pursuant to G.S. 150B-40(e).

History Note: Authority G.S. 90-356; 150B-40;
Eff. December 1, 2022.

21 NCAC 17 .0512 SUBPOENAS

(a) A party shall file and serve a request for a subpoena, attaching a proposed subpoena. The Board may issue the subpoena in accordance with G.S. 150B-39(c). Issued subpoenas must be signed by the Presiding Officer, the Board's Executive Director, the Board's legal counsel, or a Board staff member designated by the Executive Director.

(b) Subpoenas shall be served as permitted by Rule 45 of the North Carolina Rules of Civil Procedure, as set forth in G.S. 1A-1.

(c) After service of the subpoena, the party serving the subpoena shall file and serve sworn proof of the method of service, demonstrating compliance with G.S. 150B-39(c).

(d) G.S. 150B-39(c) governs the recipients' duties in responding to subpoenas. A party to the case or person subject to the subpoena may object to a subpoena. Any objection to a subpoena shall be served on the party who requested the subpoena simultaneously with the filing of the objection with the Board. Motions to override an objection or quash or modify a subpoena shall be filed in accordance with G.S. 150B-39(c). The Board shall hear and rule on motions to override an objection or quash or modify a subpoena as provided in G.S. 150B-39(c).

History Note: Authority G.S. 90-356; 150B-39;
Eff. December 1, 2022.

21 NCAC 17 .0513 WITNESSES

All testimony at the hearing shall be under oath or affirmation and shall be recorded. The presiding officer may exclude witnesses from the hearing room so that they cannot hear the testimony of other witnesses.

History Note: Authority G.S. 90-356; 150B-42;
Eff. December 1, 2022.

21 NCAC 17 .0514 FINAL DECISION

In a contested case, the Board shall issue a final agency decision in compliance with G.S. 150B-42. To obtain judicial review, the person seeking review must file a petition with the court in accordance with the provisions of G.S. 150B-45.

History Note: Authority G.S. 90-356; 150B-42; 150B-45;
Eff. December 1, 2022.

21 NCAC 17 .0515 PROPOSALS FOR DECISION

(a) When an administrative law judge conducts a hearing pursuant to G.S. 150B-40(e), a "proposal for decision" shall be rendered. The parties may file written exceptions to this "proposal for decision" and submit their own proposed findings of fact and conclusions of law. The exceptions and alternative proposals must be filed within 10 days after the party has received the "proposal for decision" as drafted by the administrative law judge.

(b) Any exceptions to the procedure during the hearing, the handling of the hearing by the administrative law judge, rulings on evidence, or any other matter must be written and refer specifically to pages of the record or otherwise precisely identify the occurrence to which exception is taken. The exceptions and alternative proposals must be filed with the Board within 10 days of the receipt of the proposal for decision. The written exceptions shall bear the notation: "EXCEPTIONS TO THE PROCEEDINGS IN THE CASE OF (name of case)."

(c) Any party may present oral argument to the Board upon request. The request must be included with the written exceptions.

(d) Upon receipt of request for further oral argument, notice shall be issued promptly to all parties designating the time and place for such oral argument.

(e) Giving due consideration to the proposal for decision and the exceptions and arguments of the parties, the Board may adopt the proposal for decision or may modify it as the Board deems necessary. The decision rendered shall be a part of the record and a copy thereof given to all parties. The decision as adopted or modified becomes the "final agency decision" for the right to judicial review. Said decision shall be rendered by the Board within 60 days of the next regularly scheduled meeting following the oral arguments, if any. If there are no oral arguments presented, the decision shall be rendered within 60 days of the next regularly scheduled Board meeting following receipt of the written exceptions and alternative proposals.

History Note: Authority G.S. 90-356; 150B-40;
Eff. December 1, 2022.

21 NCAC 17 .0516 DISCIPLINARY COSTS

(a) The Board may recover against a licensee or license applicant, 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;
- (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; and
- (4) costs incurred by reason of legal fees charged to 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 also be assessed against a licensee or license applicant for an investigation or action in the nature of disciplinary action, pursuant to the express consent by the person in a consent order approved by the Board.

History Note: Authority G.S. 90-356; 90-370;
Eff. December 1, 2022.

21 NCAC 17 .0517 DRUG TESTING AND INTERVENTION

(a) When information of suspected impairment of a licensee is received by the Board, the Board shall conduct an investigation and routine inquiries to determine the validity of the report.

(b) Licensees suspected of impairment may be required to submit to personal interviews if the investigation and inquiries indicate the report may be valid.

(c) The Board shall have authority to compel a licensee to submit to a mental or physical examination, including drug and blood alcohol testing, by physicians designated by the Board, if there is a reasonable suspicion that the licensee is consuming drugs or alcohol to such an extent or with such frequency as to impair the licensee's ability to practice dietetics or nutrition. The cost of examination shall be borne by the licensee being examined. The failure of a dietitian/nutritionist or nutritionist to submit to such an examination when so directed constitutes an admission that the licensee is unable to deliver dietetics or nutrition services with reasonable skill and safety, upon which a default and a final order may be entered without the taking of testimony or presentation of evidence, unless the failure was due to circumstances beyond the licensee's control. A licensee affected under this Paragraph shall at reasonable intervals be afforded an opportunity to demonstrate that the licensee can resume the competent delivery of dietetics or nutrition services with reasonable skill and safety. Neither the record of the proceedings nor any order of the Board based solely on a licensee's failure to submit to an examination shall be deemed by the Board to constitute a conclusive determination that the licensee engaged in any particular conduct.

(d) Information received by the Board related to a mental or physical examination of a licensee conducted by a licensed health professional shall remain confidential as a medical record but shall be freely exchanged with the Board or its authorized agents, for the purposes of the investigation.

(e) Information gathered shall be used to determine whether the licensee is a chronic or persistent user of intoxicants, drugs, or narcotics to the extent that the same impairs their ability to practice dietetics or nutrition.

(f) The Board may make arrangements for a licensee with impairments to participate in intervention, treatment, and a monitoring program without disciplinary action.

History Note: Authority G.S. 90-356;
Eff. December 1, 2022.