



Board Meeting Minutes – 10.26.2020

8:30 a.m.

Join Zoom Meeting

<https://zoom.us/j/93129643695>

Meeting ID: 931 2964 3695

Dial by your location

+1 312 626 6799 US (Chicago)

Meeting ID: 931 2964 3695

Mission Statement: To protect the public and ensure compliance with the ND Century Code Chapter 43-44.

Present – Board Members: Linda Schloer, Brooke Fredrickson, Nancy Overson, Wendy Mankie, Shaundra Ziemann-Bolinske. Also present was Pat Anderson, NDBODP Executive Secretary, and Allyson Hicks, Assistant Attorney General, from 8:30 – 11:05 a.m.

I. Call to Order

Chair, Brooke Fredrickson called the meeting to order at 8:35 a.m.

II. Procedure for Guests

Brooke Fredrickson welcomed any guests and invited any questions to be submitted via of the chat box.

Guests Present: Sandra Horob, Pepin Tuma, Brittany McAllister, Joan Enderle, and Jenna Metcalf

III. Approval of Minutes from 9.29.2020

Shaundra Ziemann-Bolinske moved to approve the 9.29.2020 minutes as written; Linda Schloer seconded the motion. Yeas: Brooke Fredrickson, Nancy Overson, Shaundra Ziemann-Bolinske, Wendy Mankie, and Linda Schloer. Nays: None. Passed.

IV. Agenda Review

Wendy Mankie moved to approve the agenda; Linda Schloer seconded the motion. Yeas: Brooke Fredrickson, Nancy Overson, Shaundra Ziemann-Bolinske, Wendy Mankie, and Linda Schloer. Nays: None. Passed.

V. Proposed Statute Changes

Brooke Fredrickson asked Pat Anderson to review the proposed statute changes. The following discussion was held:

43-44-01 Pat explained that on page 91 of the ND Legislative Drafting Manual it states that a statement of legislative policy, purpose or intent should not be used so this will be removed. Allyson suggested that we include a mission statement in the rules.

43-44-02 The definitions have been expanded and we have gone from 8 definitions to 27. No. 24 definition needs to be changed since the ND Legislative Drafting Manual says to not use *includes, but not limited to*. "Includes" is not a term of limitation. The definition will be changed to remove, *but not limited to* and leave the rest of the language.

Pat asked Allyson if the tele-practice definition would be okay. Allyson stated that we should be okay with this definition.

43-44-03 The certified nutrition specialists (CNS) have asked whether the LN position on the board could be a CNS? There is the possibility if the person is a resident of ND.

43-44-06 Limited permit will be changed to provisionally limited license. Fee amounts are capped at \$250 and this will allow the ability to adjust the fees as needed without changing the administrative rules each time you want to change the fees.

43-44-08 The requirements for LNs will be elevated and the statute will list the requirements very specifically. The statute language is inclusive of the education, experience and exam requirements.

43-44-10 This is a grandfathering clause. An individual who meets the requirements for licensure and holds a license as a licensed nutritionist on the date of enactment of this chapter and is practicing or residing in this state on the effective date of July 31, 2021 shall be eligible to maintain and renew a license as a licensed nutritionist provided the applicant furnishes evidence satisfactory to the board that the applicant has completed training and continuing education required related to revisions to the scope of practice for licensed nutritionists, as determined by the board.

The plan is to allow grandfathering in the current LNs and allow them to renew their license but any new LNs would be required to meet the new requirements. Pat asked for discussion about this as this would mean that current LNs would be allowed by the law to practice MNT. How do we address this concern? Allyson Hicks expressed concern on the enforceability of this. Allyson Hicks recommended to take out, related to revisions to the scope of practice for LNs as determined by the board as we can't have two sets of standards for LNS (i.e. one for current LNS and a new standard for new LNs) and to add the word, required, after continuing education.

Discussion was held regarding CE requirements and whether you could differentiate something in the CE requirements. Allyson stated that CE requirements would have to be the same for all LNs. Could you require that if practicing in a particular area that CE is obtained in that area? The problem is the ability to enforce this. Pat asked if we could include something in the code of ethics that would address this as it would be unethical to provide certain services if you have not been trained in an area? Allyson said, yes and suggested that we include in the code of ethics a violation if practice is carried out by an individual that has not had sufficient training or education for areas of practice. It was also suggested that we include in CE requirements that a person obtain training for their areas of practice but that all CE requirements would have to be the same for all LNs.

43-44-11 The requirements for application as an LRD will include to have a current valid registration with the Commission on Dietetic Registration that gives the applicant the right to use the term “Registered Dietitian” or Registered Dietitian Nutritionist.” It has also been added to complete a background check or fingerprinting if requested by the board.

43-44-12 This section is new and adds a scope of practice for LRDs and LNs.

43-44-13 Exemptions from licensure.

1. A licensed health care practitioner duly licensed in accordance with Chapter 43-44 of the general statutes who is acting within the scope of the individual’s licensed profession, consistent with the accepted standards of their profession, if the persons do not represent themselves as licensed registered dietitians or licensed nutritionists.

Licensed health care practitioner instead of professional was used as licensed health practitioner is defined in the Hospitals section of ND Century code: "Licensed health care practitioner" means an individual who is licensed or certified to provide medical, medically related, or advanced registered nursing care to individuals in North Dakota.

Exemptions 2 and 3 has been combined and put into one exemption.

An individual enrolled in an accredited course on dietetics and nutrition recognized by the board from performing any action necessary to complete the individual’s course of study or supervised experience requirements or passage of the exam requirements and engaging in the practice of dietetics and nutrition under a supervisor in accordance with 43-44-08 section 1 (b) for a time period of no more than five years after the individual completes the course of study and is designated by a title which clearly indicates that person’s status as a student or trainee.

Exemption 3. This exemption would pertain to those working under a dietitian or licensed nutritionist.

Any person who does not meet the requirements of subdivision a, b, or c of subsection 1 of section ~~43-44-07-08~~ 43-44-11, and who provides nutrition care services, ~~including weight control programs~~, under the supervision of a licensed registered dietitian, licensed nutritionist, or a dietitian or licensed nutritionist licensed in another state that has licensure requirements considered by the board to be at least as stringent as the requirements for licensure under this chapter, or a dietitian registered by the Commission on Dietetic Registration of the Academy of Nutrition and Dietetics or its predecessor or successor organization or health care practitioner licensed in this State who is legally authorized to provide nutrition care services for the purpose of treatment or management of a disease or medical condition.

Exemption 4.

A person practicing dietetics and ~~providing general nutrition services~~ as a duty of serving in the armed forces.

Exemption 5 and Exemption 6 are new, and the language is lifted from another ND law that pertains to services from a foreign practitioner.

5. ~~Any person foreign practitioner practicing dietetics and nutrition in this state for more than ten days annually, if the person has met the commonly accepted standards for~~ which fall within the scope of the practice designated by the foreign practitioner’s license and by this title without

obtaining a license if the services are provided through a remote means and are a continuation of an existing relationship between the foreign practitioner and the individual receiving the services which was formed in the state or jurisdiction in which the foreign practitioner is currently licensed.

6. Any ~~person~~ foreign practitioner practicing dietetics and nutrition in this state which fall within the scope of practice designated by the foreign practitioner's license and this title without obtaining a license if the services are provided in consultation with the person licensed by the board and if the foreign practitioner has no direct communication in this state with the individual receiving the services except in the presence of the individual who is licensed by the board. ~~for more than ten days annually who has pending before the board an application for licensure as a licensed registered dietitian under this chapter.~~ Both the foreign practitioner and the individual licensed by the board are responsible for the services provided.

~~8.~~ 7. An educator who is in the employ of a federal, state, county, or municipal agency, or other political subdivision, or an elementary or secondary school, or an accredited institution of higher education insofar as the activities and services are part of the duties of the employee's position and do not involve provision of medical nutrition therapy; or who is in the employ or service of a nonprofit organization approved by the board.

It was clarified that educators teach, and they are not to provide MNT.

9. ~~8.~~ Any person having received a baccalaureate degree in home economics or family and consumer sciences, if the person does not represent that the person is a licensed registered dietitian, nutritionist or licensed nutritionist, insofar as the services and activities are within the scope of that person's education and training.

~~10.~~ 9. A person who markets or distributes food, food materials, herbs, or dietary supplements, or any person who engages in the advising of the use of those products, or the preparation of those products, or the counseling of individuals or groups in the selection of products to meet normal nutritional needs, if that person does not represent that that person is a licensed registered dietitian, nutritionist, or licensed nutritionist.

10. Any individual from providing nutrition information, guidance, encouragement, individualized nutrition recommendations, behavior change management, coaching, assessments, nonmedical weight control services, or other nutrition care services provided they do not constitute medical nutrition therapy as defined in 43-44-02 provided that the individual does not hold himself or herself out as a licensed registered dietitian or licensed nutritionist or as a provider of medical nutrition therapy or otherwise violate provisions of this chapter.

This exemption has been developed and is consensus language for various groups provided by the Academy of Nutrition and Dietetics. Brooke and Pat recommended adding, nonmedical, in front of weight control services. We have included definitions for medical and nonmedical weight control. Allyson suggested that we consider how this can be clarified and explained to the lay person. The majority of the board thinks that non-medical provides clarity.

11. An individual providing medical weight control from doing so through a program of instruction that has been approved in writing by a licensed registered dietitian or licensed nutritionist in this State, a dietitian nutritionist or nutritionist licensed in another state that has licensure requirements substantially equivalent to those of this State, as determined by the board, a dietitian registered by the Commission on Dietetic Registration, a certified nutrition specialist certified by the Board for Certification of Nutrition Specialists, a Diplomate of the American Clinical Board of Nutrition, or is part of a plan of care overseen by a North Dakota licensed health care practitioner who is legally authorized to provide nutrition care services for the purpose of treatment or management of a disease or medical condition.

This would provide an exemption for those that work in medical weight control under other ND licensed health care practitioners (i.e. Weight Watchers, Lifestyle coaches, Sanford Profile)

12. Any individual who provides nutrition care services without remuneration to family members.

43-44-15 Limited permits will be changed to provisionally licensed dietitians. This pertains to new graduates that are waiting to take their exam. It was recommended to include nutritionists in this as well as the CNS exam is two times per year.

43-44-18 Other statutes include the authority of the board to issue cease and desist orders from certain conduct. We also changed the code of ethics to be determined by the board rather than specifying the Academy of Nutrition and Dietetics code of ethics.

Sections 43-44-19 through 43-44-21 Language was added to model from other statutes.

43-44-19. Injunction.

The civil remedy of injunction is available to the board to restrain and enjoin violations of this chapter. The board may make application to any appropriate court for an order enjoining violations of this Chapter, and upon a showing by the Board that any person has violated or is about to violate this Chapter, the court may grant an injunction, restraining order, or take other appropriate action.

43-44-20. Penalty.

Any person who violates this chapter is guilty of a class B misdemeanor. Each act of such unlawful practice shall constitute a distinct and separate offense.

43-44-21. Costs This is new language.

The Board may assess the attorney fees of disciplinary actions against a licensee or person found to be in violation of this Article or rules adopted by the Board. Costs recovered pursuant to this section shall be the property of the Board.

43-44-22 was added to address tele-practice or telehealth.

43-44-22. Telepractice or telehealth

The provision of nutrition care services and medical nutrition therapy to an individual in this state that fall within telepractice or telehealth as defined in 43-44-02 is not prohibited under this Chapter so long as (i) it is appropriate for the individual receiving the services and (ii) the level of care provided meets the required level of care for that individual. An individual providing services

regulated by this chapter via telepractice or telehealth shall comply with, and shall be subject to, all licensing and disciplinary provisions of this chapter unless qualifying for indirect practice without a license under North Dakota Century Code 43-51-03 and 43-51-05.

Allyson recommended taking out unless qualifying for indirect practice without a license under North Dakota century code 43-51-03 and 43-51-05.

43-44-23 Limited practice without a license. This section was added to allow a foreign practitioner with less than 30 full or partial days per year to apply for limited practice without a license.

Upon prior written application to the board, a foreign practitioner may provide services in this state which fall within the scope of practice designated by the foreign practitioner's license and by this title without obtaining a license from the board if the services are provided for no more than thirty full or partial days per year. The one-year period commences on the date the written application is approved by the board. An application from a foreign practitioner under this section must include verified documentation from the appropriate licensing authority which identifies the requirements for licensure in that jurisdiction and which confirms that the practitioner is licensed and in good standing in that jurisdiction and any other information requested by the board. The board may require payment of a fee of twenty-five dollars or other fee established by the board by administrative rule, not to exceed the higher of twenty-five dollars or one-tenth of the fee for an annual license from the board, as a condition of approving an application under this section.

Allyson Hicks recommended to add at the end of this section, If you apply under this section you are subject and shall be subject to, all licensing and disciplinary provisions of this chapter.

Pat asked Allyson to check into what additional things may be needed concerning the background checks and if we need a section for that.

Discussion was held on whether we should get a legislator to sponsor. Allyson will check into the filing date requirements.

Brittany had some additional comments for page 9 under no. 3. Pat and Brooke will take a look at that.

Next Steps:

1. Pat showed a document that she is working on that will help licensees to understand the proposed changes.
2. The plan will be to firm up changes to the proposed statute changes at our next meeting and to determine our options (file as an agency bill or legislator sponsored).

VI. LN Application – Jennifer Unruh

Ms. Unruh has a Master's Degree in Nutrition and Human Performance concentration in Nutritional Wellness. Pat requested that Allyson Hicks provide guidance on how the determination be made according to the administrative rules. Allyson Hicks stated that the determination would be made on the second clause of the administrative rule (master's or doctorate degree in a related field that meets eligibility requirements of the commission on dietetic registration of the academy of nutrition and dietetics or its predecessor or successor organization).

VII. Audit Follow Up

a. Francie Berg

Francie Berg sent a letter dated October 13, 2020 with her CPE certificates for this period.

“Unfortunately, I could only locate 50 of the 60 I have recorded which I’m sure I did complete. Sorry, this is the best I can provide at this time. Thank you for your consideration.”

Nancy reported that she reviewed her CE information three times and Francie has certificates for 30 recorded webinars and 14 other credits for a total of 44. Nancy is not sure how she got to the count of 50. Either way it isn't a total of 75 CEs that are needed.

Allyson Hicks said that we have the right to deny licensure, but she recommended a conditional license with a settlement agreement. The board could give her a set amount of time to renew and she is not a risk for harming the public. Allyson explained that a settlement agreement informs her that the renewal has come, she has fallen short on her CE, this is how many hours she is short and in lieu of denial of your license the board will allow you to submit proof of your CE. All CE will be done at your expense and failure to complete will result in revocation of your license.

Nancy Overson moved to issue a settlement agreement to Francie Berg to complete 31 credits of nonrecorded CE by April 30, 2021. Wendy Mankie seconded the motion. A roll call vote was taken: Yeas: Brooke Fredrickson, Nancy Overson, Shaundra Ziemann-Bolinske, Wendy Mankie, and Linda Schloer. Nays: None. Passed.

Allyson will issue the settlement agreement and Pat will follow up with the information to Allyson.

b. Kelsey Kincaid

Pat has obtained the additional information from Kelsey. Linda Schloer will review the audit Materials.

VIII. Position Announcement

Pat provided a draft of the Executive Secretary job posting. Misspellings were corrected on NDBOPD and Quickbooks. Pat was recommended to be the point of contact for cover letters, resumes and letters of recommendation.

Brooke asked about the three file cabinets; do we really have that many? Pat explained that the cabinets hold current licensee files and inactive files. In the past Edward Erickson advised us to hold onto all records. It would be good to check into record retention requirements and determine what perhaps could be purged (i.e. deceased licensees).

Pat will post the announcement to the website and send to NDNC for posting. Brooke will post it to the NDAND list serve.

IX. Next Meeting - November 12 from 1:30 – 3:30 pm.

X. Adjournment

Wendy Mankie moved to adjourn the meeting; Linda Schloer seconded the motion. Yeas: Brooke Fredrickson, Beth Viland, Shaundra Ziemann-Bolinske, Wendy Mankie, and Linda Schloer. Nays:

None. Passed. The meeting was adjourned at 12:13 p.m.

Respectfully Submitted,

Pat Anderson

Pat Anderson, NDBODP Executive Secretary