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The Honorable Lt. Governor Mary Taylor
Common Sense Initiative
77 S. High Street, 30th Floor
Columbus, OH 43215-6117
CSIReferrals@governor.ohio.gov
Via Hand Delivery, U.S. Mail, and e-mail

Re: February 1, 2018 Referral by the Board of Certification of Nutrition Specialists

Dear Lt. Governor Taylor,

Please accept this letter as the State Medical Board of Ohio's ("the Medical Board") response to the referral made by the Board for Certification of Nutrition Specialists ("BCNS") on February 1, 2018. In its referral, BCNS asks the Common Sense Initiative ("CSI") to invalidate those portions of O.A.C. 4759-4-01 through 4759-4-13 (hereinafter "Dietetics rules") that it argues improperly prohibit the licensure of its members. For the following reasons, CSI should decline to render an opinion on BCNS' referral as there is no "action" for this body to review.

In their referral, BCNS alleges that the Dietetics rules: (1) fix prices or limit price competition; (2) divides, allocates or assigns customers or potential customers or geographic markets in this state among members of the occupation regulated by the boards; (3) exclude present or potential competitors from the occupation regulated by the board; (4) limit output or supply in this state of any good or service provided by members of the regulated occupation; and (5) restrict advertising or make it more expensive or less effective. Put succinctly, BCNS alleges that the Dietetics rules improperly preclude licensure of BCNS-credentialed nutritionists as Dietitians. For the following reasons, CSI is without authority to grant BCNS any relief.

For more than 30 years, the State of Ohio has regulated the practice of dietetics. See R.C. 4759.01, *et seq.* In July 1987, the General Assembly created the Board of Dietetics ("Dietetics Board"). See 1987 Ohio H.B. 570 (Ex. A). Only those licensed by the State may practice dietetics.¹ See R.C. 4759.02. As part of the 2017 budget bill, the Dietetics Board was dissolved and its duties placed under the jurisdiction of the State Medical Board. See 2017 Ohio H.B. 49, Sec. 515.31. The rules of the former Dietetics Board remain in effect until such time as the Medical Board modifies or rescinds them. 2017 Ohio H.B. 49, Sec. 515.31(C). The General Assembly further directed that the Medical Board appoint a Dietetics advisory council. See R.C. 4759.051. To date, the Medical Board has not taken any actions with respect to dietitians.

A. There is no "action" for this body to review.

Before proceeding further with any analysis of BCNS's referral, CSI must ensure that it has the statutory authority to do as BCNS requests. CSI has been granted the authority to review "actions" taken or proposed to be taken by boards or commissions subject to review. See R.C.

¹ For purposes of this response, the Board assumes, without conceding, that the services offered by BCNS-accredited nutritionists fall within the definition of the practice of dietetics found in R.C. 4759.01(A).

107.56(B). The Medical Board is subject to that review. See R.C. 107.56(A)(25). As part of that review, CSI has been directed to review any “action” that may have an anti-competitive impact. See R.C. 107.56(B). Proposed Rule 107-3-01(B) defines an action as “a board’s or commission’s order, proposed order, or other proposed action which is subject to review.”

In this instance, there is no “action” for CSI to review. Nothing has happened. No rule changes have been suggested.² No orders have been issued. No action been proposed that would impact BCNS or its members. Instead, BCNS has asked this body to review long-standing rules of the now-defunct Dietetics Board. That falls plainly outside of this agency’s purview because nothing in R.C. 107.56 gives CSI the power to invalidate an existing rule or statutory provision. Indeed, R.C. 107.56(C)(4) requires an aggrieved party to seek CSI review “within thirty days after receiving notice of the action or proposed action.” That requirement certainly belies any argument that the General Assembly intended to grant CSI the authority to review any rule or law – no matter the age.

B. The Dietetics rules are valid expressions of the intent of the General Assembly.

Per Proposed Rule 107-3-03(C)(3), if this body determines that there is a reviewable “action,” the Medical Board is required to address those items specified in Rule 107-3-03(C)(1)(a)-(h). In this response, the Medical Board has attempted to provide as much information as is available in response to those items. Given the age of the rules and statutes in question, however, there is limited information available to respond to items (c) and (d). As to item (f), the Medical Board notes that the rules at issue are not presently the subject of a formal AG opinion request. The Medical Board reserves the right to supplement this response in the event that additional information becomes available.

Even assuming, *arguendo*, that BCNS has alleged some hypothetical action that CSI can review, the Dietetics rules are clearly “supported by, and consistent with, a clearly articulated state policy as expressed in the statutes creating the board or commission or the statutes and rules setting forth the board’s or commission’s powers, authority, and duties.” R.C. 107.56(D). And it is for precisely that reason that BCNS’ complaints should be rejected.

As articulated by the Supreme Court of the United States, “when a state legislature adopts legislation, its actions constitute those of the State, and *ipso facto* are exempt from the operation of the antitrust laws.” *Hoover v. Ronwin*, 466 U.S. 558, 567-68 (1984). See also *North Carolina State Bd. of Dental Exam’rs. v. FTC*, 135 S.Ct. 1101, 1110 (2015)(state legislation is exempt from the operation of antitrust laws). While antitrust law is inapplicable to actions taken by the State itself, it would not necessarily protect the Medical Board now if they had in some way deviated from or expanded upon their legislative mandate. See *North Carolina State Bd. of Dental Exam’rs.*, 135 S.Ct. at 1110-1111.

O.A.C. Chapter 4759-4 contains the former Dietetics Board’s licensing provisions. BCNS argues that the Dietetics rules are more restrictive than was statutorily required and were adopted as a mere pretext for the Board to allow its members to engage in anticompetitive conduct. BCNS is wrong. Here, the Dietetics Board simply followed legislative directive in adopting its rules and those rules have not changed since the Medical Board assumed responsibility for dietitian licensure. Consequently, those rules are not subject to challenge on antitrust grounds.

² The Medical Board is presently reviewing all of the Dietetics rules as part of its required 5 year rules review. Though the Board has suggested some technical changes in an attempt to modernize those rules, none of the proposed changes will have any impact on BCNS.

The General Assembly long ago set forth, in explicit detail, the specific standards an applicant must meet to be licensed as a dietitian. Amongst those standards are (and were) that an applicant for licensure must have “received a baccalaureate or higher degree from an institution of higher education that is approved by the board or a regional accreditation agency that is recognized by the council on postsecondary accreditation, and has completed a program consistent with the academic standards for dietitians **established by the academy of nutrition and dietetics**” and “has successfully completed a pre-professional dietetic experience **approved by the academy of nutrition and dietetics**, or experience approved by the board under division (A)(3) of section 4759.05 of the Revised Code. R.C. 4759.06(A)(4)-(5) (emphasis added). Those requirements have been enshrined in law since the very beginning of dietitian licensure in Ohio. See R.C. 4759.06; 1987 Ohio H.B. 570 (Ex. A).³ The General Assembly also charged the then-newly-created Dietetics Board with adopting rules to fulfill their statutory purpose of regulating the practice of dietetics. See R.C. 4759.05; 1987 Ohio H.B. 570. It was under that authority that the Dietetics Board adopted O.A.C. 4759-4-01 through 4759-4-13.

The Dietetics rules mirror the General Assembly’s statutory mandates. Ohio law has long required that, to be licensed as a dietitian, applicants must have “successfully completed a pre-professional dietetic experience approved by the academy of nutrition and dietetics, or experience approved by the board under division (A)(3) of section 4759.05 of the Revised Code” Rule 4759-4-02(A) requires that, to be licensed, an applicant must have “successfully complete[d] a preprofessional dietetic experience that is approved by ‘The Academy of Nutrition and Dietetics’ and is at least equivalent to the requirement for such programs adopted by ‘The Commission on Dietetic Registration.’”⁴ There is no substantive difference between R.C. 4759.06(A)(5) and O.A.C. 4759-4-02(A).

The Academy of Nutrition and Dietetics/Commission on Dietetic Registration is only mentioned twice more in the Dietetics rules – in O.A.C. 4759-4-03 (the Examination Rule) and O.A.C. 4759-4-04 (the Continuing Education Rule). Both rules are expressions of the General Assembly’s clear legislative mandate. R.C. 4759.05 commanded the Dietetics Board to adopt rules governing the examination of applicants for licensure and the continuing education requirements of licensed dietitians. The Dietetics Board, having been directed to require completion of an academic program “consistent with the academic standards for dietitians established by the academy of nutrition and dietetics” and the successful completion of an examination, simply selected the examination for dietitians offered by the Academy of Nutrition and Dietetics’ testing arm. See O.A.C. 4759-4-03(B). As for the continuing education rule, the Dietetics rules permit licensees to either hold the “Registered Dietitian” credential or establish a continuing education cycle with the Board consistent with that required for Registered Dietitians. See R.C. 4759-4-04(B)(2). No fair reading of those rules supports the argument that the former Dietetics Board exceeded the scope of its legislative mandate.

³ The 1987 version of R.C. 4759.06 refers to the American Dietetic Association. That body changed its name to the Academy of Nutrition and Dietetics in 2012. The General Assembly amended R.C. 4759.06 in December 2012 to reflect that change. See 2011 Ohio H.B. 303.

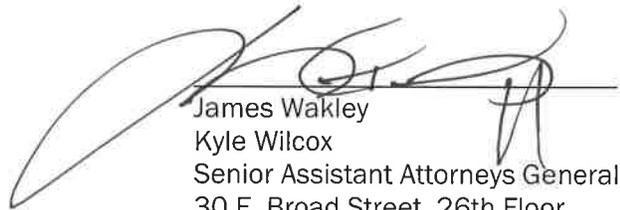
⁴ The Commission on Dietetic Registration is the testing arm of the Academy of Nutrition and Dietetics. See <https://www.cdrnet.org/>.

What is clear from a review of BCNS' proposed revisions to the Dietetics rules is that BCNS is attempting to use the CSI antitrust review process to circumvent the legislative process. In their proposed revisions, BCNS repeatedly suggests that the Medical Board revise the Dietetics rules to create a new licensure type for BCNS-accredited "nutrition specialists" or "nutritionists."⁵ For the Medical Board to do so, however, would require a legislative enactment. Nothing in Chapter 4759 grants the Medical Board the authority to license individuals who have not successfully completed a degree-granting program consistent with the academic standards set by the Academy of Nutrition and Dietetics. It is also apparent that the General Assembly was aware of BCNS' concerns and elected not to make any changes. See November 2015 email exchange between the office of Representative Barbara Sears and the Dietetics Board (Ex. B); September 2013 email exchange between the office of Senator Dave Burke and the Dietetics Board (Ex. C); Appendix D to BCNS Referral. And thus the Medical Board could not adopt any of the changes proposed by BCNS – even if CSI had the authority to order rule changes, which it does not.

C. Conclusion

In sum, the CSI should decline to take any action on BCNS' referral. The Medical Board has taken no action, or even proposed to take any action, which would trigger review by this body. And the CSI has not been delegated any authority to strike down or invalidate longstanding rules or statutes. Simply put, BCNS has not asserted any legal authority by which they can obtain relief. Even if an "action" was at issue, the standards BCNS complains of were set forth in statute by the General Assembly, not merely in rule.

Sincerely,



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⁵ See BCNS' proposed revision to O.A.C. 4759-4-03. (Appendix B to Referral).

Exhibit A:
1987 Ohio H.B. 570

AN ACT

To amend section 4745.01 and to enact sections 4759.01 to 4759.10 and 4759.99 of the Revised Code to license and regulate dietitians.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That section 4745.01 be amended and that sections 4759.01, 4759.02, 4759.03, 4759.04, 4759.05, 4759.06, 4759.07, 4759.08, 4759.09, 4759.10, and 4759.99 of the Revised Code be enacted to read as follows:

Sec. 4745.01. (A) "Standard renewal procedure," as used in Chapters 905., 907., 909., 911., 913., 915., 917., 918., 921., 923., 927., 942., 943., 953., 1321., 3713., 3717., 3719., 3731., 3769., 3783., 3905., 3921., 3951., 4104., 4105., 4143., 4169., 4561., 4701., 4703., 4707., 4709., 4713., 4715., 4717., 4723., 4725., 4727., 4729., 4731., 4733., 4735., 4739., 4741., 4747., 4749., 4755., and 4757., AND 4759. of the Revised Code, means the license renewal procedures specified in this chapter.

(B) "Licensing agency," as used in this chapter, means any department, division, board, section of a board, or other state governmental unit subject to the standard renewal procedure, as defined in this section, and authorized by the Revised Code to issue a license to engage in a specific profession, occupation, or occupational activity, or to have charge of and operate certain specified equipment, machinery, or premises.

(C) "License," as used in this chapter, means a license, certificate, permit, card, or other authority issued or conferred by a licensing agency by authority of which the licensee has or claims the privilege to engage in the profession, occupation, or occupational activity, or to have control of and operate certain specific equipment, machinery, or premises over which the licensing agency has jurisdiction.

(D) "Licensee," as used in this chapter, means either the person to whom the license is issued or renewed by a licensing agency, or the person, partnership, or corporation at whose request such license is issued or renewed.

(E) "Renewal," and "renewed," as used in this chapter and in the chapters of the Revised Code specified in division (A) of this section, shall include the continuing licensing procedure provided in sections 1321.05, 3905.01, 3905.02, 3905.07, 3905.18, and 3921.28 of the Revised Code and as applied to such continuing licenses any reference in this chapter to the date of expiration of any license shall be construed to mean the due date of the annual fee for such continuing license.

Sec. 4759.01. AS USED IN THIS CHAPTER:

(A) "THE PRACTICE OF DIETETICS" MEANS ANY OF THE FOLLOWING:

(1) NUTRITIONAL ASSESSMENT TO DETERMINE NUTRITIONAL NEEDS AND TO RECOMMEND APPROPRIATE NUTRITIONAL INTAKE, INCLUDING ENTERAL AND PARENTERAL NUTRITION;

(2) NUTRITIONAL COUNSELING OR EDUCATION AS COMPONENTS OF PREVENTIVE, CURATIVE, AND RESTORATIVE HEALTH CARE;

(3) DEVELOPMENT, ADMINISTRATION, EVALUATION, AND CONSULTATION REGARDING NUTRITIONAL CARE STANDARDS.

(B) "THE AMERICAN DIETETIC ASSOCIATION" MEANS THE NATIONAL PROFESSIONAL ORGANIZATION OF DIETITIANS THAT PROVIDES DIRECTION AND LEADERSHIP FOR QUALITY DIETETIC PRACTICE, EDUCATION, AND RESEARCH.

(C) "COMMISSION ON DIETETIC REGISTRATION" MEANS THE COMMISSION ON DIETETIC REGISTRATION THAT IS A MEMBER OF THE NATIONAL COMMISSION ON HEALTH CERTIFYING AGENCIES.

Sec. 4759.02. (A) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION OR IN SECTION 4759.10 OF THE REVISED CODE, NO PERSON SHALL PRACTICE, OFFER TO PRACTICE, OR HOLD HIMSELF FORTH TO PRACTICE DIETETICS UNLESS HE HAS BEEN LICENSED UNDER SECTION 4759.06 OF THE REVISED CODE.

(B) EXCEPT FOR A LICENSED DIETITIAN HOLDING AN INACTIVE LICENSE WHO DOES NOT PRACTICE OR OFFER TO PRACTICE DIETETICS, OR A PERSON LICENSED UNDER SECTION 4759.06 OF THE REVISED CODE, OR AS OTHERWISE PROVIDED IN THIS SECTION OR IN SECTION 4759.10 OF THE REVISED CODE:

(1) NO PERSON SHALL USE THE TITLE "DIETITIAN"; AND

(2) NO PERSON EXCEPT FOR A PERSON LICENSED UNDER CHAPTERS 4701. TO 4755. OF THE REVISED CODE,

WHEN ACTING WITHIN THE SCOPE OF THEIR PRACTICE, SHALL USE ANY OTHER TITLE, DESIGNATION, WORDS, LETTERS, ABBREVIATION, OR INSIGNIA OR COMBINATION OF ANY TITLE, DESIGNATION, WORDS, LETTERS, ABBREVIATION, OR INSIGNIA TENDING TO INDICATE THAT THE PERSON IS PRACTICING DIETETICS.

(C) NOTWITHSTANDING DIVISION (B) OF THIS SECTION, A PERSON WHO IS A DIETITIAN REGISTERED BY THE COMMISSION ON DIETETIC REGISTRATION AND WHO DOES NOT VIOLATE DIVISION (A) OF THIS SECTION MAY USE THE DESIGNATION "REGISTERED DIETITIAN" AND THE ABBREVIATION "R.D."

(D) DIVISION (A) OF THIS SECTION DOES NOT APPLY TO:

(1) A STUDENT ENROLLED IN AN ACADEMIC PROGRAM THAT IS IN COMPLIANCE WITH DIVISION (A)(5) OF SECTION 4759.06 OF THE REVISED CODE WHO IS ENGAGING IN THE PRACTICE OF DIETETICS UNDER THE SUPERVISION OF A DIETITIAN LICENSED UNDER SECTION 4759.06 OF THE REVISED CODE OR A DIETITIAN REGISTERED BY THE COMMISSION ON DIETETIC REGISTRATION, AS PART OF THE ACADEMIC PROGRAM;

(2) A PERSON PARTICIPATING IN THE PRE-PROFESSIONAL EXPERIENCE REQUIRED BY DIVISION (A)(6) OF SECTION 4759.06 OF THE REVISED CODE;

(3) A PERSON HOLDING A LIMITED PERMIT UNDER DIVISION (F) OF SECTION 4759.06 OF THE REVISED CODE.

(E) DIVISIONS (A) AND (B) OF THIS SECTION DO NOT APPLY TO A PERSON WHO PERFORMS NO MORE THAN ONE HUNDRED EIGHTY DAYS OF DIETETIC PRACTICE IN THE STATE AND WHO MEETS AT LEAST ONE OF THE FOLLOWING REQUIREMENTS:

(1) THE OHIO BOARD OF DIETETICS DETERMINES THAT HE IS LICENSED IN ANOTHER STATE WITH LICENSURE REQUIREMENTS EQUIVALENT TO OR MORE STRINGENT THAN THOSE SET FORTH IN THIS CHAPTER;

(2) HE IS A DIETITIAN REGISTERED BY THE COMMISSION ON DIETETIC REGISTRATION.

Sec. 4759.03. THERE IS HEREBY CREATED THE OHIO BOARD OF DIETETICS CONSISTING OF FIVE MEMBERS APPOINTED BY THE GOVERNOR WITH THE ADVICE AND CONSENT OF THE SENATE. THE OHIO DIETETIC ASSOCIATION MAY SUBMIT A LIST OF FIVE NAMES FOR EACH POSITION OR VACANCY ON THE BOARD TO BE FILLED BY A DIETITIAN, AND THE GOVERNOR MAY MAKE HIS APPOINTMENT FROM THE PERSONS SO REC-

COMMENDED OR FROM OTHER PERSONS. WITHIN THIRTY DAYS OF THE EFFECTIVE DATE OF THIS SECTION, THE GOVERNOR SHALL MAKE INITIAL APPOINTMENTS TO THE BOARD. OF THE INITIAL APPOINTMENTS, ONE SHALL BE FOR A TERM ENDING ONE YEAR AFTER THE EFFECTIVE DATE OF THIS SECTION, ONE SHALL BE FOR A TERM ENDING TWO YEARS AFTER THE EFFECTIVE DATE OF THIS SECTION, ONE SHALL BE FOR A TERM ENDING THREE YEARS AFTER THE EFFECTIVE DATE OF THIS SECTION, ONE SHALL BE FOR A TERM ENDING FOUR YEARS AFTER THE EFFECTIVE DATE OF THIS SECTION, AND ONE SHALL BE FOR A TERM ENDING FIVE YEARS AFTER THE EFFECTIVE DATE OF THIS SECTION. THEREAFTER, TERMS OF OFFICE SHALL BE FOR FIVE YEARS, EACH TERM ENDING ON THE SAME DAY OF THE SAME MONTH AS DID THE TERM WHICH IT SUCCEEDS. EACH MEMBER SHALL HOLD OFFICE FROM THE DATE OF HIS APPOINTMENT UNTIL THE END OF THE TERM FOR WHICH HE WAS APPOINTED. THE GOVERNOR SHALL APPOINT A MEMBER TO FILL A VACANCY IN THE MANNER PRESCRIBED FOR FILLING THE POSITION IN WHICH THE VACANCY OCCURS. ANY MEMBER APPOINTED TO FILL A VACANCY OCCURRING PRIOR TO THE EXPIRATION OF THE TERM FOR WHICH HIS PREDECESSOR WAS APPOINTED SHALL HOLD OFFICE FOR THE REMAINDER OF THE TERM. ANY MEMBER SHALL CONTINUE IN OFFICE SUBSEQUENT TO THE EXPIRATION DATE OF HIS TERM UNTIL HIS SUCCESSOR TAKES OFFICE, OR UNTIL A PERIOD OF SIXTY DAYS HAS ELAPSED, WHICHEVER OCCURS FIRST.

MEMBERS OF THE BOARD MAY BE REMOVED BY THE GOVERNOR FOR MALFEASANCE, MISFEASANCE, OR NONFEASANCE AFTER AN ADJUDICATION HEARING PURSUANT TO CHAPTER 119. OF THE REVISED CODE. MEMBERS MAY NOT BE APPOINTED TO A SECOND TERM UNLESS A PERIOD OF FIVE YEARS HAS PASSED SINCE THE EXPIRATION OF THE FIRST TERM, EXCEPT THAT MEMBERS APPOINTED FOR LESS THAN A FIVE-YEAR TERM OR APPOINTED TO FILL AN UNEXPIRED TERM MAY BE APPOINTED FOR ONE FULL TERM OF FIVE YEARS IMMEDIATELY FOLLOWING THE END OF THE TERM FOR WHICH HE WAS FIRST APPOINTED.

THREE MEMBERS OF THE BOARD SHALL BE DIETITIANS WHO HAVE BEEN ACTIVELY ENGAGED IN THE PRACTICE OF DIETETICS IN THE STATE FOR AT LEAST

FIVE YEARS IMMEDIATELY PRECEDING THEIR APPOINTMENT; ONE MEMBER SHALL BE AN EDUCATOR WITH A DOCTORAL DEGREE WHO HOLDS A REGULAR FACULTY APPOINTMENT IN A PROGRAM THAT PREPARES STUDENTS TO MEET THE REQUIREMENTS OF DIVISION (A)(5) OF SECTION 4759.06 OF THE REVISED CODE; AND ONE MEMBER SHALL BE A MEMBER OF THE GENERAL PUBLIC WHO IS NOT AND NEVER HAS BEEN A DIETITIAN, IS NOT A MEMBER OF THE IMMEDIATE FAMILY OF A DIETITIAN, DOES NOT HAVE A FINANCIAL INTEREST IN THE PROVISION OF GOODS OR SERVICES TO DIETITIANS, AND IS NOT ENGAGED IN ANY ACTIVITY RELATED TO THE PRACTICE OF DIETETICS.

EACH MEMBER OF THE BOARD SHALL RECEIVE AN AMOUNT FIXED PURSUANT TO DIVISION (J) OF SECTION 124.15 OF THE REVISED CODE FOR EACH DAY, OR PORTION THEREOF, HE IS ACTUALLY ENGAGED IN THE DISCHARGE OF HIS OFFICIAL DUTIES, AND SHALL BE REIMBURSED FOR ACTUAL AND NECESSARY EXPENSES INCURRED IN THE PERFORMANCE OF THOSE DUTIES.

Sec. 4759.04. THE OHIO BOARD OF DIETETICS SHALL MEET AT LEAST ONCE ANNUALLY AND AT OTHER TIMES AS DETERMINED BY THE BOARD, UPON THE CALL OF THE CHAIRMAN, OR UPON THE WRITTEN REQUEST TO THE EXECUTIVE SECRETARY OF THE BOARD BY TWO OR MORE MEMBERS OF THE BOARD. THREE MEMBERS OF THE BOARD CONSTITUTE A QUORUM TO CONDUCT BUSINESS AND NO ACTION SHALL BE TAKEN WITHOUT THE CONCURRENCE OF AT LEAST THREE MEMBERS.

AT THE FIRST MEETING OF EACH YEAR, THE BOARD SHALL ELECT A CHAIRMAN AND A VICE-CHAIRMAN FROM AMONG ITS MEMBERS. THE BOARD SHALL DESIGNATE AN EXECUTIVE SECRETARY AND MAY EMPLOY OTHER EMPLOYEES OR CONSULTANTS, OR CONTRACT, SUBJECT TO THE APPROVAL OF THE CONTROLLING BOARD, WITH A STATE AGENCY OR NONPROFIT CORPORATION AS NECESSARY TO CARRY OUT THIS CHAPTER AND RULES ADOPTED UNDER IT PURSUANT TO CHAPTER 119. OF THE REVISED CODE.

Sec. 4759.05. THE OHIO BOARD OF DIETETICS SHALL:
(A) ADOPT, AMEND, OR RESCIND RULES PURSUANT TO CHAPTER 119. OF THE REVISED CODE TO CARRY OUT THE PROVISIONS OF THIS CHAPTER, INCLUDING RULES GOVERNING THE FOLLOWING:

(1) SELECTION AND APPROVAL OF A DIETITIAN LICENSURE EXAMINATION OFFERED BY THE COMMISSION ON DIETETIC REGISTRATION OR ANY OTHER EXAMINATION;

(2) THE EXAMINATION OF APPLICANTS FOR LICENSURE AS A DIETITIAN, TO BE HELD AT LEAST TWICE ANNUALLY, AS REQUIRED UNDER DIVISION (A) OF SECTION 4759.06 OF THE REVISED CODE;

(3) REQUIREMENTS FOR PRE-PROFESSIONAL DIETETIC EXPERIENCE OF APPLICANTS FOR LICENSURE AS A DIETITIAN THAT ARE AT LEAST EQUIVALENT TO THE REQUIREMENTS ADOPTED BY THE COMMISSION ON DIETETIC REGISTRATION;

(4) REQUIREMENTS FOR A PERSON HOLDING A LIMITED PERMIT UNDER DIVISION (F) OF SECTION 4759.06 OF THE REVISED CODE AND A LICENSED DIETITIAN WHO PLACES HIS LICENSE IN INACTIVE STATUS UNDER DIVISION (G) OF SECTION 4759.06 OF THE REVISED CODE, INCLUDING A PROCEDURE FOR CHANGING INACTIVE STATUS TO ACTIVE STATUS;

(5) CONTINUING EDUCATION REQUIREMENTS FOR RENEWAL OF A LICENSE, EXCEPT THAT THE BOARD MAY ADOPT RULES TO WAIVE THE REQUIREMENTS FOR A PERSON WHO IS UNABLE TO MEET THE REQUIREMENTS DUE TO ILLNESS OR OTHER REASONS. RULES ADOPTED UNDER THIS DIVISION SHALL BE CONSISTENT WITH THE CONTINUING EDUCATION REQUIREMENTS ADOPTED BY THE COMMISSION ON DIETETIC REGISTRATION.

(6) ANY ADDITIONAL EDUCATION REQUIREMENTS THE BOARD CONSIDERS NECESSARY, FOR APPLICANTS WHO HAVE NOT PRACTICED DIETETICS WITHIN FIVE YEARS OF THE INITIAL DATE OF APPLICATION FOR LICENSURE;

(7) STANDARDS OF PROFESSIONAL RESPONSIBILITY AND PRACTICE FOR PERSONS LICENSED UNDER THIS CHAPTER THAT ARE CONSISTENT WITH THOSE STANDARDS OF PROFESSIONAL RESPONSIBILITY AND PRACTICE ADOPTED BY THE AMERICAN DIETETIC ASSOCIATION;

(8) FORMULATION OF A WRITTEN APPLICATION FORM FOR LICENSURE OR LICENSE RENEWAL THAT INCLUDES THE STATEMENT THAT ANY APPLICANT WHO KNOWINGLY MAKES A FALSE STATEMENT ON THE APPLICATION IS GUILTY OF A MISDEMEANOR OF THE FIRST DEGREE UNDER SECTION 2921.13 OF THE REVISED CODE;

(9) PROCEDURES FOR LICENSE RENEWAL;

(10) ESTABLISHING A TIME PERIOD AFTER THE NOTIFICATION OF A VIOLATION OF SECTION 4759.02 OF THE REVISED CODE, BY WHICH THE PERSON NOTIFIED MUST REQUEST A HEARING BY THE BOARD UNDER SECTION 4759.09 OF THE REVISED CODE.

(B) INVESTIGATE ALLEGED VIOLATIONS OF SECTION 4759.02 TO 4759.10 OF THE REVISED CODE. IN MAKING ITS INVESTIGATIONS, THE BOARD MAY ISSUE SUBPOENAS, EXAMINE WITNESSES, AND ADMINISTER OATHS.

(C) ADOPT A SEAL;

(D) CONDUCT MEETINGS AND KEEP RECORDS AS ARE NECESSARY TO CARRY OUT THE PROVISIONS OF THIS CHAPTER;

(E) PUBLISH, AND MAKE AVAILABLE TO THE PUBLIC, UPON REQUEST AND FOR A FEE NOT TO EXCEED THE ACTUAL COST OF PRINTING AND MAILING, THE BOARD'S RULES AND REQUIREMENTS FOR LICENSURE ADOPTED UNDER DIVISION (A) OF THIS SECTION AND A RECORD OF ALL PERSONS LICENSED UNDER SECTION 4759.06 OF THE REVISED CODE.

Sec. 4759.06. (A) THE OHIO BOARD OF DIETETICS SHALL ISSUE OR RENEW A LICENSE TO PRACTICE DIETETICS TO AN APPLICANT WHO:

(1) HAS SATISFACTORILY COMPLETED AN APPLICATION FOR LICENSURE IN ACCORDANCE WITH DIVISION (A) OF SECTION 4759.05 OF THE REVISED CODE;

(2) HAS PAID THE FEE REQUIRED UNDER DIVISION (A) OF SECTION 4759.08 OF THE REVISED CODE;

(3) IS A RESIDENT OF THE STATE OR PERFORMS SUBSTANTIAL DIETETIC SERVICES WITHIN THE STATE;

(4) IS OF GOOD MORAL CHARACTER;

(5) HAS RECEIVED A BACCALAUREATE OR HIGHER DEGREE FROM AN INSTITUTION OF HIGHER EDUCATION THAT IS APPROVED BY THE BOARD OR A REGIONAL ACCREDITATION AGENCY THAT IS RECOGNIZED BY THE COUNCIL ON POSTSECONDARY ACCREDITATION, AND HAS COMPLETED A PROGRAM CONSISTENT WITH THE ACADEMIC STANDARDS FOR DIETITIANS ESTABLISHED BY THE AMERICAN DIETETIC ASSOCIATION;

(6) HAS SUCCESSFULLY COMPLETED A PRE-PROFESSIONAL DIETETIC EXPERIENCE APPROVED BY THE AMERICAN DIETETIC ASSOCIATION, OR EXPERIENCE APPROVED BY THE BOARD UNDER DIVISION (A)(3) OF SECTION 4759.05 OF THE REVISED CODE;

(7) HAS PASSED THE EXAMINATION APPROVED BY THE BOARD UNDER DIVISION (A)(1) OF SECTION 4759.05 OF THE REVISED CODE;

(8) IS AN APPLICANT FOR RENEWAL OF A LICENSE, AND HAS FULFILLED THE CONTINUING EDUCATION REQUIREMENTS ADOPTED UNDER DIVISION (A)(5) OF SECTION 4759.05 OF THE REVISED CODE.

(B) THE BOARD SHALL WAIVE THE REQUIREMENTS OF DIVISIONS (A)(5), (6), AND (7) OF THIS SECTION AND ANY RULES ADOPTED UNDER DIVISION (A)(6) OF SECTION 4759.05 OF THE REVISED CODE IF THE APPLICANT PRESENTS SATISFACTORY EVIDENCE TO THE BOARD OF CURRENT REGISTRATION AS A REGISTERED DIETITIAN WITH THE COMMISSION ON DIETETIC REGISTRATION.

(C) THE BOARD SHALL WAIVE THE REQUIREMENTS OF DIVISION (A)(7) OF THIS SECTION IF THE APPLICATION FOR RENEWAL IS MADE WITHIN TWO YEARS AFTER THE DATE OF LICENSE EXPIRATION.

(D) THE BOARD MAY WAIVE THE REQUIREMENTS OF DIVISION (A)(5), (6), OR (7) OF THIS SECTION OR ANY RULES ADOPTED UNDER DIVISION (A)(6) OF SECTION 4759.05 OF THE REVISED CODE, IF THE APPLICANT PRESENTS SATISFACTORY EVIDENCE OF THE FOLLOWING IN HIS APPLICATION FOR LICENSURE TO PRACTICE DIETETICS:

(1) EDUCATION, EXPERIENCE, OR PASSING AN EXAMINATION IN ANOTHER STATE OR A FOREIGN COUNTRY, THAT THE BOARD CONSIDERS THE EQUIVALENT OF THE REQUIREMENTS STATED IN THOSE DIVISIONS OR RULES;

(2) PROVIDED THAT THE APPLICATION IS FILED NO LATER THAN ONE YEAR AFTER THE EFFECTIVE DATE OF THIS SECTION, PRACTICING DIETETICS FOR THREE YEARS PRIOR TO THE EFFECTIVE DATE OF THIS SECTION AND HOLDING A BACCALAUREATE OR HIGHER DEGREE IN NUTRITION, OR ANOTHER RELATED FIELD ACCEPTABLE TO THE BOARD, FROM AN INSTITUTION OF HIGHER EDUCATION THAT IS APPROVED BY A REGIONAL ACCREDITATION AGENCY THAT IS RECOGNIZED BY THE COUNCIL ON POSTSECONDARY ACCREDITATION.

(E) THE BOARD SHALL ISSUE AN INITIAL LICENSE TO PRACTICE DIETETICS TO AN APPLICANT WHO MEETS THE REQUIREMENTS OF DIVISION (A) OF THIS SECTION. AN INITIAL LICENSE SHALL BE VALID FROM

THE DATE OF ISSUANCE THROUGH THE THIRTIETH DAY OF JUNE FOLLOWING ISSUANCE OF THE LICENSE. EACH SUBSEQUENT LICENSE SHALL BE VALID FROM THE FIRST DAY OF JULY THROUGH THE THIRTIETH DAY OF JUNE. THE BOARD SHALL RENEW THE LICENSE OF AN APPLICANT WHO IS LICENSED TO PRACTICE DIETETICS AND WHO MEETS THE CONTINUING EDUCATION REQUIREMENTS OF DIVISION (A)(5) OF SECTION 4759.05 OF THE REVISED CODE.

(F) THE BOARD MAY GRANT A LIMITED PERMIT TO A PERSON WHO HAS COMPLETED THE EDUCATION AND PRE-PROFESSIONAL REQUIREMENTS OF DIVISIONS (A)(5) AND (6) OF THIS SECTION AND WHO PRESENTS EVIDENCE TO THE BOARD OF HIS APPLICATION TO TAKE THE EXAMINATION APPROVED BY THE BOARD UNDER DIVISION (A)(1) OF SECTION 4759.05 OF THE REVISED CODE. THE PERMIT MAY BE RENEWED ONE TIME IF THE APPLICANT HAS FAILED THE EXAMINATION AND HAS APPLIED TO TAKE THE NEXT AVAILABLE EXAMINATION. THE PERMIT AND RENEWAL PERMIT SHALL EXPIRE THIRTY DAYS AFTER THE APPROPRIATE EXAMINATION RESULTS ARE MADE PUBLIC. A PERSON HOLDING A LIMITED PERMIT WHO HAS FAILED THE EXAMINATION SHALL PRACTICE ONLY UNDER THE DIRECT SUPERVISION OF A LICENSED DIETITIAN.

(G) A LICENSED DIETITIAN MAY PLACE HIS LICENSE IN INACTIVE STATUS.

Sec. 4759.07. (A) THE OHIO BOARD OF DIETETICS MAY, IN ACCORDANCE WITH CHAPTER 119. OF THE REVISED CODE, REFUSE TO ISSUE, REVIEW, OR RENEW, OR MAY SUSPEND, REVOKE, OR IMPOSE PROBATIONARY CONDITIONS UPON ANY LICENSE OR PERMIT TO PRACTICE DIETETICS, IF THE APPLICANT HAS:

(1) VIOLATED SECTIONS 4759.02 TO 4759.10 OF THE REVISED CODE OR RULES ADOPTED UNDER THOSE SECTIONS;

(2) KNOWINGLY MADE A FALSE STATEMENT IN HIS APPLICATION FOR LICENSURE OR LICENSE RENEWAL;

(3) BEEN CONVICTED OF ANY CRIME CONSTITUTING A FELONY IN THIS OR ANY OTHER STATE;

(4) BEEN IMPAIRED IN HIS ABILITY TO PERFORM AS A LICENSED DIETITIAN DUE TO THE USE OF A CONTROLLED SUBSTANCE OR ALCOHOLIC BEVERAGE;

(5) BEEN CONVICTED OF A MISDEMEANOR COMMITTED IN THE COURSE OF HIS WORK AS A DIETITIAN IN THIS OR ANY OTHER STATE;

(6) A RECORD OF INCOMPETENT OR NEGLIGENT CONDUCT IN HIS PRACTICE OF DIETETICS.

(B) ONE YEAR OR MORE AFTER THE DATE OF SUSPENSION OR REVOCATION OF A LICENSE OR PERMIT, AN APPLICATION FOR REINSTATEMENT OF THE LICENSE OR PERMIT MAY BE MADE TO THE BOARD. THE BOARD SHALL GRANT OR DENY REINSTATEMENT WITH A HEARING, AT THE REQUEST OF THE APPLICANT, IN ACCORDANCE WITH CHAPTER 119. OF THE REVISED CODE AND MAY IMPOSE CONDITIONS UPON THE REINSTATEMENT, INCLUDING THE REQUIREMENT OF PASSING AN EXAMINATION APPROVED BY THE BOARD.

Sec. 4759.08. (A) THE OHIO BOARD OF DIETETICS SHALL CHARGE AND COLLECT FEES AS DESCRIBED IN THIS SECTION FOR ISSUING THE FOLLOWING:

(1) AN INITIAL DIETITIAN LICENSE, OR REINSTATEMENT OF AN INACTIVE, LAPSED, REVOKED, OR SUSPENDED LICENSE, FORTY DOLLARS;

(2) LICENSE RENEWAL, THIRTY DOLLARS;

(3) A LIMITED PERMIT, AND RENEWAL OF THE PERMIT, TEN DOLLARS;

(4) A DUPLICATE LICENSE OR PERMIT, TEN DOLLARS.

(B) THE BOARD SHALL NOT REQUIRE A LICENSED DIETITIAN HOLDING AN INACTIVE LICENSE TO PAY THE RENEWAL FEE.

(C) SUBJECT TO THE APPROVAL OF THE CONTROLLING BOARD, THE OHIO BOARD OF DIETETICS MAY ESTABLISH FEES IN EXCESS OF THE AMOUNTS PROVIDED IN DIVISION (A) OF THIS SECTION, PROVIDED THAT THE FEES DO NOT EXCEED THE AMOUNTS BY GREATER THAN FIFTY PER CENT.

(D) THE BOARD MAY ADOPT RULES PURSUANT TO CHAPTER 119. OF THE REVISED CODE TO WAIVE ALL OR PART OF THE FEE FOR AN INITIAL LICENSE IF THE LICENSE IS ISSUED WITHIN ONE HUNDRED DAYS OF THE DATE OF EXPIRATION OF THE LICENSE.

(E) ALL RECEIPTS OF THE BOARD SHALL BE DEPOSITED IN THE STATE TREASURY TO THE CREDIT OF THE GENERAL REVENUE FUND. ALL EXPENDITURES SHALL BE PAID FROM GENERAL REVENUE FUND APPROPRIATIONS TO THE BOARD BY THE TREASURER OF STATE UPON THE WARRANT OF THE AUDITOR OF STATE. THE AUDITOR SHALL ISSUE THE WARRANT UPON THE PRESENTATION OF THE ITEMIZED

VOUCHERS SIGNED BY THE CHAIRMAN OR SECRETARY OF THE BOARD, OR BOTH, AS AUTHORIZED BY THE BOARD.

Sec. 4759.09. THE OHIO BOARD OF DIETETICS SHALL NOTIFY IN WRITING ANY PERSON DETERMINED BY THE BOARD TO BE IN VIOLATION OF SECTION 4759.02 OF THE REVISED CODE. THE NOTIFICATION SHALL STATE THAT THE PERSON MAY REQUEST A HEARING BY THE BOARD WITHIN THE AMOUNT OF TIME SPECIFIED BY THE BOARD PURSUANT TO DIVISION (A) OF SECTION 4759.05 OF THE REVISED CODE. IF THE PERSON FAILS TO REQUEST THE HEARING, OR IF THE BOARD DETERMINES FROM THE HEARING THAT THE PERSON IS IN VIOLATION OF SECTION 4759.02 OF THE REVISED CODE, THE BOARD MAY APPLY TO THE COURT OF COMMON PLEAS OF THE COUNTY IN WHICH THE VIOLATION IS OCCURRING FOR AN INJUNCTION OR OTHER APPROPRIATE RESTRAINING ORDER TO PROHIBIT THE CONTINUED VIOLATION OF SECTION 4759.02 OF THE REVISED CODE.

Sec. 4759.10. SECTIONS 4759.01 TO 4759.09 OF THE REVISED CODE DO NOT APPLY TO:

(A) A PERSON LICENSED UNDER CHAPTERS 4701. TO 4755. OF THE REVISED CODE WHO IS ACTING WITHIN THE SCOPE OF HIS PROFESSION PROVIDED THAT HE COMPLIES WITH DIVISION (B) OF SECTION 4759.02 OF THE REVISED CODE;

(B) A PERSON WHO IS A GRADUATE OF AN ASSOCIATE DEGREE PROGRAM APPROVED BY THE AMERICAN DIETETIC ASSOCIATION OR THE OHIO BOARD OF DIETETICS WHO IS WORKING AS A DIETETIC TECHNICIAN UNDER THE SUPERVISION OF A DIETITIAN LICENSED UNDER SECTION 4759.06 OF THE REVISED CODE OR REGISTERED BY THE COMMISSION ON DIETETIC REGISTRATION, EXCEPT THAT THE PERSON IS SUBJECT TO DIVISION (B) OF SECTION 4759.02 OF THE REVISED CODE IF HE USES A TITLE OTHER THAN "DIETETIC TECHNICIAN";

(C) A PERSON WHO PRACTICES DIETETICS RELATED TO EMPLOYMENT IN THE ARMED FORCES, VETERAN'S ADMINISTRATION, OR THE PUBLIC HEALTH SERVICE OF THE UNITED STATES;

(D) PERSONS EMPLOYED BY A NONPROFIT AGENCY APPROVED BY THE BOARD OR BY A FEDERAL, STATE, MUNICIPAL OR COUNTY GOVERNMENT, OR BY ANY OTHER POLITICAL SUBDIVISION, ELEMENTARY OR

SECONDARY SCHOOL, OR AN INSTITUTION OF HIGHER EDUCATION APPROVED BY THE BOARD OR BY A REGIONAL AGENCY RECOGNIZED BY THE COUNCIL ON POSTSECONDARY ACCREDITATION, WHO PERFORMS ONLY NUTRITIONAL EDUCATION ACTIVITIES AND SUCH OTHER NUTRITIONAL ACTIVITIES AS THE BOARD OF DIETETICS, BY RULE, PERMITS, PROVIDED THE PERSON DOES NOT VIOLATE DIVISION (B) OF SECTION 4759.02 OF THE REVISED CODE;

(E) A PERSON WHO HAS COMPLETED A PROGRAM MEETING THE ACADEMIC STANDARDS SET BY THE AMERICAN DIETETIC ASSOCIATION FOR DIETITIANS, RECEIVED A BACCALAUREATE OR HIGHER DEGREE FROM A SCHOOL, COLLEGE, OR UNIVERSITY APPROVED BY A REGIONAL ACCREDITATION AGENCY RECOGNIZED BY THE COUNCIL ON POSTSECONDARY ACCREDITATION, WORKS UNDER THE SUPERVISION OF A LICENSED DIETITIAN OR REGISTERED DIETITIAN, AND DOES NOT VIOLATE DIVISION (B) OF SECTION 4759.02 OF THE REVISED CODE;

(F) A PERSON WHEN ACTING, UNDER THE DIRECTION AND SUPERVISION OF A PERSON LICENSED UNDER CHAPTERS 4701. TO 4755. OF THE REVISED CODE, IN THE EXECUTION OF A PLAN OF TREATMENT AUTHORIZED BY THE LICENSED PERSON, PROVIDED THE PERSON COMPLIES WITH DIVISION (B) OF SECTION 4759.02 OF THE REVISED CODE;

(G) THE FREE DISSEMINATION OF LITERATURE IN THE STATE;

(H) PROVIDED THAT THE PERSONS INVOLVED IN THE SALE, PROMOTION, OR EXPLANATION OF THE SALE OF FOOD, FOOD MATERIALS, OR DIETARY SUPPLEMENTS DO NOT VIOLATE DIVISION (B) OF SECTION 4759.02 OF THE REVISED CODE, THE SALE OF FOOD, FOOD MATERIALS, OR DIETARY SUPPLEMENTS AND THE MARKETING AND DISTRIBUTION OF FOOD, FOOD MATERIALS, OR DIETARY SUPPLEMENTS AND THE PROMOTION OR EXPLANATION OF THE USE OF FOOD, FOOD MATERIALS, OR DIETARY SUPPLEMENTS PROVIDED THAT THE PROMOTION OR EXPLANATION DOES NOT VIOLATE CHAPTER 1345. OF THE REVISED CODE;

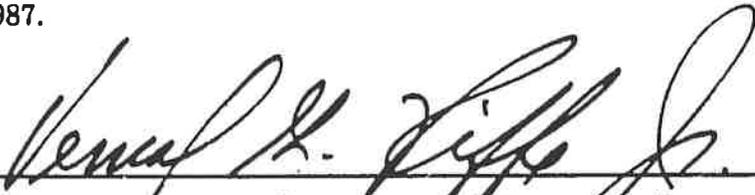
(I) PROVIDED THAT THE PERSONS INVOLVED IN PRESENTING A GENERAL PROGRAM OF INSTRUCTION FOR WEIGHT CONTROL DO NOT VIOLATE DIVISION (B) OF SECTION 4759.02 OF THE REVISED CODE, A GENERAL PROGRAM OF INSTRUCTION FOR WEIGHT CONTROL

APPROVED IN WRITING BY A LICENSED DIETITIAN, A PHYSICIAN LICENSED UNDER CHAPTER 4731. OF THE REVISED CODE TO PRACTICE MEDICINE OR SURGERY OR OSTEOPATHIC MEDICINE OR SURGERY, A PERSON LICENSED IN ANOTHER STATE THAT THE BOARD CONSIDERS TO HAVE SUBSTANTIALLY EQUIVALENT LICENSURE REQUIREMENTS AS THIS STATE, OR A REGISTERED DIETITIAN.

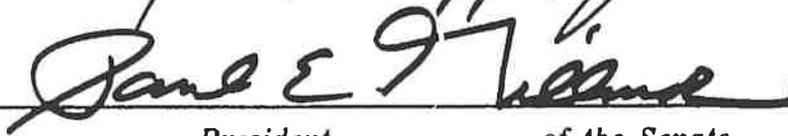
Sec. 4759.99. WHOEVER VIOLATES SECTION 4759.02 OF THE REVISED CODE IS GUILTY OF A MINOR MISDEMEANOR. IF THE OFFENDER HAS BEEN PREVIOUSLY CONVICTED ONCE OF A VIOLATION OF THE SECTION, THEN THE VIOLATION IS A MISDEMEANOR OF THE FOURTH DEGREE. IF THE OFFENDER HAS BEEN PREVIOUSLY CONVICTED MORE THAN ONCE OF A VIOLATION OF THE SECTION, THEN THE VIOLATION IS A MISDEMEANOR OF THE FIRST DEGREE.

SECTION 2. That existing section 4745.01 of the Revised Code is hereby repealed.

SECTION 3. Sections 1 and 2 of this act shall take effect on July 1, 1987.



Speaker _____ of the House of Representatives.



President _____ of the Senate.

Passed November 21, 1986

Approved Dec. 10, 1986

Richard F. Celeste
11:03 AM

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Ronald S. Howard

Acting Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the 10th day of December, A. D. 1986,

Sumner Brown

Secretary of State.

File No. 301

Effective Date March 11, 1987

(certain sections effective other than March 11, 1987)

Section 4745.01 of the Revised Code is amended by this act (effective July 1, 1987) and also by Am. Sub. H.B. 589 (effective March 17, 1987) and Am. Sub. H.B. 1053 (effective December 19, 1986) of the 116th General Assembly. Comparison of these amendments in pursuance of section 1.52 of the Revised Code discloses that they are not irreconcilable, so that they are required by that section to be harmonized to give effect to each amendment.

Ronald S. Howard

Acting Director, Legislative Service Commission



Exhibit B:

November 2015 email exchange between the office of Representative Barbara Sears and the Dietetics Board

Sarah.Peterson@ohiohouse.gov

From: Morrison, Karen [<mailto:Karen.Morrison@exchange.state.oh.us>]
Sent: Tuesday, November 24, 2015 11:40 AM
To: Peterson, Sarah
Subject: RE: Rep. Sears Constituent Concern

Hello Sarah,

Would it be acceptable to email my letter to you?

Thank you.

*Sincerely,
Karen*

*Karen Morrison, MBA, RD, LD
Executive Secretary
Ohio Board of Dietetics
77 S. High St., 18th floor
Columbus, OH 43215-6119
phone: (614) 466-3291
fax no longer available please scan and email to Karen.morrison@exchange.state.oh.us*

From: Sarah.Peterson@ohiohouse.gov [<mailto:Sarah.Peterson@ohiohouse.gov>]
Sent: Thursday, November 19, 2015 1:47 PM
To: Morrison, Karen
Subject: Rep. Sears Constituent Concern

Good afternoon Karen,

Representative Sears received an email from a constituent this week about some concerns they have. If the board could please provide us with comments regarding our constituents concerns it would be greatly appreciated.

The concerns are as follows:

Message :

I was distressed to learn that Ohio may be in violation of federal law in its insistence that only Registered Dietitians may provide nutritional counseling to patients. In February, the US Supreme Court ruled that a North Carolina professional board -- a dental board, in this case -- violated antitrust laws by shutting down competing service providers. I am concerned that Ohio is making itself vulnerable to federal felony prosecution and civil damages under antitrust law and the First Amendment if you attempt to enforce our state's current dietetics practice laws.

Restricting the practice of nutrition counseling to Registered Dietitians alone is grossly unfair to nutritionists. Nutritionists and dietitians employ differing therapeutic philosophies with different degrees of expertise and training. In general, nutritionists have comprehensive knowledge of how nutrition impacts the whole body; they focus on medical nutrition therapy, metabolism, and biochemistry; and they work primarily in private practice settings conducting one-on-one nutrition counseling. Nutritionists practice an integrative approach to medicine and concentrate on prevention and

treatment of chronic disease. Dietitians, on the other hand, are experts in nutrition science with training focusing on institutional diets and food service management -- developing diets for hospital patients, school food service programs, and nursing homes.

Because of the substantial differences between the two professions, conflating them and governing their licensure with a single Board is unfair. There should be separate licensing processes for nutritionists and dietitians. These are different philosophical approaches to nutrition therapy, and they should be recognized as such. There need to be separate boards for nutritionists and dieticians, and separate examination requirements as well.

As a CCN (Board Certified Clinical Nutritionist) with a master's degree in human nutrition from an accredited and well-regarded

Thanks! Let me know if you have any questions or concerns.

Sarah Peterson

Sr. Legislative Aide
State Representative Barbara Sears | House District 47
Ohio House of Representatives
77 South High Street, 14th Floor
Columbus, OH 43215
(614) 466-1731
Sarah.Peterson@ohiohouse.gov



OHIO BOARD OF DIETETICS

77 SOUTH HIGH STREET, 18TH FLOOR
COLUMBUS, OH 43215-8119

Ph: (614) 466-3291
www.dietetics.ohio.gov

November 24, 2015

Dear Representative Sears,

Thank you for the opportunity to respond to your constituent's concerns on behalf of the Board. Information is provided below to address the concerns and clarify the interpretation of Chapter 4759 of the Ohio Revised Code.

- Licensed dietitians provide Medical Nutrition Therapy as part of the health care team. They are employed in nursing homes, hospitals, and other settings to address the nutritional needs of people with chronic diseases. Examples are cardiovascular diseases, diabetes, renal failure, cancer, swallowing issues, weight loss, weight gain, enteral and parenteral nutrition and others.
- A Registered Dietitian in the state of Ohio may not practice without a license if they are practicing Medical Nutrition Therapy. The Registered Dietitian may only give general non-medical nutrition information, if they are not licensed.
- The dietitian licensure law requires all persons who practice dietetics in Ohio as defined in Chapter 4759 of the Ohio Revised Code to be licensed. Sec.4759.01(A) "The practice of dietetics" means any of the following: 1.) Nutritional assessment to determine nutritional needs and to recommend appropriate nutritional intake, including enteral and parenteral nutrition; 2.) Nutritional counseling or education as components of preventive, curative and restorative health care; and 3.) Development, administration, evaluation and consultation regarding nutritional care standards.
- If someone engages in any of the 3 activities within the dietitian's scope of practice, he or she must have a license to do so.
- Section 4759-2-01 of the Ohio Administrative Code allows unlicensed practitioners to provide general non-medical nutrition information.
- The title "nutritionist" is not a nationally-recognized credential and both the definition and requirements for using the term "nutritionist" varies from state to state. In Ohio, only a licensed dietitian may refer to themselves as a nutritionist. The Board does not regulate providers of general non-medical nutrition information.
- The Board has not sought any court action to shut down unlicensed service providers, even though Section 4759.09 of the Ohio Revised Code authorizes the Board to ask a court for an injunction to protect public health, safety and welfare.

Please let me know if I can be of further assistance.

Sincerely,


Karen Morrison

Karen Morrison, MBA, RD, LD
Executive Secretary

Christopher A. Taylor PhD RD, LD
Chairman, Educator Member

John H. Ridgway, MBA, RD, LD
Vice Chairman, Dietitian Member

Donald Davis, RD, LD
Compliance Specialist

Susan Finn, PhD, RD, LD, FADA
Dietitian Member

Judith Nagy, MEd, RD, CSC, LD, FAND
Dietitian Member

Joseph Nigh, Esq.
Public Member

Exhibit C:

September 2013 email exchange between the office of
Senator Dave Burke and the Dietetics Board

Smith, Nathan

From: Morrison, Karen
Sent: Thursday, March 1, 2018 4:20 PM
To: Anderson, Kimberly; Smith, Nathan
Subject: FW: Abolish Ohio's Board of Dietetics!
Attachments: SKMBT_28313091912410.pdf

-----Original Message-----

From: Dion, Karen
Sent: Thursday, September 19, 2013 12:52 PM
To: Brigano, Lindsey <Lindsey.Brigano@ohiosenate.gov>
Subject: RE: Abolish Ohio's Board of Dietetics!

Hello Lindsey,

Please let me know if Senator Burke has any questions or would like to meet.

Thank you,

Karen Dion, MBA, RD, LD
Executive Secretary
Ohio Board of Dietetics
77 S. High St., 18th floor
Columbus, OH 43215-6119
phone: (614) 466-3291
fax: (614)728-0723

-----Original Message-----

From: Brigano, Lindsey [mailto:Lindsey.Brigano@ohiosenate.gov]
Sent: Thursday, September 19, 2013 12:23 PM
To: Dion, Karen
Subject: FW: Abolish Ohio's Board of Dietetics!

Dear Ms. Dion,

I hope this e-mail finds you well. I wanted to send you a letter our office received from a constituent in our district regarding the Dietetics Board. I was hoping you could help provide our office with some information for our response back.

Thank you for your assistance and please e-mail or call with any questions.

Lindsey Brigano
Legislative Aide for State Senator Dave Burke The Ohio Statehouse
614-466-8049

-----Original Message-----

From: Alliance for Natural Health USA [mailto:office@anh-usa.org] On Behalf Of Gerald Scherf
Sent: Friday, May 17, 2013 7:57 AM
To: Senator Burke
Subject: Abolish Ohio's Board of Dietetics!

May 17, 2013

Senator David Burke
Senate Building, Ground Floor
One Capitol Square
Columbus, OH 43215

Dear Senator Burke,

As your constituent, I'm writing to abolish the Ohio Board of Dietetics. Doing so will end the Dietitian monopoly in our state.

The board prohibits nutrition practitioners from doing any sort of nutrition counseling unless they are Registered Dietitians (RDs, that is, certified by the credentialing arm of the Academy of Nutrition and Dietetics, formerly the American Dietetic Association), even though they may be certified by other national organizations like the Certification Board for Nutrition Specialists, and have Master's and PhDs and may be more highly trained than the RDs. Not only does this unfairly prevent people from doing their jobs, it drastically limits consumer choice.

Since 2009, there have been 349 investigations by the Ohio Board of Dietetics. At least forty-two of the investigations were of non-RD practitioners accused of practicing nutrition/dietetics without a license -- including wellness centers, alternative health providers, physical trainers, and other licensed professionals.

In addition to its questionable investigations against non-RD nutrition professionals, there seems to be a flagrant conflict of interest on the part of the Ohio Board of Dietetics. A bill that was introduced in the state legislature, HB 259, would have allowed non-medical practitioners who do no harm to practice in Ohio. The bill was supported by health freedom advocates, but opposed by the state Ohio Dietetic Association, a 501(c)6 trade group that can legally lobby for and against bills.

However, the Ohio Dietetics Board -- a state government entity -- actively lobbied against HB 259, which is patently against the law.

This is outrageous enough, but I understand the board was coordinating its lobbying activities with the Dietetics trade group -- the same group the board is supposed to regulate.

Ohio's Board of Dietetics has had one goal: to stamp out the competition and limit consumer choice. Unfortunately, they've been doing an admirable job of it. It's time for them to go!

Please abolish the Board of Dietetics!

Sincerely,

Mr. Gerald Scherf
3105 County Road 175
Clyde, OH 43410-9534
(419) 650-8113



OHIO BOARD OF DIETETICS

77 SOUTH HIGH STREET, 18TH FLOOR
COLUMBUS, OH 43215-8119

Ph: (614) 466-3291 Fax: (614) 728-0723
www.dietetics.ohio.gov

September 19, 2013

Senator David Burke
Senate Building, Ground Floor
One Capitol Square
Columbus, OH 43215

Dear Senator Burke:

This letter is to clarify the role of the Ohio Board of Dietetics, educational requirements for licensure, and the exemptions in the Ohio Revised Code Chapter 4759 which allow non-licensed individuals to provide general non-medical nutrition information.

The Board's role is to protect the health and safety of Ohioans related to the practice of nutrition and dietetics. The Board does not function to serve as a barrier, but to allow Ohioans to understand that if they are receiving care from a Licensed Dietitian, certain education parameters and professional standards are being met. The Board works to ensure that practitioners have completed education in accredited schools through principles derived from evidence-based practice. The "Academy of Nutrition and Dietetics" refers to the national organization which strives to improve the nation's health and advance the profession of dietetics through research, education, and advocacy. The organization accomplishes this through many dimensions:

- **Providing Reliable and Evidence-based Nutrition Information for the Public**

The Academy's website, www.eatright.org, contains a wealth of nutrition information for consumers and the media, featuring content ranging from articles, tips, videos, recipes and online games to app reviews, a SHOP section and press releases. Consumers seeking the services of a registered dietitian can use the Find a Registered Dietitian feature on the Academy's website.

- **Accrediting Undergraduate and Graduate Programs**

The Accreditation Council for Education in Nutrition and Dietetics (ACEND) of the Academy of Nutrition and Dietetics is recognized by the United States Department of Education as the accrediting agency for education programs that prepare dietetics professionals. Through the accreditation of approximately 600 undergraduate and graduate didactic, dietetic technician and supervised practice programs, ACEND ensures that entry-level education meets quality standards.

- **Credentialing Dietetics Professionals**

The Commission on Dietetic Registration awards credentials to individuals at entry and specialty levels who have met CDR's standards for competency to practice in the dietetics profession, including successful completion of its national certification examination and recertification by continuing professional education or examination.

Since the Academy is recognized by the United States Department of Education as the accrediting agency for education programs that prepare dietetics professionals, other programs providing certifications or degrees are not recognized by the Academy or the Ohio Board of Dietetics. Attached is an example of the minimum coursework required to obtain a Bachelor of Science in Human Nutrition from Ohio State University. Following the undergraduate program, a dietetic internship must be completed, which includes over 1250 hours of supervised practice in clinical, community, and foodservice management.

There are over 3,000 licensed dietitians in the state of Ohio. Consumers have an opportunity to make an informed choice, knowing that licensed dietitians are held to quality standards. This is the most effective means of protecting the public. Dietitians assess and counsel on a variety of disease states such as cancer, diabetes, cardiac disease and kidney disease to name a few. These are serious health conditions which require the oversight of a medical team, and dietitians are part of that healthcare team.

What role can persons who do not meet qualifications for licensure have? Persons who do not qualify for an Ohio dietetics license may follow Chapter 4759 of the Ohio Administrative Code to provide General Non-Medical Nutrition Information. I have attached Bulletin #8 which serves as a guide for your review. <http://dietetics.ohio.gov/bulletins/bulletin8.pdf>

In the past 5 years, the majority of approximately 42 investigations involving non-licensed practitioners concerned personal trainers. The board provided education to these individuals and they willingly adjusted their practice to comply.

In regards to HB 259, there have been numerous versions of this bill in the past 15 years. This bill had opposition from at least 12 health professions and boards because it would allow anyone, with no minimum education requirements, standards or regulation, to practice in areas including nutrition, pharmacy, medicine, optometry, speech and audiology, psychology, to name a few. The Ohio Board of Dietetics has testified that it believes the public to be at risk for harm without any minimum education requirements, standards and oversight, which is the reason for opposition of HB 259.

The board's mission is to protect the public, and it fulfills this statutory obligation by licensing individuals and investigating complaints. The board licenses and oversees INDIVIDUALS, not associations. The board does not regulate the Ohio Academy of Nutrition and Dietetics. The Board and the Ohio Academy often have similar opinions on proposed bills, for differing reasons. The Ohio Academy supports the profession itself, while the Board protects the public. The Board believes in the importance of educating legislators to promote informed decision-making.

The Ohio Board of Dietetics mission is to effectively protect the public by regulating the practice of dietetics through licensure, and by fairly and consistently enforcing the laws and rules governing nutritional practices.

Please contact me if you have additional questions or concerns. I appreciate your attention to this matter.

Sincerely,



Karen Dion

Karen Dion, MBA, RD, LD
Executive Secretary

L. Leah Relbel
Chairman, Public Member

Susan Finn, PhD, RD, LD, FADA
Vice Chairman, Dietitian Member

Donald Davis, RD, LD
Compliance Specialist

John H. Ridgway, MBA, RD, LD
Dietitian Member

Christopher A. Taylor PhD, RD, LD
Educator Member

Judith Nagy, MEd, RD, CSG, LD
Dietitian Member