

Act 392 of the 1989 Regular Session.

Act 392

HB1473

By: Representatives Flanagan, Landers, Arrington, Rice,  
Mitchell, and Calhoun

"AN ACT TO PROVIDE FOR THE DEFINITION, EXAMINATION, AND  
LICENSING OF DIETITIANS; TO DEFINE THE DUTIES AND POWERS OF A  
STATE BOARD OF DIETETICS; TO PROVIDE PENALTY FOR THE  
VIOLATION OF THIS ACT; AND FOR OTHER PURPOSES."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. This act shall be known and may be cited as the "Dietetics Practice Act".

SECTION 2. PURPOSE. It is the purpose of this act to protect the health, safety and welfare of the public by providing for the licensing and regulation of persons engaged in the practice of dietetics. Nothing in this act shall prevent the furnishing of general nutritional information on food, food materials, or dietary supplements, or the explanation to customers about foods or food products in connection with the sale, marketing and distribution of those products.

SECTION 3. DEFINITIONS. (a) "Board" shall mean the Dietetics Licensing Board.

(b) "Association" means The American Dietetic Association (ADA).

(c) "National Commission for Health Certifying Agencies" means the national organization that establishes national standards for certifying bodies that attest to the competence of individuals who participate in the health care delivery system, grants recognition to certifying bodies that voluntarily apply and meet the established standards, and monitors the adherence to those standards by the certifying bodies that it has recognized.

(d) "Commission on Dietetic Registration" (CDR) means Commission on Dietetic Registration that is a national certifying agency for voluntary professional credentialing in dietetics. A member of the National Commission for Health Certifying Agencies.

(e) "Degree" means a degree received from a U.S. college of university that was regionally accredited at the time the degree was conferred.

(f) "Registered Dietitian" means a person registered by the Commission on Dietetic Registration.

(g) "Licensed Dietitian" means a person licensed under this act.

(h) "Provisionally Licensed Dietitian" means a person provisionally licensed under this act.

(i) "Dietetics Practice" means the integration and application of the principles derived from the sciences of nutrition, biochemistry, food, physiology, management and behavioral and social sciences to achieve and maintain peoples' health through the provision of nutrition care services.

(j) "Nutrition Care Services" means:

1. Assessing the nutritional needs of individuals and groups of humans, and determining resources and constraints in the practice setting.

2. Establishing priorities, goals, and objectives that meet nutritional needs of humans and are consistent with available resources and constraints.

3. Providing nutrition counseling to humans in health and disease.  
4. Developing, implementing, and managing nutrition care of and food service systems for humans.

5. Evaluating, making changes in, and maintaining appropriate standards of quality in food and nutrition care services for humans.

(k) "Nutritional Assessment" means the evaluation of the nutritional needs of individuals and groups based upon appropriate biochemical, anthropometric, physical and dietary data to determine nutrient needs and recommend appropriate nutritional intervention including enteral and parenteral nutrition.

(l) "Nutrition Counseling" means advising and assisting individuals or groups concerning appropriate nutritional intake by integrating information from the nutritional assessment with information on food and other sources of nutrients and meal preparation consistent with cultural background and socioeconomic status.

(m) "Dietitian" means one engaged in dietetics practice.

(n) "Dietetic Technician" means one who has completed a Dietetic Technician Program, and has received a two-year associate degree from a regionally accredited college or university.

SECTION 4. EXEMPTIONS. This article shall not be construed to affect or prevent:

(a) dietetics students who engage in clinical practice under the supervision of a dietitian as part of a dietetic education program approved or accredited by the American Dietetic Association and approved by the Board;

(b) a dietitian who is serving in the armed forces or the public health service of the United States or is employed by the Veterans Administration from engaging in the practice of dietetics provided such practice is related to such service or employment;

(c) a cooperative extension home economist from performing nutrition tasks incidental to the practice of his/her profession, providing that such persons do not hold themselves out under the title dietitian or licensed dietitian;

(d) a duly licensed physician, pharmacist or nurse from engaging in the practice of dietetics when incidental to the practice of his/her profession, providing that such persons do not hold themselves out under the title dietitian or licensed dietitian;

(e) any person employed by, supervised by, under the guidance of, or in consultation with a licensed dietitian such as a dietetic technician, home economist, dietary manager or food service supervisor from performing nutrition tasks in the practice of his/her profession, providing that said persons do not hold themselves out under the title dietitian or licensed dietitian;

(f) any person who has received a Doctorate Degree from a regionally accredited U.S. college or university in/with a concentration in human nutrition, food and nutrition, dietetics, public health nutrition or food systems management;

(g) a non-resident dietitian practicing dietetics in this state, if the dietetics are performed for no more than one-hundred-eighty (180) consecutive working days, and if:

(1) the dietitian is licensed under the laws of another state which has licensure requirements at least as stringent as the requirements of this chapter, as determined by the Board; or

(2) the dietitian has met qualifications as specified in this act for the practice of dietetics;

(h) any person who offers weight control programs prepared under the supervision of or approved by a Registered Dietitian or a licensed dietitian

who is licensed under the laws of this state or another state which has licensure requirements at least as stringent as the requirements of this chapter, as determined by the Board, providing that such persons do not hold themselves out under the title dietitian or licensed dietitian;

(i) any person employed by a hospital or long term care facility licensed by the State Department of Health or the Department of Human Services and operating under the rules and regulations of said agencies shall be exempt from this act; provided that person's practice of dietetics is related to such employment;

(j) any person employed by a facility which is conducted by and for those who rely exclusively upon treatment by prayer alone for healing in accordance with the tenets or practices of any recognized religious denomination; provided that person's practice of dietetics is related to such employment;

(k) any person who has received a Doctorate Degree from a regionally accredited U.S. college or university in/with a concentration in animal nutrition and his practice is related to said degree;

(l) any health care professional or nutritionalist from engaging in dietetics practice without a license under this Act;

(m) the sale of vitamins, over the counter health care products or food supplements by persons who are not licensed under this Act, nor shall this Act prevent nutritionists from advising customers in regard to such products.

SECTION 5. QUALIFICATIONS FOR LICENSES. The Board may issue a license as Licensed Dietitian to an applicant who qualifies as follows:

(1) files an application;

(2) has received a baccalaureate or post-baccalaureate degree from a regionally accredited U.S. college or university with a program in human nutrition, food and nutrition, dietetics or food systems management. Applicants who have obtained their education outside of the United States and its territories must have their academic degree(s) validated as equivalent to the baccalaureate or post-baccalaureate degree conferred by a regionally accredited college or university in the United States;

(3) has completed a planned continuous pre-professional experience component in dietetic practice of not less than nine hundred (900) hours under the supervision of a Registered Dietitian or Licensed Dietitian; and

(4) has passed an examination as defined by the Board; or

(5) files an application and provides evidence of current registration as a Registered Dietitian by the Commission on Dietetic Registration (CDR).

SECTION 6. PROHIBITIONS. Beginning one (1) year after the effective date of this act, no individual shall practice or offer to practice dietetics within the meaning of this act unless he is duly licensed or is a student under the provisions of this Act, or otherwise entitled under Sections 4 or 7.

SECTION 7. WAIVERS FOR LICENSING. For one (1) year beginning on the effective date of this act, the Board shall waive the examination requirement and grant a license to any person who:

(a) has received a baccalaureate or post-baccalaureate degree from a regionally accredited U.S. college or university with a program in human nutrition, food and nutrition, dietetics or food systems management. Applicants who have obtained their education outside of the United States and its territories must have their academic degree(s) validated as equivalent to the baccalaureate or post-baccalaureate degree conferred by a regionally accredited college or university in the United States;

(b) has completed a planned continuous pre-professional experience

component in dietetic practice of not less than nine hundred (900) hours under the supervision of a Registered Dietitian or Licensed Dietitian; and  
(c) has been employed in the practice of dietetics for at least three (3) of the last ten (10) years preceding the act; or  
(d) is registered with CDR.

#### SECTION 8. APPOINTMENT OF BOARD MEMBERS; QUALIFICATION, TERMS, REMOVAL.

(a) There is hereby created the Arkansas Dietetics Licensing Board to commence operations on January 1, 1990.

(b) The Board shall consist of seven (7) persons, all of whom are Arkansas residents, with the following qualifications:

four (4) Board members who are Licensed Dietitians;

three (3) Board members who are representatives of the public at large.

(c) The members of the Board shall be appointed by the Governor, with the consent of the Senate and, except for the initial Board, shall serve staggered terms of five (5) years each beginning January 15 of odd-numbered years.

(d) In making the initial appointments to the Board, the Governor shall designate the terms of the initial appointees as follows:

(1) three (3) members, including two (2) dietitians and one (1) member who represents the public at large for terms of five (5) years;

(2) two (2) members, including one (1) dietitian, and one (1) member who represents the public at large for terms of four (4) years;

(3) two (2) members, including one (1) dietitian, and one (1) member who represents the public at large, for terms of two (2) years;

(4) appointments shall be made within ninety (90) days after the effective date of this act.

(e) The four (4) Board members, who are representative of the dietetics profession, shall be selected from a list of ten (10) names submitted to the Governor by the Board of Directors of the Arkansas Dietetic Association. Each of these Board members shall have been practicing dietitians for at least five (5) years preceding their appointment.

(f) Members of the Board may be removed from office by the Governor for cause. In case of death, resignation, or removal, the vacancy of the unexpired terms shall be filled by the Governor in the same manner as other appointments. A person chosen to fill a vacancy shall be appointed only for the unexpired terms of the Board member replaced. No members shall serve more than two (2) consecutive terms.

#### SECTION 9. FUNCTIONS OF THE BOARD.

(a) Organization and Meetings.

(1) The Board shall hold a meeting within thirty (30) days after its members are first appointed for the purpose of organization.

(2) At least two (2) regular meetings of the Board shall be held each calendar year, and at the first regular meeting every two (2) years, the Board shall elect a chairperson and vice-chairperson. Other regular meetings may be held at such time as the rules of the Board may provide.

(3) Special called meetings may be held at the discretion of the chairperson or at the written request of any three (3) members of the Board.

(4) Reasonable notice of all meetings shall be given in the manner prescribed by the laws of this state.

(5) A quorum of the Board shall consist of four (4) members.

(6) A secretary of the Board shall be elected by the Board and shall hold office at the pleasure of the Board. Said Board shall adopt a seal, which must be affixed to all certificates issued by the Board.

(b) Funds. The secretary of the Board shall receive and account for all money derived under the provisions of this act, and shall deposit the

same weekly into financial institutions other than the State Treasury. These monies shall be known as the Dietetics Practice Licensing Fund. There shall be such audits of this Fund as required by law. The secretary of the Board shall give a surety bond for the faithful performance of his duties to the Governor in the sum of Ten Thousand Dollars (\$10,000.00) or an amount recommended by the State Auditor. The premium for this bond shall be paid out of the Dietetics Practice Licensing Fund. The Board may make expenditures from this Fund for any purpose which is reasonable and necessary to carry out the provisions of this act.

(c) Fees. The Board shall establish, charge, and collect for:

- (1) the filing of an application for a license under this act;
- (2) the original issuance of a license under this act;
- (3) a renewal of a license issued in accordance with this act;
- (4) replacement of a license or renewal lost or destroyed.

(d) Continuing Education. The Board shall establish Continuing Education Requirements and shall notify the applicants for licensing of the requirements.

(e) Duties of the Board. In addition to the duties set forth elsewhere in this act, the Board shall:

(1) establish an examination procedure, utilizing the examination approved by the Board;

(2) establish a licensure reciprocity agreement with other states;

(3) annually compile a list of the names, addresses (residential and business) and dates and license numbers of all persons licensed under this act to be available upon request and cost;

(4) establish mechanisms for appeal and decisions regarding applications and granting of licenses, such mechanisms to include provisions for judicial review in accordance with the Arkansas Administrative Procedure Act;

(5) make such rules and regulations not inconsistent with law as may be necessary to regulate its proceedings;

(6) promulgate rules and regulations necessary to implement the act;

(7) compile an annual report;

(8) establish rules defining unprofessional conduct and set forth and publish Standards of Professional Responsibility and publish standards for practice within twelve (12) months after the first Board meeting;

(9) receive and process complaints;

(10) impose penalties;

(11) establish fees and publish financial records;

(12) require at the time of license renewal each applicant to present satisfactory evidence that in the period since the license was issued he/she has completed the continuing education requirements in a manner specified by the Board.

#### SECTION 10. PER DIEM AND EXPENSE.

(a) Each member of the Board shall receive all necessary expenses incident to holding meetings, provided, however, that expenses shall in no case exceed the fees collected by said Board and shall not exceed the per diem and reimbursement limits set for state employees. All reimbursements for expenses authorized by this act shall be paid from the Dietetics Practice License Fund.

(b) The Board shall employ necessary personnel for the performance of its functions and fix the compensation thereof within the limits of funds available to the Board.

#### SECTION 11. PROVISIONAL LICENSES.

(a) Provisional license to practice as a dietitian may be issued by the Board upon the filing of an application and submission of evidence of successful completion of the education requirements.

(b) A provisional license shall expire eighteen (18) months from the date of issuance. Provisional licenses may be renewed once upon submission to the Board of a satisfactory explanation for the applicant's failure to become licensed within the original eighteen (18) month period.

(c) A provisional license shall permit the holder to practice only under the supervision of a dietitian licensed in this state.

SECTION 12. RECIPROCITY. Reciprocity shall be provided for licensed dietitians from other states provided that the standards for licensing in that state are not less than those provided for in this act as determined by the Board.

SECTION 13. RENEWAL OF LICENSES.

(a) All licenses shall be effective when issued by the Board.

(b) The license of Licensed Dietitian shall be ruled valid for one (1) year after the date of issuance.

(c) A license may be renewed by the payment of a renewal fee as set by the Board. The Board shall mail an application for renewal of a license to each person sixty (60) days prior to renewal date. This shall be mailed to the most recent address of said person as it appears on the record of the Board. Such person shall complete the renewal application and return it to the Board accompanied by the required renewal fee within not more than sixty (60) days after the renewal application was mailed by the Board. Upon receipt of application and fee, the Board shall verify the accuracy of such application and issue to the applicant a notice of license renewal for the next year. If a person fails to renew his or her license within the sixty (60) day period, such license shall lapse the last day of the month of the calendar year that is exactly one (1) year from the calendar year and month in which the license was issued. If the renewal license has been expired for not more than ninety (90) days the person may renew the license by paying to the Board the required renewal fee and a penalty in an amount equal to one-half of the renewal fee. If the license has been expired for more than ninety (90) days but less than one (1) year the person may renew the license by paying to the Board the unpaid renewal fee and a penalty in an amount equal to the renewal fee. If a license has been expired one (1) year or more the license shall not be renewed, but a new license may be obtained by applying to the Board as a new licensee.

(d) At the time of license renewal, each applicant shall present satisfactory evidence that in the period since the license was issued, he has completed the continuing education requirements as required by the Board.

SECTION 14. BRIBERY, FRAUD, MISREPRESENTATION, AND FALSE STATEMENTS. The following acts shall constitute violations of this act.

(1) Representing oneself to be a Dietitian, Licensed Dietitian or the word "dietitian" alone or in combination, Provisional Licensed Dietitian or use the letters L.D., or P.L.D., or any facsimile thereof, unless he or she is duly licensed as such under this act; or under such title or descriptions offering to give or giving services to individuals, groups, agencies or corporations without a license.

(2) Attempting to engage in dietetics practice, as herein defined, without having first been licensed or otherwise permitted under the provisions of this act to do so.

(3) Obtaining or attempting to obtain a license or renewal thereof by

bribery or fraudulent representation.

(4) Knowingly making a false statement on any form promulgated by the Board in accordance with this act or the rules and regulations promulgated thereunder.

SECTION 15. GROUNDS FOR DISCIPLINARY PROCEEDINGS. The Board may refuse to issue or renew a license, or may revoke or suspend a license issued under this act for any of the following but is not limited to:

- (1) violation of a provision of this act;
- (2) engaging in unprofessional conduct or gross incompetence as defined by the rules of the Board, or violating the Standards of Professional Responsibility adopted and published by the Board;
- (3) conviction in this or any other state of any crime that is a felony in this state;
- (4) has been convicted of a felony in a federal court.

SECTION 16. DISCIPLINARY PROCEEDING. Hearings shall be conducted by the Board. Decisions will be determined by a majority vote of the Board. All proceedings will be conducted in accordance with the Arkansas Administrative Procedure Act.

SECTION 17. VIOLATIONS, PENALTIES AND ENFORCEMENT. Violations of this act shall constitute Class A misdemeanors. The Board shall assist the prosecuting attorney in the enforcement of this act; and any member of the Board may present evidence of a violation to the appropriate prosecuting attorney.

SECTION 18. All provisions of this Act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 19. All laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 20. SEVERABILITY. If any provision of this act or the application thereof to any persons or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

APPROVED: March 7, 1989

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