

ARKANSAS REGISTER

Proposed Rule Cover Sheet



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Arkansas Dietetics Licensing Board**Rules****Table of Contents**

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SECTION I. PROMULGATION

Pursuant to Ark. Code Ann. 17-83-101, *et seq.* specifically §17-83-203, “Dietetics Practice Act,” the Arkansas Dietetics Licensing Board (“Board”) hereby establishes and promulgates the following rules. These rules and all future amendments are made in accordance with the Arkansas Administrative Procedure Act, Ark. Code Ann. §25-15-201, *et seq.*

SECTION II. PURPOSE

It is the purpose of the Dietetics Practice Act (“Act”) to protect the health, safety, and welfare of the public by providing for the licensing and regulations of persons engaged in the practice of dietetics. Nothing in the Act prevents 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 III. INFORMATION FOR PUBLIC GUIDANCE

The Board employs persons holding certain responsibilities for handling Freedom of Information Act (“FOIA”) requests, licensing questions, and complaints against licensees so that the public may obtain information about the Board or make submissions or requests. The names, mailing addresses, telephone numbers, and electronic addresses can be obtained from the Board’s office or website.

The Board has a list of official forms used by the Board and a list of all formal, written statements of policy and written interpretative memoranda, and orders, decisions and opinions resulting from adjudications, which may be obtained from the Board’s office or website.

SECTION IV. GENERAL ORGANIZATION

- A. The Board shall consist of five (5) persons, all of whom are Arkansas residents, with the following qualifications: three (3) Board members who are Licensed Dietitians; two (2) Board members who are representatives of the public at large including:
1. One (1) member who is not actively engaged in or retired from the field of Dietetics, to represent the consumers; and
 2. One (1) member who is sixty (60) years of age or older, who is not actively engaged in or retired from the field of Dietetics, to represent the elderly.

- B. The members of the Board shall be appointed by the Governor, with the confirmation of the Senate and shall serve terms of five (5) years.
- C. The Governor shall consult the Board of Directors of the Arkansas Academy of Nutrition and Dietetics before appointing the three (3) Board members who are licensed dietitians. Each of these Board members shall have been practicing dietitians for at least five (5) years preceding their appointment.
- D. Members of the Board may be removed 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 vacancy shall be appointed only for the unexpired term of the Board member replaced. No member shall serve more than two (2) consecutive terms.
- E. A quorum of the Board shall consist of four (4) members.
- F. Meetings:
 - 1. 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.
 - 2. 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.
 - 3. Reasonable notice of all meetings shall be given in the manner prescribed by the laws of this State.

SECTION V. DEFINITIONS

The following terms and phrases apply to all rules promulgated by the Board, unless a specific paragraph in the Act defines or uses the word or term in a different manner.

- A. “Academy” means the Academy of Nutrition and Dietetics.
- B. “Commission on Dietetic Registration (“CDR”)” means the Commission on Dietetic Registration that is a national certifying agency for voluntary professional credentialing in dietetics and a member of the Institute for Credentialing Excellence.
- C. “Degree” means a degree received from a United States college or university that was regionally accredited at the time the degree was conferred.

- D. “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 people’s health through the provision of nutrition care services.
- E. “Dietitian” means one engaged in dietetics practice.
- F. “Examination” means the examination administered by the CDR.
- G. “Institute for Credentialing Excellence” 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.
- H. “Licensed Dietitian (“LD”)” means a person licensed under this Act.
- I. “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; and
 - 5. Evaluating, making changes in, and maintaining appropriate standards for quality in food and nutrition care services for humans.
- J. “Provisional Licensed Dietitian (“PLD”)” means a person provisionally licensed under this Act.
- K. “Registered Dietitian” means a person registered by the CDR.

SECTION VI. PROHIBITIONS

No individual shall practice or offer to practice dietetics within the meaning of this Act unless he/she is duly licensed or is a student under the provisions of this Act.

SECTION VII. QUALIFICATIONS FOR ISSUANCE OF LICENSE

A. Pre-licensure criminal background check

1. Pursuant to Act 990 of 2019, an individual may petition for a pre-licensure determination of whether the individual's criminal record will disqualify the individual from licensure and whether a waiver may be obtained.
2. The individual must obtain the pre-licensure criminal background check petition form from the Board.
3. The Board will respond with a decision in writing to a completed petition within a reasonable time.
4. The Board's response will state the reason(s) for the decision.
5. All decisions of the Board in response to the petition will be determined by the information provided by the individual.
6. Any decision made by the Board in response to a pre-licensure criminal background check petition is not subject to appeal.
7. The Board will retain a copy of the petition and response and it will be reviewed during the formal application process.

B. The Board may issue a license as a Licensed Dietitian ("LD") to an applicant who qualifies as follows:

1. The applicant files an application and has:
 - a. Received a baccalaureate or post-baccalaureate degree from a regionally accredited United States 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 or degrees validated as equivalent to the baccalaureate or post-baccalaureate degree conferred by a regionally accredited college or university in the United States;
 - b. Completed a planned, continuous pre-professional experience component in dietetic practice of not fewer than nine hundred (900) hours under the supervision of a registered dietitian or licensed dietitian; and
 - c. Passed an examination as defined by the board; or

2. The applicant files an application and provides evidence of current registration as a registered dietitian by the CDR.
- C. Applications shall be typewritten or printed in ink, signed by the applicant and accompanied by the appropriate fee and by such evidence, statements, or documents as specified or required by the Board. All applications, statements, and documents submitted shall become the property of the Board.
- D. The Board adopts the passing score on the examination as the passing score required by the CDR.
- E. Licensure for Military Service Members and Spouses
1. As used in this subsection:
 - a. “automatic licensure” means the granting of occupational licensure without an individual’s having met occupational licensure requirements provided under Title 17 of the Arkansas Code or by these Rules.
 - b. “returning military veteran” means a former member of the United States Armed Forces who was discharged from active duty under circumstances other than dishonorable.
 2. The Board shall grant automatic licensure to an individual who holds a substantially equivalent license in another U.S. jurisdiction and is:
 - a. An active duty military service member stationed in the State of Arkansas;
 - b. A returning military veteran applying for licensure within one (1) year of his or her discharge from active duty; or
 - c. The spouse of a person under 2 (a) or (b) above.
 3. The Board shall grant such automatic licensure upon receipt of all the below:
 - a. Payment of the initial licensure fee;
 - b. Evidence that the individual holds a substantially equivalent license in another state; and
 - c. Evidence that the applicant is a qualified applicant under Section E.2 above.
- F. Waiver request for disqualifying criminal offense
1. If an individual has been convicted of an offense listed in A.C.A. § 17-2-102(a), except those permanently disqualifying offenses found in subsection (e), the

Board may waive disqualification of a potential applicant or revocation of a license based on the conviction if a request for a waiver is made by:

- a. An affected applicant for a license; or
 - b. An individual holding a license subject to revocation.
2. The Board may grant a waiver upon consideration of the following, without limitation:
- a. The age at which the offense was committed;
 - b. The circumstances surrounding the offense;
 - c. The length of time since the offense was committed;
 - d. Subsequent work history since the offense was committed;
 - e. Employment references since the offense was committed;
 - f. Character references since the offense was committed;
 - g. Relevance of the offense to the occupational license; and
 - h. Other evidence demonstrating that licensure of the applicant does not pose a threat to the health or safety of the public.
3. A request for a waiver, if made by an applicant, must be in writing and accompany the completed application and fees.
4. The Board will respond with a decision in writing and will state the reasons for the decision.
5. An appeal of a determination under this section will be subject to the Administrative Procedures Act §25-15-201 *et seq.*

SECTION VIII. PROVISIONAL LICENSES

A Provisional License shall permit the holder to practice only under the direct supervision of a dietitian licensed in this State.

- A. The Board may issue a Provisional License to any dietitian who meets the following requirements:
 1. The applicant has filed an application with the Board, and
 2. Submitted evidence of successful completion of the education requirements in Section VII.
- B. A Provisional License shall expire eighteen (18) months from the date of issuance.

- C. A Provisional License may be renewed upon submission to the Board of satisfactory explanation for the applicant's failure to become licensed within the original eighteen (18) month period. A Provisional License may only be renewed one time.

SECTION IX. RECIPROCITY

- A. The Board shall provide reciprocity for licensed dietitians from other states, provided that the standards in that state are not less than those provided for in Section VII.
- B. Applicants shall provide the Board with the following:
 - 1. A current copy of that state's proposed (if any) and adopted rules/regulations governing its operations and application and licensing procedures;
 - 2. A copy of the legal authority (law, act, code, section, or otherwise) for the license including any proposed and final amendments;
 - 3. Information regarding all disciplinary actions relating to each applicant from that state's licensing authority;
 - 4. The names, addresses, and phone numbers of the licensing authority's chairperson and/or executive administrator;
 - 5. A copy of the license or certificate for which the reciprocal licensure is requested; and
 - 6. Any other information deemed necessary by the Board or by its legal counsel.
- C. All application materials shall be completed and application and license fees shall be paid by the applicant. All application materials become the property of the Board.
- D. The Board may contact the issuing authority to verify the applicant's status with the agency at the time of application.

SECTION X. RENEWAL OF LICENSES

- A. A licensee must renew their license annually and is responsible for renewing before the expiration date.
 - 1. All licenses issued as of January 1, 2021 will have a renewal date of December 1 of each year.
 - 2. All licenses issued after January 1, 2021 will have a renewal date of one (1) year from the date of issuance.

B. Licensees applying for renewal shall:

1. Submit a completed renewal application;
2. Renewal fee; and
3. Documentation showing completion of at least twelve (12) clock hours per renewal period of continuing education. All continuing education hours must be in compliance with continuing professional education activities approved by CDR.

C. Continuing Education Extension Request

1. The one (1) year completion period for continuing education requirements may be extended on an individual basis if the Board determines a licensee's circumstances prevented him/her from timely completing the requirement.
2. The request must be in writing with adequate documentation of the circumstances that prevented the licensee from completing the requirement.
3. The request must be submitted at least twenty (20) days prior to the expiration date of the license.
4. If the Board grants an extension, the time for completion will not exceed ninety (90) days past the expiration date of the license.
5. All hours obtained during the extension period will only be applied towards the twelve (12) hours required for the renewal period in which the extension was requested and not towards the next renewal period's twelve (12) hours requirement.

D. The Board shall mail a notice for renewal of a license to each person sixty (60) days prior to the renewal date.

1. The renewal notice shall be mailed to the most recent address of the person as it appears on the record of the Board.
2. The renewal notice shall include:
 - a. The expiration date of the license;
 - b. The amount of the renewal fee due; and
 - c. The license renewal form.

E. The licensee shall complete the renewal form and return it to the Board, accompanied by the required renewal fee, within no more than sixty (60) days after the renewal notice was mailed by the Board.

F. Late Renewal Requirements

1. If a licensee fails to renew his/her license within the sixty (60) day period, the license shall lapse the last day of the month of the renewal date.
2. If the renewal license has expired for no more than ninety (90) days, the licensee may renew the license by paying the Board the required renewal fee and a penalty in an amount equal to one-half (1/2) of the renewal fee.
3. If the renewal license has expired for more than ninety (90) days but less than one (1) year, the licensee may renew the license by paying the Board the required renewal fee and a penalty in an amount equal to the renewal fee.
4. 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.
5. If a license has expired, before renewal a licensee must submit to the Board an attestation that the licensee has not practiced in dietetics since the day that the license lapsed and that the licensee will not practice dietetics until the license is approved for renewal by the Board.

G. Expiration of License

1. A person whose license has expired may not use the title or represent or imply that he/she has the title of “licensed dietitian” or “provisional licensed dietitian” or use the letters “LD” or “PLD” and may not use any facsimile of those titles in any manner.
2. A person whose license has expired must return to the Board his/her license certificate and license identification card within thirty (30) days of notification by the Board.

SECTION XI. FEES

The Board shall establish, charge, and collect fees as follows:

- A. Application and license fee for Licensed Dietitian (LD), including those seeking licensure through reciprocity, shall be \$110.
- B. Annual LD license renewal fee shall be \$50.
- C. Application and licensing fee for Provisional Licensed Dietitian (PLD) shall be \$150.
- D. One time eighteen (18) month renewal fee for PLD shall be \$75.
- E. Duplicate or replacement of a lost or destroyed license (LD/PLD) shall be \$25.

SECTION XII. STANDARDS OF PROFESSIONAL RESPONSIBILITY

The Board adopts the most current CDR Code of Ethics for all persons holding an LD or PLD license. A copy of the code is available from the Board's office or the CDR website.

SECTION XIII. LICENSE ISSUANCE AND RENEWAL DENIAL

- A. The Board may refuse to issue or renew a license, or may revoke or suspend a license for any of the following, but is not limited to:
 - 1. Violation of a provision of the Dietetics Practice Act or the rules adopted by the Board;
 - 2. Engaging in unprofessional conduct or gross incompetence as defined by the rules of the Board or violating standards of professional responsibility adopted and published by the Board; or
 - 3. Conviction of a felony listed under §17-2-102.
- B. The Board may deny approval of an application from an applicant who is either licensed by another state or Registered Dietitian, if the Board has determined that the applicant may be:
 - 1. In violation of that state's Act or rules of the licensing authority, if applicable;
 - 2. In violation of a provision of the Dietetics Practice Act or the rules adopted by the Board;
 - 3. Engaging in unprofessional conduct or gross incompetence as defined by the rules of the Board or violating standards of professional responsibility adopted and published by the Board; or
 - 4. Convicted of a felony listed under §17-2-102.

- C. If a preliminary determination is made that the application should be denied, the Board will inform the applicant of the opportunity for a hearing on the application.
- D. The grounds or basis for the proposed denial of a license will be set forth in writing by the Board. Any hearing on the denial of a license will be conducted in accordance with Ark. Code Ann. §§ 25-15-208 and 25-15-213, and unless otherwise provided by law, the applicant has the burden of establishing entitlement to the license.

SECTION XIV. DISCIPLINARY PROCEDURES

A. Complaint

1. The Board is authorized to receive complaints against licensees or applicants from any person. Signed complaints must be submitted in writing to the Board's office. A complaint form may be obtained from the Board's office.
2. The Board may on its own motion, in the absence of a written complaint, conduct an investigation of a suspected violation if reasonable cause exists to believe a violation has occurred.

B. Investigation

1. The Board shall investigate a complaint if the complaint states prima facie violations of the Dietetics Practice Act or Board rules. The Board Chairman will appoint one or more board members to investigate the complaint.
2. A copy of the complaint will be sent certified mail to the party complained against. The party complained against shall submit a written response to the complaint within a reasonable time as provided by the Board's instructions.
3. The Board investigator(s) will review the response to the complaint. Further investigation will be conducted if deemed appropriate.
4. Upon completion of the investigation and upon the recommendation of the Board investigator(s), the Board will determine whether to conduct a hearing, dismiss the complaint, or take other appropriate action. All interested parties will be notified of the Board's instruction.
5. When appropriate, informal hearing procedures may be used to attempt to resolve complaints in lieu of an administrative hearing.

C. Suspension, Revocation, or Other Sanctions

1. Prior to the entry of a final order to suspend, revoke, or to impose other sanctions upon a licensee, the agency will serve the licensee a notice of hearing in the manner set out in Ark. Code Ann. § 25-15-208 and Section XIV.
2. The Board has the burden of proving the alleged facts and violations of law stated in the notice.

SECTION XV. ADMINISTRATIVE HEARING

- A. Scope of this Section - This section applies in all administrative adjudications conducted by the Board. This rule describes the process by which the Board formulates orders (for example, an order revoking a license to practice, or imposing civil penalties).
- B. Presiding Officer - The Board shall preside at the hearing or may designate one or more members of the Board or one or more examiners, referees, or hearing officers to preside at a hearing.
- C. Appearances
 - 1. Any party appearing in any agency proceeding has the right, at his or her own expense, to be represented by counsel. Alternatively, the respondent may appear on his or her own behalf.
 - 2. Any attorney representing a party to an adjudicatory proceeding must file notice of appearance as soon as possible.
 - 3. Service on counsel of record is the equivalent of service on the party represented.
 - 4. On written motion served on the party represented and all other parties of record, the presiding officer may grant counsel of record leave to withdraw for good cause shown.
- D. Consolidation - If there are separate matters that involve similar issues of law or fact, or identical parties, the matters may be consolidated if it appears that consolidation would promote the just, speedy, and inexpensive resolution of the proceedings, and would not unduly prejudice the rights of a party.
- E. Notice to Interested Parties - If it appears that the determination of the rights of parties in a proceeding will necessarily involve a determination of the substantial interests of persons who are not parties, the presiding officer may enter an order requiring that an absent person be notified of the proceeding and be given an opportunity to be joined as a party of record.
- F. Service of Papers - Unless the presiding officer otherwise orders, every pleading and every other paper filed for the proceeding, except applications for witness subpoenas and the subpoenas, shall be served on each party or the party's representative at the last address of record.

G. Initiation & Notice of Hearing

1. An administrative adjudication is initiated when the agency issues a notice of hearing.
2. The notice of hearing will be sent to the respondent by U.S. Mail, return receipt requested, delivery restricted to the named recipient or his agent. Notice shall be sufficient when it is so mailed to the respondent's latest address on file with the agency.
3. Notice will be mailed at least twenty (20) days before the scheduled hearing.
4. The notice will include:
 - a. Statement of the time, place, and nature of the hearing;
 - b. A statement of the legal authority and jurisdiction under which the hearing is to be held; and
 - c. A short and plain statement of the matters of fact and law asserted.

H. Motions – All requests for relief will be by motion. Motions must be in writing or made on the record during a hearing. A motion must fully state the action requested and the grounds relied upon. The original written motion will be filed with the agency. When time allows, the other parties may, within seven (7) days of the service of the written motion, file a response in opposition. The presiding officer may conduct such proceedings and enter such orders as are deemed necessary to address issues raised by the motion. However, a presiding officer, other than the Board will not enter a dispositive order unless expressly authorized in writing to do so.

I. Answer – A respondent may file an answer to the notice of hearing.

J. Information Provided upon Request

1. Upon written request, the Board will provide the information designated in Ark. Code Ann. § 25-15-208(a)(3).
2. Such requests should be received by the Board at least 10 days before the scheduled hearing.

K. Continuances

1. The Board may grant a continuance of hearing for good cause shown. Requests for continuances will be made in writing. The request must state the grounds to be considered and be made as soon as practicable and, except in cases of

emergencies, no later than five (5) days prior to the date noticed for the hearing.

In determining whether to grant a continuance, the Board may consider:

- a. Prior continuances;
- b. The interests of all parties;
- c. The likelihood of informal settlements;
- d. The existence of an emergency;
- e. Any objection;
- f. Any applicable time requirement;
- g. The existence of a conflict of the schedules of counsel, parties, or witnesses;
- h. The time limits of the request; and
- i. Other relevant factors.

2. The Board may require documentation of any grounds for continuance.

L. Hearing Procedures

1. The presiding officer presides at the hearing and may rule on motions, require briefs, and issue such orders as will ensure the orderly conduct of the proceedings; provided, however, any presiding officer other than the Board shall not enter a dispositive order or proposed decision unless expressly authorized in writing to do so.
2. All objections must be made in a timely manner and stated on the record.
3. Parties have the right to participate or to be represented by counsel in all hearings or pre-hearing conferences related to their case.
4. Subject to terms and conditions prescribed by the Administrative Procedure Act, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and, upon request by the agency, may submit briefs and engage in oral argument.
5. The presiding officer is charged with maintaining the decorum of the hearing and may refuse to admit, or may expel, anyone whose conduct is disorderly.

M. Order of Proceedings

The presiding officer will conduct the hearing in the following manner:

1. The presiding officer will give an opening statement, briefly describing the nature of the proceedings.
2. The parties will be given the opportunity to present opening statements.
3. The parties will be allowed to present their cases in the sequence determined by the presiding officer.
4. Each witness must be sworn or affirmed by the presiding officer and be subject to examination and cross-examination as well as questioning by the Board. The presiding officer may limit questioning in a manner consistent with the law.
5. When all parties and witnesses have been heard, parties will be given the opportunity to present final arguments.

N. Evidence

1. The presiding officer shall rule on the admissibility of evidence and may, when appropriate, take official notice of facts in accordance with all applicable requirements of law.
2. Stipulation of facts is encouraged. The agency may make a decision based on stipulated facts.
3. Evidence in the proceeding must be confined to the issues set forth in the hearing notice, unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence outside the scope of the notice, over the objection of a party who did not have actual notice of those issues, that party, upon timely request, may receive a continuance sufficient to prepare for the additional issue and to permit amendment of pleadings.
4. A party seeking admission of an exhibit must provide ten (10) copies of each exhibit at the hearing. The presiding officer must provide the opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. All exhibits admitted into evidence must be appropriately marked and be made part of the record.
5. Any party may object to specific evidence or may request limits on the scope of the examination or cross-examination. A brief statement of the grounds upon which it is based shall accompany such an objection. The objection, the ruling on

the objection, and the reasons for the ruling will be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve the ruling until the written decision.

6. Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony will briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.
 7. Irrelevant, immaterial, and unduly repetitive evidence will be excluded. Any other oral or documentary evidence, not privileged, may be received if it is of a type commonly relied upon by reasonably prudent men and women in the conduct of their affairs.
 8. The finder of fact may base its findings of fact upon reasonable inferences derived from other evidence received.
- O. Default – If a party fails to appear or participate in an administrative adjudication after proper service of notice, the agency may proceed with the hearing and render a decision in the absence of the party.
- P. Recording the Proceedings – The Board will record the testimony heard at a hearing. Upon the filing of a petition for judicial review, the Board will provide a verbatim transcript of testimony taken before the agency.
- Q. Factors to be Considered in Imposing Sanctions – In addition to any other considerations permitted by the Dietetics Practice Act, if applicable, the Board in imposing any sanction may consider the following:
1. The nature and degree of the misconduct for which the licensee is being sanctioned.
 2. The seriousness and circumstances surrounding this misconduct.
 3. The loss or damage to clients or others.
 4. The assurance that those who seek similar professional services in the future will be protected from the type of misconduct found.
 5. The profit to the licensee.

6. The avoidance of repetition.
7. Whether the conduct was deliberate, intentional, or negligent.
8. The deterrent effect on others.
9. The conduct of the individual during the course of the disciplinary proceeding.
10. The professional's prior disciplinary record, including warnings.
11. Matters offered by the professional in mitigation or extenuation, except that a claim of disability or impairment resulting from the use of alcohol or drugs may not be considered unless the professional demonstrates that he or she is successfully pursuing in good faith a program of recovery.

R. Final Order

1. The Board will serve on the respondent a written order that reflects the action taken by the Board. The order will include a recitation of facts found based on testimony and other evidence presented and reasonable inferences derived from the evidence pertinent to the issues of the case. It will also state conclusions of law and directives or other disposition entered against or in favor of the respondent.
2. The order will be served personally or by mail on the respondent. If counsel represents respondent, service of the order on respondent's counsel shall be deemed service on the respondent.

SECTION XVI. DECLARATORY ORDERS

A. Purpose and Use of Declaratory Orders

1. A declaratory order is a means of resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the Board has authority.
2. A petition for declaratory order may be used only to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner's particular circumstances.
3. A declaratory order is not the appropriate means for determining the conduct of another person or for obtaining a policy statement of general applicability from the Board.

4. A petition or declaratory order must describe the potential impact of statutes, rules, or orders upon the petitioner's interests.
- B. The Petition – The process to obtain a declaratory order is begun by filing with the Board's office a petition that provides the following information:
1. The name, address, telephone number, and facsimile number of the petitioner;
 2. The name, address, telephone number, and facsimile number of the attorney of the petitioner;
 3. The statutory provision(s), agency rule(s), or agency order(s) on which the declaratory order is sought;
 4. A description of how the statutes, rules, or orders may substantially affect the petitioner and the petitioner's particular set of circumstances, and the question or issue on which petitioner seeks a declaratory order;
 5. The signature of the petitioner or petitioner's attorney;
 6. The date; and
 7. Request for a hearing, if desired.
- C. Board Disposition
1. The Board may hold a hearing to consider a petition for declaratory order. If a hearing is held, it shall be conducted in accordance with Ark. Code Ann. § 25-15-208 and § 25-15-213, and the Board's rules for adjudicatory hearings.
 2. The Board may rely on the statements of fact set out in the petition without taking any position with regard to the validity of the facts. Within ninety (90) days of the filing of the petition, the Board will render a final order denying the petition or issuing a declaratory order.

Section XVII. THE PRACTICE OF TELEMEDICINE

A. Definitions

1. "Distant site" means the location of the healthcare professional delivering services through telemedicine at the time the services are provided. Ark. Code Ann. §17-80-402(1).
2. "Originating site" means a site at which a patient is located at the time healthcare services are provided to him or her by means of telemedicine. Ark. Code Ann. §17-80-402(2).

3. “Remote patient monitoring” means the use of synchronous or asynchronous electronic information and communication technology to collect personal health information and medical data from a patient at an originating site that is transmitted to a healthcare professional at a distant site for use in the treatment and management of medical conditions that require frequent monitoring. Ark. Code Ann. §17-80-402(5).
 4. “Store-and-forward technology” means the asynchronous transmission of a patient’s medical information from a healthcare professional at an originating site to a healthcare professional at a distant site. Ark. Code Ann. § 17-80-402(6).
 5. “Telemedicine” means the use of electronic information and communication technology to deliver healthcare services, including without limitation the assessment, diagnosis, consultation, treatment, education, care management, and self-management of a patient. Telemedicine includes store-and-forward technology and remote patient monitoring. Ark. Code Ann. § 17-80-402(7).
- B. Establishing a Licensed Dietitian/Client Relationship – A licensed dietitian/client relationship must be established in accordance with Ark. Code Ann. §§ 17-80-402 & 403 and Section VII before the delivery of services via telemedicine. A client’s completing a nutrition history online and forwarding it to a licensed dietitian is not sufficient to establish the relationship, nor does it qualify as store-and-forward technology. A licensed dietitian exhibits gross negligence if he or she provides and/or recommends any form of treatment via telemedicine without first establishing a proper licensed dietitian/client relationship.
- C. Minimum Requirements for Licensed Dietitian/Client Relationship – For purposes of this regulation, a proper licensed dietitian/client relationship, at a minimum requires that:
1. The licensed dietitian performs an “in person” nutrition history of the client adequate to establish a diagnosis and develop a treatment plan, OR
 2. The licensed dietitian performs a face to face nutrition history using real time audio and visual telemedicine technology that provides information at least equal to such information as would have been obtained by an in-person nutrition history, OR

3. The licensed dietitian knows the client and the client's general nutrition issues through a previously established professional relationship; AND
 4. Appropriate follow-up be provided or arranged, when necessary.
- D. When a Licensed Dietitian/Client Relationship is Deemed to Exist – For the purposes of this regulation, a proper licensed dietitian/client relationship is deemed to exist in the following situations:
1. When treatment is provided in consultation with, or upon referral by, another provider or treatment team who has an ongoing relationship with the client, and who has agreed to supervise the client's treatment, including follow up care.
 2. On-call or cross-coverage situations arranged by the client's treating provider or treatment team.
- E. Exceptions – Recognizing a licensed dietitian's duty to adhere to the applicable standard of care and to comply with mandatory reporting laws, the following situations are excluded from the requirement of this regulation by Ark. Code Ann. § 17-80-403(a)(2):
1. Emergency situations where the life or health of the client is in danger or imminent danger.
 2. Simply providing information of a generic nature, not meant to be specific to an individual client.
- F. Professional Relationship Exceptions – Under Ark. Code Ann. § 17-80-403(c), "Professional relationship" does not include a relationship between a licensed dietitian and a client established only by the following:
1. An internet questionnaire;
 2. An email message;
 3. Patient-generated medical history;
 4. Audio-only communication, including without limitation interactive audio;
 5. Text messaging;
 6. A facsimile machine; or
 7. Any combination thereof.
- G. Requirements for Services Provided VIA Telemedicine – The following requirements apply to all services provided by licensed dietitians using telemedicine.

1. The practice of dietetics via telemedicine shall be held to the same standards of care as traditional in-person encounters.
 2. The licensed dietitian must obtain a detailed explanation of the client's medical diagnosis from the client or the client's treating provider or treatment team in order to individualize the nutrition interventions.
 3. If a decision is made to provide treatment (medical nutrition therapy), the licensed dietitian must agree to accept responsibility for the(nutrition) care of the client.
 4. If follow-up care is indicated, the licensed dietitian must agree to provide or arrange for such follow-up care.
 5. The licensed dietitian must keep a documented treatment record, including, but not limited to nutrition history, interventions, and outcomes.
 6. At the client's request, the licensed dietitian must make available to the client an electronic or hardcopy version of the client's treatment record documenting the encounter. Additionally, unless the client declines to consent, the licensed dietitian must forward a copy of the record of the encounter to the client's regular treating provider or treatment team if that provider or treatment team is not the same licensed dietitian delivering the service via telemedicine.
 7. Services must be delivered in a transparent manner, including providing access to information identifying the licensed dietitian's licensure and other relevant certifications, as well as client financial responsibilities, in advance of the encounter.
 8. If the client, at the recommendation of the licensed dietitian, needs to be seen in person, the licensed dietitian must arrange to see the client in person or direct the client to their regular treating provider or treatment team or other appropriate provider if the client does not have a treating provider or treatment team. Such recommendation shall be documented in the client's treatment record.
 9. Licensed dietitians who deliver services through telemedicine must establish protocols for referrals for emergency services.
- H. Scope of Practice – Licensed dietitians may practice dietetics via telemedicine within the definitions found in Section V.

- I. Confidentiality – Licensed dietitians who use technology to facilitate supervision, consultation, or other confidential meetings shall use appropriate precautions to protect the confidentiality of those communications. Precautions to protect confidentiality depend on the type of technology being used, and may include using passwords, firewalls, encryption, and antivirus software; using electronic service providers that rely on standards of security for data that are transmitted and stored; and ensuring a private setting when using their electronic devices.

**QUESTIONNAIRE FOR FILING PROPOSED RULES WITH THE
ARKANSAS LEGISLATIVE COUNCIL**

DEPARTMENT/AGENCY Department of Health
DIVISION Division of Health Related Boards/Arkansas Dietetics Licensing Board
DIVISION DIRECTOR Matt Gilmore, ADH Boards and Commissions
CONTACT PERSON Kim Jablonski Board Chair; Justine Flowers, Secretary for the Board
ADDRESS P.O. Box 1016, North Little Rock, AR 72115
PHONE NO. 501-580-9294 **FAX NO.** _____ **E-MAIL** ardiet@arkansas.gov
NAME OF PRESENTER AT COMMITTEE MEETING Kim Jablonski, Board Chair
PRESENTER E-MAIL JablonskiKimberlyM@uams.edu or ardiet@arkansas.gov

INSTRUCTIONS

- A. Please make copies of this form for future use.**
- B. Please answer each question completely using layman terms. You may use additional sheets, if necessary.**
- C. If you have a method of indexing your rules, please give the proposed citation after “Short Title of this Rule” below.**
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:**

Jessica C. Sutton
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201

- 1. What is the short title of this rule? Arkansas Dietetics Licensing Board Rules
 - 1. Promulgation
 - 2. Purpose
 - 3. Information for Public Guidance.
 - 4. General Organization
 - 5. Definition
 - 6. Prohibitions
 - 7. Qualifications for Issuance of Licenses
 - 8. Provisional Licenses
 - 9. Reciprocity
 - 10. Renewal of Licenses
 - 11. Fees
 - 12. Standards of Professional Responsibility
 - 13. License Issuance and Renewal Denial
 - 14. Disciplinary Procedures
 - 15. Administrative Hearings
 - 16. Declaratory Order
 - 17. The Practice of Telemedicine _____

Arkansas Dietetics Licensing Board

2. What is the subject of the proposed rule?

1. Promulgation – rule promulgation authority of the Board

2. Purpose – Board purpose

3. Information for Public Guidance – FOIA information

4. General Organization – general organization of the Board including Board make up and meeting schedule

5. Definition- definitions used by the Board throughout the rules

6. Prohibitions – prohibition against practicing dietetics without a license

7. Qualifications for Issuance of Licenses – qualifications required for licensure including automatic licensure for military service members and spouses and disqualifying criminal offense waiver

8. Provisional Licenses - information regarding temporary licensure

9. Reciprocity – requirements for reciprocal licensure

10. Renewal of Licenses – information regarding the renewal process and continuing education requirements

11. Fees – Board fees for licensure

12. Standards of Professional Responsibility – Board’s adoption of the national code of ethics

13. License Issuance and Renewal Denial – information regarding grounds for denial or revocation of license

14. Disciplinary Procedures – information regarding the process for disciplinary procedures

15. Administrative Hearings – information regarding the administrative hearing process for disciplinary procedures or appeals of Board decisions

16. Declaratory Order – information regarding how to obtain a declaratory order to explain the applicability of any rule, statute or order enforced by the Board

17. The Practice of Telemedicine – information regarding the practice of telemedicine as it relates to Dietitians in compliance with the Telemedicine Act

3. Is this rule required to comply with a federal statute, rule, or regulation? Yes _____ No X

If yes, please provide the federal rule, regulation, and/or statute citation. _____

4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes _____ No X

If yes, what is the effective date of the emergency rule? _____

When does the emergency rule expire? _____

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes _____ No _____

5. Is this a new rule? Yes X No _____ If yes, please provide a brief summary explaining the rule. The proposed rules provide guidance on licensure, renewals, continuing education requirements, standards of professional responsibility, as well as disciplinary procedures.

Does this repeal an existing rule? Yes _____ No X If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.

Is this an amendment to an existing rule? Yes _____ No X If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The**

Arkansas Dietetics Licensing Board

summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation.
Arkansas Dietetics Practice Act - A.C.A. §17-83-203

7. What is the purpose of this proposed rule? Why is it necessary?
The proposed rules are necessary as new rules because during rule review under Act 781 of 2017 the current Board members were made aware that the Board rules have not previously been through the promulgation process. All rules with the exceptions of rules promulgated in connection with Acts 820 and 990 of 2019, Declaratory Order in connection with A.C.A. §25-15-206, and the Telemedicine rule in connection with A.C.A. §17-80-401 *et seq.*, have all been in use by the Board for years. Revisions were made to Renewal of Licenses to be consistent with statutory language. Changes for clarification and format reasons have been made which differ from the version of rules that were presented under Act 781 of 2017 review.

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b).
ARDieteticslicbrd.net

9. Will a public hearing be held on this proposed rule? Yes _____ No **X**
If yes, please complete the following:
Date: _____
Time: _____
Place: _____

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)
May 13 2020

11. What is the proposed effective date of this proposed rule? (Must provide a date.)
August 1, 2020

12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice.

13. Please provide proof of filing the rule with the Secretary of State as required pursuant to Ark. Code Ann. § 25-15-204(e).

14. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Department of Health

DIVISION Division of Health Related Boards/ Arkansas Dietetics Licensing Board

PERSON COMPLETING THIS STATEMENT Kim Jablonski, Board Chair

TELEPHONE NO. 501-580-9294 **FAX NO.** _____ **EMAIL:**

JablonskiKimberlyM@uams.edu or ardiet@arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

1. **SHORT TITLE OF THIS RULE** Arkansas Dietetics Licensing Board Rules

- 1. Promulgation
- 2. Purpose
- 3. Information for Public Guidance.
- 4. General Organization
- 5. Definition
- 6. Prohibitions
- 7. Qualifications for Issuance of Licenses
- 8. Provisional Licenses
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- 15. Administrative Hearings
- 16. Declaratory Order
- 17. The Practice of Telemedicine

1. Does this proposed, amended, or repealed rule have a financial impact?

Yes _____ No X _____

2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?

Yes X _____ No _____

3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes X _____ No _____

If an agency is proposing a more costly rule, please state the following:

(a) How the additional benefits of the more costly rule justify its additional cost;

(b) The reason for adoption of the more costly rule;

(c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and

Arkansas Dietetics Licensing Board

(d) Whether the reason is within the scope of the agency’s statutory authority, and if so, please explain.

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

(a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

(b) What is the additional cost of the state rule?

Current Fiscal Year

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

Next Fiscal Year

\$0 _____

\$0 _____

Although the proposed rules are considered new, there is no change in cost to any private individual, entity or business because the fee amounts remain the same as the Board has been using for several years. The proposed rules are considered new because it was discovered that the rules the Board have been using never went through the rule promulgation process.

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

Next Fiscal Year

