DEPARTMENT OF HEALTH

Adoption of Chapter 11-79
Hawaii Administrative Rules

JAN 0 8 2008

SUMMARY

Chapter 11-79, Hawaii Administrative Rules, entitled "Licensing of Dietitians", is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 79

LICENSING OF DIETITIANS

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SUBCHAPTER 1

GENERAL PROVISIONS

§11-79-1 Purpose. The purpose of this chapter is to establish procedures for the licensing of dietitians in the State of Hawaii.
[Eff JAN 24 2008] (Auth: HRS §448B-3)
(Imp: HRS §448B-3)

§11-79-2 Definitions. As used in this chapter:

"American Dietetic Association" means the national professional association for dietitians that develop standards of practice and training opportunities for members.

"Commission on Dietetic Registration" means the credentialing agency for the American Dietetic Association.

"Committee" means an advisory committee of licensed dietitians appointed by the director of health to assist with implementation of the licensure program.

"Department" means the department of health, State of Hawaii.

"Dietitian" means a person who is registered as a dietitian by the Commission on Dietetic Registration.

"Director of health" or "director" means the director of department of health, State of Hawaii, or the director's designee.

"Hawaii Dietetic Association" or "HDA" means the state-affiliate of the American Dietetic Association.

"Licensed dietitian" means a person who has a valid license to practice dietetics in the State of Hawaii under this chapter.

"Respondent" means a person who is alleged to have violated this chapter or chapter 448B, HRS, and is expected or disposed to respond to those allegations.

[Eff JAN 24 2008] (Auth: HRS §448B-3) (Imp: HRS §448B-3)

§11-79-3 Advisory committee. (a) The director shall appoint five licensed dietitians to serve on the dietitian licensure advisory committee from a list of candidates nominated. Committee candidates may include, but are not limited to the following:

(1) Health care facilities;
(2) Higher education;
(3) Department of health;
(4) Private consultant or practitioner; and
(5) Community member.

(b) Members shall serve staggered terms of three years each with one member serving one year, two members serving two years and three members serving three years in the initial phase. Thereafter, all members will serve three year terms. No person shall serve more than two consecutive terms.

(c) The committee shall meet as required, and shall advise the director on matters pertaining to this chapter, including applications, complaints, license revocation, license reinstatement, budget issues related to fees collected, use of the special fund monies, and other matters as deemed necessary by the department.

(d) Three members shall constitute a quorum.

(e) The committee members shall assist in the development of guidelines relating to:

(1) Frequency and process of meetings, designation of chair, dissemination of minutes, and communication with department;
(2) Process for review of applications, complaint investigations, license

revocation, reinstatement and enforcement, licensure by endorsement, budgetary matters, use of special funds, and other matters. [Eff JAN 24 2008] (Auth: HRS §448B-3) (Imp: HRS §448B-3)

§§11-79-4 to 11-79-10 (Reserved)

SUBCHAPTER 2

REQUIREMENTS FOR LICENSURE

§11-79-11 Qualifications for licensure. (a) To be licensed, applicants shall meet the licensure requirements in section 448B-5, HRS, in addition to the requirements of this chapter.

(b) An individual who provides evidence of current registration with the Commission on Dietetic Registration shall be deemed to have met the requirements of this chapter, provided that the individual shall submit a report of any disciplinary action relating to dietetics practice taken against the applicant in another jurisdiction.

[Eff JAN 24 2008] (Auth: HRS §448B-3) (Imp: HRS §448B-5)

§11-79-12 Application. (a) Applications for licensure as a dietitian shall be submitted to the department on forms provided by the department. An applicant shall provide the following information:

(1) The applicant's legal name;
(2) Affirmation that the applicant is beyond the age of majority;
(3) The applicant's current residence, business and mailing addresses, and telephone numbers;
(4) Current driver's license or state identification card;

(5) Current dietetic registration with the Commission on Dietetic Registration;

(6) The date and place of any conviction of a criminal offense related to the applicant's possible performance of the practice of dietetics, unless the conviction has been expunged or annulled, or is otherwise precluded from consideration by section 831-3.1, HRS;

(7) Proof that the applicant is a United States citizen, a United States national, or an alien authorized to work in the United States;

(8) Disclosure of similar licensure in any state or territory;

(9) Disclosure of disciplinary action by any state or territory against any license held by the applicant; and

(10) Any other information the department may require to investigate the applicant's qualifications for licensure.

(b) Failure to provide all of the information in subsection (a) and payment of required fees shall be grounds to deny the application for licensure. [Eff JAN 24 2008] (Auth: HRS §448B-3) (Imp: HRS §436B-10, §448B-3, §448B-5)

§11-79-13 Licensure by endorsement. The director shall grant, upon application and payment of the fee established in section 11-79-17, licensure to a person who at the time of application holds a valid license as a dietitian issued by another state, territory, or jurisdiction if the requirements for that certificate or license are equal to, or greater than, the requirements of this chapter. When the out-of-state license expires, the dietitian holding the license shall thereafter pay the Hawaii triennial licensure fee. [Eff JAN 24 2008] (Auth: HRS §448B-3) (Imp: HRS §448B-6)

§11-79-14 Timely processing. (a) The director shall approve, approve with conditions, or deny a complete application and notify the applicant accordingly within sixty calendar days after the receipt of the completed application and fees. Otherwise, the application is deemed automatically approved on the sixty-first calendar day and license shall be issued.

(b) The director shall determine and notify an applicant of any deficiencies of an application covered by this section, including payment of required fees, within forty-five calendar days after receipt of the application.

(1) Failure by the applicant to provide a complete application with all required documents or pay the fees required shall result in the suspension or termination of review of the application, and the application will be returned to the applicant.

(2) Upon receipt of a revised complete application, determine and notify an applicant of the completeness of a revised application, including payment of required fees, within thirty calendar days after receipt of the revised completed application, the director shall proceed with processing of the application. No additional fee will be required.

(c) All necessary fees shall be submitted with application and renewal forms.

(d) The advisory committee shall assist in the review of all applications and provide input in the decision to approve, approve with conditions or deny a license. [Eff JAN 24 2008] (Auth: HRS §448B-3) (Imp: HRS §448B-

§11-79-15 Renewal of license. (a) A renewal application shall be submitted to the department on a form provided by the department with required fees

submitted at minimum thirty days prior to license expiration.

(b) Current dietetic registration with the Commission on Dietetic Registration shall be provided with the renewal application.

(c) Incomplete renewal applications shall be returned to the applicant for completion and provided a deadline for submittal. Failure to comply with the deadline established may affect timely re-licensure and a late renewal fee may be applied.

(d) Failure to renew a license shall result in forfeiture of the license.

(1) Licenses that have been so forfeited may be restored within one year of the expiration date upon payment of renewal and late fees.

(2) Failure to restore a forfeited license within one year of the date of its expiration shall result in the automatic termination of the license, and relicensure may require the person to apply as a new applicant and satisfy all licensure requirements as per §11-79-11.

[Eff JAN 24 2008] (Auth: HRS §448B-3) (Imp: HRS §448B-8)

§11-79-16 Period of licensure. Licensure shall be granted for a period of three years to an individual who satisfactorily meets all of the requirements of this chapter and has submitted all applicable fees with the application.

[Eff JAN 24 2008] (Auth: HRS §448B-3) (Imp: HRS §448B-8)

§11-79-17 Inactive licenses. (a) Upon request by the licensee, the director may grant inactive status to a person licensed under this chapter. The request shall be submitted in writing to the department, and the department shall acknowledge the request, in writing, within thirty calendar days after receipt of the request. Inactive status will be considered for persons in good standing not practicing

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dietetics in the State of Hawaii for a minimum of one year.

(b) If the director grants a request for inactive status, the license shall be returned to the department within thirty calendar days after the request has been granted.

(c) If the director does not grant a request for inactive status, the licensee may appeal the decision and request a hearing in writing within thirty days of receipt of notice.

(d) Any request to reinstate an inactive license shall be submitted in writing to the department. The department shall grant or deny reinstatement within thirty calendar days after receipt of the request. Reinstatement shall be granted only if the holder of the inactive license meets all the requirements of §11-79-11 including a full application with applicable fees, as required in §11-79-11(a).

(e) A licensee must request that an inactive license be reinstated within two years after the expiration date of the inactivated license. If no reinstatement occurs within that period of time, licensure will be granted only upon submittal of a full application with applicable fees and the individual meets all requirements of this chapter as per §11-79-11. [Eff JAN 24 2008] (Auth: HRS §448B-3) (Imp: HRS §448B-8)

§§11-79-18 to 11-79-24 (Reserved)

SUBCHAPTER 3

CODE OF ETHICS, MISCONDUCT, AND DISCIPLINARY PROCEDURES

§11-79-25 Code of ethics. All licensed dietitians shall adhere to the following ethical principles adapted from the American Dietetic Association's code of ethics:

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(1) The licensed dietitian shall practice honesty, integrity, and fairness;
(2) The licensed dietitian shall practice dietetics based on scientific principles and current information;
(3) The licensed dietitian shall present substantiated information and interpret controversial information without personal bias, recognizing that legitimate differences of opinion exist;
(4) The licensed dietitian shall assume responsibility and accountability for personal competence in practice;
(5) The licensed dietitian shall recognize and exercise professional judgment and collaborate with others, seek counsel, or make referrals as appropriate;
(6) The licensed dietitian shall provide sufficient information to enable clients and others to make their own informed decisions;
(7) The licensed dietitian shall protect confidential information and make full disclosure about any limitations in making a guarantee of full confidentiality;
(8) The licensed dietitian shall provide professional services with objectivity and with respect for the unique needs and values of individuals;
(9) The licensed dietitian shall provide professional services in a manner that is sensitive to cultural differences and does not discriminate against others on the basis of race, ethnicity, creed, religion, disability, sex, age, sexual orientation, or national origin;
(10) The licensed dietitian shall not engage in sexual harassment in connection with professional practice;
(11) The licensed dietitian shall provide objective evaluations of performance for employees and coworkers, candidates for employment, students, professional

association memberships, awards, or scholarships. The licensed dietitian shall make all reasonable effort to avoid bias in any kind of professional evaluation of others;

(12) The licensed dietitian shall be alert to situations that might cause a conflict of interest or have the appearance of a conflict. The licensed dietitian shall provide full disclosure when an actual or potential conflict of interest arises;

(13) The licensed dietitian who wishes to inform the public and colleagues of own professional service shall do so by using factual information. The licensed dietitian shall not advertise in a false or misleading manner;

(14) The licensed dietitian shall promote or endorse products in a manner that is neither false nor misleading;

(15) The licensed dietitian shall permit the use of own name for the purpose of certifying that dietetics services have been rendered only if the practitioner personally provided or personally supervised the provision of those services;

(16) The licensed dietitian shall accurately present professional qualifications and credentials. The licensed dietitian shall use only such credentials and certifications as awarded or granted by a legitimate credentialing organization, such as the Commission on Dietetic Registration, and only when the credential or certification is current and authorized by the accrediting organization.

(17) The licensed dietitian shall refrain from practicing as a licensed dietitian and turn in the license to practice dietetics if:

(A) The licensed dietitian is engaged in substance abuse that could affect the ability to practice dietetics;

(B) The licensed dietitian has been judged by a court to be mentally incompetent;

(C) The licensed dietitian has an emotional or mental disability that affects the ability to practice in a manner that could harm the client or others.

[Eff JAN 24 2008] (Auth: HRS §448B-3) (Imp: HRS §448B-11)

§11-79-26 Grounds for denial, revocation, suspension, or condition of license. (a) The department shall deny an application for a license when the applicant fails to meet any requirement for licensure specified in subchapter 2.

(b) The department may deny, revoke, suspend, condition, or deny renewal of a license for:

(1) Conviction by a court of competent jurisdiction of a crime which the director has determined directly relates to the person's performance in the practice of dietetics;

(2) Failure to report in writing to the director any disciplinary decision related to dietetic practice issued against the applicant or the licensed dietitian in any jurisdiction within twenty days after licensure or within thirty days after the disciplinary decision;

(3) Violation of any of the recognized ethical principles for dietitians as set out in section 11-79-12;

(4) Use of fraud, deception, or misrepresentation in obtaining a license;

(5) Revocation, suspension, or other disciplinary action by another state, territory, federal agency, or country against the licensed dietitian or applicant for any reason provided in this section.

(6) Other just and sufficient cause that renders a person unfit to practice dietetics.

[Eff JAN 24 2008] (Auth: HRS §448B-3) (Imp: HRS §448B-11)

§11-79-27 Enforcement. (a) The department may enforce this chapter on its own initiative.

(b) The department may also enforce this chapter based on complaints. Complaints must be submitted in writing and must include:

(1) The exact nature of the complaint;

(2) The statutory or regulatory requirement(s) that are alleged to have been violated;

(3) The professional or ethical principle(s) that are alleged to have been violated;

(4) The date(s), time(s), and location(s) of the alleged violation(s);

(5) The name(s) and address(es) of individual(s) with knowledge of the alleged violation(s);

(6) Any other supporting evidence; and

(7) The complainant's name, address, signature, and daytime telephone number.

(c) The department shall mail a notice to the complainant, within seven calendar days after receiving the complaint, that the complaint has been received and an investigation will be conducted.

(d) The department shall notify the respondent of the results of the investigation, by certified mail and within thirty calendar days after its substantiation of the alleged violation. The notice shall state the action that the department intends to take regarding the respondent's license: suspension, revocation, imposition of conditions, or imposition of penalties. The action shall become final twenty days after receipt of the notice unless, within those twenty days, the respondent requests in writing a hearing before the director.

(e) Upon receiving a request for a hearing, the director shall schedule a hearing under chapter 91, Hawaii Revised Statutes, and the department's rules of practice and procedure. If a hearing officer is appointed, the hearing officer shall serve the

proposed decision on the parties within thirty calendar days after the completion of the hearing. The director shall render a decision within sixty calendar days after the completion of the hearing.

(f) The advisory committee shall have the opportunity to review findings of complaint investigations and provide recommendations for enforcement action to be taken. [Eff JAN 24 2008] (Auth: HRS §448B-3) (Imp: HRS §448B-11)

§11-79-28 Determination of suspension or revocation. The determination of whether a suspension or revocation will be imposed shall be consistent with the seriousness of the conduct on which it is based upon consideration of the following:

(1) Whether it resulted in actual or potential harm;
(2) Nature of actual or potential harm;
(3) Degree of actual or potential harm;
(4) Pattern of conduct or previous instance(s) of similar conduct;
(5) Malicious intent;
(6) Impairment of the licensed dietitian and willingness to address the impairment;
(7) Actions taken by the licensed dietitian and other parties to mitigate actual or potential harm; and
(8) Extenuating circumstances or contributing factors. [Eff JAN 24 2008] (Auth: HRS §448B-3) (Imp: HRS §448B-11)

§11-79-29 Reinstatement following license revocation. (a) A licensed dietitian whose license has been revoked may submit an application for reinstatement of licensure, accompanied with the licensure fees for reinstatement.

(b) An application for reinstatement shall not be submitted until one year or more after the effective date of revocation.

(c) An application for reinstatement shall include a statement detailing the reasons why licensure should be granted.

(d) Upon receipt of an application for reinstatement, the department shall forward the application and supporting documentation to the advisory committee for review.

(e) The advisory committee shall review the application and supporting documentation, if any, and shall prepare written comments to the director.

(f) The director shall review the application for reinstatement, the submitted basis therefore, and the recommendation of the advisory committee and shall grant or deny reinstatement of the license based on the following:

(1) The presence or absence of demonstrated evidence which clearly shows that the conduct which formed the basis of the revocation has been satisfactorily addressed;

(2) The serious nature of the conduct which formed the basis of the revocation;

(3) The likelihood that client safety and quality of care would not be jeopardized in any way by reinstatement; and

(4) Whether the person meets all licensing requirements.

(g) The dietitian shall be notified by mail of a decision on reinstatement within thirty calendar days of the decision of the director. [Eff JAN 24 2008] (Auth: HRS §448B-3) (Imp: HRS §448B-10)

§§11-79-30 to 11-79-35 (Reserved)

SUBCHAPTER 4

OTHER PROVISIONS

§11-79-36 Licensure Fees. The department shall collect a non-refundable fee for each of the following:

(1) $25 for application, re-activation or reinstatement for licensure;
(2) $225 for triennial licensure fee;
(3) $50 for late renewal;
(4) $50 for application for licensure by endorsement;
(5) $25 for inactive status; and
(6) $25 for replacement licenses.

[Eff JAN 24 2008] (Auth: HRS §448B-3) (Imp: HRS §448B-9)

§11-79-37 Dietitian licensure special fund. All fees collected shall be deposited into the dietitian licensure special fund, and shall be used for:

(1) Operation of licensing program; and
(2) Funding of statewide continuing education and training programs for licensed dietitians. [Eff JAN 24 2008] (Auth: HRS §448B-3) (Imp: HRS §448B-10)

§§11-79-38 to 11-79-44 (Reserved)

DEPARTMENT OF HEALTH

Chapter 11-79, Hawaii Administrative Rules, on the Summary Page dated JAN 08 2008, following public hearings held on November 9, 2007 via video conferencing at (1) Keoni Ana Building, Honolulu, Hawaii; (2) Kakuhihewa Building, Kapolei, Hawaii; (3) Hilo State Office Building, Hilo, Hawaii; (4) Wailuku Judiciary Building, Wailuku, Hawaii; and (5) Lihue State Office Building, Lihue, Hawaii, after public notice was published on September 23, 2007 in the Honolulu Star Bulletin, Hawaii Tribune-Herald, West Hawaii Today, The Maui News, and The Garden Island.

The rules shall take effect ten days after filing with the Office of the Lieutenant Governor.

CHIYOME LEINAALA FUKINO, M.D.
Director
Department of Health

APPROVED:

LINDA LINGLE
Governor
State of Hawaii

Date: JAN 11 2008

APPROVED AS TO FORM:

Deputy Attorney General

Filed

LIEUTENANT GOVERNOR'S OFFICE
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