

**From:** [Sunset Advisory Commission](#)  
**To:** [Janet Wood](#); [Brittany Roberson](#)  
**Subject:** FW: Form submission from: Public Input Form for Agencies Under Review (Public/After Publication)  
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-----Original Message-----

From: [sundrupal@capitol.local](mailto:sundrupal@capitol.local) [<mailto:sundrupal@capitol.local>]  
Sent: Friday, June 06, 2014 11:48 AM  
To: Sunset Advisory Commission  
Subject: Form submission from: Public Input Form for Agencies Under Review (Public/After Publication)

Submitted on Friday, June 6, 2014 - 11:47

Agency: DEPARTMENT STATE HEALTH SERVICES DSHS

First Name: Laura

Last Name: Bubak

Title: President

Organization you are affiliated with: Texas Academy of Nutrition and Dietetics

City: Houston

State: Texas

Your Comments About the Staff Report, Including Recommendations Supported or  
Opposed:

The Texas Academy of Nutrition and Dietetics opposes DSHS Sunset Staff Report Recommendation 3.1 related to Dietitians.

The Texas Academy of Nutrition and Dietetics, a statewide professional organization representing more than 4,000 Licensed and Registered Dietitians, opposes the Department of State Health Services (DSHS) Sunset Staff Report Recommendation 3.1 related to the discontinuation of the current regulatory and statutory framework for Licensed Dietitians.

The Texas Academy takes strong exception with much of the rationale provided by the Sunset Staff Report in support of the proposed dismantling of the Texas State Board of Examiners of Dietitians and the elimination of dietitian licensure. Particularly troubling is the report's conclusion that the work performed by Licensed Dietitians has little or no impact on the well-being, safety, and health of the public. Quite the contrary, Licensed and Registered Dietitians are uniquely trained and qualified to perform Medical Nutrition Therapy, a highly-specialized array of nutrition-related analytical, diagnostic, rehabilitative and treatment services that, performed improperly or by lesser-trained individuals, can produce very definite harm and risk to patients, up to and including death.

By way of background, Medical Nutrition Therapy encompasses the use of specific nutrition services to manage a disease or to treat or rehabilitate an illness, injury or condition. Examples of the types of services Licensed Dietitians provide under the Medical Nutrition Therapy umbrella include interpreting dietary data and recommending nutrient needs for medically-prescribed diets, including but not limited to tube feedings, specialized intravenous solutions and specialized oral feedings; providing skilled guidance on food and drug interactions that could be potentially harmful to patients with various medical conditions; and developing and managing food service

operations in hospitals, skilled nursing homes and other settings in which patients require medically-prescribed diets.

The Texas Academy has always supported health care providers of all types providing consumers with basic guidance on general non-medical nutrition information, including the principles of good nutrition and food preparation; food to be included in the normal daily diet; the essential nutrients needed by the body; and recommended amounts of essential nutrients. However, when the more highly-specialized services that comprise Medical Nutrition Therapy are required, it is very much a matter of public safety for a properly-trained and Licensed Dietitian to be directing dietary care.

Following are just a few examples of the adverse patient impacts that can occur when individuals without specialized Medical Nutrition Therapy expertise dispense "nutrition" advice and treatment. These examples represent actual patient cases documented by the Texas Academy from input received from Licensed and Registered Dietitians practicing in Texas today.

\* Case 1: A female patient diagnosed with gestational diabetes was advised by her OB/GYN to see a dietitian to help manage her blood glucose. After seeing a sign in a local chiropractic office promoting "nutrition therapy," she decided to book an appointment. To address her condition, the chiropractor placed the patient on a supplement that was basically a very low-carbohydrate, high-protein diet. She subsequently experienced morning blood sugars below 60 mg (in pregnancy values under 90 mg are considered low) and frequent dizziness. The patient returned to her OB/GYN who assisted in finding a Licensed Dietitian to design a menu that would manage the gestational diabetes but at the same time provide the nutrients required during pregnancy. Licensed Dietitians know that ketones created with a low-carbohydrate, high-protein diet are considered unsafe during pregnancy as adequate carbohydrate intake is essential for healthy fetal brain development. By using the services of a Licensed Dietitian for the remainder of her pregnancy, the patient was able to give birth to a healthy, 7-pound, 3-ounce baby.

\* Case 2: In an effort to stay fit, a female diagnosed with Anorexia Nervosa went to a cross-fit type gym, where she was told by staff that she needed to consume no more than 1,500 calories per day to maintain her weight and eat fewer calories and stay on a strict fitness regimen if she wanted to lose weight. At that time, her Body Mass Index (BMI) was 17, which is considered underweight. Any suggestion to reduce calories and set intake limits without considering the patient's underlying mental health could have quickly resulted in severe medical consequences. Instead, a Licensed Dietitian and mental health professional intervened and were able to work with the patient to get her BMI into the normal range over time.

\* Case 3: A male patient diagnosed with Hepatitis C and liver disease was told by a licensed chiropractor to take Red Rice Yeast to treat his condition. A year after taking the supplement as directed, the patient's blood work revealed compromised liver function. A Licensed Dietitian would know that taking the supplement Red Rice Yeast can cause harm to liver function. Moreover, when the patient worked with a Licensed Dietitian, he learned to manage his diet and the liver function returned to normal.

\* Case 4: A practitioner from another discipline, claiming to be a "dietitian", placed a female patient diagnosed with Type 2 Diabetes, high cholesterol and Polycystic Ovarian Syndrome on a food supplement and advised her to replace dairy consumption with coconut oil. The patient followed the program for four months, spending about \$2,000 on supplements. During this period, she lost 30 pounds and felt sick every day. Her blood glucose stayed high and cholesterol levels increased. At the end of the four months, she also was diagnosed with a gallbladder stone. A Licensed Dietitian was finally consulted and tailored the patient's eating preferences to her medical diagnoses. As a result, she began feeling better, saved money and was able to better manage her diabetes and cholesterol issues.

While the Sunset Staff Report concludes that discontinuing the regulatory program for dietitians would have little impact on public health and safety, these examples clearly illustrate that services performed in the name of good nutrition do not always protect patients but can actually do substantial harm. Even under the more stringent Sunset criteria established by the Legislature in 2013, evidence strongly supports that the licensing program for dietitians serves a meaningful public interest purpose. This point is further underscored by the fact that various Texas administrative rules specify the use of a Licensed Dietitian in critical facilities in which fragile Texans must be protected, including end-stage renal disease centers, private psychiatric hospitals, crisis stabilization units, Texas Youth Commission facilities, and state-licensed skilled nursing homes, among others.

While ample evidence exists to support the public safety contributions of dietitian licensure, research also indicates that Licensed Dietitians performing Medical Nutritional Therapy support another important state goal of addressing

skyrocketing health care costs. In almost any medical setting, having a Licensed Dietitian on the extended health care team can help shorten patient recovery time, reduce the length of hospital stays, prevent re-admissions and help manage chronic illnesses. Without regulatory oversight, it is likely that these cost benefits would be undermined.

Another aspect of the Staff Report that the Texas Academy refutes is the assertion that the enabling statute for dietitian licensure serves no meaningful purpose other than to regulate the use of the Licensed Dietitian title. The Texas Academy has long held the position that the public safety implications of performing Medical Nutrition Therapy strongly support a more robust statute that prohibits non-licensed persons from providing highly-specialized services for which Licensed Dietitians are uniquely trained. However, absent such statutory clarity, the so-called "title" act in place today is hardly meaningless. Quite the contrary, it helps ensure that anyone who holds himself or herself out as a "Licensed Dietitian" has met the educational and training standards defined by the dietitians' regulatory board. As such, it provides a level of consumer protection and confidence that would simply not exist if the Texas Board of Examiners of Dietitians and the enabling statute for dietitian licensure were to be abruptly abolished. At least under the current regulatory framework Texans can be assured that a practitioner using the Licensed Dietitian title has the necessary skills and training to perform the more sophisticated services that comprise Medical Nutrition Therapy.

Similarly, while the Sunset Staff Report dismisses the state dietitian licensure process as redundant to national accreditation programs, the Texas Academy believes this is an overly simplistic and inaccurate conclusion. In reality, ensuring that standards set by the Commission for Dietetic Registration (CDR) are met before an individual is licensed in Texas is an important and necessary consumer safeguard. Additionally, the Texas State Board of Examiners of Dietitians performs other valuable oversight duties.

For example, the board ensures that applicants have taken a Jurisprudence Test on rules specific to Texas and that all licensees are retested on Texas statutes at each renewal. Another ongoing role of the board is oversight of the Provisional Licensing process for individuals who have met all academic requirements for licensure but have yet to complete the required supervised internship. The TSBED must verify that the Provisional Licensee has the necessary internship hours and has passed the CDR examination before upgrading his or her status to full Licensed Dietitian.

A final area in which the Texas Academy believes the Staff Report is flawed is its dismissal of the need for dietitian licensure based upon limited regulatory activity. The number of Licensed Dietitians in the state currently totals 4,972, hardly an insignificant professional representation, especially compared to many of the other DSHS regulatory programs identified in the Staff Report. Moreover, with more than 546 students in dietitian training/degree programs in Texas colleges today and an increasing number of out-of-state practitioners moving to Texas for better employment opportunities, requests for licensure are expected to grow at a steady pace. Equally important, as less-credentialed business entities and practitioners find new ways to promote and profit from offering nutrition-related treatment and counseling, it is expected that the need for enforcement will increase, not diminish.

#### Any Alternative or New Recommendations on This Agency:

The Texas Academy proposes that the current dietitian licensure program be retained and that an appropriate state entity be identified to house it if DSHS cannot.

While the Texas Academy acknowledges the vast and diverse scope of regulatory functions for which DSHS is responsible, that situation alone does not constitute a valid reason for abolishment of a function that helps ensure Texans needing specialized Medical Nutrition Therapy are safely served. If limited resources and unmanageable work load are problematic for DSHS, the focus should shift to finding the appropriate location within state government to house Licensed Dietitian oversight and the important consumer protection work it performs. Among the possible alternatives that should be carefully examined include: 1) establishing an independent board similar to the ones that regulate other health care professions with a comparable number of licensees; 2) moving the function under the Texas Medical Board, since Licensed Dietitians work in partnership with physicians in many health care settings; 3) moving the function under the Texas Department of Licensing and Regulation; or 4) placement in a newly-created independent health care licensing agency, which would encompass the various health profession regulatory programs that do not today have autonomous boards.

The professional dietitian community, along with our regulators at the Texas State Board of Examiners of Dietitians, has been preparing for a comprehensive Sunset review to take place in the 2016-17 review cycle, which for some time has been part of the published future Sunset schedule. Given the typical thoroughness with which Sunset review is conducted--with ample opportunity for upfront input from all affected stakeholders, including the agency itself--it is alarming that an issue as serious as dismantling dietitian licensure would be recommended without the procedural due process and detailed analysis that the parties have come to expect. In fact, the Staff Report acknowledges that "the luxury of a detailed analysis of each regulatory program was simply not possible." The Texas Academy of Nutrition and Dietetics respectfully submits that a deeper, more nuanced analysis is in order, especially given the proven patient health and safety risks associated with improperly-trained individuals providing specialized Medical Nutrition Therapy services.

Respectfully submitted by representatives of the Texas Academy Leadership team,

Laura (Ellen) Bubak  
President

Dolores Cheek  
Executive Director

My Comment Will Be Made Public: I agree