



NATIONAL HEALTH FREEDOM ACTION

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WISCONSIN July 2011: Line-by-Line comments on Dietitian Licensing bill Draft, on behalf of health freedom.

1. **Constitution:** There is no constitutional endangerment rational in this July 2011 Wisconsin bill draft for licensing as opposed to current certification of dietitians. There is no constitutional rational for state government to criminalize the practice of nutrition care services by those persons not holding themselves out as dietitians. Current Wisconsin law certifies dietitians and prohibits a person who is not certified from designating himself or herself as a dietitian, or claiming to provide dietetic services. The bill would increase regulation to licensure, which then would add criminal charges, not just for using the title dietitian, but would criminalize the actual "practice" of anything within the definition of "dietetics" or the newly spelled out definition of "dietetic nutrition care services". There is no endangerment justification for this change.
2. **Page 6, Line 9 and 10:** There is no constitutional rational for adding "nutrition care services", (a very broad sweep of vocations currently practiced by many people in the public domain), to the regulation of "dietetics", (a much more narrow and industry based skill set). This point alone has created a cultural uprising in resistance to a monopolistic move by a small special interest group.
3. **Page 6, Line 17:** Creating a combined title of "Dietitian nutritionist" causes great confusion, because the profession of nutrition and the title "nutritionist" is a completely different profession, and practiced in a completely different manner and in different settings, and have different academic locations and options. Thousands of citizens practice varying forms of nutrition services.
4. **Page 6 and 7, Line 20 through end of definition:** The bill attempts to subsume the entire field of nutrition by adding new terms to the existing definition of dietetics in Wisconsin law, looping in "nutrition", "dietetic nutrition therapy", and "nutrition care process".
5. **Page 7, Line 9:** The bill creates confusion because it takes the new merged terms such as "dietetic nutrition therapy" and creates broad sweeping definitions that include nutrition, which then become criminal to practice without a license. In Section 18, instead of calling dietetic practices that deal with medically prescribed diets "medical dietetics", the bill uses the term "dietetic nutrition therapy", creating much confusion for the nutrition community that offers nutrition therapies on a regular basis for many ailments.

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6. **Page 7, Line 21-25 and Page 8, Line 1-5: It is unconstitutional for any professional group to define and restrict a subset of free speech to their group with the attached threat of criminal charges if one should speak the coveted words.** Section 20 attempts to define what “nonmedical” speech is and then attaches prohibitions to it. This is entirely unconstitutional. There are select examples of laws that restrict speech having to do with fraud, danger, and criminal intent, and commercial laws on labeling of products, however to blatantly carve out a section of speech for a particular group of people, speech that is regularly used in the culture for the sustenance of the people, is so onerous as to have created a justified uprising from Wisconsin citizens and consumers.
7. **Page 8, Lines 11-25 and Page 9, Line 1-2:** The definition of “nutrition care process” includes actions that are done by thousands of non-dietitian people in the culture, actions that any common sense person would do when helping another person increase their wellness. This definition **is then later included in criminal violations section** if done without a license. This is completely unacceptable, and is similar to banning free speech. It is banning regular behaviors of regular critically thinking people.
8. **Page 9, Line 7-9:** Section 22 of this bill is the most dangerous section of the bill. It is the police power section of the bill. It reflects the difference between current certification and the proposed licensure. Certification calls for the prohibition of use of title. But licensure, calls for the prohibition of “practice”. In Section 22, it calls for the prohibition to “practice”. The fact that the bill has added nutritional terms and extended definitions onto the current definition of dietetics makes this section especially intolerable because Section 22 prohibits anything within the definition of “dietetic nutrition care services”. Since “nutrition” dietetic nutrition therapy and “nutrition care process” are all tied into that original definition, this bill would ban all of those activities, unless otherwise exempted. This bill gives the impression that dietitians own the entire field of nutrition as it relates to health and that their statute then doles out exemptions as they see fit, including an exemption for those who speak “non-medical” speech. Giving a small group of people this massive gatekeeping power on health practices and free speech, is intolerable. The largest impact to consumers that this would have is to eliminate a large percentage of their current options for information and support in their healing journeys, and would make the culture monoclonal in its approach to health and nutrition.
9. **Page 11, Line 9-15:** Section 35 replaces existing WI law and offends retailers who are currently regulated in their speech about their products by the FDA. Wisconsin retailers should not have to worry about the state of Wisconsin being more stringent than the federal government on commercial speech. It is already legal for them to sell food, food materials, dietary supplements, or other goods to consumers so it is not the business of dietitians to tell them that they can sell. And when they do that selling, the federal product law regulates them when they furnish oral or written information to their customers, and no new state qualifiers such as what this bill suggests should be attached to the bill. This bill attempts to put qualifiers on retailers such as ALLOWING “general nonmedical nutrition information”, or whether a person receives remuneration consisting solely of commissions, overrides, bonuses, or differentials directly related to sales or other output derived from in-person sales to or solicitation of orders from

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ultimate consumers, primarily in the home. The retail exemption should be without onerous qualifiers and should simply read: **“A retailer or other person who sells food, food materials, dietary supplements, or other goods.”**

10. **Page 11, Line 15:** A new exemption should be inserted here for all those unlicensed practitioners practicing anything that could remotely be construed to be within the definition of as “dietetic nutrition care services”, which includes “nutrition”, “dietetic nutrition therapy”, and “nutrition care process”, and any speech that is considered “non-medical”. The exemption that is suggested is as follows:

SUGGESTED AMENDMENT: *An herbalist, nurse, nutrition consultant, nutritionist, naturopath, acupuncturist, retailer, culture or religion-based medical practitioner or any other person or health care practitioner who does not hold himself out to be a dietitian by using one or more of the titles restricted in this chapter, who makes recommendations or furnishes advice regarding nutrition, health, or lifestyle, or about food, food ingredients, dietary supplements or other goods or product, or who furnishes information about such products. Legitimate disagreement about the role of the above listed nutrients and foods as they apply to human nutrition shall not, in and of itself, constitute fraud.*

Note for Example: Recently in May 2011, a dietitian licensing bill passed in Nevada and the following amendment exemption was added to it in the final hearing:

NEVADA ENROLLED 2011 (d) A person who furnishes nutrition information, provides recommendations or advice concerning nutrition, or markets food, food materials or dietary supplements and provides nutrition information, recommendations or advice related to that marketing, if the person does not represent that he or she is a licensed dietitian or registered dietitian. While performing acts described in this paragraph, a person shall be deemed not to be engaged in the practice of dietetics or the providing of nutrition services.

11. **Page 11, Line 20-25:** This section should be deleted due to the fact that dietitians have not been successful at weight control programs due to their alliances with large sugar based corporations and shows how a monopoly managing nutrition information can negatively impact the country. Weight control should be in the public domain purvue where approaches of all kinds can be evaluated and experienced by all consumers.
12. **Page 12, Line 9-11:** This section is completely unconstitutional. A religious exemption is a straight constitutional exemption and dietitians have no right to declare mandatory disclosures and prohibitions to practice activities within the definition of dietetic nutrition. This exemption is written misleadingly giving the impression that it exempts persons from the practice of dietetic nutrition care services, but in the last phrase it takes it all back and mandates disclosures and says they cannot practice dietetic nutrition care services.
13. **Page 17, Lines 7-22:** Section 59 is the basis of the citizen uprising of this bill. Rather than exempting unlicensed persons providing nutritional advice from the jurisdiction of a dietitian licensing board, this section gives police power to the dietitian board to police the activities of the public citizens regarding nutrition services. The dietitian law attempts to tell citizens that

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they cannot speak about nutrition unless it is within the dietitian board's definition of general nonmedical nutrition information, and unless they give out a written disclosure. These types of mandates may be justified by the state under a medical board when citizens attempt to administer prescription drugs or toxic substances, or perform surgery or medical invasive treatments. But to police the citizens regarding nutrition information and non-invasive protocols is completely unfounded and does not fit within the criteria of endangerment required for licensing laws. This section strongly displays the need for the Wisconsin Health Freedom Coalition's work to pass their Consumer Choice and Wellness Act.

Respectfully Submitted

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