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172 NAC 61

TITLE 172 PROFESSIONAL AND OCCUPATIONAL LICENSURE
CHAPTER 61 LICENSURE OF MEDICAL NUTRITION THERAPISTS

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TITLE 172 PROFESSIONAL AND OCCUPATIONAL LICENSURE

CHAPTER 61 LICENSURE OF MEDICAL NUTRITION THERAPISTS

61-001 SCOPE AND AUTHORITY: These regulations govern the credentialing of medical nutrition therapists under Neb. Rev. Stat. §§ 38-1801 to 38-1816 and the Uniform Credentialing Act (UCA). These regulations are operative December 1, 2008.

61-002 DEFINITIONS

1. Accredited College or University means an institution currently listed with the United States Secretary of Education as accredited. Applicants who have obtained their education outside of the United States and its territories must have their academic degrees validated as equivalent to a baccalaureate or master's degree conferred by a United States regionally accredited college or university.
2. Act means Neb. Rev. Stat. §38-1801 to 38-1816 known as the Medical Nutrition Therapy Practice Act.
3. Active addiction means current physical or psychological dependence on alcohol or a substance, which develops following the use of alcohol or a substance on a periodic or continuing basis.
4. ADA means the American Dietetic Association.
5. Alcohol or Substance Abuse means a maladaptive pattern of alcohol or substance use leading to clinically significant impairment or distress as manifested by one or more of the following occurring at any time during the same 12-month period:
 - a. Recurrent alcohol or substance use resulting in a failure to fulfill major role obligations at work, school, or home;
 - b. Recurrent alcohol or substance use in situations in which it is physically hazardous;
 - c. Recurrent legal problems related to alcohol or substance use; or
 - d. Continued alcohol or substance use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of the alcohol or substance use.

6. Angoff Method means a method of determining passing scores based on aggregate information obtained by having judges predict the probability that a hypothetical minimally competent candidate will correctly answer items in a test.
7. Assessment means the process of evaluating the nutritional status of patients. The assessment includes review and analysis of medical and diet histories, biochemical lab values, and anthropometric measurements to determine nutritional status and appropriate nutritional treatment.
 - a. An example of assessment could include:
 - (1) Collect/review of records (verify as needed). The records may include anthropometric data; diagnoses, laboratory values, medications, diet order; physical assessment data; and food preference/diet history information;
 - (2) Determine complete nutritional plan of care: fluid need, calorie/protein need, appropriate diet order, need for specific form of food, need for specific adaptive devices for feeding techniques, need for supplemental food, fluid, medical nutritional product;
 - (3) Review/refine goals set for the patient;
 - (4) Review/refine plan to achieve the established goals; and
 - (5) Recommend changes in physician's diet order to physician when identified.
 - b. The mere collection of these data for use in assessment is not medical nutrition therapy and does not require medical nutrition therapy licensure under these regulations.
8. Attest or Attestation means that the individual declares that all statements on the application are true and complete. Attestation to meeting continuing competency requirements satisfies the documentation requirement of Neb. Rev. Stat. § 38-142.
9. Board means the Board of Medical Nutrition Therapy.
10. Complete Application means an application that contains all of the information requested on the application, with attestation to its truth and completeness, and that is submitted with the required fees and all required documentation.
11. Confidential Information means information protected as privileged under applicable law.
12. Consultation means conferring with a physician regarding the activities of the licensed medical nutrition therapist.

13. Consumer means a person receiving health or health-related services or environmental services and includes a patient, client, resident, customer, or person with a similar designation.
14. Continuing Competency means to ensure
 - a. The maintenance by a credentialed person of knowledge and skills necessary to competently practice medical nutrition therapy,
 - b. The utilization of new techniques based on scientific and clinical advances, and
 - c. The promotion of research to assure expansive and comprehensive services to the public. It is the competency required as a condition of licensure renewal, pursuant to Neb. Rev. Stat. Section § 38-145.

Continuing Competency programs/activities may be offered as follows:

- a. College/University Coursework
- b. Exhibits
- c. Poster Sessions
- d. Homestudy Programs
- e. Video/Audio Media
- f. Certification Programs
- g. Continuing Education Programs (workshops, seminars, conferences, electronic interactive presentations)

In order for continuing competency to be recognized/count for licensure renewal it must be approved by the Board.

Continuing Competency hours/credits are determined as follows:

- a. College/University Coursework:
 - (1) 1 semester of academic credit equals 15 continuing competency credit hours. One semester credit audited equals 8 hours of continuing competency;
 - (2) 1 quarter hour of academic credit equals 10 continuing competency credit hours. One quarter credit audited equals 5 hours of continuing competency; and
 - (3) 1 trimester hour of academic credit equals 14 continuing competency credit hours. One trimester credit audited equals 7 hours of continuing competency.
- b. Exhibits: 25 exhibits equals 1 continuing competency hour; a limit of 3 continuing competency credit hours per biennium may be obtained through exhibits.

- c. Poster Sessions: 6 poster sessions equals 1 continuing competency hour; a limit of 5 continuing competency credit hours per biennium may be obtained through poster sessions.
- d. Homestudy Programs: A licensee may accumulate up to 15 hours of continuing competency per biennial renewal period.
- e. Video/Audio Media and Journal Clubs: A licensee may accumulate up to 15 hours of continuing competency per biennial renewal period.
- f. Board Certified/Certification/Certificate Programs: 20 hours (unless noted otherwise) will be granted for completing a certified program, certification program or certificate program as follows:
 - (1) Certified Nutrition Support Clinician sponsored by the National Board of Nutrition Support Certification, Inc (NBNSC);
 - (2) Certified Diabetes Educator sponsored by the National Certification Board for Diabetes Educators (NCBDE);
 - (3) Certified Lifestyle and Weight Management Consultant sponsored by the American Council on Exercise (ACE);
 - (4) Board Certification as a Specialist in Pediatric Nutrition sponsored by the Commission on Dietetic Registration (CDR);
 - (5) Board Certification as a Specialist in Renal Nutrition sponsored by the Commission on Dietetic Registration (CDR);
 - (6) Board Certification as a Specialist in Gerontological Nutrition sponsored by the Commission on Dietetic Registration (CDR);
 - (7) Board Certification as a Specialist in Oncology Nutrition sponsored by the Commission on Dietetic Registration (CDR);
 - (8) Board Certification as a Specialist in Sports Dietetics sponsored by the Commission;
 - (9) International Board of Lactation Consultant Examiners (IBLCE);
 - (10) Certificate Programs approved through the American Dietetic Association (ADA):
 - (a) Certificate of Training in Childhood and Adolescent Weight Management sponsored by the Commission on Dietetic Registration (CDR) – 29 hours acceptable); and
 - (b) Certificate Training in Adult Weight Management sponsored by the Commission on Dietetic Registration (CDR) – 28 hours acceptable; and
 - (11) Board Certified/Certification/Certificate Programs approved by the ADA/CDR.
- g. Continuing Education Programs (workshops, seminars, conferences, electronic interactive presentations): 60 minutes of participation equals 1 continuing competency hour.

15. Conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere or non vult contendere made to a formal criminal charge, or a judicial finding of guilt irrespective of the pronouncement of judgment or the suspension thereof, and includes instances in which the imposition or the execution of sentence is suspended following a judicial finding of guilt and the defendant is placed on probation.
16. Credential means a license, certificate, or registration.
17. Data Collection means the collection of anthropometric data: such as height, weight, age; laboratory values; current medications; diagnoses; food preference; diet history; etc. The collection of data may be completed by ancillary personnel and submitted to the medical nutrition therapist in writing for medical records. The mere collection of these data for use in assessment is not medical nutrition therapy and does not require medical nutrition therapy licensure under these regulations.
18. Department means the Division of Public Health of the Department of Health and Human Services.
19. Dependence means a maladaptive pattern of alcohol or substance use, leading to clinically significant impairment or distress, as manifested by three or more of the following occurring at any time in the same 12-month period:
 - a. Tolerance as defined by either of the following:
 - (1) A need for markedly increased amounts of alcohol or the substance to achieve intoxication or desired effect; or
 - (2) A markedly diminished effect with continued use of the same amount of alcohol or the substance;
 - b. Withdrawal as manifested by either of the following:
 - (1) The characteristic withdrawal syndrome for alcohol or the substance as referred to in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, published by the American Psychiatric Association; or
 - (2) Alcohol or the same substance or a closely related substance is taken to relieve or avoid withdrawal symptoms;
 - c. Alcohol or the substance is often taken in larger amounts or over a longer period than was intended;
 - d. A persistent desire or unsuccessful efforts to cut down or control alcohol or substance use;
 - e. A great deal of time is spent in activities necessary to obtain alcohol or the substance, to use alcohol or the substance; or to recover from the effects of use of alcohol or the substance;
 - f. Important social, occupational, or recreational activities are given up or reduced because of alcohol or substance use; or

24. Inactive Credential means a credential which the credential holder has voluntarily placed on inactive status and by which action has terminated the right to practice or represent him/herself as having an active credential.
25. License means an authorization issued by the Department to an individual to engage in a profession or to a business to provide services which would otherwise be unlawful in this state in the absence of such authorization.
26. Licensed Medical Nutrition Therapist means a person who is licensed to practice medical nutrition therapy pursuant to the Uniform Credentialing Act and who holds a current license issued by the Department.
27. Licensure Examination means the Registration Examination for Dietitians, as established by the Commission on Dietetic Registration, the credentialing agency of the American Dietetic Association, or any other examination established by the Commission on Dietetic Registration and determined by the Board to be equivalent.
28. Medical Nutrition Therapy means the assessment of the nutritional status of patients. It involves the assessment of patient nutritional status followed by treatment, ranging from diet modification to specialized nutrition support, such as determining nutrient needs for enteral and parenteral nutrition, and monitoring to evaluate patient response to such treatment.
29. Military Service means full-time duty in the active military service of the United States, or a National Guard call to active service for more than 30 consecutive days, or active service as a commissioned officer of the Public Health Service or the National Oceanic and Atmospheric Administration. Military service may also include any period during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause. (From the Servicemembers Civil Relief Act, 50 U.S.C. App. 501 et seq., as it existed on January 1, 2007.)
30. Observation means watching the patient during intake of food and fluid. Ancillary personnel may document an observation, such as anthropometric data, food preferences, etc., for medical records or on the patient's chart. Ancillary personnel may also direct questions to the physician in charge or the medical nutrition therapist and may make recommendations based on observations.
31. Official Transcript means issued by and under the original seal of the educational institution.
32. NAC means the Nebraska Administrative Code, the system for classifying State agency rules and regulations. These regulations are 172 NAC 61.
33. Patient means a person with a disease, illness, injury, or medical condition for which nutritional interventions are an essential component of standard care.

34. Pattern of Incompetent or Negligent Conduct means a continued course of incompetent or negligent conduct in performing the duties of the profession.
35. Practice of Medical Nutrition Therapy means performed under the consultation of a licensed physician.
36. Profession means any profession or occupation named in subsection (1) or (2) of Neb. Rev. Stat. §38-121.
37. Provider of Continuing Competency means an association, educational institution, individual or group who requests approval from the Board of continuing competency program/activities, and presents continuing competency program/activities to licensees.
38. Served in the Regular Armed Forces has the same meaning as "military service" in these regulations.

61-003 MEDICAL NUTRITION THERAPY LICENSURE: No person shall practice medical nutrition therapy unless s/he is licensed for such purpose pursuant to the Uniform Credentialing Act. The criteria for issuance of licensure, and the documentation required by the Department and the Board are set forth below.

61-003.01 Qualifications: To receive a credential to practice medical nutrition therapy, an individual must meet the following qualifications:

1. Age and Good Character: Be at least 19 years old and of good character;
2. Citizenship/Resident Information: Be a citizen of the United States, an alien lawfully admitted into the United States for permanent residence under the Immigration and Naturalization Act (INA) and who is eligible for a credential under the Uniform Credentialing Act, or a nonimmigrant whose visa for entry, or application for visa for entry, is related to such employment in the United States.
3. Registration or Education:
 - a. American Dietetic Association (ADA) Registration: Have met the requirements for and be a registered dietitian with the American Dietetic Association or an equivalent entity recognized by the board; or
 - b. Baccalaureate Degree:
 - (1) Have a baccalaureate degree from an accredited college or university with a major course of study in human

nutrition, food and nutrition, dietetics, or an equivalent major course of study approved by the Board;

- (2) Have satisfactorily completed a program of supervised clinical experience approved by the Department. Such clinical experience must consist of not less than 900 hours of a planned continuous experience in human nutrition, food and nutrition, or dietetics under the supervision of an individual meeting the qualifications of a medical nutrition therapist; and
- (3) Have satisfactorily passed the licensure examination with a score as determined by using the Angoff Method; or

c. Master's or Doctoral Degree

- (1) Have a master's or doctoral degree from an accredited college or university in human nutrition, nutrition education, food and nutrition, or public health nutrition, or in an equivalent major course of study with the intent of the degree being nutrition in nature and approved by the Board; or

Have a master's or doctoral degree from an accredited college or university which includes a major course of study in clinical nutrition. Such course of study must consist of not less than a combined 200 hours of biochemistry and physiology and not less than 75 hours in human nutrition; and

- (2) Have satisfactorily passed the licensure examination with a score as determined by using the Angoff Method.

61-003.02 Application: To apply for a credential to practice medical nutrition therapy, the individual must submit a complete application to the Department. A complete application includes all required documentation, the required fee, and a written application. The applicant may obtain an application from the Department or construct an application that must contain the following information:

1. Written Application:

a. Personal Information:

- (1) The legal name of the applicant, maiden name (if applicable), and any other names by which the applicant is known;
- (2) Date of birth (month, day, and year);

- (3) Place of birth (city and state or country if not born in the United States);
 - (4) Mailing address (street, rural route, or post office address; and city, state, and zip code, or country information);
 - (5) The applicant's:
 - (a) Social Security Number (SSN);
 - (b) Alien Registration Number ("A#"); or
 - (c) Form I-94 (Arrival-Departure Record) number.Certain applicants may have both a SSN and an A# or I-94 number, and if so, must report both.
 - (6) The applicant's telephone number including area code (optional);
 - (7) The applicant's e-mail address (optional);
 - (8) The applicant's fax number (optional);
 - (9) Citizenship: The applicant must state that s/he is one of the following:
 - (a) A citizen of the United States;
 - (b) An alien lawfully admitted into the United States for permanent residence under the Immigration and Naturalization Act (INA) and who is eligible for a credential under the Uniform Credentialing Act; or
 - (c) A non-immigrant whose visa for entry, or application for visa for entry, is related to such employment in the United States;
- b. Practice Before Application: The applicant must state:
- (1) That s/he has not practiced medical nutrition therapy in Nebraska before submitting the application; or
 - (2) If s/he has practiced medical nutrition therapy in Nebraska before submitting the application, the actual number of days practiced in Nebraska before submitting the application for a credential and the name and location of practice;
- c. Attestation: The applicant must attest that:
- (1) S/he has read the application or has had the application read to him/her;
 - (2) All statements on the application are true and complete; and
 - (3) S/he is of good character.
2. Documentation: The applicant must submit the following documentation with the application:
- a. Evidence of age, such as:
 - (1) Driver's license;
 - (2) Birth certificate;

- (3) Marriage license that provides date of birth;
- (4) Transcript that provides date of birth;
- (5) U.S. State identification card;
- (6) Military identification; or
- (7) Other similar documentation;

b. Evidence of good character, including:

- (1) Other Credential Information: If the applicant holds a credential to provide health services, health-related services, or environmental services in Nebraska or in another jurisdiction, the applicant must submit the state, credential number, type of credential, date issued, and expiration date of each credential where the applicant has been or is currently credentialed;

The applicant must have the licensing agency submit to the Department a certification of his/her credential;

- (2) Disciplinary Action: A list of any disciplinary actions taken against the applicant's credential and a copy of the disciplinary action(s), including charges and disposition;
- (3) Denial: If the applicant was denied a credential or denied the right to take an examination, an explanation of the basis for the denial;
- (4) Conviction Information: If the applicant has been convicted of a felony or misdemeanor, the applicant must submit to the Department:
 - (a) A list of any misdemeanor or felony convictions;
 - (b) A copy of the court record, which includes charges and disposition;
 - (c) Explanation from the applicant of the events leading to the conviction (what, when, where, why) and a summary of actions the applicant has taken to address the behaviors/actions related to the convictions;
 - (d) All addiction/mental health evaluations and proof of treatment, if the conviction involved a drug and/or alcohol related offense and if treatment was obtained and/or required;
 - (e) A letter from the probation officer addressing probationary conditions and current status, if the applicant is currently on probation; and

- (f) Any other information as requested by the Board/Department;
- c. Evidence that the applicant is:
 - (1) A citizen;
 - (2) An alien lawfully admitted into the United States for permanent residence under the Immigration and Naturalization Act (INA) who is eligible for a credential under the Uniform Credentialing Act; or
 - (3) A non-immigrant whose visa for entry, or application for visa for entry, is related to such employment in the United States;
- d. Evidence of citizenship, lawful permanent residence, and/or immigration status may include a copy of:
 - (1) A U.S. Passport (unexpired or expired);
 - (2) A birth certificate issued by a state, county, municipal authority or outlying possession of the United States bearing an official seal;
 - (3) An American Indian Card (I-872);
 - (4) A Certificate of Naturalization (N-550 or N-570);
 - (5) A Certificate of Citizenship (N-560 or N-561);
 - (6) Certification of Report of Birth (DS-1350);
 - (7) A Consular Report of Birth Abroad of a Citizen of the United States of America (FS-240);
 - (8) Certification of Birth Abroad (FS-545 or DS-1350);
 - (9) A United States Citizen Identification Card (I-197 or I-179);
 - (10) A Northern Mariana Card (I-873);
 - (11) An Alien Registration Receipt Card (Form I-551, otherwise known as a "Green Card");
 - (12) An unexpired foreign passport with an unexpired Temporary I-551 stamp bearing the same name as the passport;
 - (13) A document showing an Alien Registration Number ("A#"); or
 - (14) A Form I-94 (Arrival-Departure Record);
- e. Documentation of ADA Registration or Education /Experience/ Examination:
 - (1) Official documentation of Registration with the Commission on Dietetic Registration; or
 - (2) Documentation of a Baccalaureate Degree and Supervised Clinical Experience, including:
 - (a) Name and date of diploma/degree awarded; and
 - (b) Name of college or university that awarded the diploma/degree;

- (c) An official transcript from an accredited college or university showing receipt of a baccalaureate degree with a major course of study in human nutrition, food and nutrition, dietetics, or an equivalent major course of study approved by the Board;
 - (d) Documentation of at least 900 hours of supervised clinical experience; and
 - (e) Official documentation of the examination score from the American Dietetic Association or scores sent by the Commission on Dietetic Registration; or
- (3) Documentation of a Master's or Doctoral Degree, including:
- (a) Name and date of diploma/degree awarded;
 - (b) Name of college or university that awarded the diploma/degree;
 - (c) An official transcript from an accredited college or university showing receipt of one of the following:
 - i. A master's or doctorate degree in human nutrition, nutrition education, foods and nutrition, or public health nutrition or in an equivalent major course of study with the intent of the degree being nutrition in nature and approved by the Board; or
 - ii. A master's or doctoral degree which included a major course of study in clinical nutrition;
 - (d) Verification of completion of not less than a combined 200 hours of biochemistry and physiology and not less than 75 hours in human nutrition; and
 - (e) Official documentation of the examination score from the American Dietetic Association or scores sent by the Commission on Dietetic Registration;
3. Fee: The applicant must submit the required license fee along with the application and all required documentation.
- a. Prorated Fee: When a credential will expire within 180 days after its initial issuance date and the initial credentialing fee is \$25 or more, the Department will collect \$25 or one-fourth of the initial credentialing fee, whichever is greater, for the initial credential, and the credential will be valid until the next subsequent renewal date.

61-003.03 Department Review: The Department will act within 150 days upon all completed applications for initial credentialing.

61-003.04 Denial of Initial Credential: If an applicant for an initial credential does not meet all of the requirements for a credential or if the applicant is found to have committed any of the grounds listed in 172 NAC 61-007, the Department will deny issuance of a credential. To deny a credential, the Department will notify the applicant in writing of the denial and the reasons for the determination. The denial will become final 30 days after mailing the notice unless the applicant, within that 30-day period, requests a hearing in writing. The hearing will be conducted in accordance with the Administrative Procedure Act and 184 NAC 1, the Department's Rules of Practice and Procedure for Administrative Hearings.

61-003.05 Withdrawn Applications: An applicant for a credential who withdraws his/her application or whose application is rejected by the Department prior to administration of the examination will be allowed the return of his/her fee, except for a \$25 administrative fee to be retained by the Department.

61-003.05 Practice Prior to Credential: An individual who practices prior to issuance of a credential is subject to assessment of an administrative penalty under 172 NAC 61-010 or such other action as provided in the statutes and regulations governing the credential.

61-003.06 Confidentiality: Social Security Numbers obtained under this section are not public information but may be shared by the Department for administrative purposes if necessary and only under appropriate circumstances to ensure against any unauthorized access to this information.

61-003.07 Address Information: Each credential holder must notify the Department of any change to the address of record.

61-003.08 Non-English Documents: Any documents written in a language other than English must be accompanied by a complete translation into the English language. The translation must be an original document and contain the notarized signature of the translator. An individual may not translate his/her own documents.

61-004 EXAMINATION: The licensure examination is administered by the Commission on Dietetic Registration (CDR).

61-005 CONTINUING COMPETENCY REQUIREMENTS: Each person holding an active credential within the state must, on or before the date of expiration of the credential, comply with the continuing competency requirements for his/her profession. Except as otherwise provided in 172 NAC 61-006.03 and 61-006.04, the Department will not renew the credential of any person who has not complied with these requirements. Each credentialed individual is responsible for maintaining certificates or records of continuing competency activities.

61-005.01 General Requirements: On or before September 1 of each odd-numbered year, each medical nutrition therapist who is in active practice in the State of Nebraska must meet the following continuing competency requirements:

61-005.01A The licensee must complete 30 hours of approved continuing competency programs/activities during the preceding 24 month period. No more than the total number of approved hours offered in Nebraska will be required during this period;

61-005.01B The licensee must submit to the Department, on the renewal form, verification of meeting the continuing competency requirements. The completed form must include the following information:

1. The title of the program/activity;
2. The number of hours of approved continuing competency credit received for each program/activity;
3. The date(s) of the continuing competency program/activity;
4. The location of the continuing competency program/activity; and
5. The name of the provider of the continuing competency program/activity.

61-005.01C The licensee must be responsible for:

1. Maintaining a record of attendance at approved continuing competency programs/activities;
2. Verifying with the Department that the continuing competency program/activity is approved by the Board; and
3. Maintaining documentation of attendance at or presentation of approved continuing competency programs/activities. A presenter may receive credit for only the initial presentation during a renewal period. Credit will not be given for subsequent presentations of the same program/activity.

61-005.01D The licensee must attend programs/activities for which the subject matter clearly relates to maintaining skills necessary for the safe and competent practice of medical nutrition therapy. Medical nutrition therapy is assessment of patient nutritional status followed by treatment, ranging from diet modification to specialized nutrition support, such as determining nutrient needs for enteral and parenteral nutrition, and monitoring to evaluate patient response to such treatment. Continuing competency may be gained as:

1. College/University Courses from an approved graduate or undergraduate program.
2. Continuing Education Programs (Workshops, seminars, or conferences, electronic interactive presentations).

3. Exhibits or Poster Sessions.
4. Homestudy Programs.
5. Video/Audio Media and Journal Clubs.
6. Board Approved Certified/Certification/Certificate Programs. 20 hours (unless noted otherwise) will be granted for completing a certified program, certification program or certificate program as follows:
 - (a) Certified Nutrition Support Clinician sponsored by the National Board of Nutrition Support Certification, Inc (NBNSC);
 - (b) Certified Diabetes Educator sponsored by the National Certification Board for Diabetes Educators (NCBDE);
 - (c) Certified Lifestyle and Weight Management Consultant sponsored by the American Council on Exercise (ACE);
 - (d) Board Certification as a Specialist in Pediatric Nutrition sponsored by the Commission on Dietetic Registration (CDR);
 - (e) Board Certification as a Specialist in Renal Nutrition sponsored by the Commission on Dietetic Registration (CDR);
 - (f) Board Certification as a Specialist in Gerontological Nutrition sponsored by the Commission on Dietetic Registration (CDR);
 - (g) Board Certification as a Specialist in Oncology Nutrition sponsored by the Commission on Dietetic Registration (CDR);
 - (h) Board Certification as a Specialist in Sports Dietetics sponsored by the Commission;
 - (i) International Board of Lactation Consultant Examiners (IBLCE);
 - (j) Certificate Programs approved through the American Dietetic Association (ADA):
 - (1) Certificate of Training in Childhood and Adolescent Weight Management sponsored by the Commission on Dietetic Registration (CDR) – 29 hours acceptable); and
 - (2) Certificate Training in Adult Weight Management sponsored by the Commission on Dietetic Registration (CDR) – 28 hours acceptable; and
 - (k) Board Certified/Certification/Certificate Programs approved by the ADA/CDR.

61-005.01E Examples of nonacceptable subject matter include, but are not limited to, the following:

1. Menu planning;
2. Dietetic association business meeting or delegate report;
3. Cooking or baking demonstrations;
4. Food service sanitation;
5. Catering;
6. Garnishing techniques;
7. Publishing an employee training manual;
8. Sales presentation on a company's new product;
9. Marketing self as dietitian;
10. Communication skills; or
11. Language Training.

61-005.02 Continuing Competency Program/Activities: The Board will evaluate applications from providers of continuing competency programs/activities or licensees in order to determine if approval is to be granted or denied.

61-005.02A Criteria: To be approved, a continuing competency program/activity must meet the following criteria:

1. The program/activity must be at least 60 minutes in duration;
2. The program/activity's objectives must relate directly to the theory or clinical application of theory pertaining to the practice of medical nutrition therapy;
3. Presenters of programs/activities must be qualified by education, experience, or training;
4. Programs/activities must be open to all medical nutrition therapists licensed by the Department who meet the pre-requisites for the program/activity;
5. Program/activity provider must have a process for monitoring and verifying attendance; and
6. The program/activity provider must employ a system to monitor knowledge obtained by the licensee, such as, but not limited to, a final examination or program/activity evaluation.

61-005.02B Approval: To obtain approval of a continuing education program, a licensee or provider must submit a complete application to the Department. A complete application includes all required documentation and written application. The applicant may obtain an application from the Department or construct an application that must contain the following information:

1. A copy of the agenda of the program/activity indicating actual presentation times, lunch and breaks;
2. The name of the program/activity;
3. A description of program/activity objectives;
4. A description of the qualifications of each presenter. Curriculum vita, resume, or documentation of training in a presentation of program/activities pertaining to dietetics and nutrition services may also be submitted as supporting documentation of the presenter's qualifications;
5. The number of hours for which approval is requested;
6. The name, address, and telephone number of the provider and its administrator or operating officer;
7. A description of the process the provider uses to verify attendance by the licensee;
8. A sample copy of the documentation the provider issues to the licensee as proof of attendance at the program/activity;
9. A sample copy of the final examination or program/activity evaluation that will be used to evaluate the knowledge obtained by the licensee upon completion of the program/activity; and
10. The date, time and place of the program/activity.

61-005.03 Homestudy Programs:

61-005.03A Criteria: The Board will evaluate applications from providers of homestudy programs or licensees in order to determine if approval is to be granted or denied. To be approved, a homestudy program must meet the following criteria:

1. The homestudy program's objectives must relate to the enhancement of practice/skills of medical nutrition therapy;
2. The provider must be qualified by education, experience, or training; and
2. The provider must employ a system to monitor knowledge obtained by the licensee completing a homestudy program, such as, but not limited to a final examination or program evaluation.

61-005.03B Approval: To obtain approval of a home study program, a licensee or provider must submit a complete application to the Department. A complete application includes all required documentation and written application. The applicant may obtain an application from the Department or construct an application that must contain the following information:

1. The name of the textbook or other training material utilized;
2. A description of the qualifications of the provider, which includes the education, experience, and training that qualifies the individual to present and/or develop home study programs. Curriculum vita, resume, or documentation of training in development of home study programs may also be submitted as supporting documentation of the provider's qualifications;
3. A description of the objectives, which must include a statement of the knowledge which the participants are expected to gain from the outcome of the study; and
4. The name, address, and telephone number of individual submitting the application.

61-005.04 Video/Audio Media and Journal Clubs: The Board will evaluate applications from licensees in order to determine if approval is to be granted or denied.

61-005.04A Criteria: To be approved, a video/audio media or journal club must meet the following criteria:

1. The video/audio media must relate to the enhancement of skills/practice of medical nutrition therapy; and
2. A journal club must be an organized activity, with a pre-determined discussion topic and must be conducted in a monitored environment by another licensed medical nutrition therapist.

61-005.04B Approval: To obtain approval of a video/audio media or journal club, a licensee must submit a complete application to the Department. A complete application includes all required documentation and the written application. The applicant may obtain an application from the Department or construct an application that must contain the following information:

1. The name, address and telephone number of the licensee submitting the application;

2. The name of the audio/video media or journal topic;
3. A description of the objectives, which must include a statement of the knowledge which the participants are expected to gain from the outcome of the review.

61-005.05 Board Approved Certified/Certification/Certificate Programs: 20 hours (unless noted otherwise) will be granted for completing a certified program, certification program or certificate program as follows:

1. Certified Nutrition Support Clinician sponsored by the National Board of Nutrition Support Certification, Inc (NBNSC);
2. Certified Diabetes Educator sponsored by the National Certification Board for Diabetes Educators (NCBDE);
3. Certified Lifestyle and Weight Management Consultant sponsored by the American Council on Exercise (ACE);
4. Board Certification as a Specialist in Pediatric Nutrition sponsored by the Commission on Dietetic Registration (CDR);
5. Board Certification as a Specialist in Renal Nutrition sponsored by the Commission on Dietetic Registration (CDR);
6. Board Certification as a Specialist in Gerontological Nutrition sponsored by the Commission on Dietetic Registration (CDR);
7. Board Certification as a Specialist in Oncology Nutrition sponsored by the Commission on Dietetic Registration (CDR);
8. Board Certification as a Specialist in Sports Dietetics sponsored by the Commission;
9. International Board of Lactation Consultant Examiners (IBLCE);
10. Certificate Programs approved through the American Dietetic Association (ADA):
 - a. Certificate of Training in Childhood and Adolescent Weight Management sponsored by the Commission on Dietetic Registration (CDR) – 29 hours acceptable); and
 - b. Certificate Training in Adult Weight Management sponsored by the Commission on Dietetic Registration (CDR) – 28 hours acceptable; and (11) Board Certified/Certification/Certificate Programs approved by the ADA/CDR; and
11. Board Certified/Certification/Certificate Programs approved by the ADA/CDR.

The Board will evaluate applications from providers, or licensees, of certificate programs which are not listed above in order to determine if approval is to be granted or denied.

61-005.05A Criteria: To be approved, a certificate program must meet the following criteria:

1. The objectives must relate to the enhancement of skills/practice of medical nutrition therapy;
2. The program must require that candidates meet eligibility requirements; and
3. The program must require that candidates pass an examination to become initially certified and require certificate holders to pass an examination for recertification in order to remain certified.

61-005.05B Approval: To obtain approval of a certificate program, a licensee or provider must submit a complete application to the Department. A complete application includes all required documentation and written application. The applicant may obtain an application from the Department or construct an application that must contain the following information:

1. The name of the certificate program;
2. The objectives of the program;
3. A course outline of the program; and
4. The name, address, and telephone number of the licensee or provider submitting the application.

61-005.06 Exhibits and Poster Sessions: Board review and pre-approval is not required.

61-005.07 Continuing Approval: Once an application for approval of a continuing competency program/activity has been granted by the Board, reapproval is not required for each occasion on which such program/activity is administered within the biennial renewal period, so long as the program/activity is not changed, or so long as the program/activity requirements are not changed by law.

For each subsequent renewal period and if the program/activity, or any portion of a program/activity is changed within the renewal period, reapplication must be made in accordance with 172 NAC 61-009.02 through 172 NAC 61-009.07.

61-005.08 Prior Approval: To obtain prior approval of continuing competency program/activity(s), a complete application must be received by the Board at least 45 days prior to the date on which the program/activity is to be given. The Board will act within 60 days upon all completed applications for continuing competency approval and will notify the applicant.

61-005.09 Post-Program/Activity Approval: Applications for approval of continuing competency programs/activities may be made after the program/activity has occurred.

61-005.10 Advertisement of Approvals: After the Board has granted its written approval of the application, the provider is entitled to state upon its publications: "This program/activity is approved for _____(number of hours approved) by the Nebraska Board of Medical Nutrition Therapy".

61-005.11 Continuing Competency Certificate of Completion: Each provider of an approved continuing competency program/activity must furnish to each person completing the program/activity a certificate of completion.

1. Each certificate must include the following:
 - a. Program/activity name;
 - b. Name of the participant and his/her license number;
 - c. Provider's name; and
 - d. Number of hours received by the licensee, not to exceed the number of hours granted for the program/activity.
2. Presentation of the certificate constitutes evidence that the person complied with all requirements of the program/activity and completed the program/activity.

61-005.12 Program/Activity Monitoring: The provider must employ a reliable system to monitor the physical presence of participants throughout the entire program/activity. If a participant chooses not to participate in the entire program/activity, the certificate of attendance must reflect the participant's actual hours of attendance.

61-006 RENEWAL: An individual who wants to renew his/her medical nutrition therapy credential must request renewal as specified in 172 NAC 61-006.02. All medical nutrition therapy credentials issued by the Department will expire on September 1, of each odd-numbered year.

61-006.01 Renewal Notice: At least 30 days before the expiration of a credential, the Department will notify each credential holder at the last known address of record. The renewal notice will include:

1. The type of credential;
2. The credential number;
3. The expiration date;
4. Continuing competency requirements for renewal;
5. The amount of the renewal fee; and
6. Information on how to request renewal and how to place a credential on inactive status.

61-006.02 Renewal Procedures: The request for renewal may be submitted in person or by mail or Internet, and must include all required documentation and the renewal fee, which must be paid no later than the expiration date. The applicant may obtain an

application from the Department or construct an application that must contain the following information:

1. Written Application:
 - a. Personal Information:
 - (1) The legal name of the applicant, maiden name (if applicable), and any other names by which the applicant is known;
 - (2) Mailing address (street, rural route, or post office address; and city, state, and zip code, or country information);
 - (3) The applicant's:
 - (a) Social Security Number (SSN); or
 - (b) Alien Registration Number (A#);
 - (c) Form I-94 (Arrival-Departure Record) number; Certain applicants may have both a SSN and an A# or I-94 number, and if so, must report both.
 - (4) The applicant's telephone number including area code (optional);
 - (5) The applicant's e-mail address (optional); and
 - (6) The applicant's fax number (optional);
 - b. Continuing competency: The individual:
 - (1) Must attest to meeting the continuing competency requirements as specified in 172 NAC 61-004; or
 - (2) May request a waiver of continuing competency requirements as specified in 172 NAC 61-006.03 and 61-006.04; and
 - c. Attestation: The applicant must attest that:
 - (1) S/he has read the application or has had the application read to him/her;
 - (2) All statements on the application are true and complete; and
 - (3) S/he is of good character.
2. Documentation: The applicant must submit the following documentation with the application:
 - a. Other Credential Information: If the applicant holds a credential to provide health services, health-related services, or environmental services in Nebraska or in another jurisdiction, the applicant must submit the state, credential number, type of credential, date issued, and expiration date of each credential where the applicant has been or is currently credentialed;
 - b. Disciplinary Action: A list of any disciplinary actions taken against the applicant's credential and a copy of the disciplinary action(s), including charges and disposition;
 - c. Denial: If the applicant was denied a credential or denied the right to take an examination, an explanation of the basis for the denial;

- d. Conviction Information: If the applicant has been convicted of a felony or misdemeanor since his/her last renewal or during the time period since initial credentialing if such occurred within the previous two years, the applicant must submit to the Department:
- (1) A list of any misdemeanor or felony convictions;
 - (2) A copy of the court record, which includes charges and disposition;
 - (3) Explanation from the applicant of the events leading to the conviction (what, when, where, why) and a summary of actions the applicant has taken to address the behaviors/actions related to the convictions;
 - (4) All addiction/mental health evaluations and proof of treatment, if the conviction involved a drug and/or alcohol related offense and if treatment was obtained and/or required;
 - (5) A letter from the probation officer addressing probationary conditions and current status, if the applicant is currently on probation; and
 - (6) Any other information as requested by the Board/Department; and
3. The renewal fee according to 172 NAC 2.

61-006.03 Waivers for Military Service: A credential holder who has served in the regular armed forces of the United States during part of the credentialing period immediately preceding the renewal date, or is actively engaged in military service as defined in 172 NAC 61-002, is not required to pay the renewal fee or to meet the continuing competency requirements if acceptable documentation is submitted to the Department. The individual must document his/her military service by submitting to the Department:

1. Military identification proving that s/he is in active service;
2. Military orders; or
3. A letter from his/her Commanding Officer indicating that s/he is on active duty.

Upon receipt of acceptable documentation, the Department will waive the fee and the continuing competency requirements and renew the credential. The credential will remain active until the next renewal period.

61-006.04 Waiver of Continuing Competency Requirements: The Department waives continuing competency requirements for individuals who were first credentialed within the 24-month period immediately preceding the renewal date.

61-006.04A The Department may waive continuing competency requirements, in whole or in part, upon submission by a credential holder of documentation that circumstances beyond his/her control have prevented completion of these requirements. These circumstances may include situations in which the licensee

has been suffering from a serious or disabling illness or physical disability for at least a 30 day period of time which prevented completion of the required number of continuing competency hours during the six (6) months immediately preceding the license renewal date;

61-006.05 Audit of Continuing Competency Requirements: The Department or the Board may biennially select, in a random manner, a sample of the renewal applications for audit of continuing competency requirements. Each credential holder selected for audit must produce documentation of the continuing competency activities.

61-006.05A The Department/Board will notify each selected credential holder by mail. Failure to notify the Department of a current mailing address will not absolve the credential holder from the requirement for audit.

61-006.05B Within 30 days, each selected credential holder must respond by submitting documentation that s/he has met the requirements for continuing competency. An extension beyond 30 days for submission of the documentation may be granted at the discretion of the Department. Documentation submitted by the credential holder will not be returned.

61-006.05C Acceptable documentation that the credential holder has met the continuing competency requirements include:

1. Certificates of attendance;
2. Attendance/Sign in-out rosters;
3. Transcripts or grade reports;
4. Letters from sponsors of continuing education verifying attendance; or
5. Similar documentation.

61-006.05D The Department/Board will review the submitted documentation to determine if the credential holder has met the requirements for continuing competency activities for renewal of the credential. Only documented activities/hours that meet the continuing competency requirements will be counted toward the total requirements for renewal.

61-006.05E The Department/Board will notify the credential holder upon satisfactory completion of the audit.

61-006.05F The credential of any person who fails to comply with the conditions of the audit will expire 30 days after notice and an opportunity for a hearing.

61-006.05G The Board reserves the right to audit continuing competency requirements of any credential holder by notifying the credential holder and requesting that s/he produce the required documentation of attendance at or participation in acceptable continuing competency programs within 30 days of mailing.

61-006.06 Department Review: The Department will act within 150 days upon all completed applications for renewal.

61-006.06A False Information: The Department may refuse to renew a credential for falsification of any information submitted for renewal of a credential. The refusal will be made according to 184 NAC 1, the Department's Rules of Practice and Procedure for Administrative Hearings.

61-006.07 Address Information: Each credential holder must notify the Department of any change to the address of record.

61-006.08 Expiration of a Credential: A credential expires if a credential holder fails to:

1. Notify the Department that s/he wants to place his/her credential on inactive status upon its expiration;
2. Meet the requirements for renewal on or before the date of expiration of his/her credential; or
3. Otherwise fails to renew his/her credential.

61-006.08A Failure to Renew: A credential automatically expires without further notice or opportunity for hearing if a credential holder fails by the expiration date of the credential to either:

1. Submit documentation of continuing competency; or
2. Pay the required renewal fee.

61-006.08B Failure to Meet Continuing Competency Requirements: The Department will refuse to renew a credential, after notice and opportunity for hearing, if a credential holder fails to meet the continuing competency requirements for renewal by the expiration date of the credential.

61-006.08C Right to Practice: When an individual's credential expires, the right to represent him/herself as a credential holder and to practice medical nutrition therapy expires.

61-006.08D Practice After Expiration: An individual who practices after expiration of his/her credential is subject to assessment of an administrative penalty under 172 NAC 61-009 or such other action as provided in the statutes and regulations governing the credential.

61-006.08E Reinstatement of an Expired Credential: If a credential holder wants to resume the practice of medical nutrition therapy after failing to renew his/her credential by the expiration date, s/he must apply to the Department for reinstatement as specified in 172 NAC 61-009.

61-006.09 Inactive Status: When an individual wants to have his/her credential placed on inactive status, s/he must notify the Department in writing. There is no fee to have a credential placed on inactive status and continuing competency is not required.

61-006.09A Request for Inactive Status: When the Department has received notification that an individual wants to have his/her credential placed on inactive status, the Department will notify the credential holder in writing of the acceptance or denial of the request.

61-006.09B Placement on Inactive Status: When an individual's credential is placed on inactive status, the credential holder must not engage in the practice of medical nutrition therapy, but may represent him/herself as having an inactive credential.

61-006.09C Return to Active Status: A credential may remain on inactive status for an indefinite period of time. An individual who wants to have his/her credential returned to active status must apply to the Department for reinstatement and meet the requirements specified in 172 NAC 61-009.

61-007 DISCIPLINARY ACTIONS

61-007.01 Grounds for Action Against a Credential: A credential to practice a profession may have disciplinary actions taken against it on any of the following grounds:

1. Misrepresentation of material facts in procuring or attempting to procure a credential;
2. Immoral or dishonorable conduct evidencing unfitness to practice the profession in this state;
3. Abuse of, dependence on, or active addiction to alcohol, any controlled substance, or any mind-altering substance;
4. Failure to comply with a treatment program or an aftercare program, including, but not limited to, a program entered into under the Licensee Assistance Program established pursuant to Neb. Rev. Stat. § 38-175;
5. Conviction of:
 - a. A misdemeanor or felony under Nebraska law or federal law, or
 - b. A crime in any jurisdiction which, if committed within this state, would have constituted a misdemeanor or felony under Nebraska law and which has a rational connection with the fitness or capacity of the applicant or credential holder to practice the profession;
6. Practice of the profession:
 - a. Fraudulently,
 - b. Beyond its authorized scope,
 - c. With gross incompetence or gross negligence, or
 - d. In a pattern of incompetent or negligent conduct;

7. Practice of the profession while the ability to practice is impaired by alcohol, controlled substances, drugs, mind-altering substances, physical disability, mental disability, or emotional disability;
8. Physical or mental incapacity to practice the profession as evidenced by a legal judgment or a determination by other lawful means;
9. Illness, deterioration, or disability that impairs the ability to practice the profession;
10. Permitting, aiding, or abetting the practice of a profession or the performance of activities requiring a credential by a person not credentialed to do so;
11. Having had his/her credential denied, refused renewal, limited, suspended, revoked, or disciplined in any manner similar to 172 NAC 61-007.05 by another state or jurisdiction based upon acts by the applicant or credential holder similar to acts described in this part;
12. Use of untruthful, deceptive, or misleading statements in advertisements;
13. Conviction of fraudulent or misleading advertising or conviction of a violation of the Uniform Deceptive Trade Practices Act;
14. Distribution of intoxicating liquors, controlled substances, or drugs for any other than lawful purposes;
15. Violations of the Uniform Credentialing Act or the rules and regulations relating to the particular profession;
16. Unlawful invasion of the field of practice of any profession regulated by the Uniform Credentialing Act which the credential holder is not credentialed to practice;
17. Violation of the Uniform Controlled Substances Act or any rules and regulations adopted pursuant to the act;
18. Failure to file a report required by Neb. Rev. Stat. §§ 38-1,124 or 38-1,125;
19. Failure to maintain the requirements necessary to obtain a credential;
20. Violation of an order issued by the Department;
21. Violation of an assurance of compliance entered into under Neb. Rev. Stat. § 38-1,108;
22. Failure to pay an administrative penalty;
23. Unprofessional conduct as defined in 172 NAC 61-007.02; or
24. Violation of the Automated Medication Systems Act.

61-007.02 Unprofessional Conduct: Unprofessional conduct means any departure from or failure to conform to the standards of acceptable and prevailing practice of a profession or the ethics of the profession, regardless of whether a person, consumer, or entity is injured. Unprofessional conduct also means conduct that is likely to deceive or defraud the public or is detrimental to the public interest, including but not limited to:

1. Receipt of fees on the assurance that an incurable disease can be permanently cured;
2. Division of fees, or agreeing to split or divide the fees, received for professional services with any person for bringing or referring a consumer other than:

- a. With a partner or employee of the applicant or credential holder or his/her office or clinic;
 - b. With a landlord of the applicant or credential holder pursuant to a written agreement that provides for payment of rent based on gross receipts;
 - c. With a former partner or employee of the applicant or credential holder based on a retirement plan or separation agreement; or
 - d. By a person credentialed pursuant to the Water Well Standards and Contractors' Practice Act.
3. Obtaining any fee for professional services by fraud, deceit, or misrepresentation, including, but not limited to, falsification of third-party claim documents;
 4. Cheating on or attempting to subvert the credentialing examination;
 5. Assisting in the care or treatment of a consumer without the consent of the consumer or his/her legal representative;
 6. Use of any letters, words, or terms, either as a prefix, affix, or suffix, on stationery, in advertisements, or otherwise, indicating that the person is entitled to practice a profession for which s/he is not credentialed;
 7. Performing, procuring, or aiding and abetting in the performance or procurement of a criminal abortion;
 8. Knowingly disclosing confidential information except as otherwise permitted by law;
 9. Commission of any act of sexual abuse, misconduct, or exploitation related to the practice of the profession of the applicant or credential holder;
 10. Failure to keep and maintain adequate records of treatment or service;
 11. Prescribing, administering, distributing, dispensing, giving, or selling any controlled substance or other drug recognized as addictive or dangerous for other than a medically accepted therapeutic purpose;
 12. Prescribing any controlled substance to:
 - a. Oneself; or
 - b. Except in the case of a medical emergency:
 - (1) One's spouse;
 - (2) One's child;
 - (3) One's parent;
 - (4) One's sibling; or
 - (5) Any other person living in the same household as the prescriber;
 13. Failure to comply with any federal, state, or municipal law, ordinance, rule, or regulation that pertains to the applicable profession; and
 14. Disruptive behavior, whether verbal or physical, which interferes with consumer care or could reasonably be expected to interfere with the care.

61-007.03 Temporary Suspension or Limitation

61-007.03A The Department may temporarily suspend or temporarily limit any credential issued by the Department without notice or a hearing if the Director

determines that there is reasonable cause to believe that grounds exist under 172 NAC 61-007.01 for the revocation, suspension, or limitation of the credential and that the credential holder's continuation in practice or operation would constitute an imminent danger to the public health and safety. Simultaneously with the action, the Department will institute proceedings for a hearing on the grounds for revocation, suspension, or limitation of the credential. The hearing will be held no later than 15 days from the date of the temporary suspension or temporary limitation of the credential.

61-007.03B A continuance of the hearing will be granted by the Department upon the written request of the credential holder, and the continuance must not exceed 30 days unless waived by the credential holder. A temporary suspension or temporary limitation order by the Director will take effect when served upon the credential holder.

61-007.03C A temporary suspension or temporary limitation of a credential under 172 NAC 61-007.03 will not be in effect for more than 90 days unless waived by the credential holder. If a decision is not reached within 90 days, the credential will be reinstated unless and until the Department reaches a decision to revoke, suspend, or limit the credential or otherwise discipline the credential holder.

61-007.04 Department Action: The Department will follow the procedures delineated in the Uniform Credentialing Act to notify credential holders of any disciplinary action to be imposed and the time and place of the hearing.

61-007.05 Sanctions: Upon the completion of any hearing held regarding discipline of a credential, the Director may dismiss the action or impose the following sanctions:

1. Censure;
2. Probation;
3. Limitation;
4. Civil Penalty;
5. Suspension; or
6. Revocation.

61-007.05A Additional Terms and Conditions of Discipline: If any discipline is imposed pursuant to 172 NAC 61-007.05, the Director may, in addition to any other terms and conditions of that discipline:

1. Require the credential holder to obtain additional professional training and to pass an examination upon the completion of the training. The examination may be written or oral or both and may be a practical or clinical examination or both or any or all of the combinations of written, oral, practical, and clinical, at the option of the Director;

2. Require the credential holder to submit to a complete diagnostic examination by one or more physicians or other qualified professionals appointed by the Director. If the Director requires the credential holder to submit to an examination, the Director will receive and consider any other report of a complete diagnostic examination given by one or more physicians or other qualified professionals of the credential holder's choice if the credential holder chooses to make available the report or reports by his/her physician or physicians or other qualified professionals; and
3. Limit the extent, scope, or type of practice of the credential holder.

61-008 VOLUNTARY SURRENDER OR LIMITATION: A credential holder may offer to voluntarily surrender or limit a credential issued by the Department. The credential holder must make the offer in writing on a form provided by the Department or constructed by the credential holder, which must include the following information:

1. Personal Information:
 - a. First, middle and last name;
 - b. Mailing address (street, rural route, or post office address), city, state, and zip code;
 - c. Telephone number; and
 - d. Fax number.
2. Information Regarding the Credential Being Offered for Surrender or Limitation:
 - a. List credential(s) and credential number(s) that would be surrendered or limited;
 - b. Indicate the desired time frame for offered surrender or limitation:
 - (1) Permanently;
 - (2) Indefinitely; or
 - (3) Definite period of time (specify);
 - c. Specify reason for offered surrender or limit of credential; and
 - d. Specify any terms and conditions that the credential holder wishes to have the Department consider and apply to the offer.
3. Attestation: The credential holder must:
 - a. Attest that all the information on the offer is true and complete; and
 - b. Provide the credential holder's signature and date.

61-008.01 The Department may accept an offer of voluntary surrender or limitation of a credential based on:

1. An offer made by the credential holder on his/her own volition;
2. An offer made with the agreement of the Attorney General or the legal counsel of the Department to resolve a pending disciplinary matter;
3. A decision by the Attorney General to negotiate a voluntary surrender or limitation in lieu of filing a petition for disciplinary action; or
4. A decision by the legal counsel of the Department to negotiate a voluntary surrender or limitation in response to a notice of disciplinary action.

61-008.02 The Department may reject an offer of voluntary surrender of a credential under circumstances which include, but are not limited to, when the credential:

1. Is under investigation;
2. Has a disciplinary action pending but a disposition has not been rendered; or
3. Has had a disciplinary action taken against it.

61-008.03 When the Department either accepts or rejects an offer of voluntary surrender or limitation, the Director will issue the decision in a written order. The order will be issued within 30 days after receipt of the offer of voluntary surrender or limitation and will specify:

1. Whether the Department accepts or rejects the offer of voluntary surrender; and
2. The terms and conditions under which the voluntary surrender is accepted or the basis for the rejection of an offer of voluntary surrender. The terms and conditions governing the acceptance of a voluntary surrender will include, but not be limited to:
 - a. Duration of the surrender;
 - b. Whether the credential holder may apply to have the credential reinstated; and
 - c. Any terms and conditions for reinstatement.

61-008.04 A limitation may be placed on the right of the credential holder to practice a profession or operate a business to the extent, for the time, and under the conditions as imposed by the Director.

61-008.05 Violation of any of the terms and conditions of a voluntary surrender or limitation by the credential holder will be due cause for the refusal of renewal of the credential, for the suspension or revocation of the credential, or for refusal to restore the credential.

61-008.06 Reinstatement following voluntary surrender is set out in 172 NAC 61-009.

61-009 REINSTATEMENT: This section applies to individuals previously credentialed in Nebraska who seek the authority to return to practice in Nebraska with a valid Nebraska credential. Individuals may apply for reinstatement as follows:

1. An individual whose credential has expired, been placed on inactive status, voluntarily surrendered for an indefinite period of time, or suspended or limited for disciplinary reasons, may apply for reinstatement at any time.
2. An individual whose credential has been voluntarily surrendered for a definite period of time may apply for reinstatement after that period of time has elapsed.

3. An individual whose credential has been revoked may apply for reinstatement only after a period of two years has elapsed from the date of revocation.
4. An individual whose credential has been permanently voluntarily surrendered may not apply for reinstatement.

The voluntary surrender of a credential may be unrelated to disciplinary matters, or may be done to resolve a pending disciplinary matter, in lieu of disciplinary action, or in response to a notice of disciplinary action.

61-009.01 Reinstatement From Expired or Inactive Status or Following Voluntary Surrender Unrelated to a Disciplinary Matter: The applicant must submit to the Department:

1. A written application on a form provided by the Department or constructed by the applicant which must contain the following information about the applicant:
 - a. Name;
 - b. Address;
 - c. The applicant's:
 - (a) Social Security Number (SSN); or
 - (b) Alien Registration Number (A#); or
 - (c) Form I-94 (Arrival-Departure Record) number;Certain applicants may have both a SSN and an A# or I-94 number, and if so, must report both.
 - d. If the applicant holds a professional credential in another state, a list of the state(s) and type of credential;
 - e. Attestation that the continuing competency requirements for renewal have been met;
 - f. A statement describing all:
 - (1) Felony or misdemeanor convictions during the time period since the credential was active. If the applicant has been convicted of a felony or misdemeanor, s/he must provide copies of:
 - (a) The court record, which includes charges and disposition;
 - (b) Arrest records;
 - (c) A letter from the applicant of the events leading to the conviction (what, when, where, why) and a summary of actions the applicant has taken to address the behaviors/actions related to the convictions;
 - (d) All addiction/mental health evaluations and proof of any treatment obtained; and

- (e) A letter from the probation officer addressing probationary conditions and current status if the applicant is currently on probation;
 - (2) Revocations, suspensions, or other disciplinary actions against any professional credential held by the applicant during the time period since the credential the applicant wishes to reinstate was active. If any disciplinary action was taken against the applicant's credential by another state, the applicant must submit a copy of the disciplinary action, including charges and disposition; and
 - (3) Disciplinary charges pending against any professional credential held by the applicant;
2. Attestation by the applicant:
- a. That s/he has not practiced in Nebraska since s/he last held an active credential; or
 - b. To the actual number of days practiced if the applicant has practiced in Nebraska since s/he last held an active credential; and
3. The following fee(s):
- a. If the credential is expired or inactive, the reinstatement and renewal fees; or
 - b. If the credential was voluntarily surrendered, the renewal fee.

61-009.01A If an applicant has practiced while his/her credential was expired, inactive, or voluntarily surrendered, the Department may, with the recommendation of the Board, take one or more of the following actions:

- 1. Assess an administrative penalty pursuant to 172 NAC 61-010, in which case a separate notice of opportunity for hearing will be sent to the applicant;
- 2. Deny the application to reinstate the credential;
- 3. Reinstate the credential to active status and impose limitation(s) or other disciplinary actions on the credential; and/or
- 4. Reinstate the credential.

61-009.01B If an applicant has committed any other violation of the statutes and regulations governing the credential, the Department may:

- 1. Deny the application for reinstatement of the credential;
- 2. Reinstate the credential to active status and impose limitation(s) or other disciplinary actions on the credential; and/or
- 3. Reinstate the credential.

61-009.01C The Department will act within 150 days on all completed applications.

61-009.01D The Department's decision may be appealed to the Director by any party to the decision. The appeal must be in accordance with the Administrative Procedure Act.

61-009.02 Reinstatement from Non-Disciplinary Revocation or Lapsed Status: An individual whose credential was placed on non-disciplinary revocation or lapsed status before December 1, 2008 may apply for reinstatement as provided in 172 NAC 61-009.01.

61-009.03 Reinstatement Following Suspension, Limitation, Revocation, or Voluntary Surrender to Resolve a Pending Disciplinary Matter, In Lieu of Discipline, or In Response to a Notice of Disciplinary Action: An individual whose credential was suspended or limited may apply for reinstatement at any time. An individual whose credential has been revoked may apply for reinstatement after a period of two years has elapsed from the date of revocation. An individual whose credential was voluntarily surrendered may apply for reinstatement based on the provisions in the order accepting the voluntary surrender.

The applicant must submit to the Board:

1. A written application on a form provided by the Department or constructed by the applicant, which must contain the following information about the applicant:
 - a. Name;
 - b. Address;
 - c. The applicant's:
 - (a) Social Security Number (SSN); or
 - (b) Alien Registration Number (A#); or
 - (c) Form I-94 (Arrival-Departure Record) number;Certain applicants may have both a SSN and an A# or I-94 number, and if so, must report both.
 - d. If the applicant holds a professional credential in another state, a list of the state(s) and type of credential;
 - e. If the applicant's credential has expired during the time the credential was suspended, limited, revoked, or voluntarily surrendered, attestation of meeting the continuing competency requirements for renewal;
 - f. A statement of the reason the applicant believes his/her credential should be reinstated;
 - g. Written recommendations from at least two individuals each having personal knowledge of the activities of the applicant since the credential was suspended, limited, revoked, or voluntarily surrendered. Recommendations from household members or relatives are not acceptable;
 - h. A statement describing all:
 - (1) Felony or misdemeanor convictions during the time period since the credential was suspended, limited, revoked, or

voluntarily surrendered. If the applicant has been convicted of a felony or misdemeanor, s/he must provide copies of:

- (a) The court record, which includes charges and disposition;
 - (b) Arrest records;
 - (c) A letter from the applicant of the events leading to the conviction (what, when, where, why) and a summary of actions the applicant has taken to address the behaviors/actions related to the convictions;
 - (d) All addiction/mental health evaluations and proof of any treatment obtained; and
 - (e) A letter from the probation officer addressing probationary conditions and current status, if the applicant is currently on probation.
- (2) Revocations, suspension, or other disciplinary actions against any professional credential held by the applicant during the time period since the credential the applicant wishes to reinstate was suspended, limited, revoked, or voluntarily surrendered. If any disciplinary action was taken against the applicant's credential by another state, the applicant must submit a copy of the disciplinary action, including charges and disposition; and
 - (3) Disciplinary charges pending against any professional credential held by the applicant;
2. Attestation by the applicant:
 - a. That s/he has not practiced in Nebraska since s/he last held an active credential; or
 - b. To the actual number of days practiced if the applicant has practiced in Nebraska since s/he last held an active credential; and
 3. The renewal fee.

61-009.03A If an applicant has practiced while his/her credential was suspended, limited, revoked, or voluntarily surrendered, the Department may take one or more of the following actions:

1. Assess an administrative penalty pursuant to 172 NAC 61-010, in which case a separate notice of opportunity for hearing will be sent to the applicant;
2. Deny the application to reinstate the credential;
3. Reinstate the credential to active status and impose limitation(s) or other disciplinary actions on the credential; and/or
4. Reinstate the credential.

61-009.03B If an applicant has committed any other violation of the statutes and regulations governing the credential, the Department may:

1. Deny the application for reinstatement of the credential;
2. Reinstatement the credential to active status and impose limitation(s) or other disciplinary actions on the credential; or
3. Reinstatement the credential.

61-009.03C The Board will make a recommendation regarding reinstatement following suspension, limitation, revocation, or voluntary surrender within 180 days of receipt of the application. The Department, with the recommendation of the Board, may:

1. Conduct an investigation to determine if the applicant has committed acts or offenses prohibited by Neb. Rev. Stat. § 38-178;
2. Require the applicant to submit to a complete diagnostic examination, at the expense of the applicant, by one or more physician(s) or other professionals appointed by the Board. The applicant may also consult a physician(s) or other professionals of his/her own choice for a complete diagnostic examination and make available a report(s) of the examination(s) to the Department and to the Board;
3. Require the applicant to pass a written, oral, or practical examination or any combination of examinations at the expense of the applicant;
4. Require the applicant to successfully complete additional education at the expense of the applicant;
5. Require the applicant to successfully pass an inspection of his/her practice site; or
6. Take any combination of these actions.

61-009.03D On the basis of the information obtained under 172 NAC 61-009.03C, the Board may:

1. Deny the application for reinstatement; or
2. Recommend to the Department:
 - a. Full reinstatement of the credential;
 - b. Modification of the suspension or limitation; or
 - c. Reinstatement subject to limitations or subject to probation with terms and conditions.

61-009.03E An affirmative vote of a majority of the full membership of the Board as authorized by statute is required to recommend reinstatement of a credential with or without terms, conditions, or restrictions.

61-009.03F If the Board's decision is to deny the application for reinstatement, notification of the Board's decision will be mailed to the applicant by certified mail. The decision of the Board will become final 30 days after the decision is mailed to the applicant unless the applicant requests a hearing within that 30-day period.

1. If the applicant has been afforded a hearing or an opportunity for a hearing on an application for reinstatement within two years before filing the current application, the Department may grant or deny the application without another hearing before the Board.
2. If the applicant requests a hearing before the Board, the Department will mail a notice of the date, time, and location of the hearing. The notice will be sent by certified mail at least 30 days before the hearing.
3. Following the hearing, if the Board's decision is denial of the application for reinstatement, the applicant will be notified by certified mail.
4. The applicant may appeal the Board's denial to District Court in accordance with the Administrative Procedure Act.

61-009.03G If the Board recommends full reinstatement of the credential, modification of the suspension or limitation, or reinstatement of the credential subject to limitations or subject to probation with terms and conditions, the Board's recommendation will be sent to the applicant by certified mail. The following information will be forwarded to the Director for a decision:

1. The written recommendation of the Board, including any finding of fact or order of the Board;
2. The application for reinstatement;
3. The record of hearing, if any; and
4. Any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the Board and the applicant.

61-009.03H The Director will review the application and other documents and make a decision within 150 days of receipt of the Board's recommendation and accompanying documents. The Director may:

1. Affirm the recommendation of the Board and grant reinstatement; or
2. Reverse or modify the recommendation if the Board's recommendation is:
 - a. In excess of statutory authority;
 - b. Made upon unlawful procedure;
 - c. Unsupported by competent, material, and substantial evidence in view of the entire record; or
 - d. Arbitrary or capricious; and

3. Enter an order setting forth the decision regarding reinstatement of the applicant's credential. The order will be sent to the applicant by certified mail.

61-009.031 The Director's decision may be appealed to District Court by any party to the decision. The appeal must be in accordance with the Administrative Procedure Act.

61-010 ADMINISTRATIVE PENALTY: The Department may assess an administrative penalty when evidence exists of practice without a credential to practice a profession or operate a business. Practice without a credential for the purpose of this regulation means practice:

1. Prior to the issuance of a credential;
2. Following the expiration of a credential; or
3. Prior to the reinstatement of a credential.

61-010.01 Evidence of Practice: The Department will consider any of the following conditions as prima facie evidence of practice without being credentialed:

1. The person admits to engaging in practice;
2. Staffing records or other reports from the employer of the person indicate that the person was engaged in practice;
3. Billing or payment records document the provision of service, care, or treatment by the person;
4. Service, care, or treatment records document the provision of service, care, or treatment by the person;
5. Appointment records indicate that the person was engaged in practice; and
6. The person opens a business or practice site and announces or advertises that the business or site is open to provide service, care, or treatment.

For purposes of this regulation, prima facie evidence means a fact presumed to be true unless disproved by some evidence to the contrary.

61-010.02 Penalty: The Department may assess an administrative penalty in the amount of \$10 per day, not to exceed a total of \$1,000 for practice without a credential. To assess the penalty, the Department will:

1. Provide written notice of the assessment to the person. The notice will specify:
 - a. The total amount of the administrative penalty;
 - b. The evidence on which the administrative penalty is based;
 - c. That the person may request, in writing, a hearing to contest the assessment of an administrative penalty;
 - d. That the Department will within 30 days following receipt of

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payment of the administrative penalty, remit the penalty to the State Treasurer to be disposed of in accordance with Article VII, section 5 of the Constitution of Nebraska; and

- e. That an unpaid administrative penalty constitutes a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the District Court of the county in which the violator resides or owns property. The Department may also collect in such action attorney's fees and costs incurred directly in the collection of the administrative penalty.
2. Send by certified mail, a written notice of the administrative penalty to the last known address of the person to whom the penalty is assessed.

61-010.03 Administrative Hearing: When a person contests the administrative penalty and requests a hearing, the Department will hold a hearing pursuant to the Administrative Procedure Act and 184 NAC 1, the Department's Rules of Practice and Procedure for Administrative Hearings.

61-011 FEES: Fees referred to in these regulations are set out in 172 NAC 2, unless otherwise specified.

THESE AMENDED RULES AND REGULATIONS Replace Title 172 Chapter 61 Regulations Relating to the Practice of Medical Nutrition Therapy, effective December 5, 2004.

Approved by the Attorney General: October 27, 2008
Approved by the Governor: December 5, 2008
Filed with the Secretary of State: December 5, 2008

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