

What you need to know now about our Licensure: Minnesota Statutes, Chapter 148 Public Health Occupations, Licensing Dietitians and Nutritionists. Provided by Ann Erickson: Last updated April 2016.



Executive Summary: True/False Pop Quiz

1. The objective of licensure for Minnesota dietitians and nutritionists is to protect scope of practice.
2. The Licensure Board, established after the Licensure Statute was enacted, is now a permanent fixture in Minnesota.
3. Providers and payers of health services could care less about whether dietitians or nutritionists are licensed.
4. Licensure is such an old issue at national and state levels that it is all but forgotten.
5. For dietitians, all that really matters is to maintain their registration status with the Academy's CDR.

If you answered **TRUE** to any of the above (or were even thinking **Maybe**), you are mistaken.

Here are the sound bite answers: **1.** Minnesota Licensure exists for protection of the public; not to promote RDs/RDNs/Nutritionists. **2.** The Licensure Board is not a permanent fixture; for example in 2012 the Minnesota Sunset Act, required all licensure boards to justify their continued operation (we passed with flying colors by the way; in no small part due to excellent Board feedback to the Legislative committee). **3.** Rather than “care less”, payers and providers increasingly rely on state level oversight to verify qualifications of individuals providing services. **4.** Then there are times when existing Licensure Statutes need updating. For example in 2013 our Licensure Statute was opened to explicitly include licensed dietitians and licensed nutritionist as being able to follow patient care protocols that included pre-defined prescription medications. Another example was our effort related to the Minnesota Chiropractors licensure update bill that finally passed in 2014. We engaged with the Minnesota Chiropractors and ensured that any reference to nutrition was appropriately positioned as “incident” to the overall Chiropractic care plan. Furthermore the current health care environment is being shaped by a number of factors that have generated intense interest in licensure at both state and national levels. So bottom line....there is nothing stagnant about licensure! **5.** State level licensure brings legal and monitoring functions that are outside the realm of our national CDR registration through the Academy. The credentialing function managed by the Academy does not have the legal authority regarding qualifications; as with other states with licensure, Minnesota does have this authority and can take corrective action or even disciplinary action when justified.

Keep reading to learn more about the Licensure challenges and opportunities in Minnesota. Then take the quiz at the bottom.

Minnesota RDs began working to obtain licensure in the mid-1980s. After about 10 years of tireless effort, and fearless leadership by many MAND officers and members, the Licensure bill was passed into law and the Licensure Board established in 1994. A copy can be accessed under the MN Statutes, Public Health Occupations Ch 148.621 – 148.633 at <https://www.revisor.mn.gov/statutes/?id=148> . The law or statute (statute is a law that applies to all citizens) describes the Licensure Board membership and duties, the educational and practice requirements to receive a license, licensure exemptions, what licensure covers, along with housekeeping issues such as licensure renewal.

Minnesota was one of the first states in the country to achieve Licensure. Licensure is hardly a new concept for Minnesota RDs/RDNs and Nutritionists. However, the topic of Licensure continues to receive a lot of attention at state affiliate and national levels.



1. Why the ongoing interest in Licensure in Minnesota and across the country?

- 1) There was certainly a great deal of interest in Minnesota Licensure **in 2013 as we introduced a bill to correct and clarify our Statute!** Our bill, HF195/SF431, allowing licensed dietitians and licensed nutritionists to adhere to a practice guideline or protocol that includes reference to a drug prescribed by a physician. A protocol for managing diabetes is an easy to understand example of nutrition services playing a major role in achieving overall healthcare goals. There are many other examples of patient care protocols where nutrition plays a significant role: to name a few – cystic fibrosis, dialysis, tube feeding and parenteral nutrition, with more protocols continually being added. Our bill was non-controversial with excellent support from legislators and physician and pharmacist communities. What a wonderful endorsement of Minnesota’s licensed dietitians and licensed nutritionists! On May 13, 2013 Governor Dayton signed our bill into law. The new law updates our original 1994 licensure law. Licensed Dietitians (LD) and Licensed Nutritionist (LN) have now been added to the list of healthcare providers physicians can delegate to follow patient care protocols that also include a predetermined physician prescribed drug. Others listed as protocol delegates are nurses, physician assistants, pharmacists, medical students and medical residents. This law clarifies and legalizes valued and long-established patient care policies and procedures. By doing so, the law preserves patient safety and care provided by a qualified nutrition professional. Additionally, by recognizing professional competencies, contributions and skill sets, the law supports advanced nutrition practice by Minnesota’s LD and LN. Examples of advanced practice supported by the updated law include LDs/LNs who are Certified Diabetes Educators (CDE) involved in insulin adjustment, nutrition support specialists placing feeding tubes, or working with patients with Cystic Fibrosis patients or kidney disease respectively adjusting pancreatic enzymes or phosphate binders. An important point to underscore is that RD/RDN/Nutritionists must be licensed in Minnesota in order to legally follow a protocol that includes a medication schedule.

- 2) The **Minnesota Chiropractors' licensure bill was finally passed in the 2014 session.** The chiropractic scope of practice bill passed and was signed into law as part of the Omnibus Health and Human Services Policy bill in 2014. The changes to the chiropractic scope of practice can be found at Chapter 291 (HF2402), Article 4, sections 4 to 7, and 59. Our issue was around article (6) "Therapeutic services" - for which the rules also list nutrition. The Minnesota Chiropractic Association (MCA) accommodated our (and many others) requirement that therapeutic services be "...performed within a practice where the primary focus is the provision of chiropractic.." It was a long six year effort for the MCA. The lead lobbyist for the MCA, Kevin Goodno, was always professional, receptive and reasonable. It should be noted that Chiropractors are one of the healthcare professions exempted by our licensure law. The specific exemption clause is "...any person licensed to practice medicine, nursing, optometry, psychology, pharmacy, dentistry, or chiropractic, when nutrition practice is incidental to the practice of the person's profession and the person does not hold out as a dietitian or nutritionist unless so licensed...". Fortunately we achieved our objective of ensuring that any reference to nutrition services in their scope is appropriately positioned as "incident" to the overall Chiropractic care plan. Along the way we learned the lessons of – communication, cooperation, perseverance, visibility, professionalism, coalition building, messaging, membership grass roots initiatives –these are the essential elements of public policy success!

- 3) To emphasize the importance of licensure, the Academy has held an **annual training workshop** with a representative from each state affiliate. The workshop objective is to raise awareness of Licensure's importance and rally affiliate members to respond to challenges faced by licensed dietitians/nutritionists including:
 - a) Possible elimination of licensure boards in some states due to state budget needs.
 - b) Infringement on scope of practice due to increased pressure from competitors.
 - c) Lack of reporting by LDs/LNs of cases of harm to Licensure Boards is perceived as a lack of vigilance on our part, or a lack of need for Licensure. Both of which may jeopardize Licensure's future.

- 4) In some states **funding for Licensure Boards** is a growing concern. The picture in Minnesota is quite different. In Minnesota all Licensure Boards are largely funded through renewal fees. For the Minnesota Board of Dietetic and Nutrition Practice (BDNP) renewal fees cover about 70% of our board's budget, with new applicant fees and miscellaneous making up the balance. In Minnesota no general fund dollars (public tax dollars) are used to fund the board. Some states have had their Licensure Board funding 'swept' or transferred into their general state fund budgets, or deposited into the general fund, making the board dependent on the state legislature to redistribute a portion back to the board. What's troubling is the portion being returned to the boards in those states is shrinking as states' budgets come under increased pressure. Another approach being taken by some states is to create "super boards" that do not use citizens to direct and oversee board decision making. Some states have "umbrella licensure boards" where one board oversees a number, or even all, the licensed occupations. In Minnesota we are grateful for our efficient, cost-effective and high performing independent BDNP. It should be noted that the Licensure Boards in Minnesota already share a number of services and logistics which keeps overhead expenses down but preserves board independence.

- 5) Another reason for heightened interest in Licensure is that our members and our professional organization, individually and collectively, are actively **pursuing direct billing and reimbursement** for services. In response, the provider and payer groups (for example United Health, Medica, etc) are using licensure as a “due diligence” measure to verify that the RD/RDN/Nutritionist is qualified. While our national credential under the Commission of Dietetic Registration (CDR) is highly respected and credible, provider and payer groups expect to see a local oversight and certification body. Many health care organizations are encouraging RD/RDN/Nutritionist licensure as a requirement for their third party business agreement-insurance. And here’s another aspect to all of this – with the availability of online verification, that screening check of state licensure status may happen without your involvement or awareness.
- 6) Maybe not the first thing you think of, but actually national **Health Care Reform** is a significant contributing factor to the increased interest in licensure. With passage in 2010 of the Affordable Care Act (ACA) being a licensed health profession conveys credibility. It reinforces our role as key players in health promotion, disease prevention and management and cost savings. Licensure is about protecting the public. Licensure does this by ensuring that local state educational and competency requirements are met, setting quality standards, and following up on complaints that are reported to the Board. Therefore, the passage of ACA and the subsequent rule writing to apply the federal law, give added incentive to states to pursue Licensure if they do not have it, and if they already have Licensure, to maximize its strategic value.
- 7) Scope of practice is under increased pressure from **competing groups** who see an opportunity for business growth and personal gainexamples may include those who put profit before public good from sales of unsubstantiated or potentially unsafe “nutrition” products, tests, procedures, diets or programs. Some of these situations are traced to ignorance but some are purposeful and fraudulent. The current opportunistic environment is likely the result of a potent mix of factors in the market place including: increasing public interest in alternative treatment options; greater marketing and promotion by groups and individuals eager to sell their products/services to the public; organized groups portraying state licensure efforts as power grabs, monopolies, anti-freedom of choice, and anti-free market.
- 8) Finally, the long term survival of licensure itself depends on **demonstrating an ongoing public safety** need. That need is made apparent by reporting potential harm or infractions of title/terminology and practice to Licensure Boards.

II. What is included in our Licensure Statute?

“Public Safety” is the sound bite reason for Licensure. The Statute is written to protect the public from unqualified individuals. The Licensure Board provides oversight that licensees have the appropriate educational background and continue to meet practice criteria. The Commission on Dietetic Registration (CDR) is a registration process and not a legal authority. In other words, and using an extreme example, AND cannot restrict RDs who may seek to intentionally harm the public. Minnesota’s Licensure Board does hold that authority. Furthermore the BDNP is able to enforce “cease and desist” for unlicensed practitioners who are engaging in “dietetics or nutrition practice” or using the protected titles “dietitian or nutritionists”, “licensed nutritionist or licensed dietitian”. This sets the LD, LN apart from various self-described “nutrition experts” who do not possess the credentials we have worked so hard to obtain.

III. Licensure Board Minnesota -- Board of Dietetics and Nutrition Practice (BDNP) operational highlights.

Below is a thumbnail sketch of Minnesota's licensure statute. A full copy of the statute is available at MN Statutes Ch 148.621 – 148.633 at <https://www.revisor.mn.gov/statutes/?id=148>

- 1) Each board is assigned an Assistant Attorney General. The BDNP's mission statement is as follows:
 - (a) Promoting public interest in receiving quality dietetic and nutrition services from competent licensed dietitians and nutritionists.
 - (b) Protecting the public by ensuring licensed dietitians and nutritionists meet the educational and practical requirements as specified by law.
 - (c) Protecting the public by setting standards for quality dietetic and nutrition services.

- 2) Licensure Board Members are appointed by the Governor:
 - (a) The BDNP consists of 2 dietitians, 2 nutritionists and 3 members of the public. Terms are for four years and those appointed can serve up to two consecutive terms (8 years total). In Minnesota we have been fortunate to have dedicated MAND members serve on the BDNP. It should be noted that roles and responsibilities of members of the board are compliance focused, i.e. applying the law/statute as written. LDs, LNs cannot be activists for the profession in their capacity as board member.
 - (b) Note: It is critical that BDNP positions not be allowed to lapse. We need strong representation on the BDNP from our dietitians and nutritionists. If you have any interest in serving on the BDNP, be sure to get in touch with one of us listed at the end of this overview.
 - (c) Additionally MAND has a member serving as MAND liaison to the Board. This additional MAND representation and access to the BDNP is a valuable asset. In September 2013, the Academy changed the title of this position from liaison to Consumer Protection Coordinator.
 - (d) BDNP has an Executive Director and administrative support. We are truly fortunate in Minnesota to have excellent board structure and support.
 - (e) The BDNP meets at least twice a year to review items of business including BDNP initiatives, renewals, new applicants, and review of complaints. Meetings are open to the public; anyone may attend. However, specifics of complaints are not disclosed because of the obvious need to respect confidentiality.
 - (f) For a list of BDNP board members, meeting minutes and meeting schedules visit www.dieteticsnutritionboard.state.mn.us

- 3) Protection of title/terminology and nutrition services are key strengths of our licensure. The licensure statute states that no person may engage in dietetics or nutrition practice unless the person is licensed as a dietitian or nutritionist. No person may use the title "dietitian," "licensed dietitian," "nutritionist," "licensed nutritionist, or any other occupational title using the word "dietitian" or nutritionist" unless so licensed by the board. Neither shall any person represent themselves as a dietitian or nutritionist unless licensed. However, any dietitian or dietetic technician registered by the Commission of Dietetic Registration (CDR) shall have the right to use their RD, RDN and DTR titles without being licensed.

- 4) There are many exemptions to the licensing requirement. The following are a few of the larger group exemptions. A primary area of exemption is for health professionals already licensed in their area of practice. This includes physicians, nurses, pharmacists, dentists and chiropractors, among others. Exempted licensed health professionals are able to incorporate nutrition “..incidental to the practice of the person’s profession...” . Another large area of exemption is for those employed by federal, state, county, municipal agency, schools and non-profits if the activity is within the scope of their employment and they are not misrepresenting themselves as dietitians or nutritionists. Additionally licensing is voluntary for persons employed by the Hospitals, Nursing Homes, Dept of Health, and Home Care. Consultants are required to be licensed. However now is a good place to insert the reminder that RD/RDN/Nutritionists must be licensed in Minnesota in order to legally follow a patient protocol or care guideline that includes a medication schedule.
- 5) Renewal requirements for licensure include a fee and completion of continuing education credits in a 3 year period. Renewal information is sent out to all LDs and LNs. For information on Licensure, access the Board’s web site at www.dieteticsnutritionboard.state.mn.us or email board.dietetics-nutrition@state.mn.us or call 651.201.2764.

IV. How are Complaints reported and addressed by the Board of Dietetics and Nutrition Practice (BDNP)?

The BDNP relies primarily on LDs, LNs and MAND membership to report cases of potential harm or misrepresentation of title/terminology and practice through the complaint process. Below is a simplified step by step version of the complaint process.

- 1) Contact the BDNP if you suspect a violation of title/terminology use or a case of potential harm from an unqualified individual engaging in dietetics or nutrition practice. If you are not sure of the appropriateness of your complaint, or could use a little coaching to complete the complaint form, you can contact the board for guidance. www.dieteticsnutritionboard.state.mn.us or email board.dietetics-nutrition@state.mn.us or call 651.201.2764.
- 2) On the BDNP website (www.dieteticsnutritionboard.state.mn.us) you will find a “File a Complaint” button.
- 3) The BDNP assigns a sub-committee comprised of LD, LN from the board to serve as a Complaint Panel. The Complaint Panel will review the complaint and close, dismiss, provide educational remediation or recommend discipline for each case. Education is through an Agreement for Corrective Action and is public but not disciplinary, while a Stipulation and Order is disciplinary and public. For minor issues the best course of action is to send a letter of inquiry. The letter might state that the individual needs to improve the quality of their practice and request a plan to assess or improve core competency. This action is non-public and non-disciplinary.
- 4) To give an example of complaint volume, in a recent two-year period there were nine complaints sent to BDNP. Seven were unlicensed individuals with various backgrounds but not licensed dietitians/nutritionists. The two other complaints were regarding unprofessional conduct, and ability to practice with reasonable skill and safety. None of the nine resulted in formal discipline.
- 5) The obvious question is, “Well okay I understand the mission of licensure is to protect the public from dietitians and nutritionists who are not practicing properly, and to prevent unqualified individuals from using the title or terminology. But what about healthcare professionals who are not dietitians or nutritionists, but are engaged in dietetics or nutrition practice that they are not qualified for? How do

I report those complaints?” The process is the same. Submit the complaint through the BDNP. The Board’s complaint panel will then refer it to the appropriate health licensing board for action or if the individual is unlicensed, consult with the Attorney General’s office.



V. Back to the Minnesota Sunset Act -- What was that about?

At the end of the 2011 State Legislative session, and unbeknownst to most, the Minnesota Sunset Act was enacted. The Sunset Act established an Advisory Commission appointed by then Governor Pawlenty to consider the merits of a department, agency, or other government entity based on 12 criteria. In 2012 all health-related licensing boards, including the BDNP, were reviewed for objectives, performance and relevance. BDNP sailed through thanks to the Board’s excellent report and review of systems and service. Some states have Sunset Laws for their licensure laws. This is an entirely different situation from Minnesota’s Sunset Act that reviewed the BDNP. States with Sunset Laws for Licensure must justify continuation of licensed status at fixed intervals. The objective of Sunset Laws is to eliminate licensure if it is deemed unwarranted for a particular profession. Unfortunately it can become quite vicious if there is significant opposition from competitive groups and special interests. Preserving and renewing important licensure laws in an antagonistic environment takes extraordinary funds, time and resources. Once again, Minnesota took a wiser approach. Minnesota does not have Licensure Sunset law. Minnesota has what is sometimes called a “Sunrise” approach. With the “Sunrise” approach, the original licensure effort must include a budget impact analysis and a solid public safety rationale. With this front end approach, the licensed Minnesota health occupations and Legislature are not burdened with the recurring task of revisiting licensure laws.

VI. What are Minnesota statistics?

- Currently about 1700 Licensed Dietitians and Nutritionist in Minnesota.
- Of that total, about 80 Licensed Nutritionists and remainder as Licensed Dietitians (Note: majority of Licensed Nutritionists are RDs also)
- Approximately 2200 RDs in the state of Minnesota, and about 60% are AND members.
- MAND membership is about 1,600.
- There are 12 other health professions in Minnesota with Licensure; to name a few - Nursing, Dentistry, Chiropractic, Social Work, Pharmacy, Physical Therapy and Veterinary Medicine

VII. What are AND statistics?

- Has about 75,000 members
- 35 States or territories have Licensure, including Minnesota which was one of the first
- 7 states have certification (4 of those seeking Licensure)
- 3 states have title protection

- 3 states have no law/statute (2 are seeking Licensure)
- 4 states have Licensure pending
- Note: in order of strength or merit, Licensure is ranked first, followed by certification, with title protection being the weakest.
- The path to Licensure has become more heated and challenging for those states that are pursuing it. Highly organized groups have developed strong opposition strategies for state Licensure efforts. There are even outrageous claims that Licensure is part of a conspiracy by AND or state affiliates to monopolize nutrition services.

VIII. We're only as effective as our 1,600 MAND members, so here is the rally cry!

- Member awareness and understanding are key to preserving and leveraging Minnesota's Licensure. Hopefully this overview has given you a better understanding of the importance of reporting your concerns, or concerns your patients and clients may have, regarding public safety, title/terminology use and practice of dietetics and nutrition to the BDNP.
- If you're still asking, is Licensure for me? Consider this. Employer and provider/payer requirements for licensure are growing as they look for assurance that the individuals they are employing or reimbursing have been credentialed and verified by an independent entity such as a Licensure Board. Licensure sends a built-in message of integrity, competence and qualification. We are in a rapid phase of multiple health care initiatives and opportunities. When decision makers are looking for a shorthand way to define a qualified service provider, they will often include the descriptor "licensed" in their regulations. Lastly, we can't predict the future -- only strive to be ready for it. Licensure is one way to be ready.

IX. FAQ

1. **Is licensure required to engage in dietetics or nutrition practice in Minnesota?** *Yes, unless exempted from the licensing requirements detailed in the law, section 148.632.*
2. **How is dietetics and nutrition practice defined in Minnesota's law?** *"...the integration and application of scientific principles of food, nutrition, biochemistry, physiology, food management, and behavioral and social sciences to achieve and maintain human health through the provision of nutrition services."*
3. **Is there a detailed "scope of practice" in our Minnesota law?** *There is not a specific scope of practice in the Minnesota licensure statute. This is an advantage. The general nature of our licensure language supports the evolving and advanced practice of our field, patient/client needs and work goals and objectives. As with any area of practice it is critical to have appropriate qualifications and expertise. This may take the form of additional credentialing or certifications. Furthermore, it is important to confirm "professional privileges" for your area of practice within an organization. In many cases this is outlined in job descriptions, roles and responsibilities, etc. In the case of advanced or emerging areas of practice, ensure it is endorsed by your organization. And congratulations of advancing your professional services! An example of where our broader licensure language was an advantage is the 2014 Therapeutic Diet Order ruling clarification by the CMS. The Federal US Statute 482.22 clarified that hospital dietitians are able to independently order therapeutic diets (along with laboratory tests to monitor the dietary plan) provided they are privileged to do so by their hospital. The CMS ruling became effective July 11, 2014. Minnesota was one of fewer than 20 states (green states in the map) determined by the Academy not to have any "impediments" in our state licensure statute to*

Master's degree or higher to legally use the Nutritionist title. Additionally, for future BDNP positions on the Licensure Board it would certainly help to have a greater pool of LN's for the Governor's office to select from. The BDNP has two seats for LDs and two for LNs but the vast majority of licensees are LDs.

9. **Is it an issue to put off doing my licensure renewal until the very last day of deadline?** Putting off renewal of your license until deadline could likely create a gap in your online licensure status. One to two weeks are needed to process renewals and update your online information. A gap in your online licensure status can create added risk for your employer, your patients and you.
10. **Is there any urgency to responding to audit requests from the Licensure Board?** If you are selected for an audit it is essential that you are diligent in responding to audit requests in a timely manner. Licensure is in place for protection of the public. Audits are required under the rules of the licensure statute to verify that the public is being protected. Delays in responding to audit requests are tantamount to saying Licensure is not important.

MAND contacts:

If you have additional questions or comments for your MAND public policy representatives, please don't hesitate to contact any one of us.

- Ann Erickson: State Policy Rep ann.erickson75@gmail.com c 651.808.3297
- Laura Perdue: Public Policy Coordinator leperdue@gmail.com c 612.834.4604
- Karen Holtmeier: MAND CPC, liaison to the BDNP kholtmeier@medicalweightcenter.com
- Louanne Kaupa: State Reimbursement Rep eatwellnt@qwestoffice.net
- Katelyn Engel: State Regulatory Specialists Katelyn.engel10@gmail.com
- MAND office mand@eatrightmn.org ph 952.830.7022

Thank you for your ongoing support!

Quiz: (Circle the best answer, and check for correct answers in box below.)

1. Minnesota Licensure is something we need to promote, preserve and protect because:
 - A. Licensure is being used more often by payers/providers as a means of gauging an individual's competency and qualification.
 - B. While your Registration/CDR serves as your national credential it does not provide the legal authority and local oversight that licensure does.
 - C. Licensure distinguishes us from unqualified and less scrupulous people representing themselves as RD/Nutritionists.
 - D. All of the above.
2. If I follow a patient care or practice protocol that includes reference to pre-defined physician prescribed medications I need to be:
 - A. Credentialed in protocol adherence.
 - B. Licensed
 - C. Co-signed by an RN or RPh
 - D. CDR Registered
3. I can help keep Licensure strong in Minnesota by:
 - A. Reporting cases of potential harm and misuse of RD/Nutritionist title/terminology to the Licensure Board through the Complaint process.

- B. Being licensed, encouraging others to be licensed and supporting use of licensure as a means of identifying qualified professionals.
 - C. Dropping my Registration and just getting licensed.
 - D. A & B above
4. Evidence of heightened national efforts related to licensure include:
- A. House of Delegates (HOD) mega issue
 - B. AND sponsored Licensure workshops to emphasize the importance of licensure with state affiliates.
 - C. Those opposed to RD/Nutritionist licensure are very vocal and organized.
 - D. All of the above.
5. To report a complaint of potential harm or misuse of RD/Nutritionist title or terminology:
- A. Post it on Facebook
 - B. Notify your District and MAND Presidents
 - C. Submit via the “File a Complaint” process found on the Licensure Board website www.dieteticsnutritionboard.state.mn.us
 - D. Write a letter to the editor

Answers: 1 (D), 2 (B), 3 (D), 4 (D), 5 (C)