

April 20, 2004

To: House of Representatives, Commerce and Labor Committee

From: Kay Mavko, Executive Secretary, Ohio Board of Dietetics

INTRODUCTION

My name is Kay Mavko, Executive Secretary of the Ohio Board of Dietetics. I appear here to day on behalf of the Board in opposition to HB 188.

The mission of the Board is to protect the public by regulating the practice of dietetics which includes making nutritional assessments and recommendations, providing nutritional counseling and education, and establishing and consulting regarding nutritional care standards.

I had prepared my remarks according to (version -4) when suddenly late yesterday I became aware that (version -5) had been drafted. Because neither the Board members nor I have had adequate time to fully review the bill or to discuss it, I must ask that you accept my testimony related to the changes in (version -5) as unofficial but in keeping with my understanding of their overall approach.

BACKGROUND

The proponents of Substitute HB 188 are salespersons and natural practitioners who have repeatedly attempted to break down licensure and reduce the authority of the Ohio Board of Dietetics and protection of Ohioans regarding the practice of nutrition and dietetics. They have made unfounded accusations aimed at the activities of the Board, provided inaccurate interpretations of the existing licensure law, and attacked dietitians, their scientific practice, and the American Dietetic Association.

Each bill they have introduced has had a different focus that shifts in order to promote the proponents expanding agenda to allow persons without identifiable educational standards to engage in nutritional activities and “natural health practices” that are currently reserved for licensed health professionals. They have testified that they believe that it is their “God given right” to provide treatments to consumers with serious diseases including cancer, renal disease, heart disease, diabetes and others. They have said that they didn’t understand what it was they could legally say about dietary supplements without a license, or what they could legally say about nutrition without a license.

The Ohio Board of Dietetics has listened to the proponents concerns about not know what they could say and has taken actions that have provided clarity to areas within the statute where confusion was claimed. In 2000 the licensure law was amended to clarify the claims allowed during the sale and promotion of dietary supplements. (A copy is provided in Tab #1) In 2003 the Board added an Administrative Rule to clarify the general non-medical nutrition information that can be provided by unlicensed persons. A copy of the rule is provided in Tab#2 for your review. You can see that it allows provision of a broad range of nutrition information.

The Board has responded to the baseless accusations of heavy handedness and provided the committee with information refuting the accusations. The proponents even complained to the

Governor's office and the Inspector General's office about the Board, and based on the intake assessment of the IG's office there was determined to be no evidence worthy of further investigation. Despite the accusations and misinformation, now the proponents are seeking recognition for their practices by the State of Ohio by proposing the registration of practitioners by the Ohio Board of Dietetics – the very Board that they have maligned over all these years.

HB 188

Substitute HB188 changes the name and composition of the Ohio Board of Dietetics, authorizes a state authorized “registration” and allows use of a title “natural health educator”. It establishes an extensive scope of practice for registrants, changes definitions of the activities that make up the practice of dietetics, and allows the registrants to engage in those newly defined activities without meeting equivalent requirements to dietitians. Make no mistake about it, HB 188 is a licensure bill. HB 188 has a proscribed scope of practice and it is protected. Only those who are registered or licensed may practice. Those who are not registered or licensed can be enjoined from practice and violation is a misdemeanor.

HB 188 also requires that consumers are provided with a document that they call a “disclosure” document before the registrant provides services.

Version –5 of the bill establishes an unprecedented application review committee separate from the Ohio Board of Dietetics whose members are appointed by the Health Department, and is responsible to review and determine whether the registrant applicants meet the Ohio Board of Dietetics requirements for registration.

The bill also proposes that all complaints be reviewed by a new board case review committee prior to docketing.

The bill authorizes very limited enforcement authority for the Board related to the registrants.

Representatives of the Ohio Dietetic Association and the Board have met with the proponents, sponsor Reidelbach, Chairman Young, and others on numerous occasions to express our concerns with versions of the bills, and have offered suggestions for meaningful regulation. The meetings have reduced the problems related to the Board's authority over dietitian licensees, some enforcement issues, and some administrative areas.

However, major deficiencies remain in Substitute HB 188 in the key areas of:

- A. Scope of practice**
- B. Education and experience requirements**
- C. Testing of applicants**
- D. Standards for on-going competency**
- E. Title protection**
- F. Use of the “disclosure” document**
- G. Investigation and enforcement**

And I anticipate that the Board will have new concerns including, but not limited to, the application review committee, fee structure, proposed definitions, and continuing education requirements.

A. Scope of Practice

The proposed scope of practice in Sub HB 188 related to nutrition is overly broad, and is not consistent with the education and training proposed for the registrants.

The proposed scope of practice allows the registrants to provide "nutritional education", "nutritional counseling", or "nutrition services" as defined by the bill.

For the first time, Version 5 defines these terms as they are meant to apply to the scope of practice for new nutrition health educators. Unfortunately the definitions are placed in a section so that the new definitions apply not only to nutrition health educators but also the practice of dietetics and redefine what a dietitian is permitted to do. I am sure the Board, dietitians, their employers and their clients will be very concerned about these new definitions.

I am uncertain if the proponents still want to do the whole practice of dietetics, change the practice of dietetics, or have erred in drafting and intend to somehow re-define in some other way those terms that have long been accepted by the public for providing scientifically based nutritional care. It certainly would add total confusion for consumers, who could not know what to expect from a dietitian or licensed health professional who provides nutrition education or counseling, versus the proposed definitions for the services that the proponents want the State to authorize.

The proposed scope for natural health educators allows registrants to collect diet and health information via diet and health histories. But it is unclear what they will be authorized to do with the information. If it allows the formulation of nutritional recommendations and engaging in nutritional counseling there should be educational and training requirements established that support those activities.

Integrating and evaluating nutritionally relevant data to develop individualized nutritional care plans and make responsible recommendations requires a broad educational background and particular knowledge and skills in the areas of communication, physical and biological sciences, social sciences, research, food and food science, nutrition, and management in order to safely, and accurately assess nutritional status. The quality deficient educational and training requirements proposed for the registrants do not support the scope of practice proposed.

Under tab #3 just take a minute to review the knowledge and skills required of the dietitian's curriculum against an example of a B.S, M.S. or PhD. program curriculum that would qualify applicants for the proposed registration. Where are the physical and biological sciences, social and communication sciences, food science, research and clinical experiences that are key to engaging in nutritional assessment and counseling? They are not there.

Performing nutrition assessment, making recommendations and engaging in one-on-one counseling behind closed doors about nutrition places the practitioner in a position of influence over the client. The process requires the collection, assessment, and integration of intimate medical, personal, and sometimes financial information. Dietitians work with the client, his family, and the medical team, using the differential diagnosis provided by doctors, to determine the nutritional actions that are appropriate. They determine a plan of action based on science, use established nutritional protocols, and utilize counseling techniques that are assessed for positive

outcomes and effectiveness. There is no indication in this bill that the registrants will do the same.

The Board's experience is that many of these practitioners engage in assessments, surveys, and use non-FDA approved diagnostic biomedical machines to collect "health information" about their clients. Then they declare that the client has an "imbalance" of the liver, the blood sugar, the colon, or the heart and that it will be returned to "balance" if he/she eliminates all dairy products from their diet, takes the \$300 package of 16 dietary and herbal supplements, engages in weekly colon cleansings, and follows up with the \$45 per session sound therapy to alleviate the negative vibrations causing such "imbalances". Sounds like assessment, diagnosis, recommendations, and medical nutrition therapy to me. Or is it taking a health history and providing information?

Persons should not be authorized by the state and be able to put on a white coat and have such influence unless they can be held to standards that will assure that the practitioner is minimally competent, and has established standards for practice so that he will not misuse or abuse his position of power and influence. Sub HB 188 includes inadequate educational and training requirements, no minimum competency testing, and no standards of practice that would support the registrant's ability to engage in the scope of practice proposed.

In its new rule regarding general non-medical nutrition information, the Board indicated a permissible standard for those without scientific training. As currently defined in Ohio Administrative Code Rule 4759-2-01(M) ORC, persons are allowed to provide a broad array of nutritional information and to educate clients about nutrition from any scientific or "philosophical" viewpoint. Version -5 uses the same term for general non-medical nutrition information" as appears in the Board rule. If the term is used in the statute, the bill should use the same definition as appears in rule. This is the extent of what is safe and reasonable for the registrants proposed scope of practice. They should not be authorized to perform other activities that would allow such influence.

The proposed scope of practice goes beyond nutrition. It applies the scope of practice to naturally occurring nutritional substances that include "but is not limited to" foods, food substances, natural vitamins and minerals, herb and herbal preparations; roots; barks; homeopathic preparations, plant substances and natural medicines of animal, mineral, or botanical origin; or any other substance not requiring a prescription.

Clearly the inclusion of "homeopathic preparations, plant substances and natural medicines of animal, mineral, or botanical origin; or any other substance not requiring a prescription." indicates that the proponents intend to authorize practices that are not nutritionally related but are within the realm of alternative medicine and naturopathy. Proponents of the bill have previously espoused their desire to "offer alternative treatments to individuals suffering from a variety of diseases who no longer want traditional medical treatment" and have stated that they would treat persons with diabetes, heart disease, kidney disease and other conditions. Such treatments may in fact conflict with the practice of medicine.

The mission of the Board of Dietetics is protection of the public by regulation of nutritional practices that make up the scope of dietetic practice - not the practice of naturopathy or naturopathic medicine. If the proponents really want the authority of the state of Ohio to practice naturopathy they should lobby for it through the two bills (HB 451 or HB 264) currently in the legislature that are proposing the licensure of naturopathic practitioners. Those bills have standards and enforcement provisions. They should not hide behind the Ohio Board of Dietetics and seek to practice naturopathy under the guise of nutrition.

B. Education and experience requirements

Substitute HB 188 (version –5) allows a variety of education or apprenticeship or work experiences to qualify for the registration. Over time (and versions of the bills) some of the options include an impressive number of hours - but **none are adequate in quality requirements to prepare practitioners to practice the proposed scope of practice**. Without both a sound education base and practice experience practitioners will not develop the skills necessary to safely care for clients with nutrition-related medical conditions.

The proposed registration requirements have changed significantly throughout the various version of the bill, and currently include:

Education alone - the study of either nutrition or “health-related areas” that include some nutrition or subjects related to nutrition. Some of the nutrition coursework can be accomplished through “outside areas” and verified by transcripts or continuing education certificates or “other methods” or

Certification alone- Completion of a certification program such as Certified Nutritionist or Certified Clinical Nutritionist or the equivalent in terms of hours or course of study

There is no requirement that any of the educational or certification programs bestowing the degree or certificate meet any standards to assure that their content is relevant to the proposed scope of practice - or that they are approved by an organization recognized to approve bonified educational programs. The educational oversight committee may but is not required to evaluate the programs the applicant has completed by any means necessary. How is this committee supposed to develop standards to evaluate programs or to develop the expertise that would be necessary to determine validity of an applicants program?

Other proposed routes to registration include:

Apprenticeship alone- 6000 hrs working under a registrant or a “licensed MD, or DO”

Work experience alone – 5 years of documented work experience in the nutrition field – working at a nutrition-related business, practice, institution, or other organization.

A non-programmed approach – “documented completion of courses that can represent at least 250 hours of instruction or study that include, but are not limited to, distance learning, CE programs, or classroom instruction.

The experience and apprenticeship options only require that the applicant “work under” someone or have “documented” work experience. **Again there is no required structure or quality guidelines provided for the experiences.**

It also seems quite inconsistent that one must apprentice for 6000 hours with a licensed MD, or DO but you would only have to provide “documentation of 250 hours of instruction or study” in the “non-programmed” approach. All of the approaches appear to be “non-programs” to me.

Most health licensure or registration laws require both education and a controlled experience, before allowing a person to practice. The idea is to know they have a sound education and have learned how to apply that education.

No other license, registration, or certificate authorizing persons to practice in a health related profession in Ohio has requirements as devoid of quality as those proposed in this bill. Barbers, beauticians, veterinarians, dental hygienists, nurses aides, and hearing aid dealers are required to engage in approved education, by accredited schools, and must prove minimum

competency by passing a test before engaging in their craft. Does the state care more about the health and safety of hair than nutritional health?

The proposed requirements are simply an effort at pretend regulation - not to provide a structure that really supports competent nutritional practice.

Proposed Registration Process.

The bill places the authority for determining if a person meets the education or experiences requirements in a special governmental entity, the Natural Health Educator Education Oversight Committee. It is unclear if the new entity is a separate entity of government, part of the Ohio Department of Health or the Ohio Board of Dietetics. The committee is required to review each applicant's pretend degrees, certificates, and experiences that could be submitted with applications – within 30 days, with no standards, no staff resources, no expertise, and I don't know whose budget. It is also unclear as to how the Ohio Administrative Practices Act (RC Chapter 119) and its due process provisions apply to the committee or the Board if they recommend or deny an applicant. And how would a due process hearing be funded? I bet the Health Department won't take that on.

The Board is required to issue the registration within 10 days after receipt of the recommendation. It has no discretionary authority after a recommendation by the Oversight Committee. What about verification of legal matters including out of state licenses, or previous professional legal actions? It is apparent that this rush job is intended to impede thorough review of applicants.

The bill will also grandfather in for registration anyone who obtained their education and experience at the time the bill goes into effect with no review of their competence.

D. Testing

There are no testing requirements established in order to determine minimum competency for practice, nor are there any standards of practice upon which to gauge on-going professional competency.

An examination that would determine entry-level competency is absolutely necessary if the registrants are to be authorized to engage in such a broad scope of practice. All of the other licensed health professions in Ohio and other states require testing to assure entry-level competency. Yes, even barbers and beauticians must be tested. **The citizens of Ohio must be able to trust that any license, certificate, or registration authorized by a State Agency indicates that the holder is proficient to practice the profession authorized.**

E. No Standards of Practice

The bill does not provide authority for the board to establish standards of practice for the registrants. There are standards imposed on a dietitian's practice, and on all licensed health professions in Ohio. They include initial standards on service, use of credentials, endorsement, competence, supervision, ethics, compliance, interpretation of information, confidentiality, and professional conduct that are inherent to safe and responsible practice. And the respective regulatory Board has the authority to hold the practitioner accountable for breaching them.

Because the standards are in place, consumers in Ohio can be assured that the practitioner who carries a license or registration is competent to practice the scope authorized and will be disciplined or removed from practice if they do not continue to meet the standards.

Not so for the registrants. They would be issued a registration on the basis of inadequate education and training, and would be able to then engage in practices for which they are not accountable. Does this sound like the ideal environment for fraud and quackery? It sure does to me.

F. Title Protection

Proposed section 4759.02 removes the existing prohibition for the use of other titles, words, letters, or insignia that indicate the practice of nutrition and dietetics or as they relate to the practices of the registrants.

Dietetics is based on the scientific practice of nutrition – nutrition assessment and recommendations, nutritional counseling and education, development of nutrition care standards, and provision of medical nutrition therapy. Those words have been defined for 17 years as applied to the Ohio law, and have been accepted in Ohio and nationally, for at least the past century. The public knows and understands what they mean. Now, version –5 of Sub HB 188 proposes to re-define them and utilize them to represent something different to the public. This will result in total confusion to consumers, the medical community, and insurance carriers.

Removal of the title prohibition would allow anyone to use the titles nutritionist, nutritional counselor or make up titles like “nutritional symptomologist”. And now that I can’t even tell you what nutrition services are, or if a dietitian can still provide medical nutrition therapy in Ohio, how can we expect an elderly infirmed diabetic, or renal patient to know?

The public should not be burdened with trying to figure out the alphabet soup of titles, or initials that one can attach to their name to ordain themselves to be an expert.

G. Use of the disclosure document

Back during the hearings on HB 314 the proponents adapted a disclosure document used in Minnesota by “naturopathic practitioners” and continue to include it in Sub HB 188. They have called it “the patient bill of rights” or “disclosure” document. The theory is that by providing this paper to a consumer prior to the registrant providing services the consumer will know what he is getting, and can make an informed choice about the registrant.

The current version of the disclosure looks more like an “advertisement” that the practitioner is registered by the state of Ohio than a document intended to provide informed choice. In tab # 4. I have provided you with a notice marked into sections for reference. I also have provided you with three other examples of practitioners who would qualify as registrants under the proposed bill. Although section 1 of the notice does require that registrants reveal where their education or training came from (a good thing) can you tell which sample practitioner graduated from a regionally accredited college or university? Section 2 goes on and on describing how the practitioner gets and keep his/her registration. Does the notice really provide any better understanding of who and what this practitioner is, or what his authorized scope of practice includes, and how his activities could affect nutritional health?

Look at the end of the notice in section #9. Does it appear that the Board who registers the practitioner will have the authority to discipline them if the consumer’s so called “rights” are not upheld – if they aren’t provided with current information, if they physically or verbally abuse the client, if they do not keep client records confidential, or prohibit clients from seeking services elsewhere? This bill does not allow the Ohio Board of Dietetics to enforce the so called “rights”. Because of the way Sub HB 188 is written, the only authority the Board would have over the notice is to discipline the registrant if they did not give it to the consumer and get it signed before

they provided their services, or if the registrant recommended discontinuance of a medical treatment. We would have no enforcement over incompetent practices of registrants, or the supposed “rights” included in the document - and it is not apparent that the rights are backed up by any other federal or Ohio laws. **Not only is the document not valuable disclosure, it provides a false “appearance” of authority where little or none exists.**

Why should a state registered practitioner have to provide such a document in the first place? Is the consumer really going to read it or understand the documents purpose? The recently published study by the Institutes of Medicine on health illiteracy certainly casts doubt upon the concept. The study notes that over 90 billion people in the U.S. have trouble comprehending medical forms in order to make personal medical decisions.

The state issued registration or license is the accepted indicator of quality, standards, and authority that people understand – not a misleading advertisement for an unqualified practitioner.

And by the way, all of the samples in tab #4 are examples of real persons who would qualify under the provisions of this bill. At least until now the Board has been able to stop them from harming the sick and vulnerable in Ohio under the guise of nutrition by restricting them from practicing dietetics.

H. Investigation and Enforcement

The complaint docketing process proposed, requirements for the board to take actions, investigation processes, and enforcement authority over registrants have been crafted in a manner that makes the regulation of these practitioners almost impossible. They would gain the “stamp of approval” that the use of a state registration provides without the state being able to hold them to safe basic entry requirements, competency, or standards of practice. And the state would be authorizing new practices in the area of naturopathy that are outside the mission of this board.

Conclusion:

Chairman Young and committee members, the Ohio Board of Dietetics appreciates your efforts to get both sides of this issue to the table to seek some reasonable resolution. Until and unless the proponents propose some meaningful quality education, training and competency requirements that correspond to an appropriate and safe scope of nutrition practice that includes standards for practice that are enforceable, the Board can not support such legislation if it is to continue to meet its mission of public protection.

The only safe and reasonable scope of practice for these practitioners is to provide general non-medical nutrition information and education. They are seeking the authorization of the State of Ohio without adequate education, training, competency, or standards so their practice must be limited.

When the Ohio Board of Dietetics has an opportunity to review the changes in version –5 of Substitute HB 188 I anticipate that they will continue to oppose it.

Today and over the past four years you have heard about the harm and danger that bad nutritional advice can cause. You see the devastating results of lifetimes of poor health and nutrition decisions. You see the increasing numbers of seriously ill citizens suffering from diabetes, renal disease, heart disease, and obesity and other complicated medical conditions related to nutrition. And we all feel the impact of rising health care costs.

Please do not abandon science based nutrition practice and allow the citizens of Ohio to become the guinea pigs of natural practitioners who can espouse unlimited “philosophies”

and who hide behind nutrition to provide naturopathic treatments to vulnerable children, senior citizens, and those battling already serious diseases. Please do not allow the proponents of Sub HB 188 to destroy the safe practice of nutrition and dietetics that Ohio has exemplified for the past 17 years. Please do not support Substitute HB 188.