

By: Goodman

H.B. No. 1834

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of clinical nutritionists; providing a civil penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle M, Title 3, Occupations Code, is amended by adding Chapter 703 to read as follows:

CHAPTER 703. CLINICAL NUTRITIONISTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 703.001. GENERAL DEFINITIONS. In this chapter:

(1) "Board of health" means the Texas Board of Health.

(2) "Clinical nutrition" means the health professional discipline that applies principles derived from current nutritional knowledge and biochemical and physiological scientific knowledge to promote optimal health.

(3) "Clinical nutrition practice" means the practice of clinical nutrition according to the guidelines set forth in the scope of practice of clinical nutrition adopted under this article.

(4) "Clinical nutritionist" means a health professional who applies clinical nutrition principles.

(5) "Commissioner" means the commissioner of public health.

(6) "Department" means the Texas Department of Health.

(7) "Institution of higher education" has the meaning assigned by Section 61.003, Education Code.

1 (8) "Nutritional supplements" includes food,
2 vitamins, minerals, botanicals, nutraceuticals, glandulars, amino
3 acids, trace elements, chemical supplements, homeopathic remedies,
4 macronutrients, micronutrients, herbs, and metabolites designed to
5 augment clinical deficiencies in the human body.

6 (9) "Nutritionists board" means the Texas State Board
7 of Examiners of Clinical Nutritionists.

8 (10) "Supervision" means control exercised over a
9 provisionally registered clinical nutritionist, student,
10 assistant, or technician working within the same facility as the
11 supervising clinical nutritionist.

12 Sec. 703.002. DEFINITION OF CLINICAL NUTRITION. (a) In
13 this section:

14 (1) "Nutritional assessment" means the evaluation of
15 individual and group nutritional needs, recognizing biochemical
16 individuality, to determine factors necessary to restore or
17 maintain healthy physiological function. The term includes the use
18 of appropriate tests and observations interpreted in terms of
19 optimal values and nutrition and lifestyle analysis to determine an
20 appropriate nutritional program, including:

21 (A) a case history;
22 (B) anthropometric measurements;
23 (C) physical signs; and
24 (D) biochemical data, including laboratory
25 tests.

26 (2) "Nutritional counseling" means communication of
27 the various aspects of clinical nutrition background information

1 and assessments, including:

2 (A) previously poor health habits, including
3 diet;

4 (B) evaluation of appropriate tests and
5 laboratory assessments to demonstrate individual differences that
6 produce a decline in good health; and

7 (C) the recommendation of an appropriate diet and
8 supplementation program, including micronutrients,
9 macronutrients, herbs, amino acids, trace elements, and
10 metabolites.

11 (b) Clinical nutrition is a specialization in the science of
12 nutrition that requires an understanding of nutrition biochemistry
13 that enables the practitioner to competently assess and evaluate
14 signs of nutritional deficiency or imbalance, through the use or
15 disuse of specific foods, vitamins, minerals, herbs, amino acids,
16 trace elements, glandulars, or other substances as necessary to
17 maintain optimal health.

18 (c) Clinical nutrition may be practiced through a
19 client-counselor relationship and requires knowledge of:

20 (1) basic concepts of human physiology derived from
21 medical and scientific literature;

22 (2) basic human anatomy derived from medical and
23 nutritional texts;

24 (3) nutrient roles and functions derived from medical
25 and scientific literature;

26 (4) human nutritional requirements to:

27 (A) provide individual client guidelines; and

- 1 (B) implement lifestyle modifications;
2 (5) the effects of nutritional imbalances, both
3 deficiencies and excesses, derived from clinical evaluation and
4 research findings;
5 (6) medical and scientific terminology;
6 (7) pharmacological and environmental effects on
7 nutritional status derived from findings from medical and
8 scientific literature;
9 (8) the effects of socioeconomic influence, food
10 selection, and food preparation on the nutritional status of
11 clients;
12 (9) the process of nutritional assessment and
13 evaluation through the use of appropriate clinical tests based on
14 previously collected data to document or confirm suspected
15 nutritional deviations or abnormalities;
16 (10) pertinent anatomical characteristics relevant to
17 nutritional status, including a client's weight, height, posture,
18 body fat, and musculature;
19 (11) the process of evaluation and interpretation of a
20 client's clinical data by careful analysis and application of
21 clinical judgment to formulate an appropriate nutritional
22 protocol;
23 (12) nutritional counseling skills and case
24 management;
25 (13) referral practices and skills for referring the
26 client to a licensed health care practitioner; and
27 (14) office management, state and federal laws, and

1 liability insurance acquired by reading the state and federal
2 codes, statutes, and laws and seeking legal counsel.

3 (d) Engaging in practice as a clinical nutritionist as
4 described by this chapter is not the practice of medicine as defined
5 by state law.

6 Sec. 703.003. SUNSET PROVISION. The Texas State Board of
7 Examiners of Clinical Nutritionists is subject to Chapter 325,
8 Government Code (Texas Sunset Act). Unless continued in existence
9 as provided by that chapter, the nutritionists board is abolished
10 and this chapter expires September 1, 2007.

11 [Sections 703.004-703.050 reserved for expansion]

12 SUBCHAPTER B. BOARD OF EXAMINERS OF CLINICAL NUTRITIONISTS

13 Sec. 703.051. BOARD; MEMBERSHIP. (a) The Texas State Board
14 of Examiners of Clinical Nutritionists consists of nine members
15 appointed by the governor as follows:

16 (1) three members who are clinical nutritionists who
17 hold a registration issued under this chapter, who do not have an
18 additional primary practice, and who have been registered under
19 this chapter for at least the three years preceding the person's
20 appointment to the nutritionists board;

21 (2) three members who are health care practitioners,
22 as described by Subsection (c); and

23 (3) three members who represent the public.

24 (b) Appointments to the nutritionists board shall be made
25 without regard to the race, color, disability, sex, religion, age,
26 or national origin of the appointee.

27 (c) The professional discipline of clinical nutrition

1 includes six primary areas of expertise: clinical, educational,
2 research, management, consultation, and community service. In
3 appointing health care practitioners to the nutritionists board,
4 the governor shall consider the broad spectrum of health care
5 practitioners who practice clinical nutrition in those areas of
6 expertise and attempt to achieve a continuing balance of
7 representation among those practitioners. Health care
8 practitioners eligible for appointment under Subsection (a)(2)
9 include physicians, chiropractors, dentists, and clinical
10 nutritionists. To be eligible for appointment under Subsection
11 (a)(2), the appointee must have at least two years of experience in
12 clinical nutrition practice, clinical nutrition education, or
13 clinical nutrition research.

14 Sec. 703.052. ELIGIBILITY OF PUBLIC MEMBERS. A person may
15 not be a public member of the nutritionists board if the person or
16 the person's spouse:

17 (1) is registered, certified, or licensed by a
18 regulatory agency in the field of clinical nutrition;

19 (2) is employed by or participates in the management
20 of a business entity or other organization regulated by or
21 receiving money from the nutritionists board;

22 (3) owns or controls, directly or indirectly, more
23 than a 10 percent interest in a business entity or other
24 organization regulated by or receiving money from the nutritionists
25 board; or

26 (4) uses or receives a substantial amount of tangible
27 goods, services, or funds from the nutritionists board, other than

1 compensation or reimbursement authorized by law for nutritionists
2 board membership, attendance, or expenses.

3 Sec. 703.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In
4 this section, "Texas trade association" means a cooperative and
5 voluntarily joined statewide association of business or
6 professional competitors in this state designed to assist its
7 members and its industry or profession in dealing with mutual
8 business or professional problems and in promoting their common
9 interest.

10 (b) A person may not be a member of the nutritionists board
11 and may not be a board employee employed in a "bona fide executive,
12 administrative, or professional capacity," as that phrase is used
13 for purposes of establishing an exemption to the overtime
14 provisions of the federal Fair Labor Standards Act of 1938 (29
15 U.S.C. Section 201 et seq.), and its subsequent amendments, if:

16 (1) the person is an officer, employee, or paid
17 consultant of a Texas trade association in a field regulated by the
18 nutritionists board; or

19 (2) the person's spouse is an officer, manager, or paid
20 consultant of a Texas trade association in a field regulated by the
21 nutritionists board.

22 (c) A person may not be a member of the nutritionists board
23 or act as the general counsel to the nutritionists board if the
24 person is required to register as a lobbyist under Chapter 305,
25 Government Code, because of the person's activities for
26 compensation on behalf of a profession related to the operation of
27 the nutritionists board.

1 Sec. 703.054. TERMS. Members of the nutritionists board
2 serve staggered six-year terms, with three members' terms expiring
3 on February 1 of each odd-numbered year.

4 Sec. 703.055. GROUNDS FOR REMOVAL FROM NUTRITIONISTS BOARD.

5 (a) It is a ground for removal from the nutritionists board that a
6 member:

7 (1) does not have at the time of appointment the
8 qualifications required by Section 703.051;

9 (2) does not maintain during service on the
10 nutritionists board the qualifications required by Section
11 703.051;

12 (3) is ineligible for membership under Section 703.052
13 or 703.053;

14 (4) cannot, because of illness or disability,
15 discharge the member's duties for a substantial part of the member's
16 term; or

17 (5) is absent from more than half of the regularly
18 scheduled nutritionists board meetings that the member is eligible
19 to attend during a calendar year without an excuse approved by a
20 majority vote of the nutritionists board.

21 (b) The validity of an action of the nutritionists board is
22 not affected by the fact that it is taken when a ground for removal
23 of a nutritionists board member exists.

24 (c) If the executive director has knowledge that a potential
25 ground for removal exists, the executive director shall notify the
26 presiding officer of the nutritionists board of the potential
27 ground. The presiding officer shall then notify the governor and

1 the attorney general that a potential ground for removal exists. If
2 the potential ground for removal involves the presiding officer,
3 the executive director shall notify the next highest ranking
4 officer of the nutritionists board, who shall then notify the
5 governor and the attorney general that a potential ground for
6 removal exists.

7 Sec. 703.056. PER DIEM; REIMBURSEMENT. (a) Each member of
8 the nutritionists board is entitled to receive a per diem at the
9 rate set by the legislature for state employees in the General
10 Appropriations Act for each day the member engages in the business
11 of the nutritionists board.

12 (b) A member is entitled to reimbursement for
13 transportation expenses as provided by the General Appropriations
14 Act.

15 Sec. 703.057. OFFICERS. (a) The governor shall designate a
16 member of the nutritionists board to serve as the presiding officer
17 of the nutritionists board to serve in that capacity at the pleasure
18 of the governor.

19 (b) The nutritionists board shall elect other officers from
20 its membership as provided by the rules of the nutritionists board.

21 Sec. 703.058. MEETINGS. The nutritionists board shall hold
22 at least two regular meetings each year as provided by rules adopted
23 by the nutritionists board.

24 Sec. 703.059. TRAINING. (a) A person who is appointed to
25 and qualifies for office as a member of the nutritionists board may
26 not vote, deliberate, or be counted as a member in attendance at a
27 meeting of the nutritionists board until the person completes a

1 training program that complies with this section.

2 (b) The training program must provide the person with
3 information regarding:

4 (1) this chapter;

5 (2) the programs operated by the nutritionists board;

6 (3) the role and functions of the nutritionists board;

7 (4) the rules of the nutritionists board, with an
8 emphasis on the rules that relate to disciplinary and investigatory
9 authority;

10 (5) the current budget for the nutritionists board;

11 (6) the results of the most recent formal audit of the
12 nutritionists board;

13 (7) the requirements of:

14 (A) the open meetings law, Chapter 551,
15 Government Code;

16 (B) the public information law, Chapter 552,
17 Government Code;

18 (C) the administrative procedure law, Chapter
19 2001, Government Code; and

20 (D) other laws relating to public officials,
21 including conflict-of-interest laws; and

22 (8) any applicable ethics policies adopted by the
23 nutritionists board or the Texas Ethics Commission.

24 (c) A person appointed to the nutritionists board is
25 entitled to reimbursement, as provided by the General
26 Appropriations Act, for the travel expenses incurred in attending
27 the training program regardless of whether the attendance at the

1 program occurs before or after the person qualifies for office.

2 Sec. 703.060. USE OF TECHNOLOGY. The nutritionists board
3 shall develop and implement a policy requiring the executive
4 director and nutritionists board employees to research and propose
5 appropriate technological solutions to improve the nutritionists
6 board's ability to perform its functions. The technological
7 solutions must:

8 (1) ensure that the public is able to easily find
9 information about the nutritionists board on the Internet;

10 (2) ensure that persons who want to use the
11 nutritionists board's services are able to:

12 (A) interact with the nutritionists board
13 through the Internet; and

14 (B) access any service that can be provided
15 effectively through the Internet; and

16 (3) be cost-effective and developed through the
17 nutritionists board's planning processes.

18 Sec. 703.061. NEGOTIATED RULEMAKING AND ALTERNATIVE
19 DISPUTE RESOLUTION PROCEDURES. (a) The nutritionists board shall
20 develop and implement a policy to encourage the use of:

21 (1) negotiated rulemaking procedures under Chapter
22 2008, Government Code, for the adoption of nutritionists board
23 rules; and

24 (2) appropriate alternative dispute resolution
25 procedures under Chapter 2009, Government Code, to assist in the
26 resolution of internal and external disputes under the
27 nutritionists board's jurisdiction.

1 (b) The nutritionists board's procedures relating to
2 alternative dispute resolution must conform, to the extent
3 possible, to any model guidelines issued by the State Office of
4 Administrative Hearings for the use of alternative dispute
5 resolution by state agencies.

6 (c) The nutritionists board shall designate a trained
7 person to:

8 (1) coordinate the implementation of the policy
9 adopted under Subsection (a);

10 (2) serve as a resource for any training needed to
11 implement the procedures for negotiated rulemaking or alternative
12 dispute resolution; and

13 (3) collect data concerning the effectiveness of
14 those procedures, as implemented by the nutritionists board.

15 [Sections 703.062-703.100 reserved for expansion]

16 SUBCHAPTER C. EXECUTIVE DIRECTOR AND PERSONNEL

17 Sec. 703.101. EXECUTIVE DIRECTOR. The nutritionists board
18 shall employ an executive director.

19 Sec. 703.102. EXECUTIVE DIRECTOR POWERS AND DUTIES. In
20 addition to other duties prescribed by this chapter and by the
21 department, the executive director shall:

22 (1) administer registration activities for the
23 nutritionists board;

24 (2) keep full and accurate minutes of the transactions
25 and proceedings of the nutritionists board;

26 (3) serve as custodian of the files and records of the
27 nutritionists board;

1 (4) prepare and recommend to the nutritionists board
2 plans and procedures necessary to implement the purposes and
3 objectives of this chapter, including rules and proposals on
4 administrative procedures;

5 (5) exercise general oversight of persons employed by
6 the department in the administration of this chapter;

7 (6) investigate complaints and present formal
8 complaints;

9 (7) attend all meetings of the nutritionists board as
10 a nonvoting participant;

11 (8) handle the correspondence of the nutritionists
12 board; and

13 (9) obtain, assemble, or prepare reports and
14 information as directed or authorized by the nutritionists board.

15 Sec. 703.103. PERSONNEL AND FACILITIES. (a) The
16 department shall provide the basic personnel and facilities
17 required to administer this chapter. The department personnel
18 administering this chapter act as agents of the nutritionists
19 board.

20 (b) The department by agreement may secure services as it
21 considers necessary to administer this chapter and provide
22 compensation for those services.

23 (c) The department may employ, on a full-time or part-time
24 basis, the professional consultants, technical assistants, and
25 employees necessary to administer this chapter.

26 Sec. 703.104. DIVISION OF RESPONSIBILITIES. The
27 nutritionists board shall develop and implement policies that

1 clearly separate the policymaking responsibilities of the
2 nutritionists board and the management responsibilities of the
3 executive director and the staff of the nutritionists board.

4 Sec. 703.105. QUALIFICATIONS AND STANDARDS OF CONDUCT
5 INFORMATION. The executive director or the executive director's
6 designee shall provide to members of the nutritionists board and to
7 board employees, as often as necessary, information regarding the
8 requirements for office or employment under this chapter, including
9 information regarding a person's responsibilities under applicable
10 laws relating to standards of conduct for state officers or
11 employees.

12 Sec. 703.106. EQUAL EMPLOYMENT OPPORTUNITY POLICY; REPORT.

13 (a) The executive director or the executive director's designee
14 shall prepare and maintain a written policy statement that
15 implements a program of equal employment opportunity to ensure that
16 all personnel decisions are made without regard to race, color,
17 disability, sex, religion, age, or national origin.

18 (b) The policy statement must include:

19 (1) personnel policies, including policies relating
20 to recruitment, evaluation, selection, training, and promotion of
21 personnel, that show the intent of the nutritionists board to avoid
22 the unlawful employment practices described by Chapter 21, Labor
23 Code; and

24 (2) an analysis of the extent to which the composition
25 of the nutritionists board's personnel is in accordance with state
26 and federal law and a description of reasonable methods to achieve
27 compliance with state and federal law.

1 (c) The policy statement must:

2 (1) be updated annually;

3 (2) be reviewed by the state Commission on Human
4 Rights for compliance with Subsection (b)(1); and

5 (3) be filed with the governor's office.

6 Sec. 703.107. STATE EMPLOYEE INCENTIVE PROGRAM. The
7 executive director or the executive director's designee shall
8 provide to nutritionists board employees information and training
9 on the benefits and methods of participation in the state employee
10 incentive program.

11 [Sections 703.108-703.150 reserved for expansion]

12 SUBCHAPTER D. POWERS AND DUTIES

13 Sec. 703.151. GENERAL POWERS AND DUTIES OF NUTRITIONISTS
14 BOARD. The nutritionists board shall:

15 (1) adopt an official seal;

16 (2) adopt and publish a code of ethics; and

17 (3) establish the qualifications and fitness of
18 applicants for registration, including renewed and reciprocal
19 registration.

20 Sec. 703.152. GENERAL RULEMAKING AUTHORITY. (a) The
21 nutritionists board may adopt rules as necessary to implement this
22 chapter.

23 (b) In adopting rules, the nutritionists board shall
24 consider the rules and procedures of the board of health and the
25 department and shall adopt procedural rules consistent with similar
26 rules and procedures of those entities.

27 Sec. 703.153. RULES RESTRICTING ADVERTISING OR COMPETITIVE

1 BIDDING. (a) The nutritionists board may not adopt a rule
2 restricting advertising or competitive bidding by a person
3 regulated by the nutritionists board except to prohibit a false,
4 misleading, or deceptive practice.

5 (b) In its rules to prohibit false, misleading, or deceptive
6 practices, the nutritionists board may not include a rule that:

7 (1) restricts a person's use of any medium for
8 advertising;

9 (2) restricts a person's personal appearance or voice
10 in an advertisement;

11 (3) relates to the size or duration of an
12 advertisement by a person; or

13 (4) restricts a person's advertisement under a trade
14 name.

15 Sec. 703.154. FEES. After consulting the commissioner or
16 the department, the nutritionists board by rule shall set fees in
17 amounts reasonable and necessary to cover the cost of administering
18 this chapter.

19 Sec. 703.155. MONEY. (a) The department shall account for
20 money received under this chapter.

21 (b) The department shall deposit all money received under
22 this chapter to the credit of the registered clinical nutritionists
23 account in the general revenue fund. Money in the account may be
24 appropriated only to the department for administration of this
25 chapter.

26 Sec. 703.156. SEAL. (a) The nutritionists board by rule may
27 require a registration holder to:

1 (1) obtain a seal authorized by the nutritionists
2 board, bearing the registration holder's name and the legend
3 "Registered Clinical Nutritionist"; and

4 (2) affix the seal to formal documentation of
5 nutrition services provided by the registration holder.

6 (b) If the nutritionists board adopts rules under
7 Subsection (a), the rules must require a registration holder to
8 comply with Subsection (a)(2) by maintaining a facsimile of the
9 registration holder's seal on file at the location where services
10 are provided if:

11 (1) the services are provided:

12 (A) in a facility licensed under the Health and
13 Safety Code;

14 (B) on behalf of a local, state, or federal
15 government agency; or

16 (C) under other circumstances determined
17 reasonable and necessary by the nutritionists board; and

18 (2) the facsimile is maintained on file at all times
19 during which the services are provided.

20 Sec. 703.157. POWERS AND DUTIES OF BOARD OF HEALTH. To
21 implement this chapter, the board of health:

22 (1) shall request and receive any necessary assistance
23 from state institutions of higher education or other state
24 agencies;

25 (2) shall prepare information of consumer interest
26 describing the regulatory functions of the board of examiners of
27 clinical nutritionists, the procedures by which consumer

1 complaints are filed and resolved, and the profession of clinical
2 nutrition;

3 (3) shall prepare a list of registered clinical
4 nutritionists and persons holding provisional or temporary
5 registrations under this chapter, and make this information
6 available to the public, registration holders, and appropriate
7 state agencies; and

8 (4) may require the attorney general or the
9 appropriate county or district attorney to sue to enjoin a
10 violation of this chapter in addition to any other action,
11 proceeding, or remedy authorized by law.

12 [Sections 703.158-703.200 reserved for expansion]

13 SUBCHAPTER E. PUBLIC INTEREST INFORMATION

14 AND COMPLAINT PROCEDURES

15 Sec. 703.201. PUBLIC INTEREST INFORMATION. (a) The
16 nutritionists board shall prepare information of public interest
17 describing the functions of the nutritionists board and the
18 nutritionists board's procedures by which complaints are filed with
19 and resolved by the nutritionists board.

20 (b) The nutritionists board shall make the information
21 available to the public and appropriate state agencies.

22 Sec. 703.202. CONTACT INFORMATION. (a) The nutritionists
23 board by rule shall establish methods by which consumers and
24 service recipients are notified of the name, mailing address, and
25 telephone number of the nutritionists board for the purpose of
26 directing complaints to the nutritionists board. The nutritionists
27 board may provide for that notification:

1 (1) on each registration form, application, or written
2 contract for services of a person regulated by the nutritionists
3 board;

4 (2) on a sign prominently displayed in the place of
5 business of each person regulated by the nutritionists board; or

6 (3) in a bill for services provided by a person
7 regulated by the nutritionists board.

8 (b) The nutritionists board shall list along with its
9 regular telephone number any toll-free telephone number
10 established under state law that may be called to present a
11 complaint about a health professional.

12 Sec. 703.203. RECORDS OF COMPLAINTS. (a) The
13 nutritionists board shall maintain a file on each written complaint
14 filed with the nutritionists board. The file must include:

15 (1) the name of the person who filed the complaint;

16 (2) the date the complaint is received by the
17 nutritionists board;

18 (3) the subject matter of the complaint;

19 (4) the name of each person contacted in relation to
20 the complaint;

21 (5) a summary of the results of the review or
22 investigation of the complaint; and

23 (6) an explanation of the reason the file was closed,
24 if the nutritionists board closed the file without taking action
25 other than to investigate the complaint.

26 (b) The nutritionists board shall provide to the person
27 filing the complaint and to each person who is a subject of the

1 complaint a copy of the nutritionists board's policies and
2 procedures relating to complaint investigation and resolution.

3 (c) The nutritionists board, at least quarterly until final
4 disposition of the complaint, shall notify the person filing the
5 complaint and each person who is a subject of the complaint of the
6 status of the complaint unless the notice would jeopardize an
7 undercover investigation.

8 (d) The nutritionists board shall review a complaint
9 regarding:

10 (1) incompetency, misconduct, gross negligence,
11 fraud, misrepresentation, or dishonesty in the performance of the
12 functions or duties of a registration holder; and

13 (2) the use of any controlled substance or drug or the
14 use of alcoholic beverages to an extent that the use impairs a
15 person's ability to perform the work of a clinical nutritionist.

16 Sec. 703.204. GENERAL RULES REGARDING COMPLAINT
17 INVESTIGATION AND DISPOSITION. (a) The nutritionists board shall
18 adopt rules concerning the investigation of a complaint filed with
19 the nutritionists board. The rules adopted under this subsection
20 shall:

21 (1) distinguish between categories of complaints;

22 (2) ensure that a complaint is not dismissed without
23 appropriate consideration;

24 (3) require that the nutritionists board be advised of
25 a complaint that is dismissed and that a letter be sent to the
26 person who filed the complaint explaining the action taken on the
27 dismissed complaint;

1 (4) ensure that the person who filed the complaint has
2 an opportunity to explain the allegations made in the complaint;
3 and

4 (5) prescribe guidelines concerning the categories of
5 complaints that require the use of a private investigator and the
6 procedures for the nutritionists board to obtain the services of a
7 private investigator.

8 (b) The nutritionists board shall:

9 (1) dispose of each complaint in a timely manner; and
10 (2) establish a schedule for conducting each phase of
11 a complaint that is under the control of the nutritionists board not
12 later than the 30th day after the date the complaint is received by
13 the nutritionists board.

14 (c) Each party to the complaint shall be notified of the
15 projected time requirements for pursuing the complaint. Each party
16 shall be notified of any change in the schedule established under
17 Subsection (b)(2) not later than the seventh day after the date the
18 change is made.

19 (d) The executive director shall notify the nutritionists
20 board of a complaint that is not resolved in the time prescribed by
21 the nutritionists board for resolving the complaint so that the
22 nutritionists board may take necessary action on the complaint.

23 Sec. 703.205. PUBLIC PARTICIPATION. (a) The nutritionists
24 board shall develop and implement policies that provide the public
25 with a reasonable opportunity to appear before the nutritionists
26 board and to speak on any issue under the jurisdiction of the
27 nutritionists board.

1 (b) The nutritionists board shall prepare and maintain a
2 written plan that describes how a person who does not speak English
3 can be provided reasonable access to the nutritionists board's
4 programs.

5 [Sections 703.206-703.250 reserved for expansion]

6 SUBCHAPTER F. REGISTRATION REQUIREMENTS

7 Sec. 703.251. REGISTRATION REQUIRED; EXEMPTIONS. (a)

8 Except as provided by Subsection (b), a person may not use the title
9 of or advertise services as a clinical nutritionist or associate
10 clinical nutritionist unless the person holds a registration issued
11 under this chapter.

12 (b) This chapter does not prohibit a person from providing
13 oral nutritional information as an operator or employee of a health
14 food store or business that sells health products, including
15 dietary supplements, foods, or food materials, or disseminating
16 written nutritional information in connection with the
17 distribution of those products. This chapter does not prohibit or
18 limit any person from conducting a class or seminar or from giving a
19 speech related to nutrition. This chapter does not apply to a
20 health care practitioner licensed under another law who provides
21 nutritional counseling under the scope of that license.

22 Sec. 703.252. REGISTRATION APPLICATION. (a) Each

23 applicant for a clinical nutritionist registration must submit a
24 sworn application, accompanied by the application fee. The
25 applicant must specify the category of registration for which the
26 person is applying.

27 (b) The nutritionists board shall prescribe the application

1 form and may by rule establish dates by which applications and fees
2 must be received. The rules must be consistent with present rules
3 of the department related to application dates of other licenses or
4 registrations.

5 (c) Each registration application must be accompanied by
6 proof of liability insurance coverage:

7 (1) issued by an insurer authorized by the Texas
8 Department of Insurance to engage in the business of liability
9 insurance in this state; and

10 (2) in amounts prescribed by the nutritionists board
11 as appropriate for the category of registration for which the
12 person is applying.

13 Sec. 703.253. EXAMINATION. (a) Except as provided by
14 Subsection (c), an applicant must pass a competency examination to
15 qualify for a registration under this chapter.

16 (b) The nutritionists board by rule may adopt an examination
17 given by an approved scientific nutritionists board of clinical
18 nutritionist experts, instead of an examination prepared by the
19 nutritionists board.

20 (c) The nutritionists board may waive the examination
21 requirement for an applicant who, at the time of application, is
22 registered as a clinical nutritionist by the Commission on Clinical
23 Nutritionist Registration or another professional certification
24 board recognized by the nutritionists board.

25 Sec. 703.254. QUALIFICATIONS FOR EXAMINATION. To qualify
26 for the registered clinical nutritionist examination under this
27 chapter, an applicant must:

1 (1) possess a baccalaureate or postbaccalaureate
2 degree, conferred by an accredited institution of higher education,
3 with:

4 (A) a major course of study in human nutrition,
5 nutrition, or nutrition education; or

6 (B) an equivalent major course of study approved
7 by the nutritionists board; and

8 (2) have completed an internship or preplanned,
9 documented, professional experience program in clinical nutrition
10 practice of not less than 900 hours under the supervision of a
11 registered clinical nutritionist or a licensed physician or dentist
12 who provides nutritionists board-approved training in the field of
13 clinical nutrition.

14 Sec. 703.255. INVESTIGATION. (a) Not later than the 45th
15 day after the date a properly and timely submitted application is
16 received and not later than the 30th day before the next examination
17 date, the department shall notify an applicant in writing of the
18 receipt and investigation of the applicant's application and any
19 other relevant evidence relating to applicant qualifications
20 established by nutritionists board rule.

21 (b) The notice must state whether the applicant has
22 qualified for examination based on the application and other
23 submitted evidence. If the applicant has not qualified, the notice
24 must state the reasons for the applicant's failure to qualify.

25 Sec. 703.256. EXAMINATION RESULTS. (a) Not later than the
26 30th day after the date a person takes a licensing examination under
27 this chapter, the nutritionists board shall notify the person of

1 the results of the examination.

2 (b) If the examination is graded or reviewed by a testing
3 service:

4 (1) the nutritionists board shall notify the person of
5 the results of the examination not later than the 14th day after the
6 date the nutritionists board receives the results from the testing
7 service; and

8 (2) if notice of the examination results will be
9 delayed for longer than 90 days after the examination date, the
10 nutritionists board shall notify the person of the reason for the
11 delay before the 90th day.

12 (c) The nutritionists board may require a testing service to
13 notify a person of the results of the person's examination.

14 (d) If requested in writing by a person who fails an
15 examination under this chapter, the nutritionists board shall
16 furnish the person with an analysis of the person's performance on
17 the examination.

18 Sec. 703.257. REEXAMINATION. An applicant who fails the
19 examination three times must provide evidence to the nutritionists
20 board that the applicant has successfully completed credit hours in
21 the applicant's areas of weakness before the applicant may apply
22 for reexamination.

23 Sec. 703.258. QUALIFIED PERSON ENTITLED TO REGISTRATION.
24 The nutritionists board shall issue the appropriate clinical
25 nutritionist registration under this chapter to a person who meets
26 the qualifications for the registration. The registration must
27 specify on its face the category under which the person is

1 registered.

2 Sec. 703.259. PROVISIONAL REGISTRATION. (a) The
3 nutritionists board may issue a registration to use the title
4 "provisionally registered clinical nutritionist" to an applicant
5 who files an application, pays an application fee, and submits
6 evidence of successful completion of the educational requirements
7 under Section 703.254.

8 (b) A provisionally registered clinical nutritionist must
9 practice under the supervision and direction of a registered
10 clinical nutritionist. The supervising registered clinical
11 nutritionist must sign the application.

12 (c) A provisional registration expires on the first
13 anniversary of the date of issuance and, if the supervising
14 registered clinical nutritionist signs the renewal application,
15 may be renewed annually not more than twice by complying with the
16 renewal procedures under Section 703.301.

17 (d) A provisionally registered clinical nutritionist shall
18 comply with Sections 703.351 and 703.352.

19 Sec. 703.260. TEMPORARY REGISTRATION. (a) On receipt of an
20 application and payment of an application fee, the nutritionists
21 board may grant a temporary registration to an applicant who:

22 (1) is registered in good standing as a clinical
23 nutritionist in another state that has registration requirements
24 that are substantially equivalent to the requirements of this
25 chapter;

26 (2) has passed a national or other examination
27 recognized by the nutritionists board relating to clinical

1 nutrition; and

2 (3) is sponsored by a person registered by the
3 nutritionists board under this chapter with whom the temporary
4 registration holder may practice.

5 (b) The nutritionists board may waive the requirement of
6 Subsection (a)(3) if the nutritionists board determines that
7 compliance with that provision is a hardship to the applicant.

8 (c) A temporary registration is valid until the date the
9 nutritionists board approves or denies the temporary registration
10 holder's application for a license. The nutritionists board shall
11 issue a registration under this chapter to the holder of a temporary
12 registration if:

13 (1) the temporary registration holder passes the
14 competency examination required by Section 703.253;

15 (2) the nutritionists board verifies that the
16 temporary registration holder meets the academic and experience
17 requirements for a registration under this chapter; and

18 (3) the temporary registration holder satisfies any
19 other registration requirements under this chapter.

20 (d) The nutritionists board must complete the processing of
21 a temporary registration holder's application for a registration
22 not later than the 180th day after the date the nutritionists board
23 issues the temporary registration. The nutritionists board may
24 extend this deadline to receive pending examination results.

25 Sec. 703.261. INACTIVE STATUS. The nutritionists board by
26 rule may provide for a registration holder to place the person's
27 registration on inactive status. The nutritionists board by rule

1 shall provide for a time limit for a registration to remain on
2 inactive status.

3 Sec. 703.262. DUPLICATE REGISTRATION. The nutritionists
4 board shall issue a new registration to replace a registration that
5 is lost, destroyed, or mutilated, subject to nutritionists board
6 rules and on payment of a reasonable fee.

7 Sec. 703.263. RECIPROCITY. The nutritionists board may
8 waive any prerequisite to obtaining a registration for an applicant
9 who holds a registration issued by another jurisdiction with which
10 this state has a reciprocity agreement. The nutritionists board
11 may make an agreement, subject to the approval of the governor, with
12 another state to allow for registration by reciprocity.

13 [Sections 703.264-703.300 reserved for expansion]

14 SUBCHAPTER G. REGISTRATION RENEWAL; CONTINUING EDUCATION

15 Sec. 703.301. REGISTRATION RENEWAL. The nutritionists
16 board shall renew the registration of a qualified clinical
17 nutritionist in good standing who:

18 (1) returns a completed renewal form in the manner
19 prescribed by the nutritionists board;

20 (2) submits evidence of completion of the minimum
21 number of continuing education hours required by nutritionists
22 board rule; and

23 (3) pays the required renewal fee before the
24 registration expires.

25 Sec. 703.302. TERM OF REGISTRATION; EXPIRATION DATE. (a) A
26 registration is valid for one year after the date of issuance and
27 may be renewed annually.

1 (b) The nutritionists board by rule may adopt a system under
2 which registrations expire on various dates during the year. For
3 the year in which the registration expiration date is changed, a
4 registration fee payable on the original expiration date shall be
5 prorated on a monthly basis so that the registration holder pays
6 only that portion of the fee allocable to the number of months the
7 registration is valid. The registration holder shall pay the total
8 registration renewal fee on renewal of the registration on the new
9 expiration date.

10 Sec. 703.303. REGISTRATION RENEWAL PROCEDURE. (a) A
11 person who is otherwise eligible to renew a registration may renew
12 an unexpired registration by paying the required renewal fee to the
13 nutritionists board before the registration expiration date. A
14 person whose registration has expired may not engage in activities
15 that require a registration until the registration has been
16 renewed.

17 (b) A person whose registration has been expired for 90 days
18 or less may renew the registration by paying to the nutritionists
19 board a renewal fee that is equal to 1-1/2 times the normally
20 required renewal fee.

21 (c) A person whose registration has been expired for more
22 than 90 days but less than one year may renew the registration by
23 paying to the nutritionists board a renewal fee that is equal to two
24 times the normally required renewal fee.

25 (d) A person whose registration has been expired for one
26 year or more may not renew the registration. The person may obtain
27 a new registration by complying with the requirements and

1 procedures for obtaining an original registration.

2 (e) A person who was registered in this state, moved to
3 another state, and is currently registered and has been in practice
4 in the other state for the two years preceding the date of
5 application may obtain a new registration without reexamination.
6 The person must pay to the nutritionists board a fee that is equal
7 to two times the normally required renewal fee for the license.

8 (f) Not later than the 30th day before the date a person's
9 registration is scheduled to expire, the nutritionists board shall
10 send written notice of the impending expiration to the person at the
11 person's last known address according to the records of the
12 nutritionists board.

13 Sec. 703.304. STAGGERED RENEWAL OF REGISTRATIONS. The
14 nutritionists board by rule may adopt a system under which
15 registrations expire on various dates during the year. For the year
16 in which the registration expiration date is changed, the
17 nutritionists board shall prorate registration fees on a monthly
18 basis so that each registration holder pays only that portion of the
19 registration fee that is allocable to the number of months during
20 which the registration is valid. On renewal of the registration on
21 the new expiration date, the total registration renewal fee is
22 payable.

23 Sec. 703.305. CONTINUING EDUCATION. (a) The nutritionists
24 board by rule shall establish a minimum number of hours of
25 continuing education required for registration renewal under this
26 chapter.

27 (b) The nutritionists board may assess the continuing

1 education needs of registration holders and may require
2 registration holders to attend continuing education courses
3 specified by the nutritionists board. The nutritionists board
4 shall develop a process to evaluate and approve continuing
5 education courses.

6 (c) The nutritionists board shall identify the key factors
7 for the competent performance of professional duties. The
8 nutritionists board shall adopt a procedure to assess a
9 registration holder's participation in continuing education
10 programs.

11 [Sections 703.306-703.350 reserved for expansion]

12 SUBCHAPTER H. PRACTICE BY REGISTRATION HOLDER

13 Sec. 703.351. PRACTICE STRATEGIES FOR CLINICAL
14 NUTRITIONISTS. (a) A registered clinical nutritionist may work,
15 independently in a general office setting or as a member of a health
16 care team, as a nutritionist, nutritional coach, or nutritional
17 advisor in a corporation, providing referrals to and receiving
18 referrals from licensed physicians, chiropractors, nurses,
19 pharmacists, and dentists.

20 (b) In providing services under this chapter, a registered
21 clinical nutritionist may:

22 (1) plan and direct appropriate preventative and
23 therapeutic nutritional needs, including individual formulation of
24 enteral and parenteral nutrition;

25 (2) provide nutritional counseling and education to
26 increase client understanding of nutritional principles and
27 physiological and biochemical pathways to increase individual

1 choices for optimizing health;

2 (3) evaluate, develop, and formulate therapeutic
3 nutrition plans, which may include the recommendation of
4 nutritional supplements, including micronutrients,
5 macronutrients, and metabolites, as considered appropriate to
6 attain optimal health; and

7 (4) develop and administer nutrition care standards
8 and systems.

9 Sec. 703.352. DISPLAY OF REGISTRATION. (a) Each
10 registration holder shall display the person's registration in an
11 appropriate and public manner.

12 (b) A registration issued by the nutritionists board is the
13 property of the nutritionists board and must be surrendered on
14 demand.

15 Sec. 703.353. REGISTRATION HOLDER INFORMATION. A
16 registration holder shall keep the department informed of the
17 registration holder's current address.

18 Sec. 703.354. PROHIBITED USE OF SEAL. (a) A person may not
19 use a seal authorized by the nutritionists board unless the person
20 holds a registration issued under this chapter.

21 (b) A person may not affix a seal to a document if the
22 registration of the registration holder named on the seal is
23 expired, suspended, or revoked.

24 [Sections 703.355–703.400 reserved for expansion]

25 SUBCHAPTER I. PROHIBITED ACTS; DISCIPLINARY PROCEDURES

26 Sec. 703.401. PROHIBITED ACTS. (a) Unless the person holds
27 an appropriate registration issued under this chapter, a person may

1 not:

2 (1) use any title, or represent or imply that the
3 person has the right to use any title, that includes the term
4 "clinical nutritionist";

5 (2) use any initials that represent or imply that the
6 person holds a registration under this chapter; or

7 (3) use any facsimile of those titles or initials in
8 any manner to indicate or imply that the person is registered under
9 this chapter.

10 (b) Unless the person holds an appropriate registration or
11 certification issued by the Commission on Clinical Nutritionist
12 Registration or another organization recognized by the
13 nutritionists board, a person may not use any title or initials, or
14 any facsimile of those titles or initials, or represent or imply
15 that the person has the right to use any title implying such a
16 registration or certification.

17 Sec. 703.402. GROUNDS FOR DISCIPLINARY ACTION. The
18 nutritionists board shall revoke, suspend, or refuse to renew a
19 registration or shall reprimand a registration holder for a
20 violation of this chapter, a rule of the nutritionists board, or the
21 code of ethics adopted by the nutritionists board.

22 Sec. 703.403. HEARING. (a) If the nutritionists board
23 proposes to suspend or revoke a person's registration, the person
24 is entitled to a hearing.

25 (b) A member or employee of the nutritionists board or a
26 department employee who carries out the functions of the
27 nutritionists board and who proposes to make a decision, a finding

1 of fact, or a conclusion of law in a proceeding pending before the
2 nutritionists board may communicate directly or indirectly with a
3 party to the proceeding or with the party's representative only if
4 notice and an opportunity to participate are given to each party.

5 Sec. 703.404. SCHEDULE OF SANCTIONS. The State Office of
6 Administrative Hearings shall use the schedule of sanctions adopted
7 by the nutritionists board by rule for a sanction imposed as the
8 result of a hearing conducted by the office.

9 Sec. 703.405. PROBATION. The nutritionists board may place
10 on probation a person whose registration is suspended. If a
11 registration suspension is probated, the nutritionists board may
12 require the person:

13 (1) to report regularly to the nutritionists board on
14 matters that are the basis of the probation;

15 (2) to limit practice to the areas prescribed by the
16 nutritionists board; or

17 (3) to continue or review professional education until
18 the person attains a degree of skill satisfactory to the
19 nutritionists board in those areas that are the basis of the
20 probation.

21 Sec. 703.406. MONITORING OF REGISTRATION HOLDER. (a) The
22 nutritionists board by rule shall develop a system for monitoring a
23 registration holder's compliance with this chapter.

24 (b) Rules adopted under this section must include
25 procedures to:

26 (1) monitor for compliance a registration holder who
27 is ordered by the nutritionists board to perform certain acts; and

1 (2) identify and monitor registration holders who
2 represent a risk to the public.

3 Sec. 703.407. ADMINISTRATIVE PROCEDURE. A proceeding to
4 suspend or revoke a registration under this subchapter is governed
5 by Chapter 2001, Government Code.

6 [Sections 703.408-703.450 reserved for expansion]

7 SUBCHAPTER J. CIVIL PENALTY

8 Sec. 703.451. CIVIL PENALTY. (a) A person who violates
9 this chapter or a rule adopted by the board under this chapter is
10 liable to the state for a civil penalty of \$1,000 for each day of
11 violation.

12 (b) At the request of the board, the attorney general shall
13 bring an action to recover a civil penalty authorized by this
14 section.

15 SECTION 2. (a) Until September 1, 2004, the Texas State
16 Board of Examiners of Clinical Nutritionists shall waive the
17 examination requirement under Chapter 703, Occupations Code, as
18 added by this Act, and issue a registration under that chapter to
19 any person who:

20 (1) presents evidence satisfactory to the Texas State
21 Board of Examiners of Clinical Nutritionists that the person has at
22 least five years of approved documented experience in the field of
23 clinical nutrition;

24 (2) holds an authorization of good standing for
25 clinical nutritionist status issued by a nationally recognized
26 professional certification entity approved by the Texas State Board
27 of Examiners of Clinical Nutritionists; or

1 (3) is a licensed physician, chiropractor, dentist,
2 pharmacist, or registered nurse who has:

3 (A) appropriate academic credentials in the
4 field of human nutrition or a directly related field approved by the
5 nutritionists board; or

6 (B) a minimum of three years' experience in the
7 practice of clinical nutrition.

8 (b) The governor shall appoint the initial members of the
9 Texas State Board of Examiners of Clinical Nutritionists not later
10 than December 1, 2003. In making the initial appointments, the
11 governor shall designate one clinical nutritionist appointee, one
12 health care practitioner appointee, and one public appointee for
13 terms expiring February 1, 2005, one clinical nutritionist
14 appointee, one health care practitioner appointee, and one public
15 appointee for terms expiring February 1, 2007, and one clinical
16 nutritionist appointee, one health care practitioner appointee,
17 and one public appointee for terms expiring February 1, 2009.

18 (c) A person appointed as a clinical nutritionist member of
19 the Texas State Board of Examiners of Clinical Nutritionists before
20 September 1, 2005, is not required to be registered under Chapter
21 703, Occupations Code, as added by this Act, but the person must be
22 eligible to hold a registration issued under that chapter, may not
23 have an additional primary practice, and must have at least three
24 years of professional experience in the field of clinical
25 nutrition.

26 SECTION 3. (a) Except as provided by Subsection (b) of this
27 section, this Act takes effect September 1, 2003.

H.B. No. 1834

1 (b) Section 703.251 and Subchapters I and J, Chapter 703,
2 Occupations Code, as added by this Act, take effect January 1, 2004.