

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

HEATHER KOKESCH DEL CASTILLO,

Plaintiff,

v.

CELESTE PHILIP, MD, MPH, in her
official capacity as Surgeon General and
Secretary, Florida Department of Health,

Civil Action No. 3:17-cv-00722

Defendant.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

This First Amendment case challenges the censorship of advice on the age-old topic of diet and nutrition. Plaintiff Heather Kokesch Del Castillo is a privately certified health coach who, until recently, offered dietary advice to paying customers in Florida. Ms. Del Castillo's dietary advice is substantially identical to advice that is widely available in thousands of books, on television, and online. But because Ms. Del Castillo renders her advice one-on-one and for pay, the State of Florida considers her to be engaged in the unauthorized practice of dietetics/nutrition and has ordered her to stop speaking.

Florida's actions violate the First Amendment. Individualized advice on what people should eat to stay healthy is surely as old as language, and such speech does not lose its constitutional protection merely because it is compensated. Although Florida certainly has the authority to regulate who may claim to be licensed by the state as a dietitian or nutritionist, it has no legitimate authority to grant licensed dietitians/nutritionists a monopoly on advice about what adults should buy at the grocery store.

JURISDICTION AND VENUE

1. Plaintiff brings this civil-rights lawsuit pursuant to the First Amendment to the United States Constitution; the Civil Rights Act of 1871, 42 U.S.C. § 1983; and the Declaratory Judgment Act, 28 U.S.C. § 2201.

2. Plaintiff seeks declaratory and injunctive relief against the enforcement of the Florida Dietetics and Nutrition Practice Act, Fla. Stat. §§ 468.501–.518, regulations promulgated pursuant to that Act, Fla. Admin. Code r. 64B8-40.003 to -45.006, and the practices and policies of the Florida Department of Health that deny her First Amendment right to communicate her opinions and advice on diet and nutrition to willing listeners.

3. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343.

4. Venue lies in this Court pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Plaintiff Heather Kokesch Del Castillo is a United States citizen and resides in the town of Fort Walton Beach, Florida.

6. Defendant Celeste Philip, MD, MPH, is the Surgeon General and Secretary of the Florida Department of Health, the agency charged with enforcing Florida's Dietetics and Nutrition Practice Act and associated regulations against unlicensed persons. She is sued in her official capacity.

FACTUAL ALLEGATIONS

Plaintiff Heather Kokesch Del Castillo's Health Coaching Business

7. Plaintiff Heather Kokesch Del Castillo is a privately certified health coach. Plaintiff received her health-coaching certification in 2013 from the Institute for Integrative Nutrition, an online school founded in 1992 that trains health coaches to assist others in making diet and lifestyle changes.

8. Plaintiff operated a business called "Constitution Nutrition" through which, until recently, she conducted her health coaching. As a health coach, Plaintiff would take on paying clients who were interested in changing their diet.

9. Although she sometimes met with clients in person, Plaintiff typically offered her services through online platforms such as Skype and Google Hangouts.

10. After having clients fill out a health-history form, Plaintiff would talk with clients about their diet and fitness goals to help each client set realistic and attainable goals.

11. Plaintiff's full six-month program cost \$1,170, which included twelve 50-minute coaching sessions, email support, recipes, a monthly newsletter, and handouts on nutrition, fitness, and overall wellness. She also offered shorter, lower-cost coaching programs focused around the Whole30 diet—a popular diet that involves cutting out sugar, alcohol, grains, legumes, and dairy for 30 days—for which she charged between \$79 and \$129.

12. Plaintiff's health-coaching services did not involve any diagnostic tests or any physical examination of her clients.

13. Plaintiff's health-coaching services did not involve any conduct at all, other than talking with clients and communicating information, encouragement, and advice.

The Sting Operation and Cease-and-Desist Letter

14. Before her husband, a career Air Force service member, was transferred to Fort Walton Beach in June 2015, Plaintiff successfully conducted her health-coaching business in California for two years without incident.

15. But on March 14, 2017, Plaintiff received an email from an individual who identified himself as Pat Smith inquiring about her services. A copy of that email (and Plaintiff's email in response) is attached as Exhibit A.

16. In the email, Mr. Smith stated that he had come across Plaintiff's website and liked what he saw. He stated that he had "tried several weight loss programs to no avail." He then inquired as to what information Plaintiff would need to get from him to personalize a weight-loss program and asked what the program would include. He concluded his email with "Thank you and have a great day."

17. Mr. Smith was not actually a prospective customer; he was an investigator for the Florida Department of Health. On information and belief, Mr. Smith was investigating Plaintiff because of a complaint filed by a licensed dietitian.

18. Plaintiff responded to Mr. Smith's email the same day, offering a free 45-minute consultation and attaching a health-history form for him to fill out. She also described her health-coaching service as typically involving two meetings per month for six months. She then offered to discuss her services further if Mr. Smith was interested in setting up an initial consultation.

19. At no point in the email, and nowhere on her website, did Plaintiff identify herself as being a licensed dietitian/nutritionist.

20. Plaintiff never heard anything else regarding Pat Smith until May 2, 2017, when an agent of the Florida Department of Health arrived at her home to deliver a letter from the Department. A copy of this letter is attached as Exhibit B.

21. From the letter, Plaintiff learned that the email from Mr. Smith had been part of a sting operation. Based on Mr. Smith's email exchange with Plaintiff, the Department stated that it had probable cause to believe that Plaintiff was illegally practicing as a dietitian/nutritionist, ordered Plaintiff to cease and desist, and assessed a fine against her of \$754 (\$500 plus \$254 in investigatory fees).

22. Plaintiff called the Department of Public Health to see if there was any way she could get the fine reduced. During this call, an attorney for the Department offered to waive the investigatory fee of \$254. Based on this offer, Plaintiff sent a check to the Department for the \$500 fine, which the Department deposited.

23. The Department subsequently informed Plaintiff by letter that the reduction of her fine was contingent on her signing a settlement agreement. Believing that her speech was protected by the First Amendment and unwilling to waive any of her rights, Plaintiff sent a check for the remaining \$254, which the Department also deposited.

24. On August 25, 2017, Plaintiff received a letter from the Department informing her that both of her payments had been processed and that the

proceedings against her were now closed. A copy of this letter is attached as Exhibit C.

Dietitian Licensure in Florida

25. Florida regulates dietetics through the Dietetics and Nutrition Practice Act, Fla. Stat. §§ 468.501–.518., and regulations promulgated pursuant to the Act, Fla. Admin. Code r. 64B8-40.003 to -45.006. Florida regulated dietetics for the first time in 1988.

26. Violating the Act is a first degree misdemeanor, punishable by up to a year in jail or \$1,000 in fines per violation. Fla. Stat. § 468.517(2).

27. The Florida Department of Health has the authority to enforce the Act against unlicensed persons, investigate potential violations of the Act and associated regulations, conduct various administrative proceedings, and bring injunctive actions to halt violations of the Act. Fla. Stat. §§ 456.065.

28. “Dietetics” is defined as “the integration and application of the principles derived from the sciences of nutrition, biochemistry, food, physiology, and management and from the behavioral and social sciences to achieve and maintain a person’s health throughout the person’s life.” Fla. Stat. § 468.503(4).

29. A license is required to “engage for remuneration in dietetics and nutrition practice or nutrition counseling.” Fla. Stat. § 468.504.

30. “Dietetics and nutrition practice” is defined to include “assessing nutrition needs and status using appropriate data; recommending appropriate dietary regimens, nutrition support, and nutrient intake; ordering therapeutic diets; improving health status through nutrition research, counseling, and education; and developing, implementing, and managing nutrition care systems, which includes, but is not limited to, evaluating, modifying, and maintaining appropriate standards of high quality in food and nutrition care services.” Fla. Stat. § 468.503(5).

31. “Nutrition counseling” means “advising and assisting individuals or groups on appropriate nutrition intake by integrating information from [a] nutrition assessment.” Fla. Stat. § 468.503(10). “Nutrition assessment,” in turn, is defined as “the evaluation of the nutrition needs of individuals or groups, using appropriate data to determine nutrient needs or status and make appropriate nutrition recommendations.” Fla. Stat. § 468.503(9).

32. To become licensed as a dietitian/nutritionist, a person must have earned a bachelor’s or postbaccalaureate degree with a major course of study in human nutrition, food and nutrition, dietetics, or food management; completed 900 hours of supervised practice; passed a licensure examination that costs \$200; and paid fees of \$165. Fla. Stat. § 468.509; Fla. Admin. Code r. 64B8-41.001; Commission on Dietetics Registration (CDR), *Entry-level Registration Examinations for Dietitians and Dietetic Technicians, Frequently Asked Questions*,

<https://admin.cdrnet.org/vault/2459/web/files/2017%20Examination%20FAQ.pdf>
(last visited Sept. 28, 2017).

33. The Act exempts a number of people who may provide individualized dietary advice without a license, including—among others—acupuncturists, podiatrists, naturopaths, optometrists, dentists, and cooperative extension home economists. Fla. Stat. § 468.505.

34. The Act also does not cover dietary advice distributed through books, on television, or online. On information and belief, such advice is widespread throughout the State of Florida.

35. A dietitian has no authority under the law to prevent a person from eating food, to compel a person to eat food, to prescribe medications, to make any medical diagnosis, to perform any medical procedure, or to perform any physical act or engage in any physical conduct with a person, such as cooking a meal or testing blood sugar, that the client or any layperson is not legally allowed to perform without the assistance or presence of a dietitian. A person may legally follow the advice of a dietitian or not, or follow it in part and reject it in part.

Injury to Plaintiff

36. Defendant, through the Department of Public Health, has ordered Plaintiff to cease giving individualized advice about diet, fined her \$754, and threatened her with further legal action if she continues to offer dietary advice to paying customers in Florida.

37. The Department issued this order, assessed this fine, and made this threat based solely on the fact that Plaintiff offered to talk for pay with another adult about diet and nutrition, and not based on any evidence that anyone anywhere has ever been harmed or defrauded by Plaintiff.

38. Based on the threat of future civil and criminal action against her by Defendant, Plaintiff has ceased providing individualized advice about diet and nutrition.

39. Currently, the only way for Plaintiff to resume offering dietary advice is to become licensed as a dietitian/nutritionist, a process that would take years and cost tens of thousands of dollars. Plaintiff cannot undertake that time and expense, particularly since the Air Force may transfer her husband to a duty station outside of Florida in as few as two years.

40. But for these legal threats against her and the extreme burden of becoming licensed as a dietitian/nutritionist, Plaintiff would immediately resume

providing individualized advice to health-coaching clients, secure in the knowledge that such speech is legal.

CONSTITUTIONAL VIOLATIONS

Count I: First Amendment

41. Plaintiff re-alleges and incorporates the allegation set forth in the preceding paragraphs.

42. The free-speech and association clauses of the First Amendment to the U.S. Constitution protect the right to speak and associate freely.

43. Content-based restrictions on the exercise of these rights—including restrictions based on the subject matter of speech—are subject to strict scrutiny.

44. Florida's regulation of speech about diet and nutrition is content-based.

45. Plaintiff's health-coaching service consisted of personal dietary advice that is substantially identical to advice that is widely available to Floridians in books, online, and from uncompensated speakers, none of which are regulated under the Act.

46. Advice about diet and nutrition is protected by the First Amendment and does not lose its First Amendment protection simply because Plaintiff charges a fee for providing that advice or because the advice was provided in person or live via the Internet, rather than through a book or a blog.

47. Defendant's enforcement against Plaintiff of Florida's statutes and regulations concerning dietetics/nutrition licensure cannot survive any level of First Amendment scrutiny, and is therefore unconstitutional.

48. Unless Defendant is enjoined, Plaintiff will continue to suffer irreparable harm.

Prayer for Relief

- A. For entry of judgment declaring that the Florida Dietetics and Nutrition Practice Act, Fla. Stat. §§ 468.501–.518, and regulations promulgated pursuant to the Act, Fla. Admin. Code r. 64B8-40.003 to -45.006, are unconstitutional to the extent that they prohibit Plaintiff Del Castillo and others similarly situated from offering individualized advice about diet and nutrition;
- B. For entry of a permanent injunction enjoining Defendant from enforcing these unconstitutional statutes, regulations, and practices against Plaintiff Del Castillo and others similarly situated;
- C. For an award of attorneys' fees and costs pursuant to 42 U.S.C. § 1988; and
- D. For such further legal and equitable relief as the Court may deem just and proper.

Respectfully submitted,

/s/ Ari Bargil

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E-mail: psherman@ij.org

Attorneys for Plaintiff

EXHIBIT A

Complaint for Declaratory and Injunctive Relief



Heather Del Castillo <constitutionnutrition@gmail.com>

Weight loss

12 messages

Pat Smith <thefun5016@outlook.com>

Tue, Mar 14, 2017 at 2:48 PM

To: "constitutionnutrition@gmail.com" <constitutionnutrition@gmail.com>

Hi there, I came across your website and I liked what I saw. I have tried several weight loss programs to no avail. I was hoping you might be able to tell me what information or data you get from/need from me to personalize a program for me. What does the program include?

Thank you and have a great day.

Sent from [Outlook](#)

Heather Del Castillo <constitutionnutrition@gmail.com>

Tue, Mar 14, 2017 at 3:17 PM

To: Pat Smith <thefun5016@outlook.com>

Hi Pat,
Thanks for reaching out. Typically I schedule a 45 minute free consultation with all new prospective clients.
Before we meet, I would ask you to fill out the attached Health History form so that we can discuss any points that may be important to your success.

After this initial consultation you will decide if working together seems like a good fit for you. A typical client will meet with me 2x per month for 6 months to ensure monitoring and a sustainable progress check. We can discuss further details if you would like to set up an initial consultation.

Are you near Fort Walton Beach?

Thanks and I hope you'll consider meeting with me.

--

Heather Del Castillo

Like [Constitution Nutrition](#) on Facebook!!
Follow [@heather_healthcoach](#) on Instagram

On Tue, Mar 14, 2017 at 2:48 PM, Pat Smith <thefun5016@outlook.com> wrote:

EXHIBIT B

Complaint for Declaratory and Injunctive Relief

Mission:

To protect, promote & improve the health of all people in Florida through integrated state, county & community efforts.



Rick Scott
Governor

Celeste Philip, MD, MPH
Surgeon General and Secretary

Vision: To be the Healthiest State in the Nation

NOTICE TO CEASE AND DESIST

Department of Health Complaint #: **201704102**

The Department of Health ("the Department") is the state agency charged with regulating the unlicensed practice of health care professions in the State of Florida. Section 456.065, Florida Statutes (2016) empowers the Department to issue a Notice to Cease and Desist when the Department has probable cause to believe that any person is practicing a health care profession without an active, valid license to practice that profession.

The Department has probable cause to believe that Heather Kokesch Del Castillo of 23 Driftwood Ave SW, Fort Walton Beach, FL 32548, is not licensed by the Department or the Board of Medicine and is practicing as dietician/nutritionist in violation of Section 456.065 and 468.517(1)(a), Florida Statutes, to wit on 3/14/17 a Department Investigator sent an email to Del Castillo inquiring about her services. Del Castillo responded offering to provide nutritional consultation and meet with the Department Investigator twice a month, for six months to ensure monitoring and a sustainable progress check. Del Castillo also offers nutritional counseling on her website at www.constitutionnutrition.com.

Per DOH records Heather Kokesch Del Castillo is not a licensed dietician/nutritionist in the State of Florida. The practice of dietetics/nutrition without an active, valid license or permit is strictly prohibited by Section 456.065, Florida Statutes, and constitutes a crime.

WHEREFORE, in accordance with Section 456.065, Florida Statutes (2016), Heather Kokesch Del Castillo is hereby notified to **cease and desist** from practicing as a dietician/nutritionist in the State of Florida unless and until she is appropriately licensed by the Department.

The Department may file a proceeding in the name of the state seeking issuance of an injunction or a writ of mandamus against any person who violates any provision of this Cease and Desist. If the violation continues and the Department is required to seek enforcement of this Notice to Cease and Desist, the Department shall be entitled to collect its attorney's fees and costs.

Issued this 1st day of May, 2017, on behalf of the State Surgeon General of the Florida Department of Health by:

Ben Lanier
Signature of Department Representative

Ben Lanier, Medical Quality Assurance Investigator
Printed/Typed Name of Representative

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of May, 2017, a true and correct original of the foregoing notice to cease and desist has been served upon Heather Kokesch Del Castillo at 23 Driftwood Ave SW, Fort Walton Beach, FL 32548.

☒ By personal service

☐ U.S. Certified Mail, Item Number _____, Received on _____

☐ U.S. Priority Mail, Tracking Number _____, Received on _____; Date Certified Mail was returned _____

Ben Lanier
DOH Representative Signature

Ben Lanier, Medical Quality Assurance Investigator
DOH Representative Printed Name

Florida Department of Health

Division of Medical Quality Assurance

4052 Bald Cypress Way, Bin C-70 • Tallahassee, FL 32399
PHONE: 850/245-4478 • FAX: 850/245-4436

FloridaHealth.gov

INV FORM 607U, Revised, 12/16, 7/16, 12/15, 7/15, 11/14, 6/14 Created 7/13



Accredited Health Department
Public Health Accreditation Board

UNIFORM UNLICENSED ACTIVITY CITATION
FLORIDA DEPARTMENT OF HEALTH

Issued to:	Heather Kokesch Del Castillo	Case Number:	201704102
Address:	23 Driftwood Ave SW, Fort Walton Beach, FL 32548	Date(s) of Violation	3/14/17
Phone:	831-244-0114	Profession:	Dietician/nutritionist
E-mail Address:	Unknown	Driver's License	Florida Driver license verified
Wk. Address	Unknown	Date of Birth:	7/30/80
Wk. Phone	Unknown		

Pursuant to Section 456.065, F.S. the undersigned, who is an Investigator for the Department of Health, hereby certifies that he/she has probable cause to believe that the above referenced subject did violate the following provision(s) of law, F.S. 468.517 (1)(a) and 456.065(2)(d), by committing the following, including but not limited to, acts: did practice, attempt to practice, or offer to practice opticianry without an active, valid Florida license to practice that profession, to wit on 3/14/17 a Department Investigator sent an email to Del Castillo inquiring about her services. Del Castillo responded offering to provide nutritional consultation and meet with the Department Investigator twice a month for six months to ensure monitoring and a sustainable progress check. Del Castillo also offers nutritional counseling on her website at www.constitutionnutrition.com. Per DOH records Heather Kokesch Del Castillo is not a licensed dietician/nutritionist in the State of Florida.

Pursuant to Section 456.065, F.S., and Rule 64B-6.003, F.A.C., the Department has set the following penalty for violations of the aforesaid provision: a fine in the amount of \$500.00 plus costs in the amount of \$254.09. Total due: \$754.09.

ISSUED this 1st day of May, 2017, on behalf of the State Surgeon General of the Department of Health, by:

Ben Lanier
DOH Representative Signature

Ben Lanier, Medical Quality Assurance Investigator
DOH Representative Printed Name

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of May, 2017, a true and correct original of the foregoing citation has been served upon Heather Kokesch Del Castillo at 23 Driftwood Ave SW, Fort Walton Beach, FL 32548. .

(☒) By personal service

(☐) U.S. Certified Mail, Item Number , Received on

(☐) U.S. Priority Mail, Tracking Number , Received on ; Date Certified Mail was Returned

Ben Lanier
DOH Representative Signature

Ben Lanier, Medical Quality Assurance Investigator
DOH Representative Printed Name

PLEASE READ IMPORTANT NOTICES ON PAGE TWO REGARDING
YOUR LEGAL RIGHTS TO CHALLENGE, ACCEPT OR APPEAL THIS CITATION

INSTRUCTIONS FOR RESPONDING

ACCEPTING THE CITATION

Fines and costs are due within 30 calendar days from the date the date of service of the citation. To ensure proper credit for payment please attach a copy of the citation with payment and send to:

Department of Health / Compliance Management Unit
P.O. Box 6320
Tallahassee, Florida 32314-6320

DISPUTING THE CITATION

You may seek review of the citation by filing an appropriate petition with the Agency Clerk. The petition must be filed in conformance with Florida Administrative Code Rules 28-106.201 or 28-106.301, as applicable. Mediation is not available. The petition must be received by the Department within 30 calendar days of the date of service of the citation. The petition may be sent by mail, hand delivery or facsimile.

By mail:

Agency Clerk, Department of Health, 4052 Bald Cypress Way, BIN #A-02, Tallahassee, FL 32399-1703

By hand delivery:

Agency Clerk, Department of Health, 2585 Merchants Row Blvd., Prather Building, Suite 110, Tallahassee, FL

By facsimile:

(850) 413-8743

Failure to file a dispute within 30 calendar days of service shall constitute a waiver of hearing, and the citation shall automatically become a Final Order of the Department. Failure to comply with the Final Order may result in further legal action by the Department, as well as additional fines and costs, in accordance with Section 456.065(2), Florida Statutes.

RIGHT TO JUDICIAL REVIEW UNLESS WAIVED

If no request for hearing is received by the Department within 30 days of the date of service of the citation, the citation automatically becomes a Final Order which constitute final agency action of the Department. If this notice should become a Final Order, a party who is adversely affected is entitled to judicial review, unless waiver, pursuant to section 120.68, Florida Statutes. Proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing one copy of the Notice of Appeal with the Agency Clerk of the Department of Health and a second copy, accompanied by the filing fees prescribed by law, with the appropriate district court of appeal in accordance with the provisions of Florida Rule of Appellate Procedure 9.110. The Notice of Appeal must be filed within 30 days of rendition of the Final Order to be reviewed. The rendition date is the date the citation becomes final agency action.

ATTORNEY'S FEES AND COSTS

If the Department is required to seek enforcement of the final agency order in circuit court, it shall be entitled to collect attorney's fees and costs. This citation does not prevent other administrative, civil or criminal prosecutions involving the same facts relied on in this agency action.

Select Year: 2016 ▼ Go

The 2016 Florida Statutes

Title XXXII	Chapter 468	View Entire Chapter
REGULATION OF PROFESSIONS AND OCCUPATIONS	MISCELLANEOUS PROFESSIONS AND OCCUPATIONS	

468.505 Exemptions; exceptions.—

(1) Nothing in this part may be construed as prohibiting or restricting the practice, services, or activities of:

(a) A person licensed in this state under chapter 457, chapter 458, chapter 459, chapter 460, chapter 461, chapter 462, chapter 463, part I of chapter 464, chapter 465, chapter 466, chapter 480, chapter 490, or chapter 491, when engaging in the profession or occupation for which he or she is licensed, or of any person employed by and under the supervision of the licensee when rendering services within the scope of the profession or occupation of the licensee.

(b) A person employed as a dietitian by the government of the United States, if the person engages in dietetics solely under direction or control of the organization by which the person is employed.

(c) A person employed as a cooperative extension home economist.

(d) A person pursuing a course of study leading to a degree in dietetics and nutrition from a program or school accredited pursuant to s. [468.509\(2\)](#), if the activities and services constitute a part of a supervised course of study and if the person is designated by a title that clearly indicates the person's status as a student or trainee.

(e) A person fulfilling the supervised experience component of s. [468.509](#), if the activities and services constitute a part of the experience necessary to meet the requirements of s. [468.509](#).

(f) Any dietitian or nutritionist from another state practicing dietetics or nutrition incidental to a course of study when taking or giving a postgraduate course or other course of study in this state, provided such dietitian or nutritionist is licensed in another jurisdiction or is a registered dietitian or holds an appointment on the faculty of a school accredited pursuant to s. [468.509\(2\)](#).

(g) A person who markets or distributes food, food materials, or dietary supplements, or any person who engages in the explanation of the use and benefits of those products or the preparation of those products, if that person does not engage for a fee in dietetics and nutrition practice or nutrition counseling.

(h) A person who markets or distributes food, food materials, or dietary supplements, or any person who engages in the explanation of the use of those products or the preparation of those products, as an employee of an establishment permitted pursuant to chapter 465.

(i) An educator who is in the employ of a nonprofit organization approved by the council; a federal, state, county, or municipal agency, or other political subdivision; an elementary or secondary school; or an accredited institution of higher education the definition of which, as provided in s. [468.509\(2\)](#), applies to other sections of this part, insofar as the activities and services of the educator are part of such employment.

(j) Any person who provides weight control services or related weight control products, provided the program has been reviewed by, consultation is available from, and no program change can be initiated without prior approval by a licensed dietitian/nutritionist, a dietitian or nutritionist licensed in another state that has licensure requirements considered by the council to be at least as stringent as the requirements for licensure under this part, or a registered dietitian.

(k) A person employed by a hospital licensed under chapter 395, by a nursing home licensed under part II of chapter 400, by an assisted living facility licensed under chapter 429, or by a continuing care facility certified under chapter 651, if the person is employed in compliance with the laws and rules adopted thereunder regarding the operation of its dietetic department.

(l) A person employed by a nursing facility exempt from licensing under s. 395.002(12), or a person exempt from licensing under s. 464.022.

(m) A person employed as a dietetic technician.

(2) Nothing in this part may be construed to prohibit or limit any person from the free dissemination of information, or from conducting a class or seminar or giving a speech, related to nutrition.

(3) The provisions of this part have no application to the practice of the religious tenets of any church in this state.

(4) Notwithstanding any other provision of this part, an individual registered by the commission has the right to use the title "Registered Dietitian" or "Registered Dietitian/Nutritionist," and the designation "R.D." or "R.D.N." An individual certified by the Certification Board for Nutrition Specialists has the right to use the title "Certified Nutrition Specialist" and the designation "CNS," and an individual certified by the American Clinical Board of Nutrition has the right to use the title "Diplomate of the American Clinical Board of Nutrition" and use the designation "DACBN."

History.—ss. 5, 20, ch. 88-236; s. 4, ch. 91-429; s. 86, ch. 92-289; s. 41, ch. 95-210; s. 5, ch. 96-367; s. 39, ch. 98-89; s. 63, ch. 98-171; s. 127, ch. 2000-153; s. 134, ch. 2000-318; s. 94, ch. 2006-197; s. 179, ch. 2007-230; s. 2, ch. 2015-125.

Select Year:

The 2016 Florida Statutes

<u>Title XXXII</u>	<u>Chapter 468</u>	<u>View Entire Chapter</u>
REGULATION OF PROFESSIONS AND OCCUPATIONS	MISCELLANEOUS PROFESSIONS AND OCCUPATIONS	

468.503 Definitions.—As used in this part:

- (1) “Board” means the Board of Medicine.
- (2) “Commission” means the Commission on Dietetic Registration, the credentialing agency of the Academy of Nutrition and Dietetics.
- (3) “Department” means the Department of Health.
- (4) “Dietetics” means the integration and application of the principles derived from the sciences of nutrition, biochemistry, food, physiology, and management and from the behavioral and social sciences to achieve and maintain a person’s health throughout the person’s life. It is an integral part of preventive, diagnostic, curative, and restorative health care of individuals, groups, or both.
- (5) “Dietetics and nutrition practice” shall include assessing nutrition needs and status using appropriate data; recommending appropriate dietary regimens, nutrition support, and nutrient intake; ordering therapeutic diets; improving health status through nutrition research, counseling, and education; and developing, implementing, and managing nutrition care systems, which includes, but is not limited to, evaluating, modifying, and maintaining appropriate standards of high quality in food and nutrition care services.
- (6) “Dietetic technician” means a person who assists in the provision of dietetic and nutrition services under the supervision of a qualified professional.
- (7) “Licensed dietitian/nutritionist” means a person licensed pursuant to s. 468.509.
- (8) “Licensed nutrition counselor” means a person licensed pursuant to s. 468.51.
- (9) “Nutrition assessment” means the evaluation of the nutrition needs of individuals or groups, using appropriate data to determine nutrient needs or status and make appropriate nutrition recommendations.
- (10) “Nutrition counseling” means advising and assisting individuals or groups on appropriate nutrition intake by integrating information from the nutrition assessment.
- (11) “Preprofessional experience component” means a planned and continuous supervised practice experience in dietetics or nutrition.
- (12) “Registered dietitian” or “registered dietitian/nutritionist” means an individual registered with the commission.

History.—ss. 3, 20, ch. 88-236; s. 4, ch. 91-429; s. 144, ch. 94-218; s. 3, ch. 96-367; s. 1, ch. 2015-125; s. 57, ch. 2016-10.

Select Year: 2016 ▼ Go

The 2016 Florida Statutes

Title XXXII	Chapter 468	View Entire Chapter
REGULATION OF PROFESSIONS AND OCCUPATIONS	MISCELLANEOUS PROFESSIONS AND OCCUPATIONS	

468.517 Prohibitions; penalties.—

(1) A person may not knowingly:

(a) Engage in dietetics and nutrition practice or nutrition counseling for remuneration unless the person is licensed under this part;

(b) Use the name or title “dietitian,” “licensed dietitian,” “nutritionist,” “licensed nutritionist,” “nutrition counselor,” or “licensed nutrition counselor,” or any other words, letters, abbreviations, or insignia indicating or implying that he or she is a dietitian, nutritionist, or nutrition counselor, or otherwise hold himself or herself out as such, unless the person is the holder of a valid license issued under this part;

(c) Present as his or her own the license of another;

(d) Give false or forged evidence to the board or a member thereof;

(e) Use or attempt to use a license that has been suspended, revoked, or placed on inactive or delinquent status;

(f) Employ unlicensed persons to engage in dietetics and nutrition practice or nutrition counseling; or

(g) Conceal information relative to any violation of this part.

(2) A person who violates any provision of this section commits a misdemeanor of the first degree, punishable as provided in s. [775.082](#) or s. [775.083](#).

History.—ss. 17, 20, ch. 88-236; s. 100, ch. 91-224; s. 4, ch. 91-429; s. 204, ch. 94-119; s. 18, ch. 96-367.

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28-106.201 Initiation of Proceedings.

(1) Unless otherwise provided by statute, and except for agency enforcement and disciplinary actions that shall be initiated under Rule 28-106.2015, F.A.C., initiation of proceedings shall be made by written petition to the agency responsible for rendering final agency action. The term "petition" includes any document that requests an evidentiary proceeding and asserts the existence of a disputed issue of material fact. Each petition shall be legible and on 8 1/2 by 11 inch white paper. Unless printed, the impression shall be on one side of the paper only and lines shall be double-spaced.

(2) All petitions filed under these rules shall contain:

(a) The name and address of each agency affected and each agency's file or identification number, if known;

(b) The name, address, any e-mail address, any facsimile number, and telephone number of the petitioner, if the petitioner is not represented by an attorney or a qualified representative; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;

(c) A statement of when and how the petitioner received notice of the agency decision;

(d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;

(e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;

(f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and

(g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

(3) Upon receipt of a petition involving disputed issues of material fact, the agency shall grant or deny the petition, and if granted shall, unless otherwise provided by law, refer the matter to the Division of Administrative Hearings with a request that an administrative law judge be assigned to conduct the hearing. The request shall be accompanied by a copy of the petition and a copy of the notice of agency action.

Rulemaking Authority 14.202, 120.54(3), (5) FS. Law Implemented 120.54(3) FS. History—New 4-1-97, Amended 9-17-98, 1-15-07, 2-5-13.

28-106.301 Initiation of Proceedings.

(1) Unless otherwise provided by statute and except for agency enforcement and disciplinary actions initiated under subsection 28-106.2015(1), F.A.C., initiation of a proceeding shall be made by written petition to the agency responsible for rendering final agency action. The term "petition" includes any document which requests a proceeding. Each petition shall be legible and on 8 1/2 by 11 inch white paper or on a form provided by the agency. Unless printed, the impression shall be on one side of the paper only and lines shall be doubled-spaced.

(2) All petitions filed under these rules shall contain:

(a) The name and address of each agency affected and each agency's file or identification number, if known;

(b) The name, address, any e-mail address, and telephone number of the petitioner, if the petitioner is not represented by an attorney or qualified representative; the name, address, e-mail address, facsimile number, and telephone number of the petitioner; if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;

(c) An explanation of how the petitioner's substantial interests will be affected by the agency determination;

(d) A statement of when and how the petitioner received notice of the agency decision;

(e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;

(f) A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action;

(g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action; and

(h) A statement that no material facts are in dispute.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97, Amended 9-17-98, 1-15-07, 12-24-07, 2-5-13.

EXHIBIT C

Complaint for Declaratory and Injunctive Relief

Mission:

To protect, promote & improve the health of all people in Florida through integrated state, county & community efforts.



Rick Scott
Governor

Celeste Philip, MD, MPH
Surgeon General and Secretary

Vision: To be the Healthiest State in the Nation

August 21, 2017

Heather Del Castillo
23 Driftwood Ave SW
Fort Walton Beach, FL 32548

RE: DOH ULA Case No. 2017-04102
Subject: Heather Kokesch Del Castillo

Dear Ms. Del Castillo:

The Department has received and processed your payment of the citation issued to you in the above-referenced case on May 2, 2017. Your payments were processed on June 5, 2017 and August 18, 2017, and the confirmation numbers regarding the payment are:

916045937 - \$500.00
917007994 - \$254.09

This matter is now closed, effective today. Please keep this letter as confirmation that the Department of Health will not pursue any further agency action against you regarding this matter. You will not receive any additional correspondence from the Department regarding the status of this case.

Please feel free to contact me should you require any additional information.

Respectfully,

Jenna Partin
Assistant General Counsel

Florida Department of Health

Office of the General Counsel – Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65 • Tallahassee, FL 32399-3265
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PHONE: 850/245-4640 • FAX: 850/245-4662

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