

# **EXHIBIT 3**

**Steve Cooksey**

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RE: Website Changes

Inbox x

Director [Director@ncbdn.org](mailto:Director@ncbdn.org)

Jan  
19

to Steve

Mr. Cooksey:

I meant to attach this to my note yesterday, but just as a follow-up, you may find the attached document helpful in understanding the laws regarding unlicensed persons and nutrition services.

- Charla

Charla M. Burill  
Executive Director  
North Carolina Board of Dietetics/Nutrition  
[director@ncbdn.org](mailto:director@ncbdn.org)  
1000 Centre Green Way, Suite 200  
Cary, NC 27513  
Phone: (919) 228-6390  
Fax: (919) 882-1776

-----Original Message-----

From: [cooksey.steve@gmail.com](mailto:cooksey.steve@gmail.com) [mailto:[cooksey.steve@gmail.com](mailto:cooksey.steve@gmail.com)] On Behalf Of Steve Cooksey  
Sent: Wednesday, January 18, 2012 2:37 PM  
To: [director@ncbdn.org](mailto:director@ncbdn.org)  
Subject: Website Changes

Have been completed.

- 1) Diabetes Support has been removed.
- 2) Disclaimer is not visible on 'front page'.

... I would like for you to see this post... it this gent was widely discussed, he was even mentioned on the [diabetes.org](http://diabetes.org) website. However, his non-grain, non-processed food 'diet' was not highlighted.

<http://www.diabetes-warrior.net/2011/06/12/85-years-with-type-1-diabetes/>

I did enjoy our conversation and I look forward to discussing my website's compliance ...and content with you. :)

Steve Cooksey

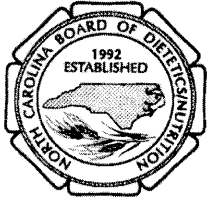
(704) 443-8658

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Diabetes-Warrior.net

 **GUIDELINE A\_6.pdf**

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## GUIDELINE A

### FOR UNLICENSED PERSONS WHO ARE NOT OTHERWISE EXEMPT

The purpose of this guideline is to summarize the North Carolina Dietetics Practice Act for unlicensed persons.<sup>1</sup>

#### NORTH CAROLINA LAW

Chapter 90 of the North Carolina General Statutes was enacted in 1991 (the “Dietetics/Nutrition Practice Act”). The North Carolina Board of Dietetics/Nutrition (“the Board”) is charged with the responsibility of safeguarding the public health, safety and welfare and to protect the public from being harmed by unqualified persons by providing for the licensure and regulation of persons engaged in the practice of dietetics/nutrition and by establishing educational standards for those persons.

**Pursuant to Chapter 90, Article 25, a license is required to engage in dietetics/nutrition in North Carolina.** Under General Statute § 90-352, the licensed practice of **dietetics/nutrition** is defined as the following: “Dietetics/nutrition means the integration and application of principles derived from the science of nutrition, biochemistry, physiology, food, and management and from behavioral and social sciences to achieve and maintain a healthy status. **The primary function of dietetic/nutrition practice is the provision of *nutrition care services*.**” (emphasis added)

General Statute § 90-352 defines *nutrition care services* as follows:

**Nutrition care services means any part or all of the following:**

- a. **Assessing the nutritional needs of individuals and groups, and determining resources and constraints in the practice setting;**
- b. **Establishing priorities, goals, and objectives that meet nutritional needs and are consistent with available resources and constraints;**
- c. **Providing nutrition counseling in health and disease;**
- d. **Developing, implementing, and managing nutrition care systems; and**
- e. **Evaluating, making changes in, and maintaining appropriate standards of quality in food and nutrition services.** (emphasis added)

**Nutrition assessment and nutrition counseling are defined in the Administrative Rules:**

Under 21 NCAC 17.0101 **nutrition assessment** is defined as the evaluation of the nutrition needs of individuals and groups based upon biochemical, anthropometric, physical, and food intake and diet history data to determine nutritional needs and recommend appropriate nutrition intake including enteral and parenteral nutrition. **Nutrition counseling** is defined as the advice and assistance provided by licensed dietitians/nutritionist to individuals or groups on nutrition intake by integrating information from the nutrition assessment with information on food and other sources of nutrient and meal preparation consistent with cultural background, socioeconomic status and therapeutic needs.

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<sup>1</sup> For purposes of this guideline, the term *unlicensed persons* or *persons not licensed* refers to all persons not licensed under the North Carolina Dietetics/Nutrition Practice Act who are not otherwise exempt from the Act’s licensure requirements.

## TERMINOLOGY

Further, General Statute § 90-365 provides that a license is required to do any of the following:

- (1) Engage in the practice of dietetics/nutrition.
- (2) Use the title "dietitian/nutritionist".
- (3) Use the words "dietitian," "nutritionist," or "licensed dietitian/nutritionist" alone or in combination.
- (4) Use the letters "LD," "LN," or "LDN," or any facsimile or combination in any words, letters, abbreviations, or insignia.
- (5) To imply orally or in writing or indicate in any way that the person is a licensed dietitian/nutritionist.

For purposes of G.S. §90-365, the terms "Nutrition Counselor," "Nutrition Coach," "Nutrition Consultant" "Sports Nutritionist" and like terms tend to indicate that a person is practicing dietetics/nutrition and/or implies that a person is a licensed dietitian/nutritionist. These terms should not be utilized by unlicensed persons.

## GENERAL NUTRITION INFORMATION

Persons who are not licensed to practice dietetics/nutrition in North Carolina can provide general non-medical *nutrition information*. **Nutrition Information** is defined in 21 NCAC 17.0402 as nonfraudulent nutrition information related to food, food materials, or dietary supplements which is designed for one or more healthy population groups and is based on valid scientific evidence, reports, and studies. Nutrition information is not based on an individual nutrition assessment as referenced in G.S. § 90-352 or medical nutrition therapy as referenced in 21 NCAC 17.0101(11) and is not individualized to provide nutrition care services to prevent, manage, treat, cure or rehabilitate a medical condition, illness, or injury for a specific person or group as referenced in G.S. § 90-352 and 21 NCAC 17.0101(12).

**Under 21 NCAC 17.0402 the Board shall deem an unlicensed person who provides *nutrition information* or *education* to be in compliance with G.S. § 90-368(9) when:**

- (1) The person **does not hold** himself/herself out to be a dietitian or nutritionist or imply orally or in writing or indicate in any way that he/she is a dietitian/nutritionist;
- (2) The person **does not provide** nutrition care services or nutrition care activities which have not been delegated to him/her by a licensed dietitian/nutritionist;
- (3) The person **provides** nutrition information on or about food, food materials, or dietary supplements, and **does not provide** nutrition information on the nutritional needs of the consumer;
- (4) The person **provides** nutrition information in connection with the marketing and distribution of the food, food materials, dietary supplements or other goods to be provided or sold, and **does not provide** nutrition information in connection with the marketing and distribution of nutrition services;
- (5) The person **provides** nonfraudulent nutrition information which is based on scientific reports and studies, is not false or misleading, and is safe; and
- (6) The person **provides** nutrition information on food, food materials, nutraceuticals, dietary supplements or other goods in accordance with federal, state and local laws, regulations and ordinances, including but not limited to G.S. 90, Article 25.

The following examples appear to meet the definition of general *nutrition information*:

- 1) Demonstrating how to cook food;
- 2) Providing information addressing the recommended amounts of essential nutrients for a healthy individual, as stated in scientific publications such as the *Dietary Guidelines for Americans*;
- 3) Providing information on healthy eating and healthy snacks;
- 4) Discussing carbohydrates, proteins, fats, vitamins, minerals, and water as essential nutrients required by the body;
- 5) Providing statistical, scientific information, regarding the correlation between chronic disease and the excesses or deficiencies of certain nutrients; and
- 6) Providing non-fraudulent information about nutrients contained in foods or supplements.

#### NUTRITION DATA COLLECTION

The North Carolina Board of Dietetics/Nutrition does not regulate the collection of information or data in and of itself, or standing alone. However, the manner in which such information is utilized may be the practice of dietetics/nutrition. A person must be licensed to practice dietetics/nutrition in order to interpret results of any analysis, assess and determine nutritional needs, recommend appropriate nutrition intake, counsel, and integrate any analysis results to help a client establish priorities, goals, and objectives that meet nutritional needs. Thus, if an unlicensed person uses collected data to then assess an individual's diet, whether this assessment is completed through the use of software or by the person him/herself, this would be a violation of the Dietetics/Nutrition Practice Act.

#### FITNESS AND NUTRITION CERTIFICATES

The requirements for licensure are statutorily defined. One must apply and meet the general requirements provided in North Carolina G.S. § 90-357 and Rule 21 NCAC 17.0104 in order to be granted a license to practice dietetics/nutrition in North Carolina. However, many organizations market nutrition certifications and the opportunity for fitness professionals, health coaches and like persons to improve their nutrition knowledge through earning certificates/certification, online diplomas or taking nutrition courses. Many of these programs advise applicants to review their state laws to determine what nutrition services can legally be offered. Under the Dietetics/Nutrition Practice Act, in order to practice dietetics/nutrition in North Carolina, one must be licensed unless otherwise exempt. A certificate or diploma, standing alone, is not enough to authorize a person to practice dietetics/nutrition in North Carolina. Therefore, upon obtaining a certification or diploma, one will not be able to provide nutritional assessments, consultation or counseling or use any title which indicates that one is practicing dietetics/nutrition, unless licensed or otherwise exempt from licensure.

#### SERVICES VERSUS INFORMATION

Advertising or offering to provide nutritional services described by the words and terms "Nutrition Assessment," "Nutrition Counseling," "Nutrition Consultations," or "Nutrition Coaching," indicates the practice of dietetics/nutrition and/or implies that one is a licensed dietitian/nutritionist, and must not be used by unlicensed persons. Unlicensed persons can only provide non-medical general *nutrition information* (see above), and should describe such information as "general nutrition information" or "basic nutrition guidelines."

Unlicensed persons should emphasize that the *nutrition information* he/she is able to provide is non-medical and is based on scientific recommendations for a healthy population. Clients with medical conditions – such as diabetes, hypertension and/or heart disease – seeking *individualized nutrition information*, should be referred to a licensed dietitian/nutritionist or other medical professional. Unlicensed persons can encourage (so long as they do not counsel) clients to follow diet plans recommended to the client by licensed dietitian/nutritionist or other medical professional, but cannot recommend diet plans themselves or recommend changes to a diet plan prescribed by a licensed dietitian/nutritionist or other medical professional.

**REFERENCE TO REPORTS OR STUDIES ON NUTRITION**

Pursuant to 21 NCAC 17.0402, if a person provides *nutrition information* referencing a report or study, this information must be based on historical or methodological studies or research conducted by experts in the field using sound scientific methods with randomized controlled clinical trials; or reports on valid scientific studies published in peer-reviewed medical or dietetic and nutrition journals or publications.

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*This document has been reviewed and approved by the North Carolina Board of Dietetics/Nutrition for use as a guideline only. It is provided to help unlicensed persons better understand the North Carolina Dietetics/Nutrition Practice Act. It is not all inclusive or exclusive. This guideline is provided as information only, and is not intended to address any specific case scenario. Violations and Complaints reported to the Board will be reviewed on a case-by-case basis, and are dependent on the facts of the situation. In the event of a conflict between this guideline and the North Carolina Dietetics/Nutrition Practice Act and associated Rules, the Statute and Rules will govern.*

**NORTH CAROLINA BOARD OF DIETETICS/NUTRITION**  
1000 Centre Green Way, Suite 200 Cary • North Carolina, 27513  
Email: [info@ncbdn.org](mailto:info@ncbdn.org) • Phone: (919) 228-6391 • Toll Free: (800) 849-2936 • Fax: (919) 882-1776