

American Clinical Board of Nutrition

Certificant Agreement

This certificant Agreement is entered into by the American Clinical Board of Nutrition (ACBN), a Virginia based certification corporation, and the undersigned, whose name and other identifying information appear on the signature page herein. ACBN and "certificant" will collectively be referred to within as the "Parties".

RECITALS

WHEREAS, the ACBN is a certification agency for health care providers in nutrition beyond the post doctorate level, and

WHEREAS, the ACBN provides for the examination and continuing assessment of "Certificants" to ensure public safety, and

WHEREAS, the ACBN screens and approves nutritional seminars, and

WHEREAS, the Certificant is duly licensed to provide nutritional care in their respective state, province or Country, and

WHEREAS, the Certificant desires to enter into a single contract with the ACBN to participate with the ACBN, and

WHEREAS, the Certificant and ACBN desire to enter into this Agreement and replace all previous agreements among the Certificant and ACBN,

NOW, THEREFORE, in consideration of the mutual promises contained herein, ACBN and Certificant agree as follows:

1.0 DEFINITIONS.

For purposes of this Agreement, in addition to terms elsewhere defined herein, the following definitions shall apply:

- 1.1 **Active.** A certificant who has successfully complied with all requirements necessary to maintain diplomate status.
- 1.2 **Agreement.** This Certificant Agreement between the Parties and any attachments or amendments hereto.
- 1.3 **Nutritional Services.** The services provided by a certificant for the treatment of health related disorders.
- 1.4 **Certificant.** A health care professional who has successfully completed a 300 hour program in nutrition as outlined in the ACBN policy and procedures, passed the ACBN examination and is in good standing.

- 1.5 **Contracted Certificant.** A Certificant who is a duly licensed to practice nutrition in the state in which they practice, has been credentialed by ACBN, and has entered into a fully executed Certificant Agreement with the ACBN.
- 1.6 **Emergency Condition.** This means a medical or behavioral condition, the onset of which is sudden, that manifests itself by symptoms of sufficient severity, including severe pain, that a prudent layperson possessing an average knowledge of medicine and health, could reasonably expect the absence of immediate medical attention to result in: (A) placing the health of the person afflicted with such condition in serious jeopardy, or in the case of a behavioral condition placing the health of such person or others in jeopardy; (b) serious impairment of such person's bodily functions; (c) serious dysfunction of any bodily organ or part of such person; or (d) serious disfigurement of such person.
- 1.7 **Good Standing.** A certificant who has successfully complied with the annual requirements of maintaining their diplomate status.
- 1.8 **Inactive.** A certificant who has failed to comply with all requirements necessary to maintain diplomate status.
- 1.9 **Medically Necessary Services.** Nutritional services, which, in the judgment of the ACBN are established as safe and effective, are provided in an efficient manner, consistent with the diagnosis, to meet the basic needs of the patient for reasons other than comfort or convenience, in accordance with generally accepted nutritional protocols and recognized scientific standards.
- 1.10 **Nutritional Services.** The history, assessment, diagnosis, treatment and follow-up of health related issues through a nutritional perspective.
- 1.11 **Participating Certificant.** A Certificant included in the ACBN, who is in good standing. (An active certificant)
- 1.12 **Patient.** Any individual who has requested services from a Certificant.
- 1.13 **Parties.** ACBN and the certificant who have executed this agreement.
- 1.14 **Stakeholder.** Any individual who pays for or requires the services of, or involved in, the regulation of the ACBN.

2.0 Responsibilities of the ACBN

- 2.1 The ACBN shall continue to seek and/or maintain accreditation status with the accreditation agency through compliance with accreditation standards and requirements.
- 2.2 The ACBN will make known to all certificants, approved seminars for the purpose of annual recertification requirements.
- 2.3 To provide a complete listing of all certificants, active and inactive, to all stakeholders as well as the general public at no cost.
- 2.4 To list any and all disciplinary measures imposed on any certificant to the ACBN website for any stakeholder to view.
- 2.5 The ACBN will provide a psychometrically and grammatically acceptable, appropriate and defensible examination to qualified candidates.

- 2.6 The ACBN will periodically reevaluate its examination through the process of field and delineation studies and evaluated by qualified psychometricians and grammarians.
- 2.7 The ACBN will establish a date, time and location for providing an examination when the minimum number of qualified candidates has submitted the appropriate application and supporting documentation.
- 2.8 The ACBN shall adhere to the Americans with Disabilities Act.
- 2.9 The ACBN shall maintain liability and indemnity insurance.
- 2.10 The ACBN will place on its website, www.acbn.org, results of recent examination results, cut scores and trends.

3.0 Certificant Responsibilities

- 3.1 Shall provide nutritional services which the certificant is qualified to provide, has the capacity to provide, and customarily provides, in a prompt manner. The certificant shall appropriately document all care provided to a patient.
- 3.2 Certificant shall comply with the Bylaws and Policies and Procedures of the ACBN. Certificant shall comply with all programs, policies, procedures, including but not limited to, authorization forms, corrective action plans, attestation forms, etc. All policies are set forth in this agreement are found in the Candidate's handbook. The Bylaws as well as the Policies and Procedures are available on the website: www.acbn.org, or in hard copy by contacting ACBN headquarters with a request for a copy of these documents. Policies and Procedures may be amended from time to time at the discretion of the ACBN and approval from the accreditation agency.
- 3.3 Certificant shall comply with all Federal and State laws. Certificant shall maintain and provide documentation satisfactory to the ACBN that Certificant is licensed and meets all federal and state regulations.
- 3.4 Certificant agrees to participate and comply in Credentialing/Recertification. This shall be written proof documenting malpractice insurance, professional certification and licenses and other information and documents. Certificant agrees to submit all information in a timely manner and warrants that all such information will be current and accurate. ACBN reserves the right to charge a nominal non-refundable processing fee in an amount determined by the ACBN.
- 3.5 Referral by Certificant to Other Health Professionals. If a patient requires additional services or evaluation as determined by the certificant, certificant agrees to refer the patient to either their primary care physician or other health professional in accordance with the terms and conditions of the certificant agreement.
- 3.6 Immediate Notification by certificant of Certain Occurrences. Certificant, and/or his/her legal representative, shall notify the ACBN immediately by fax of the occurrence of any of the following:
 - a. The filing of any claims for professional negligence or malpractice against Certificant institution of any action, litigation,

- or lawsuit in that regard, regardless of whether the claim involves a Certificant;
- b. The commencement of any voluntary or involuntary bankruptcy proceedings by or against the Certificant or any similar proceedings;
 - c. Certificant's loss of license required for by the ACBN: the suspension, revocation, or imposition of any limitations on any such license, or the institution of any action against certificant or certificant's license or the commencement of any disciplinary or enforcement action against Certificant by a State Health Regulatory Board, a State Department of Health Services, the U.S. Department of Health and Human Services, the Health Care Financing Administration, the Office of the Inspector General, or any other licensing, regulatory, or professional agency or body, or the commencement or institution of any similar action;
 - d. Any lapse of professional liability (malpractice) or general liability insurance maintained by Certificant, any denial, cancellation, or non-renewal of any such insurance, or any reduction in the amount of such insurance carried by or issued to Certificant.
 - e. The filing of any criminal charges against Certificant by a District Attorney, Attorney General, or any other government official or agency;
 - f. Certificant's termination, for cause, from a provider network, offered by any plan, including, without limitation, any health care service plan or health maintenance organization, any health insurer, any preferred provider organization, or any employer;
 - g. Involuntary termination of certificant's membership in any State or National Professional Organization, or any similar professional organization or;
 - h. Any other occurrence or condition which might materially impair the ability of Certificant to discharge his/her duties or obligations under this agreement, including, without limitation, any disability or health condition which would affect Certificant's ability to provide nutritional services to patients.
 - i. Any condition or circumstance that may pose a direct threat to the safety of Certificant, Certificant's staff, patients and/or the general public;

Failure of Provider to notify the ACBN of any occurrences listed above will result in termination of this agreement.

NOTHING IN SECTION 3.6 SHALL PREVENT OR BE CONSTRUED TO PREVENT CERTIFICANT FROM EXERCISING HIS/HER RESPONSIBILITY TO ADVOCATE FOR APPROPRIATE HEALTH CARE FOR ANY PATIENT.

IF CERTIFICANT VIOLATES THE TERMS OF THIS SECTION, SECTION 3.6, PROVIDER ACKNOWLEDGES THAT CERTIFICANT WILL BE RESPONSIBLE FOR AND AGREES TO PAY ANY AND ALL ACTUAL DAMAGES INCURRED BY THE ACBN AS A RESULT OF THAT VIOLATION AND MAY BE LIABLE FOR OTHER COSTS, EXPENSES, DAMAGES, CLAIMS AND LIABILITIES, INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEY'S FEES AND COURT COSTS. IF MONEY DAMAGES ARE INSUFFICIENT TO COMPENSATE THE ACBN FOR ANY SUCH VIOLATION, CERTIFICANT MAY BE SUBJECT TO AN INJUNCTION PROHIBITING THAT ACTIVITY THAT CONSTITUTES A VIOLATION OF THIS SECTION AND/OR OTHER EQUITABLE RELIEF. NOTHING IN THIS SECTION 3.6 SHALL AFFECT ANY OF THE CERTIFICANTS OTHER RIGHTS UNDER THIS AGREEMENT, OR IN EQUITY. THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

4.0 TERM OF AGREEMENT

This agreement shall become effective on the date the Agreement is signed by both parties and shall continue in effect through December 31st of that same year. This agreement will automatically be extended for a term of one (1) year on each successive January 1st unless either party terminates this agreement as provided in section 5. Either party may exercise a right of non renewal at the expiration of the contract period at least sixty (60) days written notice to the other party.

5.0 Termination

5.1 Termination with Cause. The ACBN may terminate this agreement with Certificant by giving thirty (30) days written notice to Certificant for any material breach of the Agreement for other than the reasons described in section 3.6. The written notice given pursuant to section 3.6 shall be subject to dispute resolution provisions set forth in the Policies and Procedures, section XIV: Grievances, Discipline and Appeals, page 29.

5.2 Termination without Cause. Notwithstanding any other provision in this Agreement, the ACBN or Certificant may terminate this Agreement at any time by giving at least sixty (60) days prior written notice of termination to the other. During the notice period, ACBN may, by further written notice(s), in its sole discretion, defer the effective date of termination of Certificant up to a total of 180 days. Certificant and ACBN each acknowledge and agree that the Party exercising its right to terminate this Agreement in accordance with this Section need not specify any cause, reason, grounds, justification or other basis for the termination other than the exercise of the Party's rights under this section.

- 5.3 Certificant Responsibilities After termination.** Once terminated, Certificant is decertified and is no longer an active certificant of the ACBN. They may no longer use the acronym ACBN, nor hold themselves out to be a Diplomate with the Clinical Board of Nutrition. They may use the term "Diplomate, American Clinical Board of Nutrition" only in a vitae or in an academic letter. This section shall survive the termination of the Agreement. Upon termination of certificant, with or without cause, the diplomate is precluded from public or private pejorative statements concerning the ACBN; this includes refraining from maligning or attempting to demonetize by phone calls, emails, conference calls, letters or other communication. This section shall survive the termination of the agreement.
- 5.4 ACBN Responsibilities after Termination.** The ACBN will list the Certificants name and termination date on the website as required by accreditation standards.

6.0 INSURANCE

- 6.1 Professional Liability Insurance.** Certificant shall maintain professional liability insurance (malpractice) insurance from an insurance provider acceptable to the ACBN and of standard form, in the amounts of (minimally) One Million (1,000,000) per claim and Three Million (3,000,000) aggregate. In the event a Certificant procures a "claims made" policy as distinguished from an "occurrence" policy, Certificant shall procure and maintain at all times during such insurance, at certificant's sole cost and expense, a "reporting endorsement" or "tail" coverage for the duration of any liability to continue and extend coverage complying with this Agreement after the end of the period covered by the "claims made" policy.
- 6.2 General Comprehensive Liability Insurance.** Certificant shall maintain general comprehensive liability coverage acceptable to the ACBN and of standard form.
- 6.3 Other Insurance.** Certificant is responsible to maintain all necessary insurance policies, such as Worker's Compensation and errors and omissions, in amounts necessary to provide adequate coverage for all liabilities.
- 6.4 Contractor Notification.** Notwithstanding any other provision of this Agreement, Certificant shall notify the ACBN within five (5) days of any material change in professional liability and general comprehensive liability insurance coverage.

7.0 Duty to Defend and Indemnify

Certificant shall be solely responsible for and shall defend and hold ACBN free and harmless from any claims, losses, damages, liabilities, costs, expenses, attorney's fees and costs or obligations arising from or relating to any acts or omissions, duties and obligations of Certificant, and its employees, agents, and representatives in providing or failing to provide nutrition services to patients.

8.0 Records Data Collections

- 8.1 Maintenance of Records.** In addition to the Policies and Procedures of the ACBN set forth in Section XV: Document Maintenance, Security, and Confidentiality, Certificant shall maintain and provide the ACBN, the State Department of Health or Human Services, U.S. Department of Health and Human Services, U.S. Department of Justice and/or Federal Health Care Financing Administration (HCFA), or other governmental organizations or agencies, and in compliance with HIIPA regulations, with all records relating to services provided to each patient by Provider, in such form and containing such information as required by applicable law, including medical histories, records and reports from other health care providers, received from patient and such other information as the ACBN or other such organizations and agencies may require. Such records must be provided by Certificant at no charge. Such records shall be retained by Certificant for a minimum of seven (7) years. Electronic records are retained indefinitely. The obligations in this section shall survive the termination of this Agreement.
- 8.2 Request for Records.** If the ACBN, or any authorized agency or organization requests the health care records, x-rays, or other documents, certificant shall provide copies of these records within a time frame as determined by the ACBN, usually fourteen (14) days. Copies of records shall be provided at Certificants sole expense. Failure of Provider to supply requested records may result in termination of this Agreement.
- 8.3 Confidentiality of Patient Records.** The ACBN and certificant shall maintain the confidentiality of each patient's medical records and related information. Certificant shall provide the ACBN access to patient's complete medical records and related information in accordance with Federal and State laws, for purposes of reviewing compliance with the ACBN's Policies and Procedures when liability issues occur. Nothing in this section shall preclude Certificant from complying with other applicable sections of this Agreement.
- 8.4 Access to Records.** Certificant shall provide access to the ACBN, upon the appropriate request, at reasonable times upon demand by the ACBN, to inspect the records relating to the Certificants performance of this Agreement, including, without limitation (as per section 8.3), access to patient records.

9.0 Governing Law

the
of
This Agreement will be governed by and construed in accordance with
laws of the Commonwealth of Virginia, without regard to or application
conflicts of law rules or principles.

10.0 Severability

In the event any provision of this Agreement is proved invalid or unenforceable by state or federal law or declared null and void by any court of competent jurisdiction, the remainder of the provisions of this Agreement shall remain in full force and effect.

11.0 Stakeholder Complaints

Complaints and grievances from any stakeholder are covered in the Policies and procedures of the ACBN and are available upon written request, or by logging on to the ACBN website: www.acbn.org: Section XV.

12.0 Dispute Resolution

See Policies and procedures of the ACBN section XIV: page 29: Grievances, Discipline and Appeals.

13.0 Notices

Any notice to be given pursuant to this Agreement by one Party to the other shall be in writing and delivered: personally, by certified mail, or registered mail by the United States Postal Service or "overnight express", with return receipt requested and postage prepaid; or sent for delivery by "express mail", "two day delivery" or any similar service offered by the United States Postal Service, Federal Express, United Parcel Service, or any similar organization. Each Party may change its address by giving notice in accordance with the Policies and Procedures of the ACBN. Notices delivered personally shall be deemed received upon actual receipt. Notices given by certified or registered mail shall be deemed received no later than two (2) United States Postal Service business days after the date mailed. Notices sent for delivery by any other means shall be deemed received no later than two (2) business days after delivery to the United States Postal Service, Federal Express, United Parcel Service, or any similar organization.

14.0 Entire Agreement

This Agreement supercedes any and all other previous agreements whether oral or in writing, between the Parties and contains all of the covenants and agreements between them. Each Party acknowledges that no representation,

inducement, promise or agreement, oral or otherwise, has been made by any Party or anyone on behalf of any Party which is not embodied herein.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth below.

CERTIFICANT
Nutrition

American Clinical Board of
6855 Browntown Road
Front Royal, VA 22630

Printed Name

Printed Name

Signature

Signature

Clinic/Practice Name

Title

License #

Date Signed

Date Signed