

PRACTICE TIPS: Legal Implications of Scope of Practice

All Registered Dietitian Nutritionists (RDNs) and Nutrition and Dietetics Technicians, Registered (NDTRs) are individually responsible for the knowledge and understanding of the scope/standards resources (Resources) including the Scope of Practice and Standards of Practice (SOP) in Nutrition Care and Standards of Professional Performance (SOPP), as well as the focus area SOP SOPP applicable to their practice. The Resources, published in January and February 2018, are necessary references and tools that each practitioner is obligated to understand and incorporate into their practice.

- The set of documents includes “core” standards and quality indicators for nutrition care and professional performance, i.e., 2017 SOP in Nutrition Care and SOPP for RDNs and 2017 SOP in Nutrition Care and SOPP for NDTRs. To view, go to the Commission on Dietetic Registration (CDR) Website at <https://www.cdrnet.org/scope>. You can also go to the *Journal* Website and click on the Scope and Standards for RDNs and NDTRs Collection, <https://jandonline.org/content/core>.
- As of August 2022, there are seventeen (17) focus area SOP and/or SOPPs that each RDN is responsible for understanding and utilizing as applicable to their practice area (i.e.; a pediatric dietitian should understand and utilize the SOP and SOPP for RDNs in Pediatric Nutrition). To view the components of the focus area SOP SOPPs, go to the CDR Website at <https://www.cdrnet.org/scope>; or, go to the *Journal* Website and click on either the Focus Area Standards for CDR Specialist Credentials Collection, <https://jandonline.org/content/credentialed>, or the Focus Area Standards for RDNs Collection, <https://jandonline.org/content/focus>.

Failure to understand and utilize the Resources and applicable focus area SOP SOPP for self-assessment of competence in practice can increase a RDN’s risk for liability. Consider the following situations and how the practitioner may be liable:

- A RDN in general clinical practice is a Medicare Medical Nutrition Therapy (MNT) Provider for patients with diabetes in an outpatient clinic. This RDN has identified an opportunity to expand services to include blood glucose self-monitoring instruction but has not been trained and deemed competent in providing blood glucose self-monitoring instruction.
- A hospital RDN in general practice has changed coverage assignment to include patients with Crohn’s on nutrition support therapy but has not participated on the Nutrition Support Team since their internship.
- Due to a staff vacancy, a Clinical Nutrition Manager needs to provide MNT to residents in a hospital’s newly opened long-term care/skilled unit but has not practiced MNT in 5 years.

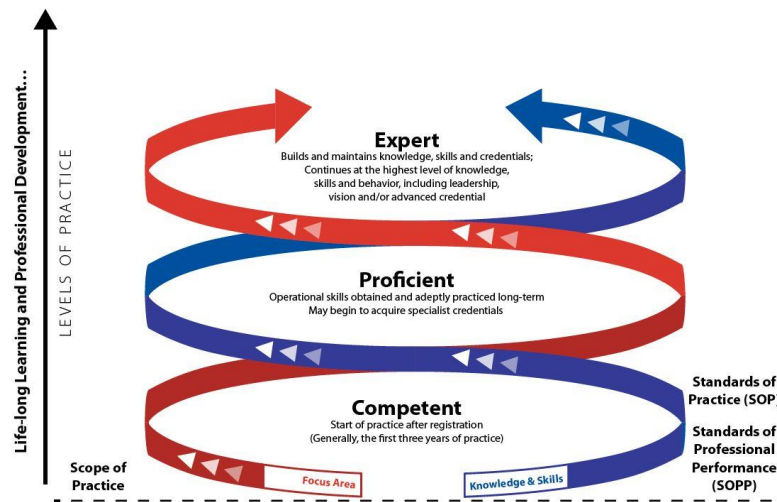
Addressing Specific Practice Scenarios

- Scenario: Change in practice area - Expertise in a specific practice area or many years in practice does not ensure competence. Each practitioner is required to self-reflect on their level of knowledge, skill, and application in the specific practice area (refer to Figure 1). Useful tools for this self-reflection include the Resources, focus area SOP SOPP, Scope of Practice Decision Algorithm, Practice Tips, and the Professional Development Portfolio (PDP). The goal is to measure *your* competence by using the appropriate standards, determine *your* learning needs and identify methods to meet those needs.

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- Scenario: Shortened, inadequate or no training period - Adequate preparation enhances application, competence, and quality in practice. Busy schedules, heavy patient workload, and inadequate staffing should not decrease time spent training. Reflect on training and assess competence prior to practicing independently. Ask yourself, “Am I competent to provide safe and adequate care in this practice area/performing this task?” Discuss comprehensive training with your supervisor and a RDN with experience in the practice area or with patient population and develop a training plan which includes demonstrating competence to a practitioner qualified to assess competence in that task. Include documentation of training and evaluation of competence in your personnel file.
- Scenario: Inadequate exposure to specific condition or disease state during training - Consider how much exposure is required to practice in a new area effectively and safely. Compare this with what is already known and what competence needs to be demonstrated. Identify the specific knowledge and application deficits, determine what is needed to diminish those deficits, and develop a plan with your supervisor and/or assigned unit RDN to accommodate current workload to allow for the time necessary for appropriate and adequate training.
- Scenario: Lack of self-reflection by the practicing RDN or NDTR regarding competence in a new and different practice area or patient population - Each practitioner is responsible for their own competence in practice. Each practitioner should be conscious of their level of competent practice in the specific focus area, role and responsibilities, and use the Resources, applicable focus area SOP SOPP, and [Scope of Practice](#) to discuss and advocate for training, assessment, mentoring, and necessary level of competence with their supervisor. Refer to May 2022 Academy Ethics Opinion on maintaining competence in practice (membership required or for purchase) ([https://www.jandonline.org/article/S2212-2672\(22\)00130-7/fulltext](https://www.jandonline.org/article/S2212-2672(22)00130-7/fulltext)).
- Scenario: Inadequate assessment of competence by the RDN’s or NDTR’s supervisor - Demonstration and documentation of competence is required by regulatory agencies and accreditation entities, such as The Joint Commission (TJC), Accreditation Commission for Health Care (ACHC) [Formerly: Healthcare Facilities Accreditation Program (HFAP) of the American Osteopathic Association], and Det Norske Veritas (DNV). Practitioners should utilize the Resources and focus area SOP SOPP to develop (if necessary), evaluate, and document measurable evidence of competent performance. Examples of competence assessment include employer’s competencies checklist, documentation review, direct observation, peer evaluations, chart audits, patient/client/customer interventions, customer service reports, and job responsibility deliverables.
- Scenario: Overreliance on state licensing mandates - Licensing mandates vary from state to state while the Resources and focus area SOP SOPP are consistent for all practitioners. Each practitioner should review and understand the licensing act and rules and regulations for your state as well as the 2017 core SOP in nutrition care and SOPP and focus area SOP SOPP and how they influence your practice.

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Adapted from the *Dietetics Career Development Guide*. For more information, please visit www.eatrightPRO.org/futurepractice

Figure 1: Dietetics Career Development Guide helix illustrating the Standards of Practice and Standards of Professional Performance (2017)

Each practitioner strives to provide quality, competent care and reduce their risk for litigation by consistently following the below strategies:

1. Understands and applies the Core Scope of Practice Resources and licensing mandates when applicable to their practice.
2. Understands and applies the Academy of Nutrition and Dietetics/Commission on Dietetic Registration Code of Ethics.
3. Completes a self-assessment of knowledge, skills and competence level using the core and applicable focus area SOP and SOPP and the Commission on Dietetic Registration *Professional Development Portfolio* process.
4. Collaborates with supervisor or appropriate professional to develop plans for adequate training and/or continuing education; including methods to determine, develop, assess, and document competence.

Training Tool: Illustration for Training RDNs and NDTRs on Legal Implications of Scope of Practice

Below is a case scenario in which a claim was made against an RDN for not reviewing and understanding the expectations for competent practice outlined in the Scope of Practice for the RDN and focus area SOP SOPP. While reading the case example, consider the viewpoints of the supervisor, defendant RDN, expert witness, and plaintiff and determine if you would find the defendant RDN liable. Review the Glossary in Appendix A for referencing legal terms.

Claim: Complications of PKU (phenylketonuria), an inborn error of metabolism, resulting from insufficient care found to be related to disregarding the performance standards outlined in the Scope of Practice for the RDN and the SOP SOPP for RDNs in Pediatric Nutrition.

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Case Scenario

Imagine you are a Registered Dietitian Nutritionist (RDN) working on the adult oncology unit in an acute care hospital. Your supervisor assigns you to provide coverage on the pediatric unit while the pediatric RDN is on maternity leave. Your supervisor gives you a one-month training schedule to shadow the pediatric RDN prior to her leave, but you are still responsible for your oncology unit during training. The pediatric RDN goes on maternity leave two weeks early. During your coverage of the pediatric unit, you encounter a patient, Baby Doe. There is a report that the baby has a positive “PKU (phenylketonuria) test”, and the team asks for your help in obtaining “PKU formula”. You fail to recognize this patient requires tasks that are out of your competence skill set and therefore, individual scope of practice. You do not consult with colleagues with experience in PKU, and unknowingly do not communicate with the regional metabolic team per guidelines to discuss patient history as well as incorporate communications with the regional metabolic team in routine nutrition care services. Because of the inaction, Baby Doe does not receive adequate care and complications arise after discharge. You are now a defendant in a lawsuit...

Trial Dialogue Example

The expert dietitian with papers and files is seated in a witness box slightly above and away from the main area of the space. The attorney for the plaintiff is standing nearby holding a pad and some notes. The judge is presiding. Abbreviations: Plaintiff Attorney (PA); Expert Witness RDN (EW); Defendant RDN (DRDN); and Defense Attorney (DA)

Plaintiff Attorney (PA): Would you please give us your name and place of employment.

Expert Witness RDN (EW): My name is Sue Jones. I work at General Hospital.

PA: Describe your educational history.

EW: I graduated with a Bachelor of Science degree in dietetics from Central University in 2000 and completed a 10-month dietetic internship - supervised practice experience at General Hospital. I received the Registered Dietitian credential – RD – in December 2002 after successfully passing the Registration Examination for Registered Dietitians; I now choose to use the Registered Dietitian Nutritionist (RDN) designation which is an option for credentialed practitioners.

PA: Is that what is necessary to become a Registered Dietitian?

EW: Yes, followed by accumulation of 75 continuing professional education units every five years to maintain and retain the RDN or RD credential.

PA: Could you please describe any of your additional education or experience pertinent to the issues of dietetic practice.

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EW: I have worked at General Hospital for 8 years and have been on our facility's Ethics Board for 3 years as the nutrition and dietetics allied services representative. Prior to that I worked in a university medical center, and my responsibilities included the pediatrics genetics program. I have been a member of the Commission on Dietetic Registration (CDR) Quality Management Committee for 4 years.

PA: Describe the functions of the CDR Quality Management Committee.

EW: The Committee coordinates the development of nutrition care practice and/or professional performance standards that RDNs can use to self-assess their own knowledge, skills, and competence to provide nutrition-related services in both a general and, if applicable, focus area of practice.

PA: Could you elaborate on exactly what these standards are expected to do?

EW: The standards and indicators found within the Standards of Practice in Nutrition Care, we call those "SOP", and Standards of Professional Performance, we call those "SOPP", reflect the minimum competent level of nutrition and dietetics practice and professional performance for RDs or RDNs. They serve as guides for self-evaluation and to determine the education and skills needed to advance an RDN's level of practice.

PA: Please describe what these SOPs and SOPPs consist of in terms of substantive material.

EW: The SOP in Nutrition Care is composed of four standards representing the four steps of the Nutrition Care Process – Assessment, Nutrition Diagnosis, Nutrition Intervention/Plan of Care, and Nutrition Monitoring and Evaluation as applied to the nutrition care of patients/clients. The SOPP for RDNs consists of six standards representing the six domains of professionalism, for example, Quality in Practice. In addition to the "core" SOP and SOPP in Nutrition Care, the Academy of Nutrition and Dietetics has published 17 SOP and/or SOPP in focus areas of practice.

PA: Does an SOP SOPP exist for Pediatric Nutrition?

EW: Yes.

PA: Have you read the complaint against Dietitian Brown?

EW: Yes, I have.

PA: Please enter Exhibit A, Academy of Nutrition and Dietetics: Revised 2022 Standards of Practice and Professional Performance (Competent, Proficient and Expert) for Registered Dietitian Nutritionists in Pediatric Nutrition. Are these the documents you are referring to?

EW: Yes. These are the standards documents for practice and performance for registered dietitian nutritionists in pediatric nutrition.

PA: And, have you reviewed them in preparation for today's testimony?

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EW: Yes.

PA: Are the standards contained in the documents, labeled Exhibit A, representative of the best practices by a Registered Dietitian in this focus area of nutrition and dietetics practice?

EW: Yes, they were developed by experienced practitioners in the focus area of pediatric nutrition and put through several layers of review, comment, revision, and approval in accordance with the procedures outlined by CDR's Quality Management Committee.

PA: What is the obligation of the practicing dietitian to know these standards?

EW: All practicing RDNs should have read and have become familiar with the Standards of Practice in Nutrition Care, if applicable, and Standards of Professional Performance applicable to their focus area of practice.

PA: Where are these standards published? How does a Registered Dietitian Nutritionist access them?

EW: They are published in the *Journal of the Academy of Nutrition and Dietetics* and are publicly available through the *Journal's* website and various channels within the professional association including the Commission on Dietetic Registration's website.

PA: What is the obligation of the practicing dietitian to use these standards?

EW: The SOP and SOPP for RDNs in Pediatric Nutrition are intended to serve as professional evaluation resources, allowing RDNs to assess their current level of practice to determine whether additional education, training and/or experience is needed for competent practice or to gain knowledge, and skills to progress to a higher level of practice.

PA: Using the pediatric document, what should an RDN be able to do?

EW: The document answers the question, "What are the knowledge, skills, and competencies that RDNs need to provide safe and effective pediatric nutrition care and service?" This document also addresses quality and risk-management issues, such as the avoidance of negative outcomes.

PA: And, if an RDN is unfamiliar with them?

EW: That could mean that when asked to do something in this focus area of patient care, they may not be aware of the appropriate knowledge, skill/s, and competence(ies) required to perform a specific task and therefore cannot self-assess if they have the necessary level of competence to safely and adequately perform that task.

PA: What could happen to a practitioner who failed to self-assess according to the standards?

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EW: Lack of knowledge of the SOP and SOPP and its resources such as published practice guidelines may result in suboptimal care as the practitioner is performing care that they are not competent or qualified to perform.

PA: Can you provide us with an example?

EW: Well, if an RDN practicing in pediatrics did not self-assess whether they have the competence to assess a possible nutrition-related issue, such as an inborn error of metabolism, then they may not be competently practicing at the standard of nutrition care for such a patient, as delineated in the SOP and SOPP in Pediatric Nutrition.

PA: Are there any other ways a Registered Dietitian Nutritionist may be practicing outside of these standards?

EW: Yes, if the dietitian is asked to provide services for which, upon self-comparison to the SOP and SOPP in this focus area, they are not adequately and appropriately competent to do and did not seek assistance, then that could be a basis for a complaint against the RDN.

PA: In this instance, in this complaint, can you identify the standard or standards that can be applied to this situation?

EW: The RDN made note of the diagnosis Phenylketonuria, PKU, and wrote the recommendation for a formula used to treat PKU but did not contact the regional metabolic team to confirm the diagnosis, discuss patient history, or cooperate in routine nutrition care which is the hospital's process. The records do not indicate that the RDN investigated whether any other steps were necessary given the patient's diagnosis.

PA: So, her current level of practice was not competent?

EW: **Her current level of practice did not fulfill the minimum level of competence required to perform the described nutrition care.** Specifically, she did not demonstrate competence regarding Pediatric Nutrition SOP indicator 1.1B, "Identifies chronic and acute conditions that affect nutrient needs, nutrient intake, growth, and eating- and food-related behaviors; seeks additional information if condition is not typical", or SOPP indicator 3.2B, "Refers customers to appropriate providers when requested services or identified needs exceed the RDN's individual scope of practice"

PA: Thank you for your testimony. Your honor, I request permission to bring this witness forward at a later time if needed.

Judge: Permission granted.

Witness steps down.

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The defendant RDN (DRDN) moves to the witness box. She has files and notes that she looks over after sitting down. Her attorney for the defense (DA) stands aside the box carrying notes. At the defendant's table sits a physician and a nurse as co-defendants. They will have been questioned at a different time.

DA: Please state your name, your credentials, and your current position.

DRD: My name is Jane Brown. I am a Registered Dietitian Nutritionist at County Hospital.

DA: What is your educational background?

DRD: I graduated with a Bachelor of Science degree in dietetics from North University in 1991 and completed a master's degree and dietetic internship - supervised practice experience at University Hospital. I received the Registered Dietitian credential – RD – in December 1994 after successfully passing the Registration Examination for Registered Dietitians. In 2002, I became licensed in my state. I have opted to use the RDN designation for my credential.

DA: What specialized training have you had?

DRD: My assigned unit is Oncology, and I am in the process of applying for the Board-Certified Specialist in Oncology Nutrition examination administered by the Commission on Dietetic Registration. I was asked to cover the pediatric care unit during the pediatric dietitian's maternity leave and was allowed to shadow her for two weeks prior to her departure.

DA: Describe the training you received in preparation for providing nutrition care to the patients in the pediatric care unit.

DRD: I spent two weeks shadowing the pediatric dietitian while also covering my assigned Oncology units. In addition to shadowing, I was provided with pediatric reference books and articles from the Academy. I was unable to complete the original four weeks of training due to the pediatric dietitian's maternity leave starting two weeks early.

DA: Are you aware of the standards documents that have been entered into evidence as Exhibit A?

DRD: Yes, I read the core SOP and SOPP in our *Journal* and was aware of the Pediatric SOP and SOPP documents, but they didn't exist when I graduated.

DA: In your opinion, in what ways do these standards apply to you?

DRD: I see them as important to dietetics to tell people about the field, but I am really governed by my state licensure act.

DA: Does your licensure act delineate the standards outlined in the core SOP and SOPP?

DRD: Not that I am aware.

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DA: So, as far as you are aware, these Academy Standards of Practice and Standards of Professional Performance for Registered Dietitian Nutritionists in Pediatric Nutrition provide a voluntary basis for the practice of nutrition and dietetics.

DRD: That was my understanding.

DA: (*Turns to the plaintiff attorney.*) Your witness.

PA: (*Rises and moves closer to the witness box.*) You are aware then that these pediatric standards exist and have been prepared by experienced practitioners in the specific area of practice?

DRD: Yes.

PA: You said you were aware of these standards?

DRD: Yes.

PA: Have you read these documents?

DRD: Not all of them.

PA: Have you read the Standards of Practice and Standards of Professional Performance for Registered Dietitian Nutritionists in Pediatric Nutrition?

DRD: Well, no

PA: Did you perform on patient Baby Doe the actions outlined in the complaint?

DRD: Yes.

PA: Under what condition did you provide this particular care?

DRD: The physician asked me to.

PA: Did you refer to or examine any practice standards before providing this particular care for Baby Doe?

DRD: No.

PA: In comparing your existing skills, or competencies, to the applicable standard, were you able to assess whether or not you should be providing the requested care?

DRD: I didn't compare. I felt I could do these things because I observed a similar case while shadowing the pediatric dietitian.

PA: And when the physician told you to take these actions for Baby Doe, you complied?

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DRD: Yes.

PA: During your time shadowing the pediatric dietitian, were you provided with the pediatric standards?

DRD: The pediatric dietitian provided me use of the books she keeps as references. She also printed out some articles from the Academy and the American Academy of Pediatrics for me to review.

PA: Were the standards that we have been discussing included in the articles she provided you?

DRD: I am not sure. I was required to cover my own unit while shadowing her and was not provided with time to read. In addition, she went on maternity leave early; I should have had an additional two weeks to shadow her.

PA: Was your competence assessed prior to your taking on the pediatric unit?

DRD: No, as I stated, the pediatric dietitian went on maternity leave early.

PA: Did it occur to you that you might not be acting in the most competent and professional manner by doing so?

DRD: I thought I could provide this care. After all, I am an RDN.

Let's review and deliberate... Questions for review:

Would you find the defendant RDN liable?

What changes would you recommend for the RDN staff to implement?

What updates and enhancements to the organization's RDN and also the NDTR professional development policies and procedures would you propose?

How do you think a competency skills list and performance indicators would assist in documenting competence including requirements for specific patient populations?

Additional questions and discussion points?

APPENDIX A

Glossary of Legal Terms

Source: <https://definitions.uslegal.com>

Complaint – is the initial document filed with the court or other authority by a person or entity claiming legal rights against another. Complaints must properly state the factual as well as legal basis for the claim. A complaint also must follow statutory requirements, which vary by jurisdiction. When the complaint is filed, a copy of the complaint and the summons must be served on a defendant before a response is required.

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Defendant – is a defendant, in criminal cases, is the person accused of the crime. In civil matters, the defendant is the person or entity that is being sued.

Depose – means to testify or to bear witness.

Deposition - is an out of court sworn testimony of a witness that is reduced in writing for later use in court or for discovery purposes. It is also referred to as examination before trial and is a pre trial procedure.

Evidence – is something legally submitted in court or other decision-making body to ascertain the truth of a matter. Evidence may take various forms, such as oral testimony, videotape, documents, and other forms.

Exhibit – is a document, record or other tangible object formally introduced as evidence in the court.

Expert Testimony - is the testimony made by a qualified person about a scientific, technical, or professional issue. An expert is often called upon to testify due to his/her familiarity with the subject or special training in the field. To be admissible, expert testimony must concern specialized knowledge and must aid the trier of fact. The expert's opinion must be sufficiently validated, by sound reason and method. Secondly, it must be relevant to the facts at issue.

The assessment of reliability is meant to be flexible and concerned more with the principles and methodology the expert employs than with his/ her conclusions. Factors bearing on the reliability of expert testimony include (1) “whether a theory or technique can be and has been tested; (2) whether the theory or technique has been subjected to peer review and publication; (3) whether, with respect to a particular technique, there is a high known or potential rate of error and whether there are standards controlling the technique's operation; and, (4) whether the theory or technique enjoys general acceptance within the relevant scientific, technical, or other specialized community.”

Expert Witness – is a witness who has knowledge beyond that of the ordinary lay person enabling him/her to give testimony regarding an issue that requires expertise to understand. Experts are qualified according to a number of factors, including but not limited to, the number of years they have practiced in their respective field, work experience related to the case, published works, certifications, licensing, training, education, awards, and peer recognition.

Experts may be called upon as consultants to a case and also used to give testimony at trial. Once listed as a witness for trial, the materials they rely upon in forming an opinion in the case is subject to discovery by the opposing parties. Expert testimony is subject to attack on cross-examination in the form of questioning designed to bring out any limitations in the witness's qualifications and experience, lack of witness's confidence in his opinions, lack of the preparation done, or unreliability of the expert's sources, tests, and methods, among other issues.

Liability – is generally a term that refers to a debt or obligation. In insurance law, liability often is used to refer to blameworthiness that is used to apportion responsibility for repairing damage caused. Criminal liability involves a determination of intent, unlike civil liability.

Licensure/License – is the act or an instance of granting a license, usually to practice a profession.

Litigation – is any lawsuit or other resort to the courts to determine a legal question or matter.

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Malpractice – is any unintentional tort or any breach of contract based on health care or professional services rendered, or which should have been rendered, by a health care provider, to a patient.

Objection – is a legal procedure protesting an inappropriate question asked of a witness by the opposing attorney, intended to make the trial judge decide if the question can be asked.

Overrule – refers to a judge's disagreement with an attorney's objection to a question to a witness or admission of evidence. By overruling the objection, the trial judge allows the question or evidence in court.

Plaintiff – is the person who initiates a court action by filing a complaint with the clerk of the court against the defendant(s) demanding damages, performance and/or court determination of rights. A plaintiff is sometimes called a petitioner.

Representation – is the act or an instance of standing for or acting on behalf of another, especially acting as an attorney for a client; for example, Mr. John represented the plaintiff in the litigation.

Settlement – refers to when parties to a lawsuit resolve their difference without having a trial. Settlements often involve the payment of compensation by one party in satisfaction of the other party's claims. The settlement agreement in a civil lawsuit is the document that spells out the terms of an out-of-court compromise.

Sustain – refers to a judge agreeing that an attorney's objection is valid. It usually occurs in the situation where an attorney asks a witness a question, and the opposing lawyer objects, saying the question is "irrelevant, immaterial and incompetent," "leading," "argumentative," or some other objection. When the judge sustains the objection, the question cannot be asked or answered. However, if the judge finds the question proper, he/she will "overrule" the objection.

Tort – is an act that injures someone in some way, and for which the injured person may sue the wrongdoer for damages. Legally, torts are called civil wrongs, as opposed to criminal ones. A tort is a negligent or intentional civil wrong not arising out of a contract or statute.

In this Practice Tips, the CDR has chosen to use the term RDN to refer to both registered dietitians (RD) and registered dietitian nutritionists (RDN) and to use the term NDTR to refer to both dietetic technician, registered (DTR) and nutrition and dietetics technician, registered (NDTR).