

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Dental Examiners

RULE CITATION: Submission for Permanent Rule Form – 21 NCAC 16U .0103

DEADLINE FOR RECEIPT: Monday, February 7, 2022

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Please check one of the boxes in Item 3, indicating that this is an amendment.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

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In reviewing this Rule, the staff recommends the following technical changes be made:

*In (a) line 4, (b) line 14, and (c) line 17, do you mean "shall" when you say "may"? If you mean "may", under what circumstances can DHHS **not** make such reports when the requirements in (a) and (b) are met? If "may," then what information besides what is described in G.S. 90-113.73(b) will DHHS report to the Board?*

In (a)(2), where you say "the patient's prescriptions overlap," you're referring to the benzodiazepine and the opioid prescribed by the dentist, correct? Or does the Board want to receive reports when prescriptions issued by the dentist overlap with prescriptions issued by other providers?

In (a)(3)(A), line 12, who is responsible for making the classification of medications as a stimulant, muscle relaxant, or hypnotic?

In (a)(3)(B), to be clear, does 1 "atypical prescription" mean 120 doses? Or does 5 "atypical prescriptions" mean 120 doses? If it's 1 = 120 doses, consider putting "atypical prescriptions" into quotation marks to clarify that the definition in (A) and (B) does not reach "five," but only "atypical prescriptions."

In (b), line 14, DHHS may report to the board "information..." What information? Also, for clarity, suggest moving "due to opioid poisoning" so it reads as follows: "...have had a patient death due to opioid poisoning in the 12 months preceding the report..." Also, I'm not sure how the timing works here. The death has to be within 12 months of the report. Wouldn't the death be the inciting incident for the report? So is this Rule trying to say that DHHS "may" make a report within 12 months of the death? Or is there another timing mechanism at play?

*In (c), line 17, the Rule states that "DHHS may submit these reports to the Board **upon request**..." Whose request? G.S. 90-113.74(c)(7) states that DHHS can release info from the Controlled Substances Reporting System to "Licensing boards with jurisdiction over health care disciplines pursuant to an ongoing investigation by the licensing board of a specific individual licensed by the board." If the Board's intent is that DHHS only make these reports upon request by the Board pursuant to a specific ongoing investigation, I think that should be clarified here.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel

Date submitted to agency: January 24, 2022

1 21 NCAC 16U .0103 is amended as published in 36:08 NCR 616-17 as follows:

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3 **21 NCAC 16U .0103 REPORTS FROM THE CONTROLLED SUBSTANCES REPORTING SYSTEM**

4 (a) The Department of Health and Human Services (DHHS) may submit a report to the North Carolina State Board
5 of Dental Examiners if it receives information that DHHS believes provides a basis to investigate whether a dentist
6 has issued prescriptions for controlled substances in a manner that may violate laws governing the prescribing of
7 controlled substances or the practice of dentistry, regarding the prescribing practices of those dentists who have issued:

8 (1) at least 10 prescriptions for an opioid with at least 75 morphine milligram equivalents per day;

9 (2) a benzodiazepine and an opioid to at least five patients where the patient's prescriptions overlap for
10 at least two days; or

11 (3) at least five atypical prescriptions, which is defined as either:

12 (A) medications classified as a stimulant, muscle relaxant, or hypnotic; or

13 (B) at least 120 doses of an opioid or benzodiazepine.

14 (b) DHHS may report to the Board information regarding dentists who have had a patient death in the 12 months
15 preceding the report due to opioid poisoning where the dentist prescribed 30 or more tablets of an opioid to the patient
16 within 60 days of the patient's death.

17 (c) DHHS may submit these reports to the Board upon request and may include the information described in G.S. 90-
18 113.73(b).

19 (d) The reports and communications between DHHS and the Board shall remain confidential pursuant to G.S. 90-41
20 and G.S. 90-113.74.

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22 *History Note: Authority G.S. 90-41; 90-48; 90-113.74;*

23 *Eff. July 1, 2015;*

24 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9,*
25 *2018-2018;*

26 *Amended Eff. March 1, 2022.*

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