

1 21 NCAC 16V .0101 is amended with changes as published in 33:24 NCR 2395-96 as follows:

2
3 **SUBCHAPTER 16V – UNPROFESSIONAL CONDUCT**

4
5 **SECTION .0100 - UNPROFESSIONAL CONDUCT**

6
7 **21 NCAC 16V .0101 DEFINITION: UNPROFESSIONAL CONDUCT BY A DENTIST**

8 Unprofessional conduct by a dentist shall include the following:

- 9 (1) ~~Having~~ having professional discipline imposed, including the denial of licensure, by the dental
10 licensing authority of another state, territory, or country. For purposes of this Rule, the surrender of
11 a license under threat of disciplinary action shall be considered the same as if the licensee had been
12 disciplined;
- 13 (2) ~~Presenting~~ presenting false or misleading testimony, statements, or records to the Board or the
14 Board's investigator or employees during the scope of any investigation, or at any hearing of the
15 Board;
- 16 (3) ~~Committing~~ committing ~~being convicted of or entering a plea of guilty or nolo contendere to any~~
17 ~~charge for a crime that is violent or sexual in nature; any act that would constitute~~ assault or battery,
18 including sexual assault or battery ~~[battery,]~~ as defined by Chapter 14 of the North Carolina General
19 Statutes ~~[Statutes,]~~ in connection with the provision of dental services;
- 20 (4) ~~Violating~~ violating any order of the Board previously entered in a disciplinary hearing, or failing to
21 comply with a subpoena of the Board;
- 22 (5) ~~Conspiring~~ conspiring with any person to commit an act, or committing an act that would tend to
23 coerce, intimidate, or preclude any patient or witness from testifying against a licensee in any
24 disciplinary hearing, or retaliating in any manner against any patient or other person who testifies
25 or cooperates with the Board during any investigation under the Dental Practice or Dental Hygiene
26 Acts;
- 27 (6) ~~Failing~~ failing to identify to a patient, patient's guardian, or the Board the name of an employee,
28 employer, contractor, or agent who renders dental treatment or services upon request;
- 29 (7) ~~Prescribing,~~ prescribing ~~prescribing,~~ procuring, dispensing, or administering any controlled
30 substance for personal use, which does not include those prescribed, dispensed, or administered by
31 a practitioner authorized to prescribe them;
- 32 (8) ~~Pre-signing~~ pre-signing blank prescription forms or using pre-printed or rubber stamped prescription
33 forms containing the dentist's signature or the name of any controlled substance;
- 34 (9) ~~Forgiving~~ forgiving the co-payment provisions of any insurance policy, insurance contract, health
35 prepayment contract, health care plan, or nonprofit health service plan contract by accepting the
36 payment received from a third party as full payment, unless the dentist discloses to the third party
37 that the patient's payment portion will not be collected;

- 1 (10) ~~Failing~~ failing to provide radiation safeguards required by the State Department of Health and
2 Human Services, the federal Occupational and Safety Health Administration, the Food and Drug
3 Administration, ~~and or~~ the Environmental Protection Agency;
- 4 (11) ~~Having~~ having professional connection with or lending one's name to the unlawful practice of
5 ~~dentistry; dentistry, including as set forth in G.S. 90-41(a)(9);~~
- 6 (12) ~~Using~~ using the name of any deceased or retired ~~and licensed~~ dentist on any office door, directory,
7 stationery, bill heading, or any other means of communication any time after one year following the
8 death or retirement from practice of said dentist;
- 9 (13) ~~Failing~~ failing to comply with any provision of any contract or agreement with the Caring Dental
10 Professionals Program;
- 11 (14) ~~Failing~~ failing to file a truthful response to a notice of complaint ~~filed with the Board~~ within the
12 time allowed in the notice;
- 13 (15) ~~Failing~~ failing to notify the Board of a change in current ~~primary~~ physical ~~address address, which~~
14 ~~shall be either a personal address or a business address at the licensee's election,~~ within 10 business
15 days;
- 16 (16) ~~Permitting~~ permitting more than two dental hygienists for each licensed dentist in the office to
17 perform clinical hygiene ~~tasks; tasks, as set forth in G.S. 90-233(b);~~
- 18 (17) ~~Failing~~ failing to produce diagnostic radiographs or other treatment records on request of the Board
19 or its investigator;
- 20 (18) ~~Soliciting~~ soliciting employment of potential patients ~~in person or by live~~ telephone ~~solicitation~~ or
21 permitting or directing another to do so;
- 22 (19) ~~Giving~~ giving or ~~paying-accepting~~ anything of value in exchange for a promise to refer or referral
23 of potential patients;
- 24 (20) ~~Failing~~ failing to offer 30 days of emergency care upon dismissing a patient from a dental practice;
- 25 (21) ~~Withholding~~ withholding or refusing ~~to complete a treatment procedure for~~ to an existing patient
26 conditioned upon payment of an outstanding balance;
- 27 (22) ~~Using~~ using protected patient health information, as defined by 45 CFR 160.103, to solicit potential
28 patients;
- 29 (23) ~~Making~~ making misleading or untruthful statements for the purpose of procuring potential patients,
30 or directing or allowing an employee or agent to do so;
- 31 (24) ~~Making~~ making ~~material~~ false statements or omissions in any communication with the Board or its
32 agents regarding the subject of any disciplinary matter under investigations by the Board;
- 33 (25) ~~Refusing~~ refusing to permit a Board agent or employee to conduct a sterilization inspection;
- 34 (26) ~~Acquiring~~ acquiring any controlled substance from any source by fraud, deceit or misrepresentation;
35 ~~and~~
- 36 (27) ~~Practicing~~ practicing outside the scope of dentistry, as set forth in G.S. ~~90-29; 90-29; and~~

1 (28) committing any act that would constitute civil assault or civil battery in connection with the
2 provision of dental services. The North Carolina Pattern Jury Instructions for Civil 800.50, Assault,
3 and for Civil 800.51, Battery, are hereby incorporated by reference, including subsequent
4 amendments and editions. These documents may be accessed at no cost at
5 <https://www.sog.unc.edu/resources/microsites/north-carolina-pattern-jury-instructions/north->
6 [carolina-pattern-jury-instructions-civil-cases.](https://www.sog.unc.edu/resources/microsites/north-carolina-pattern-jury-instructions/north-)

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8 *History Note:* Authority G.S. 90-28; 90-29;90-41; 90-48; 90-223(b);
9 Eff. August 1, 1998;
10 Amended Eff. August 1, 2016; July 1, 2015; October 1, 2001; August 1, 2000;
11 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9,
12 ~~2018~~ 2018;
13 Amended Eff. ~~October~~ November 1, 2019.

1 21 NCAC 16V .0102 is amended with changes as published in 33:24 NCR 2396-97 as follows:

2
3 **21 NCAC 16V .0102 DEFINITION: UNPROFESSIONAL CONDUCT BY A DENTAL HYGIENIST**

4 Unprofessional conduct by a dental hygienist shall include the following:

- 5 (1) ~~Having~~ having professional discipline imposed, including the denial of licensure, by the dental
6 hygiene licensing authority of another state, territory, or country. For purposes of this Rule, the
7 surrender of a license under threat of disciplinary action shall be considered the same as if the
8 licensee had been disciplined;
- 9 (2) ~~Presenting~~ presenting false or misleading testimony, statements, or records to the Board or ~~a Board~~
10 ~~employee~~ the Board's investigator or employees during the scope of any investigation or at any
11 hearing of the Board;
- 12 (3) ~~Committing~~ [committing] ~~being convicted of or entering a plea of guilty or nolo contendere to any~~
13 ~~charge for a crime that is violent or sexual in nature; any act that would constitute~~ [assault or battery,
14 ~~including~~ sexual assault or battery [battery,] as defined by Chapter 14 of the North Carolina General
15 Statutes ~~[Statutes,]~~ in connection with the provision of dental hygiene services;
- 16 (4) ~~Violating~~ violating an order of the Board previously entered in a disciplinary hearing or failing to
17 comply with a subpoena of the Board;
- 18 (5) ~~Conspiring~~ conspiring with any person to commit an act, or committing an act that would ~~tend to~~
19 coerce, intimidate, or preclude any patient or witness from testifying against a licensee in any
20 disciplinary hearing, or retaliating in any manner against any patient or other person who testifies
21 or cooperates with the Board during any investigation of any licensee; under the Dental Practice or
22 Dental Hygiene Acts;
- 23 (6) ~~Failing~~ failing to identify to a patient, patient's guardian, an employer, or the Board the name of any
24 person or agent who renders dental treatment or services upon request;
- 25 (7) ~~Procuring,~~ [procuring] ~~procuring,~~ dispensing, or administering any controlled substance for personal
26 use except those prescribed, dispensed, or administered by a practitioner authorized to prescribe
27 them;
- 28 (8) ~~Acquiring~~ acquiring any controlled substance from any pharmacy or other source by
29 misrepresentation, fraud or deception;
- 30 (9) ~~Having~~ having professional connection with or lending one's name to the illegal practice of dental
31 hygiene; hygiene, including as set forth in G.S. 90-229(11);
- 32 (10) ~~Failing~~ failing to comply with any provision of any contract or agreement with the Caring Dental
33 Professionals Program;
- 34 (11) ~~Failing~~ failing to file a truthful response to a notice of ~~complaint,~~ complaint filed with the Board
35 within the time allowed in the notice;

- 1 (12) ~~Failing~~ failing to notify the Board of a change in current ~~primary physical address~~ address, which
2 shall be either a personal address or a business address at the licensee's election, within 10 business
3 days;
- 4 (13) ~~Working~~ working in a clinical hygiene position if the ratio of hygienists to licensed dentists present
5 in the office is greater than ~~2:1; 2:1~~, as set forth in G.S. 90-233(b);
- 6 (14) ~~Soliciting~~ soliciting employment of potential patients in person or by telephone or ~~assisting~~
7 ~~permitting or directing~~ another person to do so;
- 8 (15) ~~Giving~~ giving or ~~paying-accepting~~ anything of value in exchange for a promise to refer or referral
9 of potential patients;
- 10 (16) ~~Using~~ using protected patient health information, as defined by 45 CFR 160.103, to solicit potential
11 patients;
- 12 (17) ~~Making~~ making misleading or untruthful statements for the purpose of procuring potential patients
13 or assisting another to do so;
- 14 (18) ~~Making~~ making ~~material~~ false statements or omissions in any communication with the Board or its
15 agents regarding the subject of any disciplinary matter under investigation by the Board; ~~and~~
- 16 (19) ~~Practicing~~ practicing outside the scope of dental hygiene, as defined in ~~90-221(a); 90-221(a); and~~
17 (20) committing any act that would constitute civil assault or civil battery in connection with the
18 provision of dental hygiene services. The North Carolina Pattern Jury Instructions for Civil 800.50,
19 Assault, and for Civil 800.51, Battery, are hereby incorporated by reference, including subsequent
20 amendments and editions. These documents may be accessed at no cost at
21 <https://www.sog.unc.edu/resources/microsites/north-carolina-pattern-jury-instructions/north->
22 [carolina-pattern-jury-instructions-civil-cases.](https://www.sog.unc.edu/resources/microsites/north-carolina-pattern-jury-instructions/north-carolina-pattern-jury-instructions-civil-cases)

23
24 *History Note:* Authority G.S. 90-29; 90-221; 90-223; 90-229;
25 Eff. August 1, 1998;
26 Amended Eff. August 1, 2016; July 1, 2015; October 1, 2001; August 1, 2000; September 1, 1998;
27 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9,
28 2018- 2018;
29 Amended Eff. ~~October~~ November 1, 2019.
30
31



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6700

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

September 19, 2019

Doug Brocker, Rulemaking Coordinator
North Carolina Board of Dental Examiners
Sent via email only: doug@brockerlawfirm.com

Re: Extension of the Period of Review for Rules 21 NCAC 16V .0101 and .0102

Dear Mr. Brocker:

At its meeting this morning, the Rules Review Commission extended the period of review for Rules 21 NCAC 16V .0101 and .0102 at the request of the agency. Pursuant to G.S. 150B-21.13, when the Commission extends the period of review, it is required to approve or object to the rules or call a public hearing on the same within 70 days.

If you have any questions regarding the Commission's actions, please let me know.

Sincerely,

Ashley B. Snyder
Commission Counsel

Cc: Dauna Bartley, The Brocker Law Firm

Administration
919/431-3000
fax: 919/431-3100

Rules Division
919/431-3000
fax: 919/431-3104

Judges and
Assistants
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fax: 919/431-3100

Clerk's Office
919/431-3000
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Rules Review
Commission
919/431-3000
fax: 919/431-3104

Civil Rights
Division
919/431-3036
fax: 919/431-3103

Burgos, Alexander N

Subject: FW: [External] RE: Dental Board Technical Changes

From: Dauna Bartley <dauna@brockerlawfirm.com>

Sent: Monday, September 16, 2019 10:31 AM

To: Snyder, Ashley B <ashley.snyder@oah.nc.gov>

Cc: Doug Brocker <doug@brockerlawfirm.com>; Whitney Waldenberg <Whitney@brockerlawfirm.com>; Firm Administrator <administrator@brockerlawfirm.com>

Subject: RE: [External] RE: Dental Board Technical Changes

CAUTION: External email. Do not click links or open attachments unless you verify. Send all suspicious email as an attachment to report.spam@nc.gov

Ashley,

I am attaching a revised version of 16N .0607 with technical changes to reflect your requests and our discussions. With these edits, we did not find it necessary to add new subparagraphs. We are ready to move forward with this version, if you approve. Please let me know.

For 16V .0101 and .0102, the Board requests an extension of time pursuant to G.S. 150B-21.10 and 150B-21.13.

Please let me know what else you need from me.

Thank you!

Dauna

This transmission is intended by the sender and proper recipient to be confidential, intended only for the proper recipient and may contain information that is privileged, attorney work product or exempt from disclosure under applicable law. If you are not the intended recipient, you are notified that the dissemination, distribution or copying of this message is strictly prohibited. If you receive this message in error, or are not the proper recipient, please notify the sender at either the e-mail address or telephone number above and delete this e-mail from your computer. Receipt by anyone other than the proper recipient is not a waiver of any attorney-client, work product, or other applicable privilege. Thank you.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Dental Examiners

RULE CITATION: All Rules

DEADLINE FOR RECEIPT: September 13, 2019

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

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:

The Commission received originals of your Submission for Permanent Rule forms but did not receive any copies. In accordance with 26 NCAC 02C .0402(1), please file a copy of your Submission for Permanent Rule forms.

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

Ashley Snyder
Commission Counsel
Date submitted to agency: August 30, 2019

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Dental Examiners

RULE CITATION: 21 NCAC 16A .0101

DEADLINE FOR RECEIPT: September 13, 2019

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

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:

In (5), line 17, please change "must" to "shall."

In (6), are you using the term "intern permit" as used in G.S. 90-29.4?

In (8), please delete "except where otherwise defined by these Rules or by statute." If "supervision" is otherwise defined, the other rule or statute will provide the exception.

In (8), the terms "supervision," "direct supervision," and "supervision and direction" which you define here are used in G.S. 90, Article 2. Are you defining these words so that they all have the same meaning and can be used interchangeably?

In (9), please delete "except where otherwise defined by these Rules or by statute." If "supervision" is otherwise defined, the other rule or statute will provide the exception.

In your history note, why do you cite G.S. 90-26, 90-37.1, and 90-43?

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

Ashley Snyder
Commission Counsel
Date submitted to agency: August 30, 2019

1 21 NCAC 16A .0101 is amended as published in 33:24 NCR 2390-91 as follows:

2
3 **SUBCHAPTER 16A – ORGANIZATION**

4
5 **21 NCAC 16A .0101 DEFINITIONS**

6 As used in this Chapter:

- 7 (1) "Applicant" means a person applying for any license or permit issued by the Board;
- 8 (2) "Board" means the North Carolina State Board of Dental Examiners;
- 9 (3) "Candidate" means a person who has applied and been accepted for examination to practice dentistry
10 or dental hygiene in North Carolina;
- 11 (4) "Current license" means a license that is renewed by the licensing ~~board;~~ board as required;
- 12 (5) "CPR certification" means that the licensee has ~~successfully~~ completed a CPR course that meets
13 American Red Cross or American Heart Association standards for certification and that provides
14 manikin testing on the subjects of cardio-pulmonary resuscitation. The course must also cover the
15 use of an automatic external defibrillator, unconscious and conscious choking and rescue breathing,
16 provided that the foregoing requirements shall not be interpreted in any way that violates the
17 Americans with Disabilities Act. The manikin testing must be provided by an instructor who is
18 ~~physically~~ present with the students;
- 19 (6) "Internship" means practice in an educational training program. Internship does not mean practice
20 under an intern permit while holding an unrestricted general dental or dental specialty license issued
21 by a state, U.S. territory or the District of Columbia; ~~and~~
- 22 (7) "Unrestricted license" means a license that is not under suspension or inactivation, or subject to the
23 terms of a consent order or other disciplinary action imposed by the jurisdiction that issued the
24 license, or limited by supervision or location ~~requirements;~~ requirements;
- 25 (8) Except where otherwise defined by these Rules or by statute, "supervision," "direct supervision,"
26 and "supervision and direction" means that the dentist overseeing treatment is present in the same
27 facility or location and available during the performance of the acts that are being performed
28 pursuant to that dentist's order, control, and approval and that the dentist must examine and evaluate
29 the results of such acts; and
- 30 (9) Except where otherwise defined by these Rules or by statute, "direction" or "under direction" means
31 that the dentist ordering treatment does not have to be present in the same facility or location during
32 the performance of the acts that are being performed pursuant to that dentist's order, control, and
33 approval, but that dentist shall be responsible for all consequences or results arising from such acts.

34
35 *History Note:* Authority G.S. 90-26; 90-28; 90-29(a); 90-29.3; 90-29.4; 90-29.5; 90-30; 90-37.1; 90-43; 90-48;
36 90-224; 90-224.1; 90-226;
37 *Eff. September 3, 1976;*

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Readopted Eff. September 26, 1977;
Amended Eff. May 1, 1991; May 1, 1989; September 1, 1988; October 1, 1986;
Temporary Amendment Eff. January 1, 2003;
Amended Eff. May 1, 2011; January 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9,
2018-2018;
Amended Eff. October 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Dental Examiners

RULE CITATION: 21 NCAC 16A .0105

DEADLINE FOR RECEIPT: September 13, 2019

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

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:

Why is this Rule necessary? It repeats requirements set forth in G.S. 93B-2(d).

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

Ashley Snyder
Commission Counsel
Date submitted to agency: August 30, 2019

1 21 NCAC 16A. 0105 is adopted as published in 33:24 NCR 2391 as follows:

2

3 **21 NCAC 16A. 0105 SUSPENSION OF AUTHORITY TO EXPEND FUNDS**

4 If the Board's authority to expend funds is suspended pursuant to G.S. 93B-2(d), the Board shall continue to issue and
5 renew licenses, registrations, and permits and to collect all fees pursuant to G.S. 90-39 and the rules of this Chapter,
6 but all fees tendered shall be placed in an escrow account maintained by the Board for this purpose. Once the Board's
7 authority is restored, the funds shall be moved from the escrow account into the general operating account.

8

9 *History Note: Authority G.S. 90-28; 90-39; 93B-2(d);*

10 *Eff. October 1, 2019.*

11

12

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Dental Examiners

RULE CITATION: 21 NCAC 16B .0101

DEADLINE FOR RECEIPT: September 13, 2019

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

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:

In your history note, why do you cite G.S. 90-38? Are you requiring former dentists who have resumed practice to take the written and clinical examinations?

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

Ashley Snyder
Commission Counsel
Date submitted to agency: August 30, 2019

1 21 NCAC 16B .0101 is amended as published in 33:24 NCR 2391 as follows:

2
3 **SUBCHAPTER 16B - LICENSURE DENTISTS**

4
5 **SECTION .0100 - GENERAL PROVISIONS**

6
7 **21 NCAC 16B .0101 EXAMINATION REQUIRED; EXEMPTIONS**

8 (a) All persons desiring to practice dentistry in North Carolina ~~are required to~~ shall pass a Board ~~approved, as set~~
9 ~~forth in these Rules,~~ approved written and clinical ~~examinations~~ examinations, as set forth in Rule .0303 of this
10 Subchapter before receiving a license.

11 (b) The examination requirement ~~does~~ shall not apply to persons who do not hold a North Carolina dental license and
12 who are seeking volunteer licenses pursuant to ~~G.S. 90-21.107~~ G.S. 90-21.107, ~~or~~ licensure by endorsement pursuant
13 to Rules .1001 and .1002 of this Subchapter, or licensure by credentials pursuant to Rule .0501 of this Subchapter.

14 (c) All persons practicing dentistry in North Carolina shall maintain ~~current~~ unexpired CPR certification at all times.

15
16 *History Note: Authority G.S. 90-21.107; 90-28; 90-30; 90-36; 90-38; 90-48;*

17 *Eff. September 3, 1976;*

18 *Readopted Eff. September 26, 1977;*

19 *Amended Eff. September 1, 2014; September 1, 2013; March 1, 2006; May 1, 1991; May 1, 1989;*

20 *January 1, 1983;*

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

22 *~~2018.~~ 2018;*

23 *Amended Eff. October 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Dental Examiners

RULE CITATION: 21 NCAC 16B .0303

DEADLINE FOR RECEIPT: September 13, 2019

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

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:

In (c), please change "must" to "shall."

In (d)(3)(D), please insert a comma after "averaged" at line 34.

In (e), please change "must" to "shall."

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

Ashley Snyder
Commission Counsel
Date submitted to agency: August 30, 2019

1 21 NCAC 16B .0303 is amended as published in 33:24 NCR 2391-92 as follows:

2
3 **SECTION .0300 - APPLICATION FOR LICENSURE**
4

5 **21 NCAC 16B .0303 BOARD APPROVED EXAMINATIONS**

6 (a) All applicants for dental licensure shall achieve a passing ~~score~~ score of at least 80 percent on the Board's
7 sterilization and jurisprudence examinations. Applicants may take reexamination in accordance with Reexamination
8 ~~on the written examinations shall be governed by~~ Rule .0317 of this Section.

9 (b) All applicants for dental licensure shall achieve passing scores on ~~Parts I and II of the Dental National Board the~~
10 examination administered by the Joint Commission on National Dental Examinations ~~and written~~ and clinical
11 examinations administered by ~~the Board or~~ Board approved testing agencies. The Board shall determine which testing
12 agencies are approved based on the requirements set forth in Paragraphs (c) and (d) of this Rule.

13 (c) To qualify as an approved testing agency, the test-development Test development agencies shall permit must allow
14 a representative of the Board representation to serve on the Board of Directors and the Examination Review Committee
15 of the agency. or equivalent committee and allow Board input in the examination development and administration.

16 (d) To qualify as an approved testing agency, the The clinical examination administered by a testing agency shall:

17 (1) ~~be substantially equivalent to or an improvement to the clinical licensure examination most recently~~
18 ~~administered by the Board;~~

19 (2)(1) include procedures performed on human subjects as part of the assessment of restorative clinical
20 competencies;

21 (3)(2) include evaluations in clinical periodontics and at least three of the following subject matter areas:

22 (A) endodontics, clinical abilities testing;

23 (B) amalgam preparation and restoration;

24 (C) anterior composite preparation and restoration;

25 (D) posterior ceramic or composite preparation and restoration;

26 (E) prosthetics, written or clinical abilities testing;

27 (F) oral diagnosis, written or clinical abilities testing; or

28 (G) oral surgery, written or clinical abilities testing; and

29 (4)(3) provide the following:

30 (A) anonymity between applicants and examination graders;

31 (B) standardization and calibration of graders;

32 (C) a mechanism for post exam analysis;

33 (D) conjunctive scoring, which is scoring that requires applicants to earn a passing grade on all
34 sections or areas tested and that does not allow weighted, averaged or overall scoring to
35 compensate for failures in individual subject areas;

36 (E) a minimum passing score set by the testing agency for each subject area tested;

37 (F) an annual review of the examination;

1 (G) a task analysis performed at least once every seven years, ~~which that~~ surveys dentists
2 nationwide to determine the content of the examination;

3 (H) a ~~defined~~ system of quality assurance to ensure uniform, consistent administration of the
4 examination at each testing site; and

5 (I) does not permit a dental instructor to grade candidates at any institution at which the
6 instructor is employed.

7 (e) The Board shall accept examination scores for five years following the date of ~~such~~ the examinations. Each
8 applicant shall arrange for and ensure the submission to the Board office the applicant's scores. Individuals who apply
9 more than five years after the examination date to seek licensure must re-take the examination.

10 (f) The applicant shall comply with all requirements of the testing agency in applying for and taking the examination.

11 ~~(g) The Board shall determine which examinations meet the criteria set out in Paragraph (d) of this Rule.~~

12
13 *History Note: Authority G.S. 90-30; 90-48;*
14 *Eff. September 3, 1976;*
15 *Readopted Eff. September 26, 1977;*
16 *Amended Eff. September 1, 2014; June 1, 2009; March 1, 2006; August 1, 1998; March 1, 1988;*
17 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9,*
18 *~~2018.~~ 2018;*
19 *Amended Eff. October 1, 2019.*
20
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REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Dental Examiners

RULE CITATION: 21 NCAC 16C .0101

DEADLINE FOR RECEIPT: September 13, 2019

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

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:

In (a), please capitalize "State" if you are only referring to North Carolina.

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

Ashley Snyder
Commission Counsel
Date submitted to agency: August 30, 2019

1 21 NCAC 16C .0101 is amended as published in 33:24 NCR 2392 as follows:

2
3 **SUBCHAPTER 16C - LICENSURE DENTAL HYGIENISTS**

4
5 **SECTION .0100 - GENERAL PROVISIONS**

6
7 **21 NCAC 16C .0101 LICENSURE**

8 (a) All dental hygienists shall be licensed by the North Carolina State Board of Dental Examiners before practicing
9 dental hygiene in this state.

10 (b) The examination requirement ~~does~~ shall not apply to persons who do not hold a North Carolina dental hygiene
11 license who are seeking volunteer licenses pursuant to ~~G.S. 90-21.107~~ or license G.S. 90-21.107, licensure by
12 endorsement pursuant to Rules 16G .0107 or .0108 of this ~~Chapter~~. Chapter or licensure by credentials pursuant to
13 Rule .0501 of this Subchapter.

14 (c) All dental hygienists shall maintain ~~current~~ an unexpired CPR certification at all times.

15
16 *History Note: Authority G.S. 90-223; 90-224;*

17 *Eff. September 3, 1976;*

18 *Readopted Eff. September 26, 1977;*

19 *Amended Eff. September 1, 2014; September 1, 2013; June 1, 2006; May 1, 1989; January 1, 1983;*

20 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9,*
21 *~~2018~~. 2018;*

22 *Amended Eff. October 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Dental Examiners

RULE CITATION: 21 NCAC 16H .0201

DEADLINE FOR RECEIPT: September 13, 2019

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

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:

In (a), what constitutes “the practice of dentistry or dental hygiene?” Can you provide a cross reference?

In (b), is the language “do and” before “perform” necessary?

Please consider adding a new Paragraph (c) and moving the last sentence to the new Paragraph.

In the last sentence, just to be clear, not all Dental Assistant I’s may be delegated the functions of a Dental Assistant II, correct? Only those who have met the training requirements in 21 NCAC 16H .0104(b) may handle those functions.

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

Ashley Snyder
Commission Counsel
Date submitted to agency: August 30, 2019

1 21 NCAC 16H .0201 is amended as published in 33:24 NCR 2392 as follows:

2
3 **SUBCHAPTER 16H - DENTAL ASSISTANTS**

4
5 **SECTION .0200 – PERMITTED FUNCTIONS OF DENTAL ASSISTANT**

6
7 **21 NCAC 16H .0201 GENERAL PERMITTED FUNCTIONS OF DENTAL ASSISTANT I**

8 (a) A Dental Assistant I may assist a dentist as a chairside assistant ~~as long as~~ provided that the acts and functions of
9 the Dental Assistant I do not constitute the practice of dentistry or dental hygiene.

10 (b) A Dental Assistant I may do and perform only routine dental assisting procedures such as oral hygiene ~~instruction;~~
11 ~~instruction,~~ chairside ~~assisting;~~ ~~assisting,~~ application of topical fluorides or topical ~~anesthetics;~~ ~~anesthetics,~~ and
12 exposure of radiographs, provided that the assistant can show ~~evidence of~~ compliance with radiography training
13 consistent with G.S. 90-29(c)(12). ~~However, functions~~ Functions of a Dental Assistant II also may be delegated to a
14 Dental Assistant I pursuant to 21 NCAC 16H .0104(2)(a). 21 NCAC 16H .0104(b).

15
16 *History Note: Authority G.S. 90-29(c)(9); 90-48;*

17 *Eff. September 3, 1976;*

18 *Readopted Eff. September 26, 1977;*

19 *Amended Eff. August 1, 2000; May 1, 1989;*

20 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9,*
21 *~~2018.~~ 2018;*

22 *Amended Eff. October 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Dental Examiners

RULE CITATION: 21 NCAC 16H .0208

DEADLINE FOR RECEIPT: September 13, 2019

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

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:

In (1), what is the School-Based Oral Health Initiative of the Carolinas grant?

In (1), does this treatment provided to school children meet the requirements of G.S. 90-233(a1)(4)? Have these facilities been identified by the Office of Rural Health and approved by the board as serving dental access shortage areas?

In (2), overall, why do you list the requirements instead of referring to the list of requirements in G.S. 90-233(a1)(1)-(3)? Also, why are these requirements slightly different? For example, G.S. 90-233(a1)(1) requires the dentist direct the treatment in writing.

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

Ashley Snyder
Commission Counsel
Date submitted to agency: August 30, 2019

1 21 NCAC 16H .0208 is adopted as published in 33:24 NCR 2392-93 as follows:

2

3 **21 NCAC 16H .0208 LIMITED EXCEPTION FOR ASSISTING HYGIENISTS**

4 A Dental Assistant II may assist a Limited Supervision Hygienist, who is qualified and practicing pursuant to 21
5 NCAC 16Z .0101-.0103, in providing oral hygiene instruction, applying sealants, applying topical fluorides, applying
6 fluoride varnishes, and while the Hygienist is performing prophylaxis, provided:

7 (1) The treatment is provided to children in school-based oral health programs under a School-Based
8 Oral Health Initiative of the Carolinas grant; and

9 (2) Prior to any treatment being provided, a licensed North Carolina dentist has:

10 (a) examined the patient;

11 (b) ordered the treatment provided to the patient; and

12 (c) agreed to provide the patient with any necessary additional treatment resulting from the
13 treatment rendered in accordance with this Rule.

14

15 *History Note: Authority G.S. 90-29(c)(9); 90-48; 90-233;*

16 *Eff. October 1, 2019.*

17

18

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Dental Examiners

RULE CITATION: 21 NCAC 16I .0106

DEADLINE FOR RECEIPT: September 13, 2019

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

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:

Are the contents or substantive requirements of the application in rule in accordance with G.S. 150B-2(8a)(d)?

Since you deleted (b), which governed duplicate licenses, did you intend to change the Rule's title?

In your history note, why is G.S. 90-39 listed?

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

Ashley Snyder
Commission Counsel
Date submitted to agency: August 30, 2019

1 21 NCAC 16I .0106 is amended as published in 33:24 NCR 2393 as follows:

2
3 **SUBCHAPTER 16I - ANNUAL RENEWAL OF LICENSE AND CONTINUING EDUCATION**
4 **REQUIREMENTS: DENTAL HYGIENIST**

5
6 **SECTION .0100 – ANNUAL RENEWAL**

7
8 **21 NCAC 16I .0106 FEE FOR LATE FILING AND DUPLICATE LICENSE**

9 ~~(a)~~ If the application for a renewal certificate, accompanied by the renewal fee of eighty-one dollars (\$81.00) and
10 annual fee to assist in funding for programs for impaired dentists of twenty-five dollars (\$25.00), ~~required,~~ is not
11 received in the Board's office before the close of business on January 31 of each year, an additional fee of fifty dollars
12 (\$50.00) shall be charged for the renewal certificate.

13 ~~(b) A fee of twenty five dollars (\$25.00) shall be charged for each duplicate of any license or certificate issued by the~~
14 ~~Board.~~

15
16 *History Note: Authority G.S. 90-39; 90-227; 90-232;*

17 *Eff. September 3, 1976;*

18 *Readopted Eff. September 26, 1977;*

19 *Amended Eff. May 1, 1989;*

20 *Transferred and Recodified from 21 NCAC 16I .0002 Eff. May 1, 1994;*

21 *Amended Eff. February 1, 2008; April 1, 2003; August 1, 1998;*

22 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9,*
23 ~~*2018. 2018;*~~

24 *Amended Eff. October 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Dental Examiners

RULE CITATION: 21 NCAC 16N .0501

DEADLINE FOR RECEIPT: September 13, 2019

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

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:

Why is this Rule necessary, particularly with the proposed language at lines 12-14? Currently, this Rule requires service via certified mail, but with the changes this Rule repeats the requirements of G.S.150B-38. What is your intent here?

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

Ashley Snyder
Commission Counsel
Date submitted to agency: August 30, 2019

1 21 NCAC 16N .0501 is amended as published in 33:24 NCR 2393 as follows:

2
3 **SUBCHAPTER 16N - RULEMAKING AND ADMINISTRATIVE HEARING PROCEDURES**

4
5 **SECTION .0500 - ADMINISTRATIVE HEARING PROCEDURES**

6
7 **21 NCAC 16N .0501 RIGHT TO HEARING**

8 When the Board acts, or proposes to act, other than in rulemaking or declaratory ruling proceedings, in a manner that
9 ~~which~~ will affect the rights, duties, or privileges of a person, licensee or applicant for a license or permit, such person
10 has a right to an administrative hearing. When the Board proposes to act in such a manner, it shall give such person
11 notice of his right to a hearing by mailing by certified mail to him at his last known address a notice of the proposed
12 action and a notice of a right to a hearing. Notice of hearing may also be given by any method of service permitted in
13 G.S. 150B-38(c), by a signed acceptance of service from such person, or by delivery to the person's attorney of record
14 who accepts service on behalf of the person.

15
16 *History Note: Authority G.S. 150B-38(h);*

17 *Eff. August 25, 1977;*

18 *Amended Eff. May 1, 1989; November 20, 1980;*

19 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9,*
20 *~~2018- 2018;~~*

21 *Amended Eff. October 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Dental Examiners

RULE CITATION: 21 NCAC 16N .0603

DEADLINE FOR RECEIPT: September 13, 2019

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

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:

In (j), under what circumstances does the Presiding Officer involve other Board members?

In (j), line 10, please either delete or explain the meaning of the phrase "if deemed necessary."

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

Ashley Snyder
Commission Counsel
Date submitted to agency: August 30, 2019

1 21 NCAC 16N .0603 is amended as published in 33:24 NCR 2393-94 as follows:

2
3 **SECTION .0600 - ADMINISTRATIVE HEARINGS: DECISIONS: RELATED RIGHTS AND**
4 **PROCEDURES**

5
6 **21 NCAC 16N .0603 SUBPOENAS**

7 (a) A request for subpoenas for the attendance and testimony of witnesses or for the production of documents, either
8 at a hearing or for the purposes of discovery, shall:

- 9 (1) be made in writing to the Board;
10 (2) identify any documents sought with specificity; ~~and~~
11 (3) include the ~~full~~ name and home or business address of all persons to be subpoenaed; and
12 (4) if known, the date, time, and place for responding to the subpoena.

13 (b) The Board shall issue the requested subpoenas within three days of the receipt of the request.

14 (c) Subpoenas shall contain:

- 15 (1) the caption of the case;
16 (2) the name and address of the person subpoenaed;
17 (3) the date, hour and location of the hearing in which the witness is commanded to appear;
18 (4) a ~~particularized~~ description of the books, papers, records, or objects the witness is directed to bring
19 with him to the hearing, if any;
20 (5) the identity of the party on whose application the subpoena was issued; and
21 (6) a return of service form.

22 (d) The "return of service" form, as filled out, ~~shows~~ shall show the name and capacity of the person serving the
23 subpoena, the date the subpoena was delivered to the person directed to make service, the date service was made, the
24 person on whom service was made, the manner in which service was made, and the signature of the person making
25 service.

26 (e) Subpoenas shall be served as permitted by Rule 45 of the North Carolina Rules of Civil Procedure, as set forth in
27 G.S. 1A-1.

28 (f) Any person receiving a subpoena from the Board may object thereto by filing a written objection to the subpoena
29 with the Board's office. Such objection shall include a statement of all reasons why the subpoena should be revoked
30 or modified. These reasons may include any basis sufficient in law for holding the subpoena invalid, such as that the
31 evidence is privileged, that the burden of appearance or production ~~would be so disruptive as to be unreasonable in~~
32 light of the significance outweighs the relevance of the evidence sought, or other undue hardship.

33 (g) Any objection to a subpoena shall be served on the party who requested the subpoena simultaneously with the
34 filing of the objection with the Board.

35 (h) The party who requested the ~~subpoena~~ subpoena, ~~at such time as may be granted by the Board,~~ may file a written
36 response to the ~~objection.~~ objection within 10 days of receipt or 7 days prior to the contested case hearing, whichever

1 ~~is sooner.~~ The written response shall be served by the requesting party on the objecting witness simultaneously with
2 the filing of the response with the Board.

3 (i) After receipt of the objection and response thereto, if any, the Board shall issue a notice to the party who requested
4 the subpoena and the party challenging the subpoena, and ~~may shall~~ notify any other party or parties of a hearing.
5 hearing, at which evidence and testimony may be presented, limited to the narrow questions raised by the objection
6 and response.

7 (j) The ~~majority~~ Presiding Officer of the Board members hearing the contested case shall conduct the hearing and
8 rule on the objection challenge and issue a written decision to all parties and made a part of the record. or, in his or
9 her discretion, may involve the other Board members. The Presiding Officer may either permit the parties to submit
10 affidavits in advance of the hearing or, if deemed necessary, permit the parties to present evidence and testimony at
11 the hearing, limited to the narrow questions raised by the objection and response.

12
13
14 *History Note: Authority G.S. 90-28; 90-48; 90-223(b); 150B-39; 150B-40*
15 *Eff. August 25, 1977;*
16 *Legislative Objection Lodged Eff. November 20, 1980;*
17 *Legislative Objection Removed Eff. March 19, 1981;*
18 *Amended Eff. April 1, 2015; May 1, 1989; March 1, 1988; October 1, 1986; March 1, 1985;*
19 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9,*
20 *~~2018.~~ 2018;*
21 *Amended Eff. October 1, 2019.*
22
23

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Dental Examiners

RULE CITATION: 21 NCAC 16N .0607

DEADLINE FOR RECEIPT: September 13, 2019

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

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:

Who does this Rule apply to? Dentists only or both dentists and dental hygienists? Please make this clear in the Rule.

If this Rule applies to both, do all the listed factors apply to both dentists and dental hygienists?

At lines 4-5, please compare this language to the language in G.S. 90-41(a) and 90-229(a). Does the Board conclude Respondent violated the Dental Practice Act, the Dental Hygiene Practice Act, or the Rules prior to imposing discipline or does the Board determine whether Respondent conclude the Respondent committed one or more of the "instances" listed in G.S. 90-41(a) and 90-229(a)?

In (1)(a), for example, contributing to a patient's death, permanent brain dysfunction, etc. is not listed in G.S. 90-41. To be clear, is this a condition for which a dentist may be disciplined or is this a factor the Board considers when determining the appropriate disciplinary action to take against the dentist? I have similar questions about other Subparagraphs of this Rule. Are the items listed in this rule a reason the Board may impose discipline or a factor when considering the appropriate discipline for the Board to impose?

In (1)(a), does this mean death, brain dysfunction, etc. as a result of malpractice?

In (1)(b), (2)(g), and (2)(h), do you mean "committed" or "convicted?"

In (1)(b), did you make the change post-publication in response to S.L. 2019-91?

How are (2)(a), (b), and (c) different?

In (2)(b), please add a comma after "emotionally."

In (2)(b), under what circumstances is an individual "mentally, emotionally, or physically unfit?" Is this determination made by the Board or by a doctor?

Ashley Snyder
Commission Counsel
Date submitted to agency: August 30, 2019

Please compare (2)(g) with (1)(c). Did you intend (2)(g) to cover acts of fraud, misrepresentation, deceit, or fabrication not related to the practice of dentistry or dental hygiene? If so, please make that clear.

In (2)(k), please capitalize "State" if you are only referring to North Carolina.

In (3), what are the "other disciplinary measures?"

In (3)(c), please capitalize "State" if you are only referring to North Carolina.

In (3)(f), is the language "or lack thereof" necessary?

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

1 21 NCAC 16N .0607 is adopted with changes as published in 33:24 NCR 2394-95 as follows:

2
3 **21 NCAC 16N .0607 DISCIPLINARY FACTORS**

4 If the Board concludes that the Respondent has violated the Dental Practice Act, the Dental Hygiene Practice Act, or
5 the Board's Rules, it shall consider the following factors relevant to the discipline to be imposed:

- 6 (1) The Board shall consider revocation of a license or permit if it concludes that lesser discipline is
7 insufficient to protect the public and that one or more of the following factors applies:
- 8 (a) Respondent caused or contributed to a patient's death, permanent organic brain
9 dysfunction, physical injury, or severe medical emergency requiring hospitalization;
 - 10 (b) Respondent committed a ~~felony or committed a misdemeanor involving moral turpitude;~~
11 felony; or
 - 12 (c) Respondent engaged in fraud, dishonesty, misrepresentation, deceit, or fabrication related
13 to the practice of dentistry or dental hygiene, including attempts to obtain or collect any
14 fees.
- 15 (2) The Board shall consider revocation or suspension of a license or permit if it concludes that lesser
16 discipline is insufficient to protect the public and that one or more of the following factors applies:
- 17 (a) Respondent's ability to practice dentistry or dental hygiene is impaired;
 - 18 (b) Respondent is mentally, emotionally or physically unfit to practice dentistry or dental
19 hygiene;
 - 20 (c) Respondent is incompetent in the practice of dentistry or dental hygiene;
 - 21 (d) Respondent's violations resulted in harm or potential harm to a patient, the public, or the
22 dental or dental hygiene profession;
 - 23 (e) Respondent failed to comply with a prior Board decision or consent order;
 - 24 (f) Respondent's violations demonstrate a lack of honesty, trustworthiness, or integrity;
 - 25 (g) Respondent committed acts of fraud, misrepresentation, deceit, or fabrication;
 - 26 (h) Respondent committed multiple instances of negligence or malpractice in treating patients,
27 including failure to complete treatment for patients;
 - 28 (i) Respondent distributed or caused to be distributed any intoxicant, drug, or narcotic for an
29 unlawful purpose;
 - 30 (j) Respondent failed to participate in the Board's investigation and disciplinary process;
 - 31 (k) Respondent aided a person or entity not licensed in this State to perform acts or services
32 that can only be performed by a dentist or dental hygienist licensed in this state; or
 - 33 (l) Respondent committed any acts set forth in Sub-items (1)(a)-(c) of this Rule.
- 34 (3) In all cases, the Board shall consider the following factors in imposing discipline, including
35 revocation, suspension, censure, probative terms, and other disciplinary measures:
- 36 (a) effect of Respondent's violation on a patient or other individuals;
 - 37 (b) Respondent's elevation of his or her interest above that of the patient or the public;

- (c) prior disciplinary violation in this state or any other jurisdiction, or the absence thereof;
- (d) dishonest or selfish motive for the violation found, or the absence thereof;
- (e) a pattern of violations;
- (f) Respondent's intent, or lack thereof, either to commit acts where the harm or potential harm is foreseeable or to cause the harm or potential harm resulting from the acts;
- (g) vulnerability of patient or victim, including violations involving an individual with a physical or mental disability or impairment;
- (h) Respondent's failure to respond, or provide responsive documents or information, to requests or subpoenas from the Board during an investigation or disciplinary proceedings;
- (i) Respondent's obstruction of the disciplinary proceedings by intentionally failing to comply with rules or orders of the Board;
- (j) Respondent's submission of false evidence, false statements, or other deceptive practices during the Board's investigation or disciplinary process;
- (k) Respondent's refusal to acknowledge the wrongful nature of the violation;
- (l) impact of Respondent's actions on the patient's or public's perception of the dental or dental hygiene profession;
- (m) Respondent's efforts to make restitution or to rectify consequences of misconduct, or the failure to do so;
- (n) Respondent's physical or mental disability or impairment diagnosed by a treating medical professional, which condition caused or contributed to Respondent's conduct in the opinion of the treating medical professional;
- (o) the degree of Respondent's rehabilitation, if any, prior to any disciplinary action;
- (p) Respondent's voluntary disclosure to the Board or cooperative attitude toward the proceedings;
- (q) Respondent's remorse for the violation or effect of the violation;
- (r) Respondent's character or reputation in the community;
- (s) remoteness in time of any prior violation by or discipline of Respondent;
- (t) Respondent's degree of experience in the practice of dentistry or dental hygiene;
- (u) imposition of other penalties or sanctions on Respondent for the conduct constituting the violation; and
- (v) any other factors found to be pertinent to the consideration of the discipline to be imposed on Respondent.

*History Note: Authority G.S. 90-41; 90-229;
Eff. October 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Dental Examiners

RULE CITATION: 21 NCAC 16V .0101

DEADLINE FOR RECEIPT: September 13, 2019

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

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:

In this Rule, you include some actions in the definition of "unprofessional conduct" that are already prohibited elsewhere in rule or statute. G.S. 90-41(6) already grants the Board authority to discipline a dentist for violations of the Board's Rules or the provisions of G.S. 90, Articles 2 and 16. Why is it necessary to repeat those items here and define them as "unprofessional conduct?" As an example, why is (16) necessary here if it is required by G.S. 90-233(b)? If the items listed in this rule are required elsewhere in statute or rule, please review to determine whether it is necessary to list them here. If it is, please provide a cross-reference to the appropriate statute or rule.

In (3), do you mean "committing" or "conviction for?"

In (5), please delete or define "tend to."

In (7), please add a comma after "prescribing."

In (10), should the "and" be an "or?"

Why is (11) necessary in light of G.S. 90-41(a)(9)?

In (12), what is the purpose of "and licensed" as used here? A deceased or retired dentist would not have a license, correct?

Is (14) limited to a complaint from the Board?

Is it necessary to have (14) and (2)?

In (15), are you asking for a business address or personal address? Please clarify.

In (15), under what circumstances are dentists required to provide notice of a change in address? 21 NCAC 16B .0701 requires notice within 10 business days of address changes for instructor's license applicants, 21 NCAC 16B .1101 requires notice from applicants for reinstatement, 21

Ashley Snyder
Commission Counsel

Date submitted to agency: August 30, 2019

NCAC 16C .0301 requires notice from applicants for licensure, and 21 NCAC 16D .0104 requires notice from applicants for provisional licensure. Are you only defining failure to notify the Board of an address change as unprofessional conduct within the context of these rules?

In (16), does this only apply to dentists in the private sector? See G.S. 90-233(b).

In (18), did you intend for this to only apply to “potential” patients?

In (18), what is the purpose of the word “live?” Is it necessary?

Please compare (18) to .0102(14). Please be consistent with language.

In (19), is the dentist/hygienist prohibited from giving or accepting the item of value?

In (19), define “anything of value.” Do you mean “anything of monetary value?”

In (24), when is a false statement material?

Is (24) necessary? It is similar to (2).

Is it necessary to have both (26) and (7)?

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

1 21 NCAC 16V .0101 is amended as published in 33:24 NCR 2395-96 as follows:

2
3 **SUBCHAPTER 16V – UNPROFESSIONAL CONDUCT**

4
5 **SECTION .0100 - UNPROFESSIONAL CONDUCT**

6
7 **21 NCAC 16V .0101 DEFINITION: UNPROFESSIONAL CONDUCT BY A DENTIST**

8 Unprofessional conduct by a dentist shall include the following:

- 9 (1) ~~Having~~ having professional discipline imposed, including the denial of licensure, by the dental
10 licensing authority of another state, territory, or country. For purposes of this Rule, the surrender of
11 a license under threat of disciplinary action shall be considered the same as if the licensee had been
12 disciplined;
- 13 (2) ~~Presenting~~ presenting false or misleading testimony, statements, or records to the Board or the
14 Board's investigator or employees during the scope of any investigation, or at any hearing of the
15 Board;
- 16 (3) ~~Committing~~ committing any act that would constitute assault or battery, including sexual assault or
17 battery ~~battery~~, as defined by Chapter 14 of the North Carolina General ~~Statutes~~ Statutes, in
18 connection with the provision of dental services;
- 19 (4) ~~Violating~~ violating any order of the Board previously entered in a disciplinary hearing, or failing to
20 comply with a subpoena of the Board;
- 21 (5) ~~Conspiring~~ conspiring with any person to commit an act, or committing an act that would tend to
22 coerce, intimidate, or preclude any patient or witness from testifying against a licensee in any
23 disciplinary hearing, or retaliating in any manner against any patient or other person who testifies
24 or cooperates with the Board during any investigation under the Dental Practice or Dental Hygiene
25 Acts;
- 26 (6) ~~Failing~~ failing to identify to a patient, patient's guardian, or the Board the name of an employee,
27 employer, contractor, or agent who renders dental treatment or services upon request;
- 28 (7) ~~Prescribing,~~ prescribing procuring, dispensing, or administering any controlled substance for
29 personal use, which does not include those prescribed, dispensed, or administered by a practitioner
30 authorized to prescribe them;
- 31 (8) ~~Pre-signing~~ pre-signing blank prescription forms or using pre-printed or rubber stamped prescription
32 forms containing the dentist's signature or the name of any controlled substance;
- 33 (9) ~~Forgiving~~ forgiving the co-payment provisions of any insurance policy, insurance contract, health
34 prepayment contract, health care plan, or nonprofit health service plan contract by accepting the
35 payment received from a third party as full payment, unless the dentist discloses to the third party
36 that the patient's payment portion will not be collected;

- 1 (10) ~~Failing~~ failing to provide radiation safeguards required by the State Department of Health and
2 Human Services, the federal Occupational and Safety Health Administration, the Food and Drug
3 Administration, and the Environmental Protection Agency;
- 4 (11) ~~Having~~ having professional connection with or lending one's name to the unlawful practice of
5 dentistry;
- 6 (12) ~~Using~~ using the name of any deceased or retired and licensed dentist on any office door, directory,
7 stationery, bill heading, or any other means of communication any time after one year following the
8 death or retirement from practice of said dentist;
- 9 (13) ~~Failing~~ failing to comply with any provision of any contract or agreement with the Caring Dental
10 Professionals Program;
- 11 (14) ~~Failing~~ failing to file a truthful response to a notice of complaint within the time allowed in the
12 notice;
- 13 (15) ~~Failing~~ failing to notify the Board of a change in current physical address within 10 business days;
- 14 (16) ~~Permitting~~ permitting more than two dental hygienists for each licensed dentist in the office to
15 perform clinical hygiene tasks;
- 16 (17) ~~Failing~~ failing to produce diagnostic radiographs or other treatment records on request of the Board
17 or its investigator;
- 18 (18) ~~Soliciting~~ soliciting employment of potential patients in person or by live telephone solicitation or
19 permitting or directing another to do so;
- 20 (19) ~~Giving~~ giving or paying anything of value in exchange for a promise to refer or referral of potential
21 patients;
- 22 (20) ~~Failing~~ failing to offer 30 days of emergency care upon dismissing a patient from a dental practice;
- 23 (21) ~~Withholding~~ withholding or refusing to complete a treatment procedure for ~~to~~ an existing patient
24 conditioned upon payment of an outstanding balance;
- 25 (22) ~~Using~~ using protected patient health information, as defined by 45 CFR 160.103, to solicit potential
26 patients;
- 27 (23) ~~Making~~ making misleading or untruthful statements for the purpose of procuring potential patients,
28 or directing or allowing an employee or agent to do so;
- 29 (24) ~~Making~~ making material false statements or omissions in any communication with the Board or its
30 agents regarding the subject of any disciplinary matter under investigations by the Board;
- 31 (25) ~~Refusing~~ refusing to permit a Board agent or employee to conduct a sterilization inspection;
- 32 (26) ~~Acquiring~~ acquiring any controlled substance from any source by fraud, deceit or misrepresentation;
33 and
- 34 (27) ~~Practicing~~ practicing outside the scope of dentistry, as set forth in G.S. 90-29.

35
36 *History Note:* Authority G.S. 90-28; 90-29;90-41; 90-48; 90-223(b);
37 *Eff. August 1, 1998;*

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Amended Eff. August 1, 2016; July 1, 2015; October 1, 2001; August 1, 2000;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9,
~~2018.~~ 2018.
Amended Eff. October 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Dental Examiners

RULE CITATION: 21 NCAC 16V .0102

DEADLINE FOR RECEIPT: September 13, 2019

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

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:

In this Rule, you include some actions in the definition of "unprofessional conduct" that are already prohibited elsewhere in rule or statute. G.S. 90-229(6) already grants the Board authority to discipline a dental hygienist for violations of the Board's Rules or the provisions of G.S. 90, Articles 2 and 16. Why is it necessary to repeat those items here and define them as "unprofessional conduct?" If the items listed in this rule are required elsewhere in statute or rule, please review to determine whether it is necessary to list them here. If it is, please provide a cross-reference to the appropriate statute or rule.

Please compare the wording in (2) with .0101(2). Please be consistent with language unless there is a reason to word these two items differently.

In (3), do you mean "committing" or "conviction for?"

In (5), please delete or define "tend to."

Please compare the wording in (5) with .0101(5).

In (7), please insert a comma after "procuring."

Is it necessary to have both (7) and (8)?

Is (9) necessary? See 90-229(11).

Is (11) limited to a complaint from the Board?

Is it necessary to have both (11) and (2)?

In (12), are you asking for a change in personal or business address?

In (13), does this only apply to dentists in the private sector? See G.S. 90-233(b).

Ashley Snyder
Commission Counsel
Date submitted to agency: August 30, 2019

Is (13) necessary? See G.S. 90-233(b).

In (14), did you intend for this to only apply to “potential” patients?

Please compare (14) with .0101(18).

Please compare (18) to .0102(14). Please be consistent with language.

In (15), is the dentist/hygienist prohibited from giving or accepting the item of value?

In (15), define “anything of value.” Do you mean “anything of monetary value?”

In (18), when is a false statement material?

Is (18) necessary? It is similar to (2).

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

Ashley Snyder
Commission Counsel
Date submitted to agency: August 30, 2019

1 21 NCAC 16V .0102 is amended as published in 33:24 NCR 2396-97 as follows:

2
3 **21 NCAC 16V .0102 DEFINITION: UNPROFESSIONAL CONDUCT BY A DENTAL HYGIENIST**

4 Unprofessional conduct by a dental hygienist shall include the following:

- 5 (1) ~~Having~~ having professional discipline imposed, including the denial of licensure, by the dental
6 hygiene licensing authority of another state, territory, or country. For purposes of this Rule, the
7 surrender of a license under threat of disciplinary action shall be considered the same as if the
8 licensee had been disciplined;
- 9 (2) ~~Presenting~~ presenting false or misleading testimony, statements, or records to the Board or a Board
10 employee during the scope of any investigation or at any hearing of the Board;
- 11 (3) ~~Committing~~ committing any act that would constitute assault or battery, including sexual assault or
12 battery ~~battery~~, as defined by Chapter 14 of the North Carolina General ~~Statutes~~ Statutes, in
13 connection with the provision of dental hygiene services;
- 14 (4) ~~Violating~~ violating an order of the Board previously entered in a disciplinary hearing or failing to
15 comply with a subpoena of the Board;
- 16 (5) ~~Conspiring~~ conspiring with any person to commit an act, or committing an act that would tend to
17 coerce, intimidate, or preclude any patient or witness from testifying against a licensee in any
18 disciplinary hearing, or retaliating in any manner against any person who testifies or cooperates with
19 the Board during any investigation of any licensee;
- 20 (6) ~~Failing~~ failing to identify to a patient, patient's guardian, an employer, or the Board the name of any
21 person or agent who renders dental treatment or services upon request;
- 22 (7) ~~Procuring,~~ procuring dispensing, or administering any controlled substance for personal use except
23 those prescribed, dispensed, or administered by a practitioner authorized to prescribe them;
- 24 (8) ~~Acquiring~~ acquiring any controlled substance from any pharmacy or other source by
25 misrepresentation, fraud or deception;
- 26 (9) ~~Having~~ having professional connection with or lending one's name to the illegal practice of dental
27 hygiene;
- 28 (10) ~~Failing~~ failing to comply with any provision of any contract or agreement with the Caring Dental
29 Professionals Program;
- 30 (11) ~~Failing~~ failing to file a truthful response to a notice of complaint, within the time allowed in the
31 notice;
- 32 (12) ~~Failing~~ failing to notify the Board of a change in current physical address within 10 business days;
- 33 (13) ~~Working~~ working in a clinical hygiene position if the ratio of hygienists to licensed dentists present
34 in the office is greater than 2:1;
- 35 (14) ~~Soliciting~~ soliciting employment of potential patients in person or by telephone or assisting another
36 person to do so;

- 1 (15) ~~Giving~~ giving or paying anything of value in exchange for a promise to refer or referral of potential
2 patients;
- 3 (16) ~~Using~~ using protected patient health information, as defined by 45 CFR 160.103, to solicit potential
4 patients;
- 5 (17) ~~Making~~ making misleading or untruthful statements for the purpose of procuring potential patients
6 or assisting another to do so;
- 7 (18) ~~Making~~ making material false statements or omissions in any communication with the Board or its
8 agents regarding the subject of any disciplinary matter under investigation by the Board; and
- 9 (19) ~~Practicing~~ practicing outside the scope of dental hygiene, as defined in 90-221(a).

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11 *History Note:* *Authority G.S. 90-29; 90-221; 90-223; 90-229;*
12 *Eff. August 1, 1998;*
13 *Amended Eff. August 1, 2016; July 1, 2015; October 1, 2001; August 1, 2000; September 1, 1998;*
14 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9,*
15 *2018, 2018;*
16 *Amended Eff. October 1, 2019.*

17

18

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Dental Examiners

RULE CITATION: 21 NCAC 16W .0102

DEADLINE FOR RECEIPT: September 13, 2019

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

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:

At lines 8, 17, and 20, please delete or define "duly."

In (a), please change "must" to "shall."

In (a)(4), what other training is required? Where can this information be found? Is it in a DHHS rule?

In (c), G.S. 90-233(a) uses the title "Dental Health Section of the Department of Health and Human Services?"

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

Ashley Snyder
Commission Counsel
Date submitted to agency: August 30, 2019

1 21 NCAC 16W .0102 is amended as published in 33:24 NCR 2397 as follows:

2
3 **SUBCHAPTER 16W - PUBLIC HEALTH HYGIENISTS**

4
5 **SECTION .0100 - PUBLIC HEALTH HYGIENISTS**

6
7 **21 NCAC 16W .0102 TRAINING FOR PUBLIC HEALTH HYGIENISTS**

8 (a) Prior to performing clinical procedures pursuant to G.S. 90-233(a) under the direction of a duly licensed dentist,
9 a public health hygienist must have:

- 10 (1) five years of experience in clinical dental hygiene;
- 11 (2) ~~current~~ unexpired CPR certification, taken in a live hands-on course;
- 12 (3) six hours of continuing education in medical emergencies each year in addition to the minimum
13 continuing education required for license renewal; and
- 14 (4) ~~such~~ other training as may be required by the ~~Dental~~ Oral Health Section of the Department of
15 Health and Human Services.

16 (b) For purposes of this Rule, a minimum of 4,000 hours, the majority of which must be spent performing ~~primarily~~
17 prophylaxis or periodontal debridement under the supervision of a duly licensed ~~dentist~~ dentist, shall be equivalent to
18 five years experience in clinical dental hygiene.

19 (c) Notwithstanding Subparagraph (a)(1) and Paragraph (b) of this Rule, a public health hygienist may place sealants
20 under the direction of a duly licensed dentist if the hygienist has a minimum of 2,000 hours of clinical experience
21 assisting in the placement of sealants with the Oral Health Section of the Department of Health and Human Services.

22
23 *History Note: Authority G.S. 90-223; 90-233(a);*
24 *Temporary Adoption Eff. October 1, 1999;*
25 *Eff. April 1, 2001;*
26 *Amended Eff. July 1, 2015;*
27 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9,*
28 *~~2018~~ 2018;*
29 *Amended Eff. October 1, 2019.*