

Burgos, Alexander N

Subject: FW: [External] RE: Dental Board 21 NCAC 16B Requests for Changes - November 2023 RRC (OAH Comm)

From: Liebman, Brian R <brian.liebman@oah.nc.gov>
Sent: Friday, October 27, 2023 2:03 PM
To: Dauna Bartley <dauna@brockerlawfirm.com>
Cc: Doug Brocker <doug@brockerlawfirm.com>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>; File <file@brockerlawfirm.com>
Subject: RE: [External] RE: Dental Board 21 NCAC 16B Requests for Changes - November 2023 RRC (OAH Comm)

Hi Dauna,

I'll recommend approval to the Commission at the November meeting.

Thank you,
Brian

Brian Liebman
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984)236-1948
brian.liebman@oah.nc.gov

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From: Dauna Bartley <dauna@brockerlawfirm.com>
Sent: Friday, October 27, 2023 12:14 PM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>
Cc: Doug Brocker <doug@brockerlawfirm.com>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>; File <file@brockerlawfirm.com>
Subject: [External] RE: Dental Board 21 NCAC 16B Requests for Changes - November 2023 RRC (OAH Comm)

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Hi Brian!

Thank you for the comments. I am attaching our responses. It does not appear that any revisions to the rules are required. Please let me know if you have any questions, and what the staff recommendation will be.

Thanks,
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.

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REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Dental Board

RULE CITATION: 21 NCAC 16B .0501

DEADLINE FOR RECEIPT: Thursday, November 9, 2023.

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 email the reviewing attorney to inquire concerning the staff recommendation.

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

In (e), p.2, lines 12-13, is “advanced dental education program” defined anywhere? I saw in the answer to the pre-review, that this language is contained in G.S. 90-36(b1)(2), but I wonder if the Board has metrics for determining what is and what is not considered an “advance dental education program.” As noted in the pre-review answer, “advanced dental education program” is a category of programs accredited by the American Dental Association’s Commission on Dental Accreditation (CODA). What is or is not considered an “advanced dental education program” is determined by CODA. The Board does not make the determination.

In (g), line 24, I noted from your pre-review answers that “fraud or by any false representation” is a finding made by the Board pursuant to a disciplinary process. I think it might be good to say that explicitly here. The History Note cites G.S. 90-41, which governs disciplinary action. This phrasing is currently in nineteen Board rules for obtaining licenses and permits. It is clear and unambiguous, and has been approved by the Rules Review Commission in 2020, 2021, and as recently as June 15, 2023, for 21 NCAC 16C .0501(f). The Board’s regulated public understands that revocation of a license is a measure taken pursuant to disciplinary process. Modifying the phrase in this rule would create confusion among the Board’s regulated public because it would create the appearance that this rule means something different than all the other rules with this phrasing.

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: October 26, 2023

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Dental Board

RULE CITATION: 21 NCAC 16B .0502

DEADLINE FOR RECEIPT: Thursday, November 9, 2023.

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 email the reviewing attorney to inquire concerning the staff recommendation.

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

In (d), line 15, I noted from your pre-review answers that “fraud or by any false representation” is a finding made by the Board pursuant to a disciplinary process. I think it might be good to say that explicitly here. The History Note cites G.S. 90-41, which governs disciplinary action. This phrasing is currently in nineteen Board rules for obtaining licenses and permits. It is clear and unambiguous, and has been approved by the Rules Review Commission in 2020, 2021, and as recently as June 15, 2023, for 21 NCAC 16C .0501(f). The Board’s regulated public understands that revocation of a license is a measure taken pursuant to disciplinary process. Modifying the phrase in this rule would create confusion among the Board’s regulated public because it would create the appearance that this rule means something different than all the other rules with this phrasing.

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: October 26, 2023

Burgos, Alexander N

Subject: FW: [External] RE: Dental Board 21 NCAC 16B Requests for Changes - November 2023 RRC (OAH Comm)

From: Liebman, Brian R <brian.liebman@oah.nc.gov>

Sent: Thursday, October 26, 2023 1:50 PM

To: Dauna Bartley <dauna@brockerlawfirm.com>

Cc: Doug Brocker <doug@brockerlawfirm.com>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: Dental Board 21 NCAC 16B Requests for Changes - November 2023 RRC

Good afternoon,

I'm the attorney who reviewed the Rules submitted by the Board for the November 2023 RRC meeting. The RRC will formally review these Rules at its meeting on Thursday, November 16, 2023, at 9:00 a.m. The meeting will be a hybrid of in-person and WebEx attendance, and an evite should be sent to you as we get closer to the meeting. If there are any other representatives from your agency who will want to attend virtually, let me know prior to the meeting, and we will get evites out to them as well.

Please submit the revised Rules and forms to me via email, no later than 5 p.m. on Thursday, November 9, 2023.

In the meantime, please do not hesitate to reach out via email with any questions or concerns.

Thanks,

Brian

Brian Liebman
Counsel to the North Carolina Rules Review Commission
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