

Burgos, Alexander N

Subject: FW: [External] RE: RFC for Dental Examiners at RRC June 2023

From: Dauna Bartley <dauna@brockerlawfirm.com>
Sent: Tuesday, June 13, 2023 1:54 PM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Doug Brocker <doug@brockerlawfirm.com>
Subject: RE: [External] RE: RFC for Dental Examiners at RRC June 2023

CAUTION: External email. Do not click links or open attachments unless verified. Report suspicious emails with the Report Message button located on your Outlook menu bar on the Home tab.

Thanks Seth! I appreciate your time and assistance.

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.

From: Ascher, Seth M <seth.ascher@oah.nc.gov>
Sent: Tuesday, June 13, 2023 1:45 PM
To: Dauna Bartley <dauna@brockerlawfirm.com>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Doug Brocker <doug@brockerlawfirm.com>
Subject: RE: [External] RE: RFC for Dental Examiners at RRC June 2023

Dauna,

After reviewing your update, I anticipate recommending that the Commission approve the ruleset. I do not plan to write a staff opinion, but will note the public comments and the clarification for the Commission when presenting the rule.

I'll work on getting the final rules uploaded presently and follow up with you if anything else comes up. Thanks for the productive work on this.

Seth Ascher
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984) 236-1934

Burgos, Alexander N

Subject: FW: [External] RE: RFC for Dental Examiners at RRC June 2023
Attachments: 21 NCAC 16H .0105.docx

From: Dauna Bartley <dauna@brockerlawfirm.com>
Sent: Tuesday, June 13, 2023 12:34 PM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Doug Brocker <doug@brockerlawfirm.com>
Subject: RE: [External] RE: RFC for Dental Examiners at RRC June 2023

CAUTION: External email. Do not click links or open attachments unless verified. Report suspicious emails with the Report Message button located on your Outlook menu bar on the Home tab.

Seth,

The phrases are not defined terms. We wouldn't be able to remove "dental radiography" from Item (A) because that is a necessary aspect of the instructor's qualifications. Not all instructors at CODA-accredited institutions may have training or experience teaching dental radiography, so the rule specifies that the instructor must be one that teaches dental radiography. The suggestion in Item (B) is helpful and doesn't change the meaning of the Rule. I am attaching a rewritten final version of 21 NCAC 16H .0105 with that change in (B).

Please let me know what your recommendations to the Commissioners 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.

1 21 NCAC 16H .0105 is adopted with changes as published in 37:16 NCR 1102-04 as follows:

2
3 **21 NCAC 16H .0105 DENTAL RADIOLOGY COURSE AND EXAMINATION REQUIREMENTS**
4

5 (a) ~~The Board will recognize~~ If a dental radiology course meeting the requirements of this Rule and the course's final
6 examination meet the requirements of this Rule, the Board will recognize the course and final examination as
7 satisfying the dental radiology training and equivalency examination requirements set out in G.S. 90-29(c)(12).

8 (b) For the Board to recognize a dental radiology course and its final examination:

- 9 (1) The course shall include at least 7 hours of didactic, lecture-based instruction and at least 14 hours
10 of laboratory instruction.
- 11 (2) The course curriculum shall include instruction and training in clinical dental radiology, in the
12 production and use of dental x-rays, and on digital x-ray equipment. The course shall enable the
13 student to:
- 14 (A) identify in sequence the steps necessary for operating dental x-ray equipment;
 - 15 (B) identify the requirements of a diagnostic digital image;
 - 16 (C) differentiate the effect of variations in amperage, kilo-voltage, distance, and exposure time
17 on the resulting digital images;
 - 18 (D) identify the terms used to measure radiation;
 - 19 (E) establish guidelines for maintaining radiation safety and the ALARA ("as low as
20 reasonably achievable") principle;
 - 21 (F) follow principles of radiologic health practices and radiation biology;
 - 22 (G) identify radiation safety techniques and monitoring devices;
 - 23 (H) identify the parts and identification marks on dental x-ray sensors;
 - 24 (I) identify and compare intraoral sensors according to size and customary usage;
 - 25 (J) identify methods of sensor handling and storage;
 - 26 (K) identify and perform in sequence the steps in processing digital images;
 - 27 (L) differentiate between preliminary interpretation and diagnosis of the digital images;
 - 28 (M) identify the anatomical landmarks of the face and skull;
 - 29 (N) identify any dental radiograph according to its location in the maxilla or mandible, and
30 position it on a digital image mount;
 - 31 (O) identify the types of radiographic errors caused by faulty exposure techniques;
 - 32 (P) identify the types of radiographic errors caused by incorrect digital mount positioning and
33 angulation of the central ray;
 - 34 (Q) identify the types of radiographic errors caused by faulty digital processing techniques;
 - 35 (R) identify the conditions that cause digital images to be fogged;
 - 36 (S) identify the advance preparations necessary before exposing digital images;
 - 37 (T) carry out the task of digital image exposure to completion;

- 1 (U) use the paralleling technique to produce digital images of diagnostic quality addressing
2 contrast, density, and definition;
- 3 (V) explain the principles of digital imaging and quality assurance;
- 4 (W) identify errors when using digital imaging in technique and processing;
- 5 (X) explain the utilization of beam aligning devices; and
- 6 (Y) describe the use of hand-held radiation exposure devices following guidelines from the
7 Radiation Protection Section of the Department of Health and Human Services, Radiology
8 Compliance Branch ("Radiation Protection Section"), which are incorporated by reference,
9 including subsequent amendments and editions, and are available at no cost online at
10 www.ncradiation.net/Xray/dentdose.htm.
- 11 (3) The laboratory portion of the course shall have no more than six students per instructor, and shall
12 include practice on dental radiography manikins. Students shall not practice on peer students unless
13 the unit is turned off and all requirements of the Board's sterilization and infection control rule, 21
14 NCAC 16J .0103, are satisfied. Students shall be required to achieve a passing score of at least 80
15 percent on a written examination on radiation safety prior to taking radiographs.
- 16 (4) To complete the course, students shall be required to achieve a passing score of at least 80 percent
17 on a written examination upon completion of the didactic, lecture-based portion of the course ~~before~~
18 ~~beginning the laboratory portion,~~ and to achieve a passing score of at least 80 percent on a final
19 laboratory examination. The final laboratory examination shall be conducted on a ~~manikin.~~ manikin
20 and include completion of a full mouth series.
- 21 (5) The facility used as the training location for the course shall:
- 22 (A) assume all overhead costs involved in offering the course;
- 23 (B) comply with the Board's rules regarding sanitation, sterilization, and infection control set
24 out in 21 NCAC 16J, the applicable guidelines of the Radiation Protection Section, and the
25 OSHA guidelines and standards related to dentistry, which are incorporated by reference,
26 including subsequent amendments and editions, and are available at no cost online at
27 www.osha.gov/dentistry/standards;
- 28 (C) provide access to a room large enough to accommodate the number of participants for
29 lecture purposes;
- 30 (D) have the number of x-ray machines necessary based on the course curriculum and
31 enrollment to ensure there are no more than two students per machine; and
- 32 (E) have facilities for ~~use of photostimulable phosphor plates for indirect~~ digital radiography.
- 33 (6) The didactic and laboratory portions of the course shall be taught by:
- 34 (A) an instructor of dental radiography at an institution accredited by the Commission on
35 Dental Accreditation ("CODA"), a list of which is available at no cost at www.ada.org/coda
36 and is incorporated by reference, including subsequent amendments and editions; or

1 (B) an instructor who has received a certification to teach dental radiography from taken and
2 passed a radiology instructor's certification course taught by an instructor of dental
3 radiography at a CODA-accredited institution, and has completed three hours of continuing
4 education in the area of radiology every other year. The continuing education courses shall
5 be offered by Board-approved continuing education course sponsors as set out in 21 NCAC
6 16I .0202 or 21 NCAC 16R .0202.

7 (7) The course sponsor shall provide students with all supplies.

8 (8) Course advertising shall comply with the Board's rules regarding advertisement of dental services
9 set out in 21 NCAC 16P.

10 (c) A course sponsor seeking Board recognition of a dental radiology course shall submit to the Board office:

11 (1) the course outline, syllabus, and handouts;

12 (2) slides and other lecture materials;

13 (3) examinations and grading criteria; and

14 (4) the name, resume, and verification of credentials satisfying Subparagraph (b)(6) of this Rule for all
15 course instructors.

16 (d) After the course sponsor submits all the information and documents required by Paragraph (c) of this Rule, the
17 course will be reviewed by the Board for compliance with this Rule at the next scheduled Board meeting. The Board
18 may delay reviewing a course until a later meeting if the Board's workload makes the review impracticable. If the
19 Board delays reviewing a course, it shall notify the course sponsor. A course shall be recognized by a majority vote
20 of the Board. A list of recognized courses is available on the Board's website at www.ncdentalboard.org.

21 (e) Upon receipt of evidence that a previously recognized course is not in compliance with this Rule, the Board will
22 notify the course sponsor in writing of each item of noncompliance. Within 30 days from the date of the notice of
23 noncompliance, the course sponsor shall provide a written response to the Board office which shall respond to each
24 item of noncompliance. The response shall provide documentation of corrections made, and shall show each item is
25 in compliance with this Rule. If the course sponsor fails to respond or correct noncompliance, the Board's recognition
26 of the course shall be withdrawn. As of the date recognition is withdrawn, the course and its examination shall not
27 satisfy the dental radiology training and equivalency examination requirements set out in G.S. 90-29(c)(12).

28
29 *History Note: Authority G.S. 90-29(c)(12); 90-48;*
30 *Eff. July 1, 2023.*

Burgos, Alexander N

Subject: FW: [External] RE: RFC for Dental Examiners at RRC June 2023

From: Ascher, Seth M <seth.ascher@oah.nc.gov>
Sent: Monday, June 12, 2023 5:38 PM
To: Dauna Bartley <dauna@brockerlawfirm.com>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Doug Brocker <doug@brockerlawfirm.com>
Subject: RE: [External] RE: RFC for Dental Examiners at RRC June 2023

Dauna,

In reviewing your response and the original comment, I did have two questions:

Is the phrase "instructor of dental radiography" defined by CODA?

Is the phrase "radiology instructor's certification course" defined by CODA?

If not, consider if the rule would have the same meaning and be clearer without them. Something like:

- (6) The didactic and laboratory portions of the course shall be taught by:
 - (A) an instructor ~~of dental radiography~~ at an institution accredited by the Commission on Dental Accreditation ("CODA"), a list of which is available at no cost at www.ada.org/coda and is incorporated by reference, including subsequent amendments and editions; or
 - (B) an instructor who has received a certification to teach dental radiography from ~~taken and passed a radiology instructor's certification course taught by an instructor of dental radiography at~~ a CODA-accredited institution, and has completed three hours of continuing education in the area of radiology every other year.

Sincerely,

Seth Ascher
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984) 236-1934

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

From: Dauna Bartley <dauna@brockerlawfirm.com>
Sent: Monday, June 12, 2023 4:36 PM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>

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

Subject: RE: [External] RE: RFC for Dental Examiners at RRC June 2023

CAUTION: External email. Do not click links or open attachments unless verified. Report suspicious emails with the Report Message button located on your Outlook menu bar on the Home tab.

Seth,

Thank you for the opportunity to respond to the comments received by the Commission. As you noted, the majority of the comments are related to the quality or efficacy of the rules, which is outside of the scope of the Commission's review. However, one comment contended that one of the Dental Board's rules is "vague." The comment was focused on 21 NCAC 16H .0105 governing dental radiology course and examination requirements. The specific provision of the Rule at issue for this commenter is found in 16H .0105(b)(6)(B). Subparagraph (b)(6) states:

- (6) The didactic and laboratory portions of the course shall be taught by:
 - (A) an instructor of dental radiography at an institution accredited by the Commission on Dental Accreditation ("CODA"), a list of which is available at no cost at www.ada.org/coda and is incorporated by reference, including subsequent amendments and editions; or
 - (B) an instructor who has taken and passed a radiology instructor's certification course taught by an instructor of dental radiography at a CODA-accredited institution, and has completed three hours of continuing education in the area of radiology every other year.

The commenter contends that Item (B) is "vague" in that it does not detail the content of a radiology instructor's certification course and whether there is a list of approved schools or courses. Item B is not vague. It states clearly that the radiology instructor's certification course must be taught by an instructor of dental radiography at a CODA-accredited institution. The Board is not regulating the content of this course offered by CODA-accredited institutions, nor does the Board approve such schools or courses beyond specifying that they must be CODA-accredited institutions. The list of those is available online as stated in Item A.

Regarding the commenter's question about the CE courses, we have revised the Rule to clarify that the CEs must be from a Board-approved CE sponsor. I am attaching the rewritten rule here.

Please let me know if you have further questions, and what your staff recommendation will be.

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.

1 21 NCAC 16H .0105 is adopted with changes as published in 37:16 NCR 1102-04 as follows:

2
3 **21 NCAC 16H .0105 DENTAL RADIOLOGY COURSE AND EXAMINATION REQUIREMENTS**

4
5 (a) ~~The Board will recognize~~ If a dental radiology course meeting the requirements of this Rule and the course's final
6 examination meet the requirements of this Rule, the Board will recognize the course and final examination as
7 satisfying the dental radiology training and equivalency examination requirements set out in G.S. 90-29(c)(12).

8 (b) For the Board to recognize a dental radiology course and its final examination:

- 9 (1) The course shall include at least 7 hours of didactic, lecture-based instruction and at least 14 hours
10 of laboratory instruction.
- 11 (2) The course curriculum shall include instruction and training in clinical dental radiology, in the
12 production and use of dental x-rays, and on digital x-ray equipment. The course shall enable the
13 student to:
- 14 (A) identify in sequence the steps necessary for operating dental x-ray equipment;
 - 15 (B) identify the requirements of a diagnostic digital image;
 - 16 (C) differentiate the effect of variations in amperage, kilo-voltage, distance, and exposure time
17 on the resulting digital images;
 - 18 (D) identify the terms used to measure radiation;
 - 19 (E) establish guidelines for maintaining radiation safety and the ALARA ("as low as
20 reasonably achievable") principle;
 - 21 (F) follow principles of radiologic health practices and radiation biology;
 - 22 (G) identify radiation safety techniques and monitoring devices;
 - 23 (H) identify the parts and identification marks on dental x-ray sensors;
 - 24 (I) identify and compare intraoral sensors according to size and customary usage;
 - 25 (J) identify methods of sensor handling and storage;
 - 26 (K) identify and perform in sequence the steps in processing digital images;
 - 27 (L) differentiate between preliminary interpretation and diagnosis of the digital images;
 - 28 (M) identify the anatomical landmarks of the face and skull;
 - 29 (N) identify any dental radiograph according to its location in the maxilla or mandible, and
30 position it on a digital image mount;
 - 31 (O) identify the types of radiographic errors caused by faulty exposure techniques;
 - 32 (P) identify the types of radiographic errors caused by incorrect digital mount positioning and
33 angulation of the central ray;
 - 34 (Q) identify the types of radiographic errors caused by faulty digital processing techniques;
 - 35 (R) identify the conditions that cause digital images to be fogged;
 - 36 (S) identify the advance preparations necessary before exposing digital images;
 - 37 (T) carry out the task of digital image exposure to completion;

- 1 (U) use the paralleling technique to produce digital images of diagnostic quality addressing
2 contrast, density, and definition;
- 3 (V) explain the principles of digital imaging and quality assurance;
- 4 (W) identify errors when using digital imaging in technique and processing;
- 5 (X) explain the utilization of beam aligning devices; and
- 6 (Y) describe the use of hand-held radiation exposure devices following guidelines from the
7 Radiation Protection Section of the Department of Health and Human Services, Radiology
8 Compliance Branch ("Radiation Protection Section"), which are incorporated by reference,
9 including subsequent amendments and editions, and are available at no cost online at
10 www.ncradiation.net/Xray/dentdose.htm.
- 11 (3) The laboratory portion of the course shall have no more than six students per instructor, and shall
12 include practice on dental radiography manikins. Students shall not practice on peer students unless
13 the unit is turned off and all requirements of the Board's sterilization and infection control rule, 21
14 NCAC 16J .0103, are satisfied. Students shall be required to achieve a passing score of at least 80
15 percent on a written examination on radiation safety prior to taking radiographs.
- 16 (4) To complete the course, students shall be required to achieve a passing score of at least 80 percent
17 on a written examination upon completion of the didactic, lecture-based portion of the course ~~before~~
18 ~~beginning the laboratory portion,~~ and to achieve a passing score of at least 80 percent on a final
19 laboratory examination. The final laboratory examination shall be conducted on a ~~manikin.~~ manikin
20 and include completion of a full mouth series.
- 21 (5) The facility used as the training location for the course shall:
- 22 (A) assume all overhead costs involved in offering the course;
- 23 (B) comply with the Board's rules regarding sanitation, sterilization, and infection control set
24 out in 21 NCAC 16J, the applicable guidelines of the Radiation Protection Section, and the
25 OSHA guidelines and standards related to dentistry, which are incorporated by reference,
26 including subsequent amendments and editions, and are available at no cost online at
27 www.osha.gov/dentistry/standards;
- 28 (C) provide access to a room large enough to accommodate the number of participants for
29 lecture purposes;
- 30 (D) have the number of x-ray machines necessary based on the course curriculum and
31 enrollment to ensure there are no more than two students per machine; and
- 32 (E) have facilities for ~~use of photostimulable phosphor plates for indirect~~ digital radiography.
- 33 (6) The didactic and laboratory portions of the course shall be taught by:
- 34 (A) an instructor of dental radiography at an institution accredited by the Commission on
35 Dental Accreditation ("CODA"), a list of which is available at no cost at www.ada.org/coda
36 and is incorporated by reference, including subsequent amendments and editions; or

1 (B) an instructor who has taken and passed a radiology instructor's certification course taught
2 by an instructor of dental radiography at a CODA-accredited institution, and has completed
3 three hours of continuing education in the area of radiology every other year. The
4 continuing education courses shall be offered by Board-approved continuing education
5 course sponsors as set out in 21 NCAC 16I .0202 or 21 NCAC 16R .0202.

6 (7) The course sponsor shall provide students with all supplies.

7 (8) Course advertising shall comply with the Board's rules regarding advertisement of dental services
8 set out in 21 NCAC 16P.

9 (c) A course sponsor seeking Board recognition of a dental radiology course shall submit to the Board office:

10 (1) the course outline, syllabus, and handouts;

11 (2) slides and other lecture materials;

12 (3) examinations and grading criteria; and

13 (4) the name, resume, and verification of credentials satisfying Subparagraph (b)(6) of this Rule for all
14 course instructors.

15 (d) After the course sponsor submits all the information and documents required by Paragraph (c) of this Rule, the
16 course will be reviewed by the Board for compliance with this Rule at the next scheduled Board meeting. The Board
17 may delay reviewing a course until a later meeting if the Board's workload makes the review impracticable. If the
18 Board delays reviewing a course, it shall notify the course sponsor. A course shall be recognized by a majority vote
19 of the Board. A list of recognized courses is available on the Board's website at www.ncdentalboard.org.

20 (e) Upon receipt of evidence that a previously recognized course is not in compliance with this Rule, the Board will
21 notify the course sponsor in writing of each item of noncompliance. Within 30 days from the date of the notice of
22 noncompliance, the course sponsor shall provide a written response to the Board office which shall respond to each
23 item of noncompliance. The response shall provide documentation of corrections made, and shall show each item is
24 in compliance with this Rule. If the course sponsor fails to respond or correct noncompliance, the Board's recognition
25 of the course shall be withdrawn. As of the date recognition is withdrawn, the course and its examination shall not
26 satisfy the dental radiology training and equivalency examination requirements set out in G.S. 90-29(c)(12).

27
28 *History Note: Authority G.S. 90-29(c)(12); 90-48;*
29 *Eff. July 1, 2023.*

Burgos, Alexander N

Subject: FW: [External] RE: RFC for Dental Examiners at RRC June 2023

From: Ascher, Seth M <seth.ascher@oah.nc.gov>

Sent: Monday, June 12, 2023 4:05 PM

To: Dauna Bartley <dauna@brockerlawfirm.com>

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

Subject: RE: [External] RE: RFC for Dental Examiners at RRC June 2023

Dauna,

I have reviewed the agency responses thus far as well as the updated rules. At this point there are no additional questions that occur to me. The only outstanding issue I see are the public comments. If the agency is planning to submit a response to any of the comments, I would like to see the response before making any decisions about a staff opinion or recommendation.

Sincerely,

Seth Ascher

Counsel to the North Carolina Rules Review Commission

Office of Administrative Hearings

(984) 236-1934

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

Burgos, Alexander N

Subject: FW: [External] RE: RFC for Dental Examiners at RRC June 2023

From: Dauna Bartley <dauna@brockerlawfirm.com>

Sent: Monday, June 12, 2023 2:51 PM

To: Ascher, Seth M <seth.ascher@oah.nc.gov>

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

Subject: RE: [External] RE: RFC for Dental Examiners at RRC June 2023

CAUTION: External email. Do not click links or open attachments unless verified. Report suspicious emails with the Report Message button located on your Outlook menu bar on the Home tab.

Seth,

Thank you for the status update. The Dental Board does wish to respond to the objection you noted below that contended "vagueness." Should I hold off until you have finished your review in case there are additional questions we need to address?

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.

Burgos, Alexander N

Subject: FW: [External] RE: RFC for Dental Examiners at RRC June 2023

From: Ascher, Seth M <seth.ascher@oah.nc.gov>
Sent: Monday, June 12, 2023 10:20 AM
To: Dauna Bartley <dauna@brockerlawfirm.com>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] RE: RFC for Dental Examiners at RRC June 2023

Dauna,

Thanks for the updates. I was on vacation last week, but will review these and update you on my progress by the end of the day.

Note that we received several public comments related to one of your rules. Some of the one's received while I was out appear not to have been sent to you, so I will forward them shortly.

It appears to me that many of these comments appear to relate to the quality or efficacy of the rule, and thus fall outside the scope of the Commission's review under G.S. 150B-21.9. However, I do note that the May 30th letter, which I believe was also sent to you, contends that some of the rules are "vague", and thus raises an issue within the Commission's scope of review (G.S. 150B-21.9(a)(2)). Does the agency wish to respond to any of these comments?

Seth Ascher
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984) 236-1934

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

Burgos, Alexander N

Subject: FW: [External] RE: RFC for Dental Examiners at RRC June 2023
Attachments: June 2023 Dental Examiners RFC_Dental Board response.docx; 21 NCAC 16C .0501.docx; 21 NCAC 16H .0105.docx; 21 NCAC 16I .0201.docx; 21 NCAC 16R .0204.docx

From: Dauna Bartley <dauna@brockerlawfirm.com>
Sent: Wednesday, June 7, 2023 12:48 PM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: [External] RE: RFC for Dental Examiners at RRC June 2023

CAUTION: External email. Do not click links or open attachments unless verified. Report suspicious emails with the Report Message button located on your Outlook menu bar on the Home tab.

Seth,

I am attaching the Dental Board's response as well as the rewritten rules here. Please let me know if you have any further questions, and what you will be recommending to the Commission.

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.

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

AGENCY: Board of Dental Examiners

RULE CITATION: 21 NCAC 16C .0501

DEADLINE FOR RECEIPT: June 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:

On line 20, what is meant by “secure electronic transmission”? Is there a definition somewhere, or a method spelled out in more detail? A definition has been added to the Rule.

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

Seth Ascher
Commission Counsel

Date submitted to agency: May 24, 2023

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

AGENCY: Board of Dental Examiners

RULE CITATION: 21 NCAC 16H .0105

DEADLINE FOR RECEIPT: June 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:

G.S. 90-29(c)(12) is potentially ambiguous as to whether the Board is recognizing the exam, the course, or both. It appears that the Board's position is that it can regulate the exam and the course. Is there any additional support for this interpretation? Generally, pursuant to the Dental Practice Act which states it is to be liberally construed to carry out its purposes, the Board is authorized and empowered to regulate the practice of dentistry to protect the public health, safety, and welfare, to ensure that only qualified persons are permitted to practice dentistry in this State, and to adopt rules interpreting and implementing the Act. G.S. 90-22 and 90-48.

G.S. 90-29(b)(9) and (10) define the practice of dentistry to include taking dental x-rays and performing or engaging in any of the clinical practices included in the curricula of recognized dental schools or colleges (which includes training in radiology). Under (c)(12), a person who is not a licensed dentist may take dental x-rays only if they have satisfied the course and examination requirements. The provision expressly states that the examination must be recognized by the Board. In addition, the course must cover production and use of dental x-rays and clinical dental radiology. The course content therefore includes acts that are the practice of dentistry. Consistent with the provisions of the Act, the Board has the authority to adopt rules regulating the course as well as the examination as part of its statutory charge to regulate the practice of dentistry in the State.

As structured, paragraph (a) is confusing. Consider: "If a dental radiology course and the course's final examination meet the requirements of this rule, The Board will recognize the final examination as satisfying the dental radiology training and equivalency requirements set out in G.S. 90-29(c)(12)." This paragraph has been restructured.

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

Seth Ascher
Commission Counsel

Date submitted to agency: May 24, 2023

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

AGENCY: Board of Dental Examiners

RULE CITATION: 21 NCAC 16I .0201

DEADLINE FOR RECEIPT: June 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:

Regarding paragraph a, G.S. 90-225 states that "All dental hygienists licensed under G.S. 90-225 shall be required to attend Board-approved courses of study in subjects relating to dental hygiene." Are self-study courses attended? Yes, the self-study courses approved under this Rule are attended. G.S. 90-225.1 does not require that each individual course be live, in-person. It vests the Board with the authority to consider and approve courses and to determine the nature of the course work required. To qualify under this Rule, self-study courses must be offered by a Board-approved course sponsor and include the test and certificate of completion. These are generally on-demand courses which are attended online.

In the last sentence of paragraph a (lines 9 through 12), is the test required for all courses? Or just self-study courses? Just self-study courses. The sentence has been revised to clarify this.

In paragraph (d), "resume practice" is confusing when applied to "semi-retired dental hygienists" who are practicing 250 hours a year under (c)(1). Do you mean something like "If a retired or semi-retired dental hygienist wishes to resume practice without the restrictions in paragraph (c) . . ." ? The sentence has been revised to clarify this.

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

Seth Ascher
Commission Counsel

Date submitted to agency: May 24, 2023

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

AGENCY: Board of Dental Examiners

RULE CITATION: 21 NCAC 16R .0204

DEADLINE FOR RECEIPT: June 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 paragraph (b), "resume practice" is confusing when applied to "semi-retired dentists". Do you mean something like "If a retired or semi-retired dentist hygienist wishes to be reclassified under paragraph (a) . . ."? **The sentence has been revised to clarify this.**

Could a Class I reclassify as Class II to increase their practice hours? If so, on lines 36 and 37 consider: "the Board shall require the continuing education courses applicable to the less restrictive classification for the . . ." **Yes, any of the retirement classifications could reclassify to a more active retirement classification, or back to fulltime practice (more than 1,000 hours per year). The phrasing suggested here would not work for dentists reclassifying to fulltime practice since fulltime practice is not a "classification" in this Rule. The CE hours required would be determined by this Rule and Rules .0201 and .0206 of this Section, as indicated.**

*When capitalized, "State" generally means "State of North Carolina." On p. 2, lines 10 and 16, capitalizing "State" would restrict the rule to state agencies in the State of North Carolina. So, for example, a North Carolina licensed dentist who worked or volunteered at a Virginia agency would receive no credit. Is this the Board's intent? **No, this was an oversight. It has been reverted to "state."** Thank you for flagging it!*

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

Seth Ascher
Commission Counsel

Date submitted to agency: May 24, 2023

1 21 NCAC 16C .0501 is amended with changes as published in 37:16 NCR 1100-01 as follows:

2
3 **SECTION .0500 – LICENSURE BY CREDENTIALS**

4
5 **21 NCAC 16C .0501 DENTAL HYGIENE LICENSURE BY CREDENTIALS**

6 (a) An applicant for a dental hygiene license by credentials shall submit to the Board:

- 7 (1) a notarized application form provided by the Board at www.ncdentalboard.org that includes the
8 information and materials required by Rule .0301(a) of this Subchapter;
- 9 (2) the nonrefundable licensure by credentials fee set forth in 21 NCAC 16M .0102;
- 10 (3) an affidavit from the applicant stating for the two year period set out in G.S. 90-224.1(c)(1):
- 11 (A) the dates that and locations where the applicant has practiced dental hygiene;
- 12 (B) that the applicant has provided at least 2,000 hours of clinical care to patients; and
- 13 (C) that the applicant holds an active, unrestricted dental hygiene license issued by another
14 U.S. state or any U.S. territory, and has done so without any period of interruption; and
- 15 (4) a statement disclosing and explaining any investigations, malpractice claims, or state or federal
16 agency complaints, judgments, or settlements that are related to licensure and are not disclosed
17 elsewhere in the application.

18 (b) In addition to the requirements of Paragraph (a) of this Rule, an applicant for a dental hygiene license by credentials
19 shall request the applicable entity to send the following required information or ~~documents~~ documents, in a sealed
20 envelope or via secure electronic transmission, directly from the entity to the Board office: office, with each document
21 in an unopened envelope sealed by the entity involved:

- 22 (1) the applicant's official transcripts from a dental hygiene program accredited by the Commission on
23 Dental Accreditation of the American Dental Association;
- 24 (2) a certificate of the applicant's licensure status from the regulatory authority or other occupational or
25 professional regulatory authority and a disclosure of all disciplinary actions taken or investigations
26 pending, from all licensing jurisdictions where the applicant holds or has ever held a dental hygiene
27 license or other occupational or professional license;
- 28 (3) ~~examination scores from: required by Rule .0303(b) of this Subchapter;~~
- 29 (A) the National Board Dental Hygiene Examination administered by the Joint Commission on
30 National Dental Examinations; and
- 31 (B) a clinical examination accepted by the Board based on the criteria set out in Rule .0303(d)
32 of this Subchapter;
- 33 (4) a report of any pending or final malpractice actions against the applicant verified by ~~the any~~
34 malpractice insurance carrier covering the applicant; and
- 35 (5) a letter of coverage history from all current and all previous malpractice insurance carriers covering
36 the applicant.

1 For purposes of this Rule, “secure electronic transmission” means an electronic method of communication that ensures
2 that completeness, integrity, and confidentiality of information are maintained during transmission.

3 ~~The Board shall receive~~ An application shall be complete when the Board receives all information and
4 documentation set forth in Paragraphs (a) and (b) of this Rule and the applicant's passing scores on all examinations
5 required by this Rule. Rule .0303 of this Subchapter for the application to be complete. Applications ~~Partial~~
6 applications that are not completed within one year of the date the first document is ~~being~~ submitted to the Board shall
7 be disregarded as expired without a refund of the application fee.

8 (d) An applicant for dental hygiene licensure by credentials shall pass the Board's written examinations in sterilization
9 and jurisprudence as set out in Rule .0303(a) of this Subchapter. Applicants who do not pass ~~the either~~ written
10 examination after three attempts within one year in accordance with Rule .0311(b) of this Subchapter shall not be
11 eligible for reexamination under Rule .0311(c) of this Subchapter and may not reapply for licensure by credentials.

12 (e) Any applicant who changes his or her address shall notify the Board office in writing within 10 business days.

13 (f) Any license obtained through fraud or by any false representation shall be revoked.

14
15 *History Note: Authority G.S. 90-223; 90-224.1; 90-229;*
16 *Temporary Adoption Eff. January 1, 2003;*
17 *Eff. January 1, 2004;*
18 *Recodified from Rule .0401 Eff. June 1, 2006;*
19 *Amended Eff. September 1, 2014; February 1, 2010;*
20 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9,*
21 *2018;*
22 *Amended Eff. July 1, 2023; March 1, 2020.*

1 21 NCAC 16H .0105 is adopted with changes as published in 37:16 NCR 1102-04 as follows:

2
3 **21 NCAC 16H .0105 DENTAL RADIOLOGY COURSE AND EXAMINATION REQUIREMENTS**
4

5 (a) ~~The Board will recognize~~ If a dental radiology course meeting the requirements of this Rule and the course's final
6 examination meet the requirements of this Rule, the Board will recognize the course and final examination as
7 satisfying the dental radiology training and equivalency examination requirements set out in G.S. 90-29(c)(12).

8 (b) For the Board to recognize a dental radiology course and its final examination:

- 9 (1) The course shall include at least 7 hours of didactic, lecture-based instruction and at least 14 hours
10 of laboratory instruction.
- 11 (2) The course curriculum shall include instruction and training in clinical dental radiology, in the
12 production and use of dental x-rays, and on digital x-ray equipment. The course shall enable the
13 student to:
- 14 (A) identify in sequence the steps necessary for operating dental x-ray equipment;
 - 15 (B) identify the requirements of a diagnostic digital image;
 - 16 (C) differentiate the effect of variations in amperage, kilo-voltage, distance, and exposure time
17 on the resulting digital images;
 - 18 (D) identify the terms used to measure radiation;
 - 19 (E) establish guidelines for maintaining radiation safety and the ALARA ("as low as
20 reasonably achievable") principle;
 - 21 (F) follow principles of radiologic health practices and radiation biology;
 - 22 (G) identify radiation safety techniques and monitoring devices;
 - 23 (H) identify the parts and identification marks on dental x-ray sensors;
 - 24 (I) identify and compare intraoral sensors according to size and customary usage;
 - 25 (J) identify methods of sensor handling and storage;
 - 26 (K) identify and perform in sequence the steps in processing digital images;
 - 27 (L) differentiate between preliminary interpretation and diagnosis of the digital images;
 - 28 (M) identify the anatomical landmarks of the face and skull;
 - 29 (N) identify any dental radiograph according to its location in the maxilla or mandible, and
30 position it on a digital image mount;
 - 31 (O) identify the types of radiographic errors caused by faulty exposure techniques;
 - 32 (P) identify the types of radiographic errors caused by incorrect digital mount positioning and
33 angulation of the central ray;
 - 34 (Q) identify the types of radiographic errors caused by faulty digital processing techniques;
 - 35 (R) identify the conditions that cause digital images to be fogged;
 - 36 (S) identify the advance preparations necessary before exposing digital images;
 - 37 (T) carry out the task of digital image exposure to completion;

- 1 (U) use the paralleling technique to produce digital images of diagnostic quality addressing
2 contrast, density, and definition;
- 3 (V) explain the principles of digital imaging and quality assurance;
- 4 (W) identify errors when using digital imaging in technique and processing;
- 5 (X) explain the utilization of beam aligning devices; and
- 6 (Y) describe the use of hand-held radiation exposure devices following guidelines from the
7 Radiation Protection Section of the Department of Health and Human Services, Radiology
8 Compliance Branch ("Radiation Protection Section"), which are incorporated by reference,
9 including subsequent amendments and editions, and are available at no cost online at
10 www.ncradiation.net/Xray/dentdose.htm.
- 11 (3) The laboratory portion of the course shall have no more than six students per instructor, and shall
12 include practice on dental radiography manikins. Students shall not practice on peer students unless
13 the unit is turned off and all requirements of the Board's sterilization and infection control rule, 21
14 NCAC 16J .0103, are satisfied. Students shall be required to achieve a passing score of at least 80
15 percent on a written examination on radiation safety prior to taking radiographs.
- 16 (4) To complete the course, students shall be required to achieve a passing score of at least 80 percent
17 on a written examination upon completion of the didactic, lecture-based portion of the course ~~before~~
18 ~~beginning the laboratory portion,~~ and to achieve a passing score of at least 80 percent on a final
19 laboratory examination. The final laboratory examination shall be conducted on a ~~manikin.~~ manikin
20 and include completion of a full mouth series.
- 21 (5) The facility used as the training location for the course shall:
- 22 (A) assume all overhead costs involved in offering the course;
- 23 (B) comply with the Board's rules regarding sanitation, sterilization, and infection control set
24 out in 21 NCAC 16J, the applicable guidelines of the Radiation Protection Section, and the
25 OSHA guidelines and standards related to dentistry, which are incorporated by reference,
26 including subsequent amendments and editions, and are available at no cost online at
27 www.osha.gov/dentistry/standards;
- 28 (C) provide access to a room large enough to accommodate the number of participants for
29 lecture purposes;
- 30 (D) have the number of x-ray machines necessary based on the course curriculum and
31 enrollment to ensure there are no more than two students per machine; and
- 32 (E) have facilities for ~~use of photostimulable phosphor plates for indirect~~ digital radiography.
- 33 (6) The didactic and laboratory portions of the course shall be taught by:
- 34 (A) an instructor of dental radiography at an institution accredited by the Commission on
35 Dental Accreditation ("CODA"), a list of which is available at no cost at www.ada.org/coda
36 and is incorporated by reference, including subsequent amendments and editions; or

1 (B) an instructor who has taken and passed a radiology instructor's certification course taught
2 by an instructor of dental radiography at a CODA-accredited institution, and has completed
3 three hours of continuing education in the area of radiology every other year.

4 (7) The course sponsor shall provide students with all supplies.

5 (8) Course advertising shall comply with the Board's rules regarding advertisement of dental services
6 set out in 21 NCAC 16P.

7 (c) A course sponsor seeking Board recognition of a dental radiology course shall submit to the Board office:

8 (1) the course outline, syllabus, and handouts;

9 (2) slides and other lecture materials;

10 (3) examinations and grading criteria; and

11 (4) the name, resume, and verification of credentials satisfying Subparagraph (b)(6) of this Rule for all
12 course instructors.

13 (d) After the course sponsor submits all the information and documents required by Paragraph (c) of this Rule, the
14 course will be reviewed by the Board for compliance with this Rule at the next scheduled Board meeting. The Board
15 may delay reviewing a course until a later meeting if the Board's workload makes the review impracticable. If the
16 Board delays reviewing a course, it shall notify the course sponsor. A course shall be recognized by a majority vote
17 of the Board. A list of recognized courses is available on the Board's website at www.ncdentalboard.org.

18 (e) Upon receipt of evidence that a previously recognized course is not in compliance with this Rule, the Board will
19 notify the course sponsor in writing of each item of noncompliance. Within 30 days from the date of the notice of
20 noncompliance, the course sponsor shall provide a written response to the Board office which shall respond to each
21 item of noncompliance. The response shall provide documentation of corrections made, and shall show each item is
22 in compliance with this Rule. If the course sponsor fails to respond or correct noncompliance, the Board's recognition
23 of the course shall be withdrawn. As of the date recognition is withdrawn, the course and its examination shall not
24 satisfy the dental radiology training and equivalency examination requirements set out in G.S. 90-29(c)(12).

25
26 *History Note: Authority G.S. 90-29(c)(12); 90-48;*

27 *Eff. July 1, 2023.*

1 21 NCAC 16I .0201 is amended with changes as published in 37:16 NCR 1104 as follows:

2
3 **SECTION .0200 – CONTINUING EDUCATION**
4

5 **21 NCAC 16I .0201 CONTINUING EDUCATION REQUIRED**

6 (a) As a condition of license renewal, each dental hygienist shall complete six clock hours of continuing education
7 each calendar year. ~~Any or all the~~ The hours may be acquired through self-study self-study courses. To count toward
8 the mandatory continuing education requirement, self-study self-study courses shall be related to clinical patient care
9 and offered by a ~~board approved~~ Board-approved sponsor, sponsor listed in Rule .0202 of this Section. The dental
10 hygienist shall pass a test following the course administered by the self-study course sponsor and obtain a certificate
11 of completion-completion from the sponsor.

12 (b) ~~Current~~ An unexpired certification in CPR is required in addition to the mandatory continuing education hours.

13 (c) ~~A dental hygienist who can demonstrate a disabling condition may request a variance in required continuing~~
14 ~~education hours during a particular period. Written documentation of a disabling condition that interferes with the~~
15 ~~hygienist's ability to complete the required hours shall be provided to the Board. The Board may grant or deny such~~
16 ~~requests on a case by case basis, depending upon the nature of the disabling condition, its impact on the hygienist's~~
17 ~~ability to complete continuing education, and the likely duration of the disability. Upon receipt of a written request~~
18 from the dental hygienist, the Board will grant exemptions from the requirements set out in this Rule and in Rule .0206
19 of this Section as follows:

20 (1) A dental hygienist who practices not more than 250 clock hours in a calendar year shall be classified
21 as a semi-retired dental hygienist, and shall:

22 (A) be exempt from the requirement set out in Paragraph (a) of this Rule to complete six clock
23 hours of continuing education each calendar year; and

24 (B) maintain an unexpired CPR certification.

25 (2) A retired dental hygienist who does not practice any dental hygiene shall be exempt from all
26 continuing education and CPR certification requirements.

27 (d) ~~If a licensee dental hygienist who has been exempted from continuing education requirements wishes to resume~~
28 practice, practicing for more hours than permitted by his or her classification under Paragraph (c) of this Rule, the
29 licensee shall complete Board shall require an unexpired CPR certification and continuing education courses for the
30 calendar year in which he or she [resumes] increases practice hours in accordance with this Rule. Rule and Rule .0206
31 of this Section when reclassifying the dental hygienist. A dental hygienist who has been classified as retired and wishes
32 to resume practice shall satisfy the reinstatement requirements of 21 NCAC 16C .0601. The Board may require
33 licensees who have not practiced dental hygiene for more than a year to undergo a clinical test before allowing the
34 licensee to resume practice if there is evidence that the licensee suffers from addiction or a mental or physical condition
35 that impairs the licensee's ability to practice hygiene competently.

36
37 *History Note: Authority G.S. 90-225.1; 90-229;*

1 *Eff. May 1, 1994;*
2 *Amended Eff. April 1, 2015; November 1, 2008; April 1, 2001; August 1, 1998;*
3 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9,*
4 *2018;*
5 *Recodified from 21 NCAC 16I .0102 Eff. January 1, ~~2020~~2020;*
6 *Amended Eff. July 1, 2023.*

1 21 NCAC 16R .0204 is amended with changes as published in 37:16 NCR 1101-02 as follows:

2
3 **21 NCAC 16R .0204 VARIANCES AND EXEMPTION FROM AND CREDIT FOR CONTINUING**
4 **EDUCATION**

5 (a) Upon receipt of written evidence, the Board ~~may~~will grant exemptions from the mandatory continuing education
6 requirements set out in ~~Rule~~Rules .0201 and .0206 of this Section as follows:

7 (1) A dentist who practices not more than 250 clock hours in a calendar year shall be classified as a
8 semi-retired Class I dentist, and shall: exempt from all continuing education requirements. Such
9 dentists, who shall be known as semi-retired Class I dentists, shall maintain current CPR
10 certification.

11 (A) be exempt from the requirement set out in Rule .0201(a) of this Section to complete 15
12 clock hours of continuing education each calendar year;

13 (B) complete the course required in Rule .0201(b) of this Section if the dentist prescribes
14 controlled substances; and

15 (C) maintain an unexpired CPR certification.

16 (2) A dentist who practices not more than 1,000 clock hours in a calendar year shall be classified as a
17 semi-retired Class II dentist, and shall: exempt from one half of the continuing education courses
18 required of dentists who practice full time. Such dentists, who shall be known as semi-retired Class
19 II dentists, shall maintain current CPR certification.

20 (A) be exempt from one half of the total continuing education hours required in Rule .0201(a)
21 of this Section;

22 (B) complete the course required in Rule .0201(b) of this Section if the dentist prescribes
23 controlled substances;

24 (C) complete the continuing education requirement on substance abuse and mental health set
25 out in Rule .0206 of this Section; and

26 (D) maintain an unexpired CPR certification.

27 (3) A retired dentist who does not practice any dentistry shall be exempt from all continuing education
28 and CPR certification requirements.

29 (4) ~~A dentist who is unable to practice dentistry because of a physical or mental illness may request a~~
30 ~~variance in continuing education hours during the period of the disability. The Board may grant or~~
31 ~~deny requests for variance in continuing education hours based on a disabling condition on a case~~
32 ~~by case basis, taking into consideration the particular disabling condition involved and its effect on~~
33 ~~the dentist's ability to complete the required hours. In considering the request, the Board may require~~
34 ~~additional documentation substantiating any specified disability.~~

35 (b) ~~In those instances where~~ If a dentist who has been exempted from continuing education requirements is waived
36 and the exempt individual wishes to resume practice, practicing for more hours than permitted by his or her
37 classification under Paragraph (a) of this Rule, the Board shall require continuing education courses for the calendar

1 year in which he or she [resumes] increases practice hours in accordance with ~~Paragraph (a) of this Rule and Rules~~
2 .0201 and .0206 of this Section when reclassifying the ~~licensee~~-dentist. A dentist who has been classified as retired
3 and wishes to resume practice shall satisfy the reinstatement requirements of 21 NCAC 16B .1101. ~~The Board may~~
4 ~~require those licensees who have not practiced dentistry for a year or more to undergo a bench test before allowing~~
5 ~~the licensee to resume practice if there is evidence that the licensee is unable to practice dentistry competently, such~~
6 ~~as a failing score on a dental licensing examination, a written report of a licensed physician, evaluation conducted by~~
7 ~~a substance abuse treatment facility, appointment of a guardian for the dentist or adjudication of incompetence by a~~
8 ~~court.~~

9 (c) Dentists shall receive 10 hours credit per year for continuing education when engaged in any of the following:

- 10 (1) service on a full-time basis on the faculty of an educational institution with involvement in
11 education, training, or research in dental or dental ~~auxiliary hygiene~~ programs; or
12 (2) service on a ~~full-time~~-full-time basis with a federal, state, [State,] or county government agency
13 whose operation is related to ~~dentistry, dentistry or dental auxiliaries~~. Verification of credit hours
14 shall be maintained in the manner specified in Rule .0203 of this Section.

15 (d) Dentists who do not work on a full-time basis but work at least 20 hours per week in an institution or entity
16 described in Subparagraph (c)(1) or (2) of this Rule shall receive five hours credit per year for continuing education.

17 (e) Dentists shall receive up to two hours of continuing education credits per year for providing dental services on a
18 volunteer basis at any state, [State,] city, or county operated site. Credit will be given at ratio of 1:5, with one hour
19 credit given for every five hours of volunteer work.

20 (f) Eligible licensees as defined by 21 NCAC 16B .0901 shall be granted a waiver of their mandatory continuing
21 education requirements.

22
23 *History Note: Authority G.S. 90-31.1; 90-38;*

24 *Eff. July 1, 2015;*

25 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9,*
26 *2018;*

27 *Amended Eff. July 1, 2023; December 1, 2020.*

Burgos, Alexander N

From: Ascher, Seth M
Sent: Wednesday, May 24, 2023 5:04 PM
To: Dauna Bartley
Cc: Burgos, Alexander N
Subject: RFC for Dental Examiners at RRC June 2023
Attachments: June 2023 Dental Examiners RFC.docx

Good afternoon,

I'm the attorney who reviewed the Rules submitted by the North Carolina State Board of Dental Examiners for the June 2023 RRC meeting. The RRC will formally review these Rules at its meeting on Thursday, June 15, 2023, at 9:00 a.m. The meeting will be a hybrid of in-person and WebEx attendance, and an invite should be sent to you as we get close to the meeting. If there are any other representatives from your agency who want to attend virtually, let me know prior to the meeting, and we will get invites out to them as well.

Attached are Requests for Changes Pursuant to G.S. 150B-21.10. Please submit the revised Rules and forms to me via email, no later than 5 p.m. on June 9, 2023.

Please note that I am currently planning to be out of the office the week of June 5. In the meantime, please let me know if you have any questions of concerns.

Seth Ascher

Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984) 236-1934

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.