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From: Dr. Jasinski PC President <DrJPCPres@mydentalmail.com>
Sent: Wednesday, August 20, 2025 9:48 PM
To: rrc.comments; Whitney Waldenberg
Subject: [External] Comments opposing permanent rules recently adopted by the NC State Board of Dental Examiners
Attachments: Rules Changes-Jasinski Comments 08-21-2025.pdf

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The attached comments opposing permanent rules recently adopted by the NC State Board of Dental Examiners are submitted to the Rules Review Commission in accordance with 26 NCAC 05.0103. Thank you for your consideration.

Kevin A. Jasinski, DMD, MAGD

President- K. Jasinski, D.M.D., P.C.

Comments Opposing Dental Board Rule Changes Regarding “Unprofessional Conduct” and Supervision of Dental Practices

Submitted by Kevin Jasinski, DMD
Owner, K. Jasinski, D.M.D., P.C.
August 21, 2025

These comments are submitted to the North Carolina Rules Review Commission (“RRC”) pursuant to 26 NCAC 05 .0103 regarding the rule changes to 21 NCAC 16A.0101 and new rules 21 NCAC 16F.0111 and 21 NCAC 16V.0103 (collectively, “Supervision Rule Changes”) that were recently-adopted by the NC State Board of Dental Examiners (“Dental Board”).²

The RRC should object to the Supervision Rule Changes pursuant to N.C. Gen. Stat. §§ 150B-21.9 and 21.10 because:

- 1) The Supervision Rule Changes exceed the authority delegated to the Dental Board by the General Assembly;
- (2) They are unclear and ambiguous;
- (3) They are not reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency; and
- (4) They were not adopted in accordance with N.C. Gen. Stat. Chapter 150B, Part 2.

I previously submitted comments directly to the Dental Board objecting to the Supervision Rule Changes on June 20, 2025, a copy of which is attached as **Attachment A** for reference. Despite my comments and objections from others, the Dental Board voted to adopt the rule changes at its July 2025 meeting.

I later requested a written statement of the Dental Board’s reasons for adopting the Supervision Rule changes, and the Dental Board responded via letter from its counsel dated August 1, 2025 (“Board Response Letter”). A copy of the Board Response Letter is attached as **Attachment B** for reference. The Board Response Letter did not resolve my objections or the reasons why the RRC should object to the changes.

The Rule Changes are Unnecessary to Implement State Law and Exceed the Dental Board’s Authority

The Dental Practice Act (N.C. Gen. Stat. Chapter 90, Article 2) currently allows dentists to be disciplined on numerous bases, including where a dentist “has engaged in any unprofessional conduct.” N.C. Gen. Stat. § 90-41(a)(26). The Dental Board’s rules already define 29 different categories of “unprofessional conduct” for which a dentist could be disciplined (21 NCAC 16V.0101). The Supervision Rule Changes would create

² See Notice of Text (Form 300) [Authority G.S. 150B-21.2(c)]

a new rule, 21 NCAC 16V.0103, and a 30th category of unprofessional conduct related to “reoccurring” violations of the Act or the Dental Board’s rules.

This new rule and new category of “unprofessional conduct” are unnecessary because, by statute, other provisions of the Dental Practice Act *already* hold practice owners and supervising dentists responsible for violations by other clinical staff in circumstances that the General Assembly considers appropriate.

The Act currently includes the following provisions:

- N.C. Gen. Stat. § 90-41(a)(21) allows dentists to be disciplined if he or she “[h]as permitted a dental hygienist or a dental assistant in his employ or under his supervision to do or perform any act or acts violative of this Article, or of Article 16 of this Chapter, or of the rules and regulations promulgated by the Board.”
- N.C. Gen. Stat. § 90-41(a)(6) allows a dentist to be disciplined if he or she “[h]as engaged in any act or practice violative of any of the provisions of this Article or violative of any of the rules and regulations promulgated and adopted by the Board, or *has aided, abetted or assisted any other person or entity in the violation of the same.*”

So it is unnecessary and redundant to use the catch-all category “unprofessional conduct” to hold dentists responsible for violations by others, because the Act already does so in certain circumstances defined by the General Assembly.

However, the proposed rule also goes *further* than the Dental Practice Act because, under the proposed 21 NCAC 16V.0103 subsections (b) and (c), practice owners and “responsible dentist managers” would *automatically* commit “unprofessional conduct” if there were “reoccurring” violations, including violations by *other licensed dentists*. These parts of the proposed rule change would *expand* the potential liability of practice owners and supervising dentists, and are unnecessary to carry out state law because:

- The Dental Practice Act *does not* make dentists *automatically or vicariously* liable for violations by others. Instead, a dentist can be disciplined for permitting violations by hygienists or dental assistants, or for aiding and abetting violations by others. Neither of the existing bases for disciplinary action are automatic, so the rule changes would permit dentists to be disciplined for violations by others they they do not even know about.
- The Dental Practice Act *does not* hold dentists (whether practice owners or “responsible dentist managers”) responsible for violations by *other licensed dentists*. *All* licensed dentists, including employees, have professional obligations not to violate the Act and the Dental Board’s rules, so it is unnecessary to also penalize or potentially revoke the licenses of owners or supervisory dentists for violations by other dentists, especially where the owner or supervisory dentist is unaware of the violations.

As a result, the rule changes are not only unnecessary to implement the Dental Practice Act, but they also go beyond what the Act allows.

The Board Response Letter argues that N.C. Gen. Stat. §§ 90-41(a)(6) and (a)(21) provide the authority for the Board to adopt rules regarding “other aspects of supervision included in those statutes but not directly referenced by them.” (See **Attachment B**, p. 2). But even assuming that is correct, that is not what the Dental Board has done here. Instead, the Board attempts to use the “unprofessional conduct” statute (not the supervision statutes) to expand dentists’ supervision obligations to other dentists and to impose potential sanctions on dentists that the General Assembly did not provide for.

The Board Response Letter also contends that my position is inconsistent because I have said the Supervision Rule Changes are both unnecessary and also exceed the Dental Board’s authority. (See **Attachment B**, p. 2). I disagree: as stated in **Attachment A**, the Supervision Rule changes are *unnecessary* to the extent that they use rulemaking to sanction dentists for conduct that the Dental Practice Act already covers (e.g., allowing hygienists or dental assistants to violate law or rule). Simultaneously, the Supervision Rule Changes *exceed the Dental Board’s authority* to the extent that they impose liability for other circumstances that the Dental Practice Act *does not* cover (eg, automatic liability for “reoccurring violations, and making dentists liable for acts or omissions of other dentists). These positions are not mutually exclusive.

The Supervision Rule Changes are Unclear and Ambiguous, and Risk Arbitrary or Selective Enforcement

The proposed new rule 21 NCAC 16V.0103 appears to target large practices with multiple dentists and relies heavily on the idea of “reoccurring” violations in subsections .0103(1)(b)(iii), 16V .0103(2), and 16V .0103(3). Group practices would especially be impacted by the proposed 21 NCAC 16V.0103. In proposing that a dentist commits unprofessional conduct if another dentist in the same practice – who, by statute, is responsible for his or her own treatment plans - violates the DPA, the proposed rule places a burden on group practices that it does not place on the solo practitioner. It is almost as if the Board is targeting large group practices.

The rule is unclear and ambiguous because “reoccurring” is not defined. “Reoccurring” could conceivably include violations of the same general type, but:

- By multiple, different people,
- Under widely different circumstances,
- Occurring months or years apart in time.

Without any limits or definition of “reoccurring” violations, the decision to discipline or revoke a dentist’s license for someone else’s violations would be *highly subjective* and could be selectively enforced. Obviously, this risk falls especially on larger practices

because, the more dentists and more employees a practice has, the higher the chance that the same general type of issue may occur separately in different circumstances, at different times, with different employees.

Despite the lack of any definition of “reoccurring,” the Board Response Letter says that “reoccurring” means that an event, in this circumstance a violation, occurs again or more than once.” (See Board Response Letter, pp. 3-4). That response does not resolve the ambiguity or the potential for subjective, selective enforcement. Violations can be defined very loosely. For example, 21 NCAC 16G.0103 prohibits *26 different types of procedures* from being delegated to a hygienist), and “reoccurring” violations could happen years apart (effectively forever). Thus, a “reoccurring” violation of 21 NCAC 16G.0103 could happen as a result of two different dentists delegating different types of procedures to different hygienists 15 years apart, in which case the practice owner would commit “unprofessional conduct.”

The Supervision Rule Changes were Not Adopted in Accordance with N.C. Gen. Stat. Chapter 150B, Part 2

N.C. Gen. Stat. § 150B-19.1 states the principles that the Dental Board must follow when making new rules or rule changes. Among those mandatory principles is Subsection (a)(5), providing that rules should be based on available scientific/technical/economic information, and that Agencies shall include a reference to this information in the notice of text required by G.S. 150B-21.2(c).

In my comments to the Dental Board I pointed out that no scientific, technical, economic or other information was cited in the notice of text. The Board Response Letter contends that the purpose of the Supervision Rule Changes is to address “an unfortunate and increasing trend ... in disciplinary matters coming before the Board over the past several years ... in which patient care was placed at risk due to a lack of cohesive planning, oversight, and provision of dental services... The Board was compelled by these cases to act and take measures to protect the public.” (see **Attachment B**, pp. 1-2). However, the notice of text mentioned no such trend and included no information or data regarding any past or current disciplinary matters. (see NC Dental Board Website: [Notice of Text \(Form 300\) \[Authority G.S. 150B-21.2\(c\)\]](#))

The Board Response Letter contends that the Dental Board cannot disclose confidential disciplinary proceedings. (See **Attachment B**, p. 2). However, *only* the Dental Board has access to its confidential disciplinary proceedings, and even if the details and/or persons involved were confidential, the Dental Board could certainly have provided statistics on relevant incidents (including categories/types of issues, timeframes, patients who were harmed, etc.) that would not reveal confidential information. Instead, the Dental Board insists that such information and data *exist* and are the reason for the Supervision Rule Changes, but it failed to reference that information or data as Section 150B-19.1(a)(5) specifically requires. As a result the Dental Board did not comply with the mandatory rulemaking procedures.

Comments Opposing the Adoption of Dental Board Rule Changes Regarding “Unprofessional Conduct” and Supervision of Dental Practices

Submitted by Kevin Jasinski, DMD
Owner, K. Jasinski, D.M.D., P.C.
June 20, 2025

Introduction

These comments are submitted for consideration by the North Carolina State Board of Dental Examiners in connection with the proposed rule changes to 21 NCAC 16A.0101 and proposed new rules 21 NCAC 16F.0111 and 21 NCAC 16V.0103.¹

The Dental Board should vote against the adoption of the proposed rule changes, which would allow a dentist to be disciplined for “unprofessional conduct” because of *other people’s* “reoccurring” violations of the Dental Practice Act or the Board’s rules. Among other reasons, the Dental Board cannot legally adopt rules that are unnecessary, redundant, unclear or ambiguous.

The proposed rule changes are unnecessary and redundant because the Dental Practice Act already holds dentists accountable for those they supervise under N.C. Gen. Stat. § 90-41. The proposed rule changes are also unclear and ambiguous and will only create risk and uncertainty that will make it harder for dental practices to grow and recruit dentists. That, in turn, will limit the growth of dental practices and limit care available to North Carolinians who already lack sufficient access to dental care.

Background: The Administrative Rulemaking Process

These comments are submitted under the Administrative Procedure Act (“APA”), which requires the Dental Board to accept public comments before voting on adoption of a proposed permanent rule (or changes to permanent rules).²

The APA also states the principles that agencies like the Dental Board must follow when making new rules or rule changes. Among those mandatory principles are the following:³

- Rules must be *necessary* to serve the public interest
- Agencies must *minimize burdensome* regulations
- Rules must be *clear and unambiguous*, and *reasonably necessary* to implement or interpret federal or State law.
- Rules *cannot be unnecessary or redundant*.
- Rules should be based on available scientific/technical/economic information.

¹ See Notice of Text (Form 300) [Authority G.S. 150B-21.2(c)]

² N.C. Gen. Stat. § 150B-21.2.

³ N.C. Gen. Stat. § 150B-19.1(a)

§ 150B-19.1. Requirements for agencies in the rule-making process.

(a) In developing and drafting rules for adoption in accordance with this Article, agencies shall adhere to the following principles:

- (1) An agency may adopt only rules that are expressly authorized by federal or State law and that are necessary to serve the public interest.
- (2) An agency shall seek to reduce the burden upon those persons or entities who must comply with the rule.
- (3) Rules shall be written in a clear and unambiguous manner and must be reasonably necessary to implement or interpret federal or State law.
- (4) An agency shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed. The agency shall not adopt a rule that is unnecessary or redundant.
- (5) When appropriate, rules shall be based on sound, reasonably available scientific, technical, economic, and other relevant information. Agencies shall include a reference to this information in the notice of text required by G.S. 150B-21.2(c).
- (6) Rules shall be designed to achieve the regulatory objective in a cost-effective and timely manner.

The proposed rule changes regarding supervision of dental practices do not follow these principles, and they should not be adopted.

The Rule Changes are Unnecessary and redundant

The Act currently allows dentists to be disciplined. . . where a dentist “Has engaged in any unprofessional conduct.” The Dental Board’s rules already define 29 different categories of “unprofessional conduct” for which a dentist could be disciplined (21 NCAC 16V.0101). These proposed rule changes would create a new rule, 21 NCAC 16V.0103, and another category of unprofessional conduct related to “reoccurring” violations of the Act or the Dental Board’s rules.

This new rule and new category of “unprofessional conduct” are unnecessary and redundant because, by statute, the Dental Practice Act *already* holds practice owners and supervising dentists responsible for violations by other clinical staff in appropriate circumstances.

The Act currently includes the following provisions:

- N.C. Gen. Stat. § 90-41(a)(21) allows dentists to be disciplined if he or she “[h]as permitted a dental hygienist or a dental assistant in his employ or under his supervision to do or perform any act or acts violative of this Article, or of Article 16 of this Chapter, or of the rules and regulations promulgated by the Board.”
- N.C. Gen. Stat. § 90-41(a)(6) allows a dentist to be disciplined if he or she “[h]as engaged in any act or practice violative of any of the provisions of this Article or violative of any of the rules and regulations promulgated and adopted by the

Board, or has aided, abetted or assisted any other person or entity in the violation of the same.”

So it is *unnecessary and redundant* to use the catch-all category of “unprofessional conduct” to hold dentists responsible for violations by others, because the Act already does so in circumstances the General Assembly considers appropriate.

The Rule Changes are Unnecessary to Implement State Law. The proposed rule also *goes further* than the Act because, under the proposed 21 NCAC 16V.0103, subsections (b) and (c), practice owners and “responsible dentist managers” would *automatically* commit “unprofessional conduct” if there were “reoccurring” violations, including violations by *other licensed dentists*. These parts of the proposed rule change amount to imposing vicarious liability on practice owners and supervising dentists, and are unnecessary to carry out state law because:

- The Dental Practice Act *does not* make dentists *automatically or vicariously* liable for violations by others. Instead, a dentist can be disciplined for permitting violations by hygienists or dental assistants, or for aiding and abetting violations by others. Neither of the existing bases for disciplinary action are automatic, so the rule changes would permit dentists to be disciplined for violations by others they do not even know about.
- The Dental Practice Act *does not* hold dentists (whether practice owners or “responsible dentist managers”) responsible for violations by *other licensed dentists*. All licensed dentists, including employees, have professional obligations not to violate the Act and the Dental Board’s rules, so it is unnecessary to also penalize or potentially revoke the licenses of owners or supervisory dentists for violations by other dentists, especially where the owner or supervisory dentist is unaware of the violations.

As a result, the rule changes are unnecessary to implement the Dental Practice Act and go beyond what the Act allows.

The Changes are Unclear and Ambiguous, and Risk Arbitrary or Selective Enforcement

The proposed new rule 21 NCAC 16V.0103 appears to target large practices with multiple dentists and relies heavily on the idea of “reoccurring” violations in subsections .0103(1)(b)(iii), 16V .0103(2), and 16V .0103(3).

Group practices would especially be impacted by the proposed 21 NCAC 16V.0103. In proposing that a dentist commits unprofessional conduct if another dentist in the same practice – who, by statute, is responsible for their own treatment plans - violates the DPA, the proposed rule places a burden on group practices that it does not place on the solo practitioner. It is almost as if the Board is targeting large group practices, which could be considered anticompetitive behavior.

The rule is unclear and ambiguous because “reoccurring” is not defined. “Reoccurring” could conceivably include violations of the same general type, but:

- By multiple, different people,
- In other locations of the same practice,
- Occurring months or years apart in time.

Without any limits or definition of “reoccurring” violations, the decision to discipline or revoke a dentist’s license for someone else’s violations would be *highly subjective* and could be selectively enforced. Obviously, this risk falls especially on larger practices with multiple offices because, the more locations and more employees, the higher the chance that the same general type of issue may occur separately in different places, at different times, with different employees.

The Rule Changes Would be Burdensome to Dentists and Limit Access to Care

The proposed rule changes will cause *unnecessary risk and uncertainty* for dentists because of the increased risk of being disciplined for “unprofessional conduct” and potentially losing one’s license because of *others’* violations. The risk is especially high for practice owners or “responsible dentist managers”, for whom “unprofessional conduct” would be *automatic* if there are “reoccurring” violations, which are undefined and subjective, as discussed above.

This increased risk and uncertainty will make it more difficult to operate a dental practice, especially larger practices with multiple locations. To avoid automatic or vicarious liability under proposed rule 21 NCAC 16V.0103(2), practice owners will have to protect themselves by designating “responsible dentist managers” at practice locations; but employee dentists will be reluctant to serve as a responsible dentist manager because of their own risk of automatic “unprofessional conduct.” As a result, it will be more difficult to recruit and retain employee dentists to operate dental offices, which in turn will limit the growth of dental practices and limit access oral care for North Carolinians, who already lack sufficient access to care.

The detrimental effects of the proposed rule changes on larger practices and the public’s access to care might be warranted if the rule changes were necessary to implement the Act or protect the public. But they are not, as discussed above.

No Data or Other Information Supports the Necessity of the Proposed Rule Changes

Further, there appears to be no scientific, technical, economic or other information available to show *why* it is necessary to expand responsibility for other dentists’ violations or automatically characterize “reoccurring” violations by others as “unprofessional conduct.” If there were any such information, it must be included in the notice of text for the proposed rule changes published on the Dental Board’s website.⁴

⁴ N.C. Gen. Stat. § 150B-19.1(a)(5).

But the published notice of test includes no such information (see NC Dental Board Website: [Notice of Text \(Form 300\)](#) [Authority G.S. 150B-21.2(c)]).

The Changes Disregard the Legislative Process and Penalize Large Practices.

It is important to note that the Dental Practice Act does not limit the number of practice locations that a dentist or dental practice may operate or the number of other dentists they may employ. Nor does the Act require that a practice owner personally supervise his or her practice locations.

If the General Assembly believed it was appropriate to limit the size of a dental practice or make practice owners automatically responsible for all violations, it could pass legislation to that effect. Therefore, the proposed rule changes appear to be an attempt to circumvent the legislative process by discouraging larger practices and imposing new, automatic or vicarious liability on owners or supervisory dentists that exceeds their responsibilities under the Act.



THE Bocker Law Firm P.A.

August 1, 2025

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Dear Dr. Jasinski:

We are providing this response to your request, pursuant to N.C. Gen. Stat. § 150B-21.2(h), as counsel for and on behalf of the North Carolina State Board of Dental Examiners ["Board"]. Your request sought an explanation regarding the Board's recent amendment to 26 NCAC 16A .0101, and adoption of 16F .0111 and 16V .0103 [hereafter collectively, "Supervision Rules" or "Rules"]. This response provides an explanation of the Board's reasons for adopting the Supervision Rules, and a response to specific concerns raised by the comments received and considered during the public comment period.

To clarify, the *verbal* comments to which your letter refers were received by the Board not at the public hearing, but at the Board's July 2025 meeting. These verbal comments were made *after* the close of the public comment period and *after* the Board had already voted to adopt the Rules. The commenter expressed her desire to remain responsible as a practice owner, which the Board confirmed she would be able to do under 16F .0111.

Purpose and Reasons for Adopting Supervision Rules

The purpose of the Supervision Rules is to address an unfortunate and increasing trend that the Board has observed in disciplinary matters coming before the Board over the past several years. Your comment noted a perceived lack of data or other information to support the need for these rules; however, the impetus for these rules is rooted in real disciplinary matters and investigations, in which patient care was placed at risk due to a lack of cohesive planning, oversight, and provision of dental services. The Board was compelled by these cases to act and take measures to protect the public.

Most, if not all, of these disciplinary matters did not result in public discipline, in part because of uncertainty about whether a current regulation or statute was implicated, or because they are still under investigation. Because the Board's investigations are confidential and not public record pursuant to N.C. Gen. Stat. § 90-41(g), the Board cannot

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disclose them in this letter. However, the Board's inability to publicly disclose these underlying circumstances does not diminish the need for these rules to protect the quality of patient care.

Board's Consideration of Public Comments

The Board received two written comments to the proposed Supervision Rules, one from you and another on behalf of a national organization [hereafter, "Commenters"]. These two Commenters raised several objections to adopting the Supervision Rules. We address the concerns raised and considered by the Board generally in the order set forth in the written comments.

1. Supervision Rules are Necessary to Provide Notice to Regulated Public

First, the Commenters asserted that the Supervision Rules are unnecessary and redundant because dentists are already subject to discipline under N.C. Gen. Stat. § 90-41(a)(6) and (a)(12). The Board considered the comment and agreed that these sections of the Dental Practice Act ["Act"] provide the necessary statutory authority to discipline dentists in circumstances where a treating dentist is required to supervise ancillary personnel. The Board further notes these sections of the Act provide the Board with the statutory authority to adopt the Supervision Rules concerning other aspects of supervision included in those statutes but not directly addressed by them.

The Commenters assert in different sections the inconsistent positions that the Supervision Rules are unnecessary because the statutes already cover the conduct addressed and then that the Board exceeded its statutory authority and bypassed the legislative process by enacting them. Neither position is accurate. The Board followed all statutory requirements for adopting the Supervision Rules, which include transparency, input from stakeholders, and accountability. The Board appropriately adopted the Supervision Rules to provide clarity and notice to the regulated public as to what specific conduct may be subject to discipline under its statutory authority, which is a primary purpose for adopting rules.

2. Supervision Rules are Based on Dentist's Actions or Failure to Act

Second, you asserted that the Supervision Rules would exceed the Act because they impose *automatic/strict* or *vicarious* liability. The Board considered but rejected these comments as an erroneous interpretation of the Supervision Rules, which would not impose vicarious or automatic/strict liability. The Rules clarify that any dentist would be responsible for a violation by another person and commit unprofessional conduct if the dentist directed or ratified the underlying conduct. 21 NCAC 16V .0103(1)(b)(i) and (ii).

Those violations would be based on the dentist's own conduct of directing or ratifying the violation by another, not based on strict or vicarious liability.

Additionally, 16V .0103(1)(b)(iii) places responsibility on the owner of a practice or the designated responsible dentist manager [hereafter, "Designated Supervising Dentist"] to take measures to prevent reoccurring violations within the practice. If the Designated Supervising Dentist fails to take steps to prevent the reoccurrence of violations, that failure to act by that dentist would be grounds for finding that he or she has engaged in unprofessional conduct. If the Designated Supervising Dentist has implemented policies or procedures to prevent reoccurrence of violations, but the violations occur nonetheless, then he or she has not committed unprofessional conduct. The finding of a violation under this subsection also is dependent on the action or failure to act by a practice owner or responsible dentist manager after a violation has occurred so there is no automatic or vicarious liability as was erroneously asserted.

3. Supervision Rules' Use of "Reoccurring Violations" is not Vague or Ambiguous

Third, the Commenters asserted that the Supervision Rules used vague, ambiguous, and undefined terms. One Commenter objected to the use of the term "recurring," which is not contained in the Supervision Rules. Your written comments complained about the use of the term "reoccurring" violations, which the Board concluded was not an ambiguous or vague term. Consistent with its common definition, "reoccurring" means that an event, in this circumstance a violation, occurs again or more than once.

Your comments raised concerns that "reoccurrence" could involve the same conduct by different providers or in separate locations of the same practice. The Board agreed and concluded that the patients are at the same risk for reoccurring violations whether they are in a single office and provider, or in practices with multiple providers and locations. The Supervision Rules seek to prevent the harm to patients and the public from unaddressed, reoccurring violations irrespective of the size, number of providers, or management structure of practices. Once a violation has occurred, the Supervision Rules would require the practice owner or responsible dentist manager to enact a facility-wide policy to prevent the violation from being repeated by *any* provider at a given facility.

Your comment also expressed concern that "reoccurring" could apply to separate locations within the same practice. However, 16V .0103(2) and (3) make clear that the reoccurrences are specific to a facility. Moreover, proposed Rule 16F .0111 states a responsible dentist manager can be designated for each of the professional entity's facilities. The Supervision Rules are clear and unambiguous that the reoccurring violations are specific to each facility and not across multiple locations of a practice.

Finally, you raised a concern that a reoccurrence could happen months or years after an initial violation. The responsibility of the Designated Supervising Dentist to enact a policy to prevent reoccurrence, however, is triggered the first time the violation occurs. The potential timing of a reoccurrence has no bearing on the Designated Supervising Dentist's responsibility to take action following the first violation.

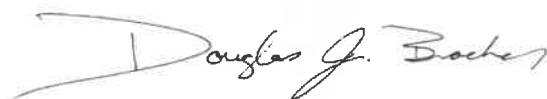
4. The Supervision Rules would not Adversely Affect Access to Care

Fourth, the Commenters make assertions that the Supervision Rules would negatively affect the ability to recruit dentists and access to care but provided no empirical data or other support for these assertions. These assertions are premised on the erroneous assertion addressed above that the Supervision Rules would create automatic or vicarious liability. The purpose of the Supervision Rules is to enhance protections for patient care by ensuring there is comprehensive and adequate oversight and supervision at any practice, irrespective of its size, number of providers, or management structure.

As far as the concerns regarding recruitment of providers, that assertion is contrary to the text of the Rules. The designation of a responsible dentist manager is entirely voluntary. Rule 21 NCAC 16F .0111 would require the responsible dentist manager's signature or electronic submission for the designation to be effective. Therefore, if a dentist employee does not wish to become a responsible dentist manager, the practice owner may remain responsible. The Board concluded the Supervision Rules should improve the quality of dental services provided to patients and had no evidence or information that the Rules would limit access to care.

The Board values the participation and input of its licensees and other stakeholders. Pursuant to your request and consistent with N.C. Gen. Stat. § 150B-21.2(h), the Board provides this written statement of its reasons for adopting the Supervision Rules and an explanation for its rejection of the arguments made or considerations urged against them in the two written public comments, which the Board considered prior to adopting the Rules.

Sincerely,

A handwritten signature in dark ink, reading "Douglas J. Brocker". The signature is stylized with a large, sweeping initial "D" and a cursive script for the rest of the name.

Douglas J. Brocker

A handwritten signature in black ink, appearing to read 'Whitney Waldenberg', with a stylized, flowing script.

Whitney Waldenberg