

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Dental Examiners

RULE CITATION: All Rules

DEADLINE FOR RECEIPT: September 13, 2019

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

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

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

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

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

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

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Dental Examiners

RULE CITATION: 21 NCAC 16A .0101

DEADLINE FOR RECEIPT: September 13, 2019

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

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

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

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

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

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

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

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

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

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

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

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

SUBCHAPTER 16A – ORGANIZATION

21 NCAC 16A .0101 DEFINITIONS

As used in this Chapter:

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

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

1 *Readopted Eff. September 26, 1977;*

2 *Amended Eff. May 1, 1991; May 1, 1989; September 1, 1988; October 1, 1986;*

3 *Temporary Amendment Eff. January 1, 2003;*

4 *Amended Eff. May 1, 2011; January 1, 2004;*

5 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9,*
6 *2018-2018;*

7 *Amended Eff. October 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Dental Examiners

RULE CITATION: 21 NCAC 16A .0105

DEADLINE FOR RECEIPT: September 13, 2019

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

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

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

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

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

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

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

2
3 **21 NCAC 16A. 0105 SUSPENSION OF AUTHORITY TO EXPEND FUNDS**

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

8
9 *History Note: Authority G.S. 90-28; 90-39; 93B-2(d);*

10 *Eff. October 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Dental Examiners

RULE CITATION: 21 NCAC 16B .0101

DEADLINE FOR RECEIPT: September 13, 2019

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

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

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

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

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

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

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

SUBCHAPTER 16B - LICENSURE DENTISTS

SECTION .0100 - GENERAL PROVISIONS

21 NCAC 16B .0101 EXAMINATION REQUIRED; EXEMPTIONS

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

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

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

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

Eff. September 3, 1976;

Readopted Eff. September 26, 1977;

Amended Eff. September 1, 2014; September 1, 2013; March 1, 2006; May 1, 1991; May 1, 1989; January 1, 1983;

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

Amended Eff. October 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Dental Examiners

RULE CITATION: 21 NCAC 16B .0303

DEADLINE FOR RECEIPT: September 13, 2019

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

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

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

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

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

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

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

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

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

SECTION .0300 - APPLICATION FOR LICENSURE

21 NCAC 16B .0303 BOARD APPROVED EXAMINATIONS

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

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

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

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

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

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

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

(A) endodontics, clinical abilities testing;

(B) amalgam preparation and restoration;

(C) anterior composite preparation and restoration;

(D) posterior ceramic or composite preparation and restoration;

(E) prosthetics, written or clinical abilities testing;

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

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

~~(4)~~(3) provide the following:

(A) anonymity between applicants and examination graders;

(B) standardization and calibration of graders;

(C) a mechanism for post exam analysis;

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

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

(F) an annual review of the examination;

- 1 (G) a task analysis performed at least once every seven years, ~~which that~~ surveys dentists
2 nationwide to determine the content of the examination;
- 3 (H) a ~~defined~~ system of quality assurance to ensure uniform, consistent administration of the
4 examination at each testing site; and
- 5 (I) does not permit a dental instructor to grade candidates at any institution at which the
6 instructor is employed.
- 7 (e) The Board shall accept examination scores for five years following the date of ~~such~~ the examinations. Each
8 applicant shall arrange for and ensure the submission to the Board office the applicant's scores. Individuals who apply
9 more than five years after the examination date to seek licensure must re-take the examination.
- 10 (f) The applicant shall comply with all requirements of the testing agency in applying for and taking the examination.
- 11 ~~(g) The Board shall determine which examinations meet the criteria set out in Paragraph (d) of this Rule.~~

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13 *History Note: Authority G.S. 90-30; 90-48;*

14 *Eff. September 3, 1976;*

15 *Readopted Eff. September 26, 1977;*

16 *Amended Eff. September 1, 2014; June 1, 2009; March 1, 2006; August 1, 1998; March 1, 1988;*

17 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9,*
18 *~~2018.~~ 2018.*

19 *Amended Eff. October 1, 2019.*
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21

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Dental Examiners

RULE CITATION: 21 NCAC 16C .0101

DEADLINE FOR RECEIPT: September 13, 2019

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

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

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

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

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

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

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

SUBCHAPTER 16C - LICENSURE DENTAL HYGIENISTS

SECTION .0100 - GENERAL PROVISIONS

21 NCAC 16C .0101 LICENSURE

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

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

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

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

Eff. September 3, 1976;

Readopted Eff. September 26, 1977;

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

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

Amended Eff. October 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Dental Examiners

RULE CITATION: 21 NCAC 16H .0201

DEADLINE FOR RECEIPT: September 13, 2019

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

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

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

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

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

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

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

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

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

SUBCHAPTER 16H - DENTAL ASSISTANTS

SECTION .0200 – PERMITTED FUNCTIONS OF DENTAL ASSISTANT

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

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

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

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

Eff. September 3, 1976;

Readopted Eff. September 26, 1977;

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

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

2018. 2018;

Amended Eff. October 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Dental Examiners

RULE CITATION: 21 NCAC 16H .0208

DEADLINE FOR RECEIPT: September 13, 2019

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

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

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

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

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

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

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

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

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

21 NCAC 16H .0208 LIMITED EXCEPTION FOR ASSISTING HYGIENISTS

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

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

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

(a) examined the patient;

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

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

*History Note: Authority G.S. 90-29(c)(9); 90-48; 90-233;
Eff. October 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Dental Examiners

RULE CITATION: 21 NCAC 16I .0106

DEADLINE FOR RECEIPT: September 13, 2019

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

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

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

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

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

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

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

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

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

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

SECTION .0100 – ANNUAL RENEWAL

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

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

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

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

Eff. September 3, 1976;

Readopted Eff. September 26, 1977;

Amended Eff. May 1, 1989;

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

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

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

Amended Eff. October 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Dental Examiners

RULE CITATION: 21 NCAC 16N .0501

DEADLINE FOR RECEIPT: September 13, 2019

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

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

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

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

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

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

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

SUBCHAPTER 16N - RULEMAKING AND ADMINISTRATIVE HEARING PROCEDURES

SECTION .0500 - ADMINISTRATIVE HEARING PROCEDURES

21 NCAC 16N .0501 RIGHT TO HEARING

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

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

Eff. August 25, 1977;

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

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

Amended Eff. October 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Dental Examiners

RULE CITATION: 21 NCAC 16N .0603

DEADLINE FOR RECEIPT: September 13, 2019

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

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

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

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

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

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

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

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

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

21 NCAC 16N .0603 SUBPOENAS

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

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

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

(c) Subpoenas shall contain:

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

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

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

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

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

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

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

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

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

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14 *History Note: Authority G.S. 90-28; 90-48; 90-223(b); 150B-39; 150B-40*

15 *Eff. August 25, 1977;*

16 *Legislative Objection Lodged Eff. November 20, 1980;*

17 *Legislative Objection Removed Eff. March 19, 1981;*

18 *Amended Eff. April 1, 2015; May 1, 1989; March 1, 1988; October 1, 1986; March 1, 1985;*

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

21 *Amended Eff. October 1, 2019.*
22
23

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Dental Examiners

RULE CITATION: 21 NCAC 16N .0607

DEADLINE FOR RECEIPT: September 13, 2019

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 NCAC 16N .0607 DISCIPLINARY FACTORS

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

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

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

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

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Dental Examiners

RULE CITATION: 21 NCAC 16V .0101

DEADLINE FOR RECEIPT: September 13, 2019

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Ashley Snyder
Commission Counsel

Date submitted to agency: August 30, 2019

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

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

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

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

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

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

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

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

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

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

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

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

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

SUBCHAPTER 16V – UNPROFESSIONAL CONDUCT

SECTION .0100 - UNPROFESSIONAL CONDUCT

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

Unprofessional conduct by a dentist shall include the following:

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

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

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

1 *Amended Eff. August 1, 2016; July 1, 2015; October 1, 2001; August 1, 2000;*

2 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9,*
3 *~~2018.~~ 2018.*

4 *Amended Eff. October 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Dental Examiners

RULE CITATION: 21 NCAC 16V .0102

DEADLINE FOR RECEIPT: September 13, 2019

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Unprofessional conduct by a dental hygienist shall include the following:

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

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

10

11 *History Note:* Authority G.S. 90-29; 90-221; 90-223; 90-229;
12 Eff. August 1, 1998;
13 Amended Eff. August 1, 2016; July 1, 2015; October 1, 2001; August 1, 2000; September 1, 1998;
14 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9,
15 2018, 2018;
16 Amended Eff. October 1, 2019.
17
18

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Dental Examiners

RULE CITATION: 21 NCAC 16W .0102

DEADLINE FOR RECEIPT: September 13, 2019

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

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

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

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

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

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

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

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

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

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

SUBCHAPTER 16W - PUBLIC HEALTH HYGIENISTS

SECTION .0100 - PUBLIC HEALTH HYGIENISTS

21 NCAC 16W .0102 TRAINING FOR PUBLIC HEALTH HYGIENISTS

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

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

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

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

History Note: Authority G.S. 90-223; 90-233(a);

Temporary Adoption Eff. October 1, 1999;

Eff. April 1, 2001;

Amended Eff. July 1, 2015;

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

Amended Eff. October 1, 2019.