

21 NCAC 16A .0101 is amended **with changes** 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 shall** 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.*

21 NCAC 16B .0101 is amended **with changes** 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.

21 NCAC 16B .0303 is amended with changes 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~~ a 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~~ shall 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 ~~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;

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

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 NCAC 16C .0101 is amended **with changes** 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.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~~ 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.

21 NCAC 16H .0201 is amended with changes 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~~ hygiene as set out in G.S. 90-29(b) and G.S. 90-221(a).

(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).]

(c) Functions of a Dental Assistant II also may be delegated to a Dental Assistant I in accordance with 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.

21 NCAC 16H .0208 is adopted with changes 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 the "ECU School-based Oral Health Expansion Readiness" grant, proposal number 19-0786 and related project number A19-0231, developed by the East Carolina University School of Dental Medicine and funded by The Duke Endowment; 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 in writing 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.*

21 NCAC 16I .0106 is amended **with changes** 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.

21 NCAC 16N .0603 is amended **with changes** 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. unless the
9 interests of justice and judicial economy allow the Presiding Officer to ~~[or, in his or her discretion, may]~~ involve the
10 other Board members. On the basis of the content of the written objection and the response, the ~~[The]~~ Presiding Officer
11 shall ~~[may]~~ either permit the parties to submit affidavits in advance of the hearing or ~~[or, if deemed necessary,]~~ permit
12 the parties to present evidence and testimony at the hearing, limited to the narrow questions raised by the objection
13 and response.

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

17 *Eff. August 25, 1977;*

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

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

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

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

23 *Amended Eff. October 1, 2019.*
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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 ~~a dentist or dental hygienist (the "Respondent")~~~~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;~~
has been convicted of or entered a plea of guilty or nolo contendere to a felony charge; 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~~ 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 has been convicted of or entered a plea of guilty or nolo contendere to charges involving or found liable for committed~~committed~~ acts of fraud, misrepresentation, deceit, or fabrication;
fabrication that are not related to the practice of dentistry or dental hygiene;
 - (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;~~ State; or
 - (l) Respondent committed any acts set forth in Sub-items (1)(a)-(c) of this Rule.

- 1 (3) In all cases, the Board shall consider the following factors in imposing ~~discipline, including~~
2 ~~revocation, suspension, censure, probative terms, and other~~ disciplinary measures:
- 3 (a) effect of Respondent's violation on a patient or other individuals;
- 4 (b) Respondent's elevation of his or her interest above that of the patient or the public;
- 5 (c) prior disciplinary violation in this ~~state~~ State or any other jurisdiction, or the absence
- 6 thereof;
- 7 (d) dishonest or selfish motive for the violation found, or the absence thereof;
- 8 (e) a pattern of violations;
- 9 (f) Respondent's ~~intent, or lack thereof, intent~~ either to commit acts where the harm or
- 10 potential harm is foreseeable or to cause the harm or potential harm resulting from the acts;
- 11 (g) vulnerability of patient or victim, including violations involving an individual with a
- 12 physical or mental disability or impairment;
- 13 (h) Respondent's failure to respond, or provide responsive documents or information, to
- 14 requests or subpoenas from the Board during an investigation or disciplinary proceedings;
- 15 (i) Respondent's obstruction of the disciplinary proceedings by intentionally failing to comply
- 16 with rules or orders of the Board;
- 17 (j) Respondent's submission of false evidence, false statements, or other deceptive practices
- 18 during the Board's investigation or disciplinary process;
- 19 (k) Respondent's refusal to acknowledge the wrongful nature of the violation;
- 20 (l) impact of Respondent's actions on the patient's or public's perception of the dental or dental
- 21 hygiene profession;
- 22 (m) Respondent's efforts to make restitution or to rectify consequences of misconduct, or the
- 23 failure to do so;
- 24 (n) Respondent's physical or mental disability or impairment diagnosed by a treating medical
- 25 professional, which condition caused or contributed to Respondent's conduct in the opinion
- 26 of the treating medical professional;
- 27 (o) the degree of Respondent's rehabilitation, if any, prior to any disciplinary action;
- 28 (p) Respondent's voluntary disclosure to the Board or cooperative attitude toward the
- 29 proceedings;
- 30 (q) Respondent's remorse for the violation or effect of the violation;
- 31 (r) Respondent's character or reputation in the community;
- 32 (s) remoteness in time of any prior violation by or discipline of Respondent;
- 33 (t) Respondent's degree of experience in the practice of dentistry or dental hygiene;
- 34 (u) imposition of other penalties or sanctions on Respondent for the conduct constituting the
- 35 violation; and
- 36 (v) any other factors found to be pertinent to the consideration of the discipline to be imposed
- 37 on Respondent.

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2 *History Note:* *Authority G.S. 90-41; 90-229;*

3 *Eff. October 1, 2019.*

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21 NCAC 16W .0102 is amended **with changes** 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~~ **shall** 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.