

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Dental Examiners

RULE CITATION: All rules

DEADLINE FOR RECEIPT: Monday, August 11, 2014

NOTE WELL: This request when viewed on computer extends 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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

Please note, the earliest any of these rules can become effective is September 1, 2014. For all rules that you are resubmitting, please change the effective date.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: July 28, 2014

1 21 NCAC 16D .0103 is proposed for repeal as published in 28 NCR 18: 2208 as follows:

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3 **21 NCAC 16D .0103 PATIENT RECORDS**

4 ~~A provisional licensee may, during the period of his provisional licensure, be required to furnish to the Board~~
5 ~~records of patients treated by him.~~

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7 *History Note: Authority G.S. 90-29.3;*
8 *Eff. September 3, 1976;*
9 *Readopted Eff. September 26, 1977.*
10 *Repealed Eff. July 1, 2014.*

11

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Dental Examiners

RULE CITATION: 21 NCAC 16D .0104

DEADLINE FOR RECEIPT: Monday, August 11, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In Paragraph (a), what is in the application form? Are you relying upon the guidance of G.S. 90-30(a), or are there other Rules or statutes that govern it? If not, then the contents of the application need to be in the Rule.

In (a), line 6, I'd rewrite the sentence as "The Board shall return incomplete applications to the applicant." If you do not want to do that, replace "will" with "shall"

On line 7, change "his" to "his or her"

In Paragraph (b), do you want to give a citation to the law or rule that sets the fee? I note that you gave the fee set in the statute in Rule 16E .0103.

In Paragraph (c), does the requirement for a photograph apply only to applicants licensed in other states? If not, then it seems it would be better as its own Paragraph.

In Paragraph (e), I take it you are using the new requirements to enforce G.S. 90-30(a), which states:

The North Carolina State Board of Dental Examiners may refuse to grant a license to any person guilty of a crime involving moral turpitude, or gross immorality, or to any person addicted to the use of alcoholic liquors or narcotic drugs to such an extent as, in the opinion of the Board, renders the applicant unfit to practice dentistry.

Is that correct? And is it the Board's interpretation that this law extends to provisional licensure under G.S. 90-29.3? If so, then I think the citation should be in the History Note.

Also in Paragraph (e), line 17, replace "must" with "shall"

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: July 28, 2014

1 21 NCAC 16D .0104 is proposed for amendment as published in 28 NCR 18:2208 as follows:

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3 **21 NCAC 16D .0104 APPLICATION**

4 (a) All applications for provisional licensure shall be made on the forms furnished ~~submitted upon forms provided~~
5 by the Board at www.ncdentalboard.org Board, and no application shall be deemed complete which does not set
6 forth all the information required relative to the applicant. Incomplete applications will be returned to the
7 applicant. Any applicant who changes his address shall notify the Board office within 10 business days. Applicants
8 shall ensure that official transcripts of undergraduate college and dental school credits are sent in a sealed envelope
9 to the Board office. ~~and all information requested shall be provided.~~

10 (b) The nonrefundable application fee shall accompany the application.

11 (c) Applicants who are licensed in other states shall ensure that the Board receives verification of licensure from
12 the board of each state in which they are licensed. A photograph of the applicant, taken within six months of the
13 date of application must be affixed to the application.

14 ~~(b)~~ (d) All applicants shall submit to the Board a signed release form, form and completed Fingerprint
15 Record Card, Card and such other form(s) required to perform a criminal history check at the time of the
16 application. The form and card are available from the Board office.

17 (e) All applicants must include a statement disclosing and explaining periods, within the last 10 years, of any
18 voluntary or involuntary commitment to any hospital or treatment facility, observation, assessment, or treatment for
19 substance abuse, with verification demonstrating that the applicant has complied with all provisions and terms of
20 any drug treatment program, or impaired dentists or other impaired professionals program.

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22 *History Note: Authority G.S. 90-29.3; 90-41(a);*
23 *Eff. September 3, 1976;*
24 *Readopted Eff. September 26, 1977;*
25 *Temporary Amendment Eff. January 1, 2003;*
26 *Amended Eff. July 1, 2014; January 1, 2004.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Dental Examiners

RULE CITATION: 21 NCAC 16D .0106

DEADLINE FOR RECEIPT: Monday, August 11, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

I believe this would read better as a two paragraph rule. Paragraph (a) would be lines 4-6, ending with "proper." Paragraph (b) would be the rest of the language.

On line 6, change "his" to "his or her" and "he" to "he or she"

What are the standards the Board may deem proper on lines 5-6?

On line 6, do you mean "shall" be inquired into, rather than "may"? If not, then you need to give guidance in the Rule as to when that will occur.

Who will make the determination that the answer was "in good faith and without malicious intent" on lines 7 and 8?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: July 28, 2014

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: Board of Dental Examiners

RULE CITATION: 21 NCAC 16D .0106

RECOMMENDED ACTION:

- Approve, but note staff's comment
- Object, based on:
 - Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
- Extend the period of review

COMMENT:

The Board adopted this Rule to make it clear to applicants for provisional licensure that they will be subject to background checks, and the Board can investigate them. Staff notes that the sole statute cited in the History Note, G.S. 90-29.3, does not speak to this. However, G.S. 90-30(a) states that individuals for licensure must have good moral character, and may be subject to criminal background checks. Therefore, staff believes the Board has the authority to conduct background checks to fulfil the statutory mandate of licensing only individuals of good moral character.

However, the Rule states that the Board will look into anything it deems proper and provides no guidance on what that will be. Staff believes this makes the Rule ambiguous. Given there are no parameters at all in the text of the Rule, it is also not entirely clear that the Board will only look at the parameters of G.S. 90-30 in its investigation.

Staff is also concerned about the language on lines 6 through 8, which establish a waiver of civil penalties by the applicant against the Board, its members or agents, or any person who answers a Board inquiry in "good faith and without malicious intent." Staff does not believe it is within the purview of the Dental Board to establish in rule a waiver of civil remedies when it does not cite to, and does not appear to have, any statutory authority to do so. Staff notes that the Board may relying upon case law to establish defenses for defamation, but that is not clear from the text.

Amanda J. Reeder
Commission Counsel

§ 90-29.3. Provisional license.

(a) The North Carolina State Board of Dental Examiners shall, subject to its rules and regulations, issue a provisional license to practice dentistry to any person who is licensed to practice dentistry anywhere in the United States or in any country, territory or other recognized jurisdiction, if the Board shall determine that said licensing jurisdiction imposed upon said person requirements for licensure no less exacting than those imposed by this State. A provisional licensee may engage in the practice of dentistry only in strict accordance with the terms, conditions and limitations of his license and with the rules and regulations of the Board pertaining to provisional license.

(b) A provisional license shall be valid until the date of the announcement of the results of the next succeeding Board examination of candidates for licensure to practice dentistry in this State, unless the same shall be earlier revoked or suspended by the Board.

(c) No person who has failed an examination conducted by the North Carolina State Board of Dental Examiners shall be eligible to receive a provisional license.

(d) Any person desiring to secure a provisional license shall make application therefor in the manner and form prescribed by the rules and regulations of the Board and shall pay the fee prescribed in G.S. 90-39 of this Article.

(e) A provisional licensee shall be subject to those various disciplinary measures and penalties set forth in G.S. 90-41 upon a determination of the Board that said provisional licensee has violated any of the terms or provisions of this Article. (1969, c. 804, s. 1.)

§ 90-30. Examination and licensing of applicants; qualifications; causes for refusal to grant license; void licenses.

(a) The North Carolina State Board of Dental Examiners shall grant licenses to practice dentistry to such applicants who are graduates of a reputable dental institution, who, in the opinion of a majority of the Board, shall undergo a satisfactory examination of proficiency in the knowledge and practice of dentistry, subject, however, to the further provisions of this section and of the provisions of this Article.

The applicant for a license to practice dentistry shall be of good moral character, at least 18 years of age at the time the application is filed. The application for a dental license shall be made to the Board in writing and shall be accompanied by evidence satisfactory to the Board that the applicant is a person of good moral character, has an academic education, the standard of which shall be determined by the Board; that the applicant is a graduate of and has a diploma from a reputable dental college or the dental department of a reputable university or college recognized, accredited and approved as such by the Board; and that the applicant has passed a clinical licensing examination, the standard of which shall be determined by the Board.

The North Carolina State Board of Dental Examiners is authorized to conduct both written or oral and clinical examinations or to accept the results of other Board-approved regional or national independent third-party clinical examinations that shall include procedures performed on human subjects as part of the assessment of restorative clinical competencies and that are determined by the Board to be of such character as to thoroughly test the qualifications of the applicant, and may refuse to grant a license to any person who, in its discretion, is found deficient in the examination. The Board may refuse to grant a license to any person guilty of cheating, deception or fraud during the examination, or whose examination discloses to the satisfaction of the Board, a deficiency in academic or clinical education. The Board may employ such dentists found qualified therefor by the Board, in examining applicants for licenses as it deems appropriate.

The North Carolina State Board of Dental Examiners may refuse to grant a license to any person guilty of a crime involving moral turpitude, or gross immorality, or to any person addicted to the use of alcoholic liquors or narcotic drugs to such an extent as, in the opinion of the Board, renders the applicant unfit to practice dentistry.

Any license obtained through fraud or by any false representation shall be void ab initio and of no effect.

(b) The Department of Justice may provide a criminal record check to the North Carolina State Board of Dental Examiners for a person who has applied for a license through the Board. The Board shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, any additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Board shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subsection. (1935, c. 66, s. 7; 1971, c. 755, s. 4; 1981, c. 751, s. 5; 2002-147, s. 7; 2005-366, s. 1.)

1 21 NCAC 16D .0106 is proposed for adoption as published in 28 NCR 18:2208 as follows:

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3 **21 NCAC 16D .0106 CONSENT FOR BOARD INVESTIGATION**

4 In making application, the applicant authorizes the Board to verify the information contained in the application and
5 to seek such further information pertinent to the applicant's qualifications or character as the Board may deem
6 proper. The applicant consents that his character and reputation may be inquired into, and waives any right he may
7 have to recover damages against the Board, any member thereof or its agents, or any person who answers a Board
8 inquiry in good faith and without malicious intent.

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10 *History Note: Authority G.S.90-29.3*

11 *Eff. July 1, 2014.*

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REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Dental Examiners

RULE CITATION: 21 NCAC 16E .0103

DEADLINE FOR RECEIPT: Monday, August 11, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In Paragraph (a), what is in the application form? Are the contents set forth in law or statutes that govern it? If not, then the contents of the application need to be in the Rule.

In Paragraph (a), line 5, replace "which" with "that"

In Paragraph (a), line 6, I'd rewrite the sentence as "The Board shall return incomplete applications to the applicant." If you do not want to do that, replace "will" with "shall"

On line 7, state "his or her address"

On line 8, are you no longer requiring proof of the high school equivalency if the applicant did not graduate from high school? G.S. 90-224(a) states the applicant may have graduated from high school or have a high school equivalency certificate issued by a governmental agency or unit. The way the rule is written, a holder of a GED would not need to submit proof of it. Also, it could appear that by removing language referring to the equivalency, the Rule is written to prevent those individuals from applying, and I am sure that is not the Board's intent.

On line 9, replace "must" with "shall"

Since your authority for the fee in Paragraph (b) is G.S. 90-232, I think you should include it in the History Note.

On line 14, replace "must" with "shall"

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: July 28, 2014

1 21 NCAC 16E .0103 is proposed for amendment as published in 28 NCR 18: 2209 as follows:

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3 **21 NCAC 16E .0103 APPLICATION**

4 (a) All applications for provisional licensure shall be ~~submitted upon~~ made on the forms provided furnished by the
5 Board at www.ncdentalboard.org and no application shall be deemed complete which does not set forth all the
6 information required relative to the applicant. Incomplete applications will be returned to the applicant. Any
7 applicant who changes his address shall notify the Board office within 10 business days. all information requested
8 shall be provided. Applicants shall ensure that a final transcript from his or her high school is sent to the Board
9 office in a sealed envelope. Applicants must also ensure that official final transcripts from a dental hygiene program
10 as set forth in G.S. 90-224 is sent in a sealed envelope to the Board office.

11 (b) The one hundred fifty dollar (\$150.00) nonrefundable application fee shall accompany the application.

12 (c) Applicants who are licensed in other states shall ensure that the Board receives verification of licensure from the
13 board of each state in which they are licensed. A photograph of the applicant, taken within six months of the date
14 of the application, must be affixed to the application.

15 ~~(b)~~ (d) All applicants shall submit to the Board a signed release form, completed Fingerprint Record Card Card,
16 and such other form(s) required to perform a criminal history check at the time of the application. The form and
17 card are available from the Board office.

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19 *History Note: Authority G.S. 90-226; 90-229(a);*
20 *Eff. September 3, 1976;*
21 *Readopted Eff. September 26, 1977;*
22 *Amended Eff. May 1, 1989;*
23 *Temporary Amendment Eff. January 1, 2003;*
24 *Amended Eff. July 1, 2014; January 1, 2004.*
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REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Dental Examiners

RULE CITATION: 21 NCAC 16E .0104

DEADLINE FOR RECEIPT: Monday, August 11, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

When may the Board require the appearance? The Rule probably needs additional language to give guidance to the regulated public on when this may occur.

Are you relying upon G.S. 90-229(a)(5) as well for the authority this Rule? It seems to me that it is applicable. If you are, please insert this citation in the History Note.

§ 90-229. Disciplinary measures.

(a) The North Carolina State Board of Dental Examiners shall have the power and authority to (i) Refuse to issue a license to practice dental hygiene; (ii) Refuse to issue a certificate of renewal to practice dental hygiene; (iii) Revoke or suspend a license to practice dental hygiene; [and] (iv) Invoke such other disciplinary measures, censure or probative terms against a licensee as it deems proper; in any instance or instances in which the Board is satisfied that such applicant or licensee:

(5) Is incompetent in the practice of dental hygiene;

If you are, please insert this citation in the History Note.

On line 6, you are adding a period after "thereof" without showing it. Please properly insert the punctuation.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: July 28, 2014

1 21 NCAC 16E .0104 is proposed for amendment as published in 28 N CR 18:2209 follows:

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3 **21 NCAC 16E .0104 EXAMINATION**

4 As a condition precedent to issuing a provisional license, the Board may require an applicant to demonstrate
5 professional competency by appearing ~~appear~~ before the Board for oral examination, written examination(s), clinical
6 evaluation or any combination thereof. ~~and satisfy the Board as to the applicant's professional competency.~~

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8 *History Note: Authority G.S. 90-226;*

9 *Eff. September 3, 1976;*

10 *Readopted Eff. September 26, 1977;*

11 *Amended Eff. July 1, 2014; August 1, 2002; May 1, 1989.*

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