

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:

- X 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:

At its August meeting, the Commission objected to this Rule, finding it was unclear and the agency lacked statutory authority to promulgate the same.

In response, the Board has withdrawn the Rule pursuant to G.S. 150B-21.12(a)(1). Therefore, there is no rewritten Rule for the Commission to review, and there is no action for the Commission to take at this meeting.

1 21 NCAC 16D .0104 is proposed for amendment as published in 28 NCR 18: 2207 with changes as follows:

2 **21 NCAC 16D .0104 APPLICATION**

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

9 (b) The nonrefundable application fee shall accompany the [application.] application, along with a photograph of the
10 applicant taken within six months of the date of the application.

11 (c) Applicants who are licensed in other states shall ensure that the Board receives verification of licensure from the
12 board of each state in which they are licensed. [A photograph of the applicant, taken within six months of the date
13 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] shall 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, for observation, assessment or treatment
19 for 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.

21
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. December 1, 2014; January 1, 2004.*
27

1 21 NCAC 16E .0103 is proposed for amendment as published in 28 NCR 18:2207 with changes as follows:

2 **21 NCAC 16E .0103 APPLICATION**

- 3 (a) All applications for provisional licensure shall be ~~submitted upon~~ made on the forms provided furnished by the
4 Board at ~~www.ncdentalboard.org~~ and ~~no~~ www.ncdentalboard.org. No application shall be deemed complete
5 [which] that does not set forth all the information required relative to the applicant. Incomplete applications
6 [will] shall be returned to the applicant. Any applicant who changes his or her address shall notify the Board office
7 within 10 business days. ~~all information requested shall be provided.~~ Applicants shall ensure that proof of a high
8 school equivalency certificate issued by a government agency or unit or a final transcript from his or her high school
9 is sent to the Board office in a sealed envelope. Applicants [must] shall also ensure that official final transcripts
10 from a dental hygiene program as set forth in G.S. 90-244 [is] are 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 application, along with a photograph of the applicant, taken within six months of the date of application.
13 (c) Applicants who are licensed in other states shall ensure that the Board receives verification of licensure from the
14 board of each state in which they are licensed. [A photograph of the applicant, taken within six months of the date
15 of the application, must be affixed to the application.]
16 (d) All applicants [must] shall submit to the Board a signed release form, completed Fingerprint
17 Record Card Card, and ~~such~~ other form(s) required to perform a criminal history check at the time of the
18 application. The form and card are available from the Board office.

19
20 *History Note:* Authority G.S. 90-226; 90-229(a); 90-232;
21 *Eff. September 3, 1976;*
22 *Readopted Eff. September 26, 1977;*
23 *Amended Eff. May 1, 1989;*
24 *Temporary Amendment Eff. January 1, 2003;*
25 *Amended Eff. December 1, 2014; January 1, 2004.*

1 21 NCAC 16E .0104 is proposed for repeal as published in 28 NCR 18: 2207 with changes as follows:

2 **21 NCAC 16E .0104 EXAMINATION**

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

6 The Board shall consider the applicant's training, experience, gaps in practice history and malpractice and
7 disciplinary history in determining whether proof of competency will be required.

8

9 *History Note:* Authority G.S. 90-226; 90-229(a)(5);

10 *Eff. September 3, 1976;*

11 *Readopted Eff. September 26, 1977;*

12 *Amended Eff. December 1, 2014; August 1, 2002; May 1, 1989.*

13

14



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6714

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

August 21, 2014

Carolyn Bakewell
Board of Dental Examiners
Sent via electronic mail to Carolyn.Bakewell@gmail.com

Re: Commission action on rules filed by the Board

Dear Ms. Bakewell:

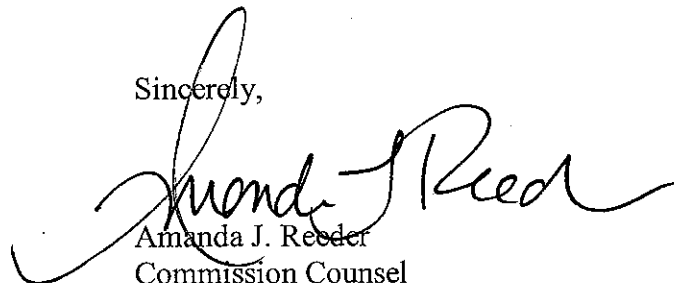
At its meeting today, the Rules Review Commission objected to Rule 21 NCAC 16D .0106 in accordance with G.S. 150B-21.10. The Commission found that the language was ambiguous as written, as it states the Board will look into any information deemed proper as it relates to the applicants qualifications or character; however, the Rule gives no guidance as to what that will be. Further, the Commission found that the Board does have statutory authority to create a waiver of recovery of damages against the Board, its members or any person who answers a Board inquiry, as proposed in the Rule.

In addition, the Commission extended to period of review pursuant to G.S. 150B-21.10 for Rules 16D .0104, 16E .0103 and .0104. The Commission did this in response to a request by the agency to extend the period of review.

Pursuant to G.S. 150B-21.13, when the Commission extends the period of review, it is required to approve or object to rules or call a public hearing on the same within 70 days.

Please respond to this letter in accordance with the provisions of G.S. 150B-21.12. If you have any questions regarding the Commission's actions, please let me know.

Sincerely,



Amanda J. Reeder
Commission Counsel

Administration
919/431-3000
fax: 919/431-3100

Rules Division
919/431-3000
fax: 919/431-3104

Judges and
Assistants
919/431-3000
fax: 919/431-3100

Clerk's Office
919/431-3000
fax: 919/431-3100

Rules Review
Commission
919/431-3000
fax: 919/431-3104

Civil Rights
Division
919/431-3036
fax: 919/431-3103

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

2
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.

21
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.*

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

2

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.

9

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

11 *Eff. July 1, 2014.*

12

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

2
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.

18
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.*
25

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

2

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.~~

7

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.*

12

13

14