

21 NCAC 16G .0101 is amended as published in 28:22 NCR 2718 with changes as follows:

**21 NCAC 16G .0101      FUNCTIONS ~~WHICH~~ THAT MAY BE DELEGATED**

A dental hygienist may be delegated appropriate functions to be performed under the direct control and supervision of a dentist who shall be personally and professionally responsible and liable for any and all consequences or results arising from performance of such acts and functions. In addition to the functions set out in G.S. 90-221(a) and 21 NCAC ~~16H .0201~~, 16H .0203, functions ~~that which~~ may be delegated to a dental hygienist provided that a dentist has examined the patient and prescribed the procedure include:

- (1) Taking impressions for study models and opposing casts ~~that which~~ will not be used for construction of permanent dental appliances, but ~~which~~ may be used for the fabrication of adjustable orthodontic appliances, nightguards and the repair of dentures or partials;
- (2) Applying sealants to teeth that do not require mechanical alteration prior to the application of such ~~sealants. sealants, provided that a dentist has examined the patient and prescribed the procedure;~~
- (3) Inserting matrix bands and wedges;
- (4) Placing cavity bases and liners;
- (5) Placing ~~and/or~~ and removing rubber dams;
- (6) Cementing temporary restorations using temporary cement;
- (7) Applying acid etch ~~materials and rinses; materials/rinses;~~
- (8) Applying bonding agents;
- (9) Removing periodontal dressings;
- (10) Removing sutures;
- (11) Placing and removing gingival retraction cord;
- (12) Removing excess cement;
- (13) Flushing, drying and temporarily closing root canals;
- (14) Placing and removing temporary restorations;
- (15) Placing and tying in or untying and removing orthodontic arch wires;
- (16) Inserting interdental spacers;
- (17) Fitting (sizing) orthodontic bands or brackets;
- (18) Applying dentin desensitizing solutions;
- (19) Performing periodontal screening;
- (20) Performing periodontal probing;
- (21) Performing subgingival exploration for or removal of hard or soft deposits;
- (22) Performing sulcular irrigation;
- (23) Applying resorbable sulcular antimicrobial or antibiotic ~~agents; agents which are resorbable;~~
- (24) Performing extra-oral adjustments ~~that which~~ affect function, fit, or occlusion of any temporary restoration or appliance; and
- (25) Initially forming and sizing orthodontic arch wires and placing ~~place~~ arch wires after final adjustment and approval by the dentist.

1 *History Note:* Authority G.S. 90-221; 90-223(b); 90-233;  
2 *Eff. September 3, 1976;*  
3 *Readopted Eff. September 26, 1977;*  
4 *Amended Eff. April 1, 2015; 2015; August 1, 2008; August 1, 2000;*  
5 *May 1, 1989; October 1, 1985; March 1, 1985.*

1 21 NCAC 16H .0104 is amended as published in 28:22 NCR 2718 with changes as follows:

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3 **21 NCAC 16H .0104 APPROVED EDUCATION AND TRAINING PROGRAMS**

4 To be classified as a Dental Assistant II, an assistant ~~must shall~~ meet one of the following criteria:

- 5 (1) ~~successful~~ completion of:
- 6 (a) an ADA-accredited dental assisting program and current certification in CPR; or
- 7 (b) one academic year or longer in an ADA-accredited dental hygiene program, and current
- 8 certification in CPR; or
- 9 (2) ~~successful~~ completion of the Dental Assistant certification examination(s) administered by the
- 10 Dental Assisting National Board and current certification in CPR; or
- 11 ~~(2)~~ (3) ~~successful~~ completion of:
- 12 (a) ~~full time employment and experience as a chairside assistant for two years (3,000 hours)~~
- 13 ~~of the preceding five; during which period the assistant may be trained in any dental~~
- 14 ~~delivery setting and allowed to perform the functions of a Dental Assistant II under the~~
- 15 ~~direct control and supervision of a licensed dentist;~~
- 16 (a) ~~(b)~~ a 3-hour course in sterilization and infection control;
- 17 ~~(e)~~ (b) a 3-hour course in dental office emergencies; emergencies; and
- 18 (d) ~~radiology training consistent with G.S. 90-29(c)(12); and~~
- 19 (e) (c) current certification in CPR; ~~or~~ CPR.
- 20 (d) ~~(e)~~ after completing ~~[Sub-items]~~ ~~Sub-Items~~ (3)(b), (c), and (d) of this Rule, dental assistants
- 21 may be trained in any dental delivery setting and allowed to perform the functions of a Dental
- 22 Assistant II under the direct control and supervision of a licensed dentist, except as listed in ~~[Sub-~~
- 23 ~~item 3(f)]~~ ~~Sub-Item 3(e)~~ of this Rule.
- 24 (f) (e) dental assistants may take radiographs after completing radiology training consistent with
- 25 G.S. 90-29(c)(12).
- 26 (3) ~~successful completion of the certification examination administered by the Dental Assisting~~
- 27 ~~National Board, and current certification in CPR.~~

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29 *History Note:* Authority G.S. 90-29(c)(9);  
30 Eff. September 3, 1976;  
31 Readopted Eff. September 26, 1977;  
32 Amended Eff. April 1, 2015; August 1, 2000; November 1, 1996; January 1, 1994;  
33 September 1, 1998; May 1, 1989; October 1, 1986.

1 21 NCAC 16H .0203 is amended as published in 28:22 NCR 2718 with changes as follows:

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3 **21 NCAC 16H .0203 PERMITTED FUNCTIONS OF DENTAL ASSISTANT II**

4 (a) A Dental Assistant II may perform all acts or procedures ~~which~~ that may be performed by a Dental Assistant I.  
5 In addition, a Dental Assistant II may be delegated the following functions to be performed under the direct control  
6 and supervision of a dentist who shall be personally and professionally responsible and liable for any and all  
7 consequences or results arising from the performance of such acts and ~~functions:~~ functions, provided that the dentist  
8 first examined the patient and prescribed the procedure:

- 9 (1) Take impressions for study models and opposing casts ~~that~~ ~~[which]~~ will not be used for  
10 construction of dental appliances, but ~~that~~ ~~[which]~~ may be used for the fabrication of adjustable  
11 orthodontic appliances, nightguards and the repair of dentures or partials;
- 12 (2) Apply sealants to teeth that do not require mechanical alteration prior to the application of such  
13 ~~sealants, provided a dentist has examined the patient and prescribed the procedure;~~ sealants:
- 14 (3) Insert matrix bands and wedges;
- 15 (4) Place cavity bases and liners;
- 16 (5) Place and remove rubber dams;
- 17 (6) Cement temporary restorations using temporary cement;
- 18 (7) Apply acid etch ~~materials and rinses;~~ materials/rinses;
- 19 (8) Apply bonding agents;
- 20 (9) Remove periodontal dressings;
- 21 (10) Remove sutures;
- 22 (11) Place and remove gingival retraction cord;
- 23 (12) Remove excess cement;
- 24 (13) Flush, dry, dry and temporarily close root canals;
- 25 (14) Place and remove temporary restorations;
- 26 (15) Place and tie in or untie and remove orthodontic arch wires;
- 27 (16) Insert interdental spacers;
- 28 (17) Fit (size) orthodontic bands or brackets;
- 29 (18) Apply dentin desensitizing solutions;
- 30 (19) Perform extra-oral adjustments ~~which~~ that affect function, fit or occlusion of any temporary  
31 restoration or appliance;
- 32 (20) Initially form and size orthodontic arch wires and place arch wires after final adjustment and  
33 approval by the dentist; and
- 34 (21) Polish the clinical ~~erown~~ crown, ~~[as allowed by 21 NCAC 16H .0104(3)(e);]~~ pursuant to [Rule  
35 .0104(3)(e) of this Subchapter] Paragraph (b) of this Rule using ~~only;~~ only:
  - 36 (A) a hand-held brush and appropriate polishing agents; or
  - 37 (B) a combination of a slow speed handpiece (not to exceed 10,000 rpm) with attached  
38 rubber cup or bristle brush, and appropriate polishing agents.

1 (b) A Dental Assistant II must shall complete a course in coronal polishing identical to that taught in an ADA  
2 accredited dental assisting program, or by a licensed North Carolina hygienist or dentist lasting at least seven clock  
3 hours before using a slow speed handpiece with rubber cup or bristle brush attachment. The course must shall  
4 include instruction on dental morphology, the periodontal complex, operation of handpieces, polish aids aids, and  
5 patient safety. A coronal polishing procedure shall not be represented to the patient as a prophylaxis and no coronal  
6 polishing procedure may be billed as a prophylaxis unless the dentist has performed an evaluation for calculus,  
7 deposits, or accretions and a dentist or dental hygienist has removed any substances detected.

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9 *History Note:* Authority G.S. 90-29(c)(9); 90-41; 90-48;  
10 Eff. September 3, 1976;  
11 Readopted Eff. September 26, 1977;  
12 Amended Eff. April 1, 2015; January 1, 2014; September 1, 2009;  
13 September 1, 2008; August 1, 2000; October 1, 1996; January 1, 1994;  
14 May 1, 1989; October 1, 1985; March 1, 1985.

1 21 NCAC 16I .0101 is amended as published in 28:22 NCR 2718 with changes as follows:

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3 **21 NCAC 16I .0101 APPLICATIONS**

4 A renewal application ~~must~~ shall be completed ~~[in full]~~ and received in the Board's office before midnight by the  
5 close of business on January 31 of each year. Any renewal applications received after that date will require a late  
6 fee. ~~[year for renewal without a fee for late filing.]~~ All applications submitted to the Board must be completed in  
7 ~~full.~~

8 *History Note:*

*Authority G.S. 90-227;*

9 *Eff. September 3, 1976;*

*Readopted Eff. September 26, 1977;*

10 *Amended Eff. April 1, 2015; February 1, 2008; April 1, 2003;*

11 *August 1, 1998; May 1, 1989.*

12

1 21 NCAC 16I .0102 is amended as published in 28:22 NCR 2718 with changes as follows:  
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3 **21 NCAC 16I .0102 CONTINUING EDUCATION REQUIRED**

4 (a) As a condition of license renewal, each dental hygienist must shall complete a minimum of six clock hours of  
5 continuing education each calendar year. Any or all the hours may be acquired through self study courses. To count  
6 toward the mandatory continuing education requirement, For self study courses to be counted towards this  
7 continuing education requirement, must- shall be related to clinical patient care and offered by a board approved  
8 sponsor. ~~the~~ The hygienist must shall successfully complete pass a test following the course and obtain a certificate  
9 of completion.

10 (b) Current certification in CPR is required in addition to the mandatory continuing education hours.

11 ~~(b)-(c)~~ (c) A dental hygienist who can demonstrate a disabling condition may request a variance in required continuing  
12 education hours during a particular period. Written documentation of a disabling condition that interferes with the  
13 hygienist's ability to complete the required hours shall be provided to the Board. The Board may grant or deny such  
14 requests on a case by case basis, depending upon the nature of the disabling condition, its impact on the hygienist's  
15 ability to complete continuing education, and the likely duration of the disability. ~~basis according to this standard.~~  
16 ~~In considering the request, the Board may require additional documentation substantiating any specified disability.~~

17 ~~(e)-(d)~~ (d) If a licensee who has been exempted from continuing education requirements wishes to resume practice, the  
18 licensee must shall complete continuing education courses in accordance with this Rule. The Board may require  
19 licensees who have not practiced dental hygiene for more than a year to undergo a bench clinical test before  
20 allowing the licensee to resume practice where there is indication of inability to practice dental hygiene.] if there is  
21 evidence that the licensee suffers from addiction or a mental or physical condition that impairs the licensee's ability  
22 to practice hygiene competently.

23  
24 *History Note:* Authority G.S. 90-225.1; 90-229;  
25 *Eff. May 1, 1994;*  
26 *Amended Eff. April 1, 2015; November 1, 2008; April 1, 2001; August 1, 1998.*  
27

1 21 NCAC 16I .0105 is amended as published in 28:22 NCR 2718, with changes, as follows:  
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3 **21 NCAC 16I .0105 PENALTY/NON-COMPLIANCE/CONTINUING EDUCATION REQUIREMENT**

4 (a) If the applicant for a renewal certificate fails to provide proof of completion of reported continuing education  
5 hours for the current year as required by ~~21 NCAC 16I~~ Rules .0102 and .0104 of this Subchapter, the Board shall  
6 may refuse to issue a renewal certificate for the year for which renewal is sought until such time as the licensee  
7 completes the required hours of education for the current year and meets all other qualifications for renewal. If the  
8 applicant applies for credit for continuing education hours or a reduction of continuing education hours and fails to  
9 provide the required documentation upon request, the Board may shall refuse to issue a certificate of renewal until  
10 such time as the applicant meets the qualifications for credit.

11 (b) If an applicant fails to meet the qualifications for renewal, including completing the required hours of continuing  
12 education and delivering the required documentation to the Board's office before midnight ~~the close of business~~ on  
13 March 31 of each year, the license becomes void ~~and must be reinstated.~~ and the holder must petition the Board for  
14 reinstatement.

15

16 *History Note:* Authority G.S. 90-225.1; 90-227;  
17 *Eff. May 1, 1994;*  
18 *Amended Eff. April 1, 2015; February 1, 2008; April 1, 2001.*



1 21 NCAC 16I .0107 is amended as published in 28:22 NCR 2718 with changes as follows:  
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3 **21 NCAC 16I .0107 LICENSE VOID UPON FAILURE TO RENEW**

4 If an application for a renewal ~~certificate~~ certificate, accompanied by the renewal ~~fee, plus fee and~~ the additional  
5 late filing fee, is not received in the Board's office before midnight ~~the close of business~~ on March 31 of each year,  
6 the license becomes ~~void and [must be reinstated.]~~ the hygienist must petition the Board for reinstatement. ~~void.~~  
7 Should the license become void due to failure to timely renew, the applicant must apply for reinstatement.  
8

9 *History Note:* Authority G.S. 90-227;  
10 Eff. September 3, 1976;  
11 Readopted Eff. September 26, 1977;  
12 Transferred and Recodified from 21 NCAC 16I .0003 Eff. May 1, 1994;  
13 Amended Eff. April 1, 2015; February 1, 2008; April 1, 2003;  
14 August 1, 2002.

1 21 NCAC 16I .0108 is amended as published in 28:22 NCR 2718 as follows:

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3 **21 NCAC 16I .0108 FORM OF CERTIFICATE**

4 The certificate of renewal of license shall bear the original license number, ~~a serial number which need not be the~~  
5 ~~serial number of the original license issued~~, the full name of the applicant, and the date of issuance.

6

7 *History Note:*

*Authority G.S. 90-222; 90-223; 90-227;*

8

*Eff. September 3, 1976;*

9

*Readopted Eff. September 26, 1977;*

10

*Amended Eff. May 1, 1991;*

11

*Transferred and Recodified from 21 NCAC 16I .0004 Eff. May 1, 1994;*

12

*Amended Eff. April 1, 2015.*

13

1 21 NCAC 16I .0110 is amended as published in 28:22 NCR 2718 as follows:  
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3 **21 NCAC 16I .0110 DEFINITIONS**

4 The following definitions apply only to this Subchapter:

- 5 (1) "Dental Board" -- the North Carolina State Board of Dental Examiners.  
6 (2) "Eligible licensees"-- all hygienists currently licensed by and in good standing with the North  
7 Carolina State Board of Dental Examiners who are serving in the armed forces of the United  
8 States and who are eligible for an extension of time to file a tax return pursuant to G.S. 105-249.2.  
9 (3) "Extension period" -- the time period disregarded pursuant to 26 U.S.C. 7508.  
10 (4) "Good standing" – a hygienist whose license is not suspended or ~~revoked~~ revoked and who is not  
11 practicing under any probationary terms.  
12

13 *History Note:* Authority G.S. ~~90-28;~~ ~~90-222;~~ ~~90-223;~~ 93B-15;  
14 Eff. April 1, 2010;  
15 Amended Eff. ~~April 1, 2015;~~ May 1, 1989.  
16

1 21 NCAC 16I .0111 is amended as published in 28:22 NCR 2718 with changes as follows:

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3 **21 NCAC 16I .0111 EXEMPTIONS GRANTED**

4 (a) Eligible licensees, as defined in Rule .0110 of this Section, are granted a waiver of their mandatory continuing  
5 education ~~requirements.~~ requirements for the period allowed pursuant to G.S. 105-249.2

6 (b) Eligible licensees are granted an extension for the period allowed pursuant to G.S. 105-249.2 in which to pay  
7 license renewal fees and comply with all other requirements imposed by the Dental Board as conditions for  
8 maintaining licensure. ~~licensure and current sedation permits.~~

9

10 *History Note:* Authority G.S. ~~90-28~~; 90-222; 90-223; 93B-15;  
11 Eff. April 1, 2010;  
12 Amended Eff. April 1, 2015.

1 21 NCAC 16J .0101 is amended as published in 28:22 NCR 2718 with changes as follows:

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3 **21 NCAC 16J .0101 PREMISES**

4 (a) The premises of a dental facility shall be kept neat and clean and free of accumulated rubbish and any  
5 substances of a similar nature which that create a public health or safety hazard, nuisance.

6 (b) The premises shall be kept free of all insects and vermin. Proper methods for their eradication or control shall  
7 be utilized.

8 (c) Water of a safe, sanitary quality ~~quality, from a source approved by the health officer,~~ shall be piped under  
9 pressure, and in an approved manner, to all equipment and fixtures where the use of water is required.

10 (d) All plumbing shall be in accordance with the local plumbing ordinances.

11 (e) Comfortable and sanitary conditions for patients and employees shall be maintained ~~constantly,~~ at all times.

12 (f) All liquid and human waste, including floor wash water, shall be disposed of through trapped drains into a public  
13 sanitary sewer system in localities where such system is available. In localities where a public sanitary system is not  
14 available, liquid and human waste shall be disposed of in a manner approved by the Environmental Health Section  
15 of the Division of Health Services, State Department of Human Resources, ~~the state Department of Environment and~~  
16 Natural Resources.

17 (g) There shall be adequate-functioning toilet facilities on the premises of every dental office. They shall conform  
18 to standards of the the state Department of Environment and Natural Resources, Environmental Health Section of  
19 the Division of Health Services, State Department of Human Resources.

20 (h) No animals, except certified assistance animals required to assist disabled individuals, [are] shall be allowed in  
21 any area of a dental office where clinical work is being performed.

22  
23 *History Note:* Authority G.S. 90-23; 90-41(a)(23); 90-48;  
24 Eff. September 3, 1976;  
25 Readopted Eff. September 26, 1977;  
26 Amended Eff. April 1, 2015; May 1, 1989. .  
27

1 21 NCAC 16K .0103 is amended as published in 28:22 NCR 2718 as follows:

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3 **21 NCAC 16K .0103 INSTRUCTORS TO BE APPROVED**

4 All dentists acting as instructors in dental school extension facilities shall be approved by that official of ~~the School~~  
5 ~~of Dentistry~~ a North Carolina school of dentistry who is generally responsible for faculty appointments.

6

7 *History Note:*

*Authority G.S. 90-29(c)(4);*

8

*Eff. September 3, 1976;*

9

*Readopted Eff. September 26, 1977;*

10

*Amended Eff. April 1, 2015; May 1, 1989.*

11

1 21 NCAC 16K .0106 is amended as published in 28:22 NCR 2718 with changes as follows:

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3 **21 NCAC 16K .0106      REPORTS TO BOARD**

4 Every North Carolina school of dentistry ~~The School of Dentistry~~ shall keep the Board **continuously** informed **as to**  
5 **of the:**

6 (1) **the** location and **nature of** kind of patients seen at each dental school extension facility;

7 (2) **the** names of the students assigned ~~thereto,~~ **there;** and

8 (3) **the** names and qualifications of all instructors functioning therein.

9

10 *History Note:*                      *Authority G.S. 90-29(c)(4);*  
11    *Eff. September 3, 1976;*  
12    *Readopted Eff. September 26, 1977;*  
13    *Amended Eff. **April 1, 2015;** May 1, 1989.*  
14

1 21 NCAC 16N .0502 is amended as published in 28:22 NCR 2718 as follows:  
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3 **21 NCAC 16N .0502 REQUEST FOR HEARING**

4 (a) Any ~~time an~~ individual **who** believes his ~~or her~~ rights, ~~duties~~ **duties**, or privileges have been affected by the  
5 Board's administrative action, but **who** has not received a notice of a right to an administrative hearing, ~~that~~  
6 **individual** may file a request for hearing.

7 (b) The individual shall submit a request to the Board's office, ~~with the request bearing the notation: REQUEST~~  
8 ~~FOR ADMINISTRATIVE HEARING. The request should contain~~ **containing** the following information:

- 9 (1) Name and address of the petitioner;  
10 (2) A concise statement of the action taken by the Board which is challenged;  
11 (3) A concise statement of the way in which petitioner has been aggrieved; and  
12 (4) A clear and specific statement of request for a hearing.  
13  
14

15 *History Note:* Authority G.S. 150B-38;  
16 Eff. August 25, 1977;  
17 Amended Eff. **April 1, 2015**; May 1, 1989;  
18 March 1, 1985; November 20, 1980.



1 21 NCAC 16N .0504 is amended as published in 28:22 NCR 2718 with changes as follows:  
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3 **21 NCAC 16N .0504 NOTICE OF HEARING**

4 (a) The Board shall give the party or parties in a contested case a notice of hearing not less than 15 days before the  
5 hearing. Said notice shall contain the following information, in addition to the items specified in G.S. 150B-38(b):

6 (1) The name, position, address and telephone number of a person at the offices office of the Board to  
7 contact for further information or discussion; and

8 ~~(2) The date, time, and place for a prehearing conference, if any; and~~

9 ~~(3) (2) Any other information deemed relevant to informing the parties as to the procedure of the hearing.~~

10 A statement explaining that the Respondent may be represented by counsel, testify, offer evidence,  
11 and cross examine adverse witnesses at the hearing.

12 (b) If the Board determines that the public health, safety safety, or welfare requires such action, it may issue an  
13 order summarily suspending a ~~license~~. license pursuant to G.S. 150B-3. Upon service of the order, the licensee to  
14 whom the order is directed shall immediately cease practicing in North Carolina. The Board shall promptly give  
15 notice of hearing pursuant to G.S. 150B-38 following service of the order. The suspension shall remain in effect  
16 pending issuance by the Board of a final agency decision pursuant to G.S. 150B-42.

17  
18 *History Note:* Authority G.S. 150B-3; 150B-38;  
19 Eff. August 25, 1977;  
20 Amended Eff. April 1, 2015; May 1, 1989;  
21 April 1, 1988; October 1, 1986; November 20, 1980.

1 21 NCAC 16N .0505 is amended as published in 28:22 NCR 2718 with changes as follows:

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3 **21 NCAC 16N .0505 WHO SHALL HEAR CONTESTED CASES**

4 All administrative hearings ~~will shall~~ be conducted by ~~the Board,~~ a panel consisting of a majority of Board ~~members~~  
5 ~~members,~~ eligible to vote on the issue, or an administrative law judge designated to hear the case pursuant to G.S.

6 150B-40(e).

7

8 *History Note:* Authority G.S. 150B-38; 150B-40;  
9 *Eff. August 25, 1997;*  
10 *Amended Eff. April 1, 2015; March 1, 1988;*  
11 *October 1, 1986; November 20, 1980.*

1 21 NCAC 16N .0506 is amended as published in 28:22 NCR 2718 with changes as follows:  
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3 **21 NCAC 16N .0506 PETITION FOR INTERVENTION**

4 (a) A person desiring to intervene in a contested case ~~must shall~~ file a written petition with the Board's office. The  
5 request ~~shall should~~ bear the notation: PETITION TO INTERVENE IN THE CASE OF (NAME OF CASE).

6 (b) The petition ~~shall must~~ include the following information:

- 7 (1) ~~The the~~ name and address of petitioner;
- 8 (2) ~~The the~~ business or occupation of ~~petitioner, where relevant, petitioner;~~
- 9 (3) ~~A the full identification name and citation~~ of the hearing in which petitioner is seeking to  
10 intervene;
- 11 (4) ~~[The] the [statutory or non-statutory]~~ grounds for intervention ~~if any, if not, so state; or a statement~~  
12 ~~that no grounds exist;~~
- 13 (5) ~~Any any~~ claim or defense in respect to which intervention is sought; and
- 14 (6) ~~A a~~ summary of the arguments or evidence petitioner seeks to present.

15 (c) The person desiring to intervene shall serve copies of the petition on all parties to the case.

16 (d) If the Board determines to allow intervention, ~~it shall send written notice to the petitioner and all parties. notice~~  
17 ~~of that decision will be issued promptly to all parties and to the petitioner.~~ In cases of discretionary intervention,  
18 such notification ~~shall will~~ include a statement of any limitations of time, subject matter, ~~evidence evidence,~~ or  
19 whatever else ~~is deemed the Board deems~~ necessary ~~which that~~ are imposed on the intervenor.

20 (e) If the ~~Board decides Board's decision is~~ to deny intervention ~~it shall send written notice to the petitioner and all~~  
21 ~~parties, stating the reasons for the denial. petitioner will be notified promptly. Such notice will be in writing,~~  
22 ~~identifying the reasons for the denial, and will be issued to the petitioner and to all parties.~~

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25 *History Note:* Authority G.S. 150B-38;  
26 Eff. August 25, 1977;  
27 Amended Eff. April 1, 2015; May 1, 1989; March 1, 1985; November 20, 1980.  
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1 21 NCAC 16N .0508 is amended as published in 28:22 NCR 2718 with changes as follows:  
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3 **21 NCAC 16N .0508 DISQUALIFICATION OF BOARD MEMBERS**

4 (a) Self Disqualification. If for any reason a Board member determines that personal bias or other factors render  
5 that member unable to hear a contested case and perform all duties in an impartial manner, that Board member shall  
6 voluntarily decline to participate in the hearing or decision.

7 (b) Petition for Disqualification. If for any reason any party in a contested case believes that a Board member is  
8 personally biased or otherwise unable to hear a contested case and perform all duties in an impartial manner, the  
9 party may file a sworn, notarized affidavit with the Board. The title of such affidavit shall should bear the notation:  
10 AFFIDAVIT OF DISQUALIFICATION OF BOARD MEMBER IN THE CASE OF (NAME OF CASE).

11 (c) Contents of Affidavit. The affidavit shall must state all facts the party deems to be relevant to the  
12 disqualification of the Board member.

13 (d) Timeliness and Effect of Affidavit. An affidavit of disqualification shall will be considered timely if filed ten-10  
14 days before commencement of the hearing. Any other affidavit shall will be considered timely provided it is filed at  
15 the first opportunity after the party becomes aware of facts which give rise to a reasonable belief that a Board  
16 member may be disqualified under this Rule. When a petition for disqualification is filed less than ten-10 days  
17 before or during the course of a hearing, the hearing shall continue with the challenged Board member sitting. The  
18 petitioner ~~Petitioner~~ shall have the opportunity to present evidence supporting his or her petition, and the petition  
19 and any evidence relative thereto presented at the hearing shall be made a part of the record. The Board, before  
20 rendering its decision, shall decide whether the evidence justifies disqualification. In the event of disqualification,  
21 the disqualified member shall will not participate in further deliberation or decision of the case.

22 (e) Procedure for Determining Disqualification:

23 (1) The Board shall will appoint a Board member to investigate the allegations of the affidavit.

24 (2) The investigator shall will report to the Board the findings of the investigation.

25 (3) The Board shall decide whether to disqualify the challenged individual.

26 (4) The person whose disqualification is to be determined shall will not participate in the decision but  
27 may be called upon to furnish information to the other members of the Board.

28 (5) When a Board member is disqualified, disqualified prior to the commencement of the hearing or  
29 after the hearing has begun, such- the hearing shall will continue with the remaining members  
30 sitting sitting, provided that the remaining members still constitute a majority of the Board, Board  
31 who are eligible to vote.

32 (6) If a majority of the members of the Board who are eligible to vote ~~three or more members of the~~  
33 ~~Board~~ are disqualified pursuant to this Rule, the Board shall petition the Office of Administrative  
34 Hearings to appoint an administrative law judge to hear the contested case pursuant to G.S.  
35 150B-40(e).

36  
37 *History Note:* Authority G.S. 150B-38; 150B-40;

38 *Eff. August 25, 1977;*

1 *Amended Eff. April 1, 2015; May 1, 1989;*  
2 *October 1, 1986; November 20, 1980.*

1 21 NCAC 16N .0603 is amended as published in 28:22 NCR 2718 with changes as follows:

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3 **21 NCAC 16N .0603 SUBPOENAS**

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

6 (1) be made in writing to the Board;

7 (2) ~~shall~~ identify any documents sought with ~~specificity,~~ specificity; and

8 (3) ~~shall~~ include the full name and home or business address of all persons to be ~~subpoenaed and,~~  
9 subpoenaed; and

10 (4) if known, the date, time, and place for responding to the subpoena.

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

12 ~~(b)~~ (c) Subpoenas shall contain:

13 (1) the caption of the case;

14 (2) the name and address of the person subpoenaed;

15 (3) the date, hour and location of the hearing in which the witness is commanded to appear;

16 (4) a particularized description of the books, papers, ~~records-records,~~ or objects the witness is directed to  
17 bring with him to the hearing, if any;

18 (5) the identity of the party on whose application the subpoena was ~~issued,~~ issued; and

19 (6) a ~~"return of service",~~ return of service form.

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

24 ~~(e)~~ (e) Subpoenas shall be served by the sheriff of the county in which the person subpoenaed resides, as permitted  
25 by Rule 45 of the North Carolina Rules of Civil [Procedure.] Procedure, as set forth in G.S. 1A-1, ~~when the party~~  
26 ~~requesting such subpoena prepays the sheriff's service fee. The subpoena shall be issued in duplicate, with a "return~~  
27 ~~of service" form attached to each copy. A person serving the subpoena shall fill out "return of service" form for~~  
28 ~~each copy and promptly return one copy of the subpoena, with the attached "return of service" form completed, to~~  
29 ~~the Board.~~

30 ~~(d)~~ (f) Any person receiving a subpoena from the Board may object thereto by filing a written objection to the  
31 subpoena with the Board's office.

32 (e) Such objection shall include a concise, but complete, statement of all reasons why the subpoena should be  
33 revoked or modified. These reasons may include ~~lack of relevancy sought, or any other~~ any basis reasons sufficient  
34 in law for holding the subpoena invalid, such as that the evidence is privileged, that appearance or production would  
35 be so disruptive as to be unreasonable in light of the significance of the evidence sought, or other undue hardship.

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

1 ~~(g)~~ (h) The party who requested the subpoena, at such time as may be granted by the Board, may file a written  
2 response to the objection. The written response shall be served by the requesting party on the objecting witness  
3 simultaneously with the filing of the response with the Board.

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

8 ~~(i)~~ (j) ~~Promptly after the close of such hearing, the~~ The majority of the Board members hearing the contested case  
9 ~~shall will~~ rule on the challenge and issue a written ~~decision.~~ ~~A copy of the decision [shall ]will be issued-~~ ~~decision~~ to  
10 all parties and made a part of the record.

11 *History Note:* *Legislative Objection Lodged Eff. November 20, 1980;*  
12 *Legislative Objection Removed Eff. March 19, 1981;*  
13 *Authority G.S. 90-28; 90-48; 90-223(b); 150B-39; 150B-40*  
14 *Eff. August 25, 1977;*  
15 *Amended Eff. April 1, 2015; May 1, 1989; March 1, 1988;*  
16 *October 1, 1986; March 1, 1985.*

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