

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Dental Examiners

RULE CITATION: 21 NCAC 16G .0101

DEADLINE FOR RECEIPT: Wednesday, July 13, 2016

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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

What is your authority to specify that dentists "shall be personally and professionally responsible and liable for any and all consequences or results arising from performance of such acts and functions"? Are you relying exclusively on G.S. 90-41?

In addition to the functions set forth in 21 NCAC 16H .0203 for Dental Assistant IIs, I assume that dental hygienists may also perform the functions as set forth in 21 NCAC 16H .0201 for Dental Assistant Is? Is there a reason that only 16H .0203 is mentioned?

In Item (1), please add a comma in between "nightguards" and "and the repair" for purposes of consistency.

In Item (13), please add a comma in between "drying" and "and temporarily closing..."

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

Amber Cronk May
Commission Counsel
Date submitted to agency: June 28, 2016

1 21 NCAC 16G .0101 is proposed for amendment as follows:

2
3 **21 NCAC 16G .0101 FUNCTIONS THAT MAY BE DELEGATED**

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

- 9 (1) Taking impressions for study models and opposing casts that ~~may~~ will not be used for the
10 construction of temporary or permanent dental appliances, ~~but may be used for the fabrication of~~
11 adjustable orthodontic appliances, nightguards and the repair of dentures or partials;
- 12 (2) Applying sealants to teeth that do not require mechanical alteration prior to the application of such
13 sealants;
- 14 (3) Inserting matrix bands and wedges;
- 15 (4) Placing cavity bases and liners;
- 16 (5) Placing and removing rubber dams;
- 17 (6) Cementing temporary restorations using temporary cement;
- 18 (7) Applying acid etch materials and rinses;
- 19 (8) Applying bonding agents;
- 20 (9) Removing periodontal dressings;
- 21 (10) Removing sutures;
- 22 (11) Placing and removing gingival retraction cord;
- 23 (12) Removing excess cement;
- 24 (13) Flushing, drying and temporarily closing root canals;
- 25 (14) Placing and removing temporary restorations;
- 26 (15) Placing and tying in or untying and removing orthodontic arch wires;
- 27 (16) Inserting interdental spacers;
- 28 (17) Fitting (sizing) orthodontic bands or brackets;
- 29 (18) Applying dentin desensitizing solutions;
- 30 (19) Performing periodontal screening;
- 31 (20) Performing periodontal probing;
- 32 (21) Performing subgingival exploration for or removal of hard or soft deposits;
- 33 (22) Performing sulcular irrigation;
- 34 (23) Applying resorbable sulcular antimicrobial or antibiotic agents;
- 35 (24) Performing extra-oral adjustments that affect function, fit, or occlusion of any temporary
36 restoration or appliance; and
- 37 (25) Initially forming and sizing orthodontic arch wires and placing arch wires after final adjustment
38 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; August 1, 2008; August 1, 2000; May 1, 1989; October 1, 1985;*
5 *March 1, 1985.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Dental Examiners

RULE CITATION: 21 NCAC 16G .0103

DEADLINE FOR RECEIPT: Wednesday, July 13, 2016

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In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Please delete "but shall not be limited to" on line 4.

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

Amber Cronk May
Commission Counsel
Date submitted to agency: June 28, 2016

1 21 NCAC 16G .0103 is proposed for amendment as follows:

2 **21 NCAC 16G .0103 PROCEDURES PROHIBITED**

3 Those procedures ~~that which~~ require the professional education and skill of a dentist and may not be delegated to a
4 dental hygienist shall include, but shall not be limited to:

- 5 (1) Comprehensive examination, ~~diagnosis~~ diagnosis, and treatment planning;
- 6 (2) Surgical or cutting procedures on hard or soft tissues, including laser, ~~air abrasion~~ air abrasion, or
7 micro-abrasion procedures;
- 8 (3) Placement or removal of therapeutic sulcular nonresorbable agents;
- 9 (4) The issuance of prescription drugs, ~~medications~~ medications, or work authorizations;
- 10 ~~(5) Taking of impressions for final fixed or removable restorations or prostheses, except as provided~~
11 ~~for in Rule .0101(1) of this Subchapter;~~
- 12 ~~(6)~~ (5) Final placement or intraoral adjustment of a fixed or removable appliance;
- 13 ~~(7)~~ (6) Intraoral occlusal adjustments which affect function, fit, or occlusion of any temporary or
14 permanent restoration or appliance;
- 15 ~~(8)~~ (7) Extra-oral occlusal adjustments which affect function, fit, or occlusion of any permanent
16 restoration or appliance;
- 17 (9) (8) Performance of direct pulp capping or pulpotomy;
- 18 ~~(10)~~ (9) Placement of sutures;
- 19 ~~(11)~~ (10) Final placement or cementation of orthodontic bands or brackets;
- 20 ~~(12)~~ (11) Placement or cementation of final restorations;
- 21 ~~(13)~~ (12) Administration of any anesthetic by any route except the administration of topically-applied
22 agents intended to anesthetize only cutaneous tissue; and
- 23 ~~(14)~~ (13) Intraoral use of a ~~high-speed~~ high-speed handpiece.
- 24

25 *History Note: Authority G.S. 90-221(a); 90-223(b);*

26 *Eff. September 3, 1976;*

27 *Readopted Eff. September 26, 1977;*

28 *Amended Eff. August 1, 2008; August 1, 2000; May 1, 1989; March 1, 1985.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Dental Examiners

RULE CITATION: 21 NCAC 16H .0102

DEADLINE FOR RECEIPT: Wednesday, July 13, 2016

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In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Please consider breaking this rule into 3 separate paragraphs. (a) would be the definition of a Dental Assistant I, (b) would be the CPR requirement, and (c) would be the prohibition regarding radiographs."

Please change the definition of a Dental Assistant I to what it actually is, rather than what it is not. I understand that you want a catch all of "if you don't qualify for a Dental Assistant II, then you are a Dental Assistant I", but as written, it seems like some others may be unintentionally captured in this definition. Does it include the front-desk or person responsible for the practice's finances?

On line 4, please provide a cross-reference as to what "training and experience" is required for classification as a Dental Assistant II.

On line 5, please change "Dental Assistant Is" to "A Dental Assistant I" for purposes of consistency.

On line 5, please also change "must" to "shall."

On line 5, please delete or define "current" in "current CPR certification." Also, please delete or define "at all times." Do you mean "at all times while employed as a Dental Assistant"?

On lines 5-6, why is the requirement that a Dental Assistant I may take radiographs only when completing the radiology training as set forth in 90-29(c)(12) being added to this Rule? Not only is it already set forth in statute, but it is also included in 21 NCAC 16H .0201.

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

Amber Cronk May
Commission Counsel
Date submitted to agency: June 28, 2016

1 21 NCAC 16H .0102 is proposed for amendment as follows:

2

3 **21 NCAC 16H .0102 DENTAL ASSISTANT I**

4 A Dental Assistant I is a dental assistant who does not qualify by training and experience for classification as a
5 Dental Assistant II. All Dental Assistant Is must maintain current CPR certification at all times. No Dental
6 Assistant I may take radiographs before completing radiology training consistent with G.S. 90-29(c)12).

7

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

9 *Eff. September 3, 1976;*

10 *Readopted Eff. September 26, 1977.*

11 *Amended Eff. July 1, 2016.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Dental Examiners

RULE CITATION: 21 NCAC 16H .0104

DEADLINE FOR RECEIPT: Wednesday, July 13, 2016

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In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

The formatting of this Rule appears to be off. On line 4, it is indicated that to be classified as a Dental Assistant II, one of the Items must be met. Items (4) and (5) don't seem to be intended to be included in this; however, as written they are. Would it be more accurate to make line (4) its own paragraph with current Items (1)(2) and (3) included, then make Items (4) and (5) their own paragraphs?

Why is it necessary to include the CPR certification in (1)(a), (1)(b), (2), and (3)(d) when it is now being included as its own requirement in Item (4)? Having the requirement in both places appears to be duplicative. Is the intent to create a requirement that an assistant have an initial CPR certification and then a requirement that they maintain it? If so, please make that more clear.

If it is determined that the CPR certification is necessary in (1)(a)(1)(b), and (2), please delete or define "current." Please also delete or define "current" in Item (4). Also, please delete or define "at all times." Do you mean "at all times while employed as a Dental Assistant"?

What is the intent of (3)(a)? Are you creating an additional requirement of 3000 chairside hours after a course in sterilization, emergencies, and CPR certification? Is the intent that a person complete 3000 hours as a "chairside assistant" within 2 years? What is a "chairside assistant"? As written it is unclear what the requirements are.

In (3)(e), to what "two year (3000 hours) time frame" are you referring? The chairside assistant hours? Please make more clear.

In (4), please change "All Dental Assistant IIs" to "A Dental Assistant II" for purposes of consistency.

In (4), please change "must" to "shall."

Amber Cronk May
Commission Counsel
Date submitted to agency: June 28, 2016

Are (3)(f) and (5) duplicative?

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

Amber Cronk May
Commission Counsel
Date submitted to agency: June 28, 2016

1 21 NCAC 16H .0104 is proposed for amendment as follows:

2
3 **21 NCAC 16H .0104 APPROVED EDUCATION AND TRAINING PROGRAMS**

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

- 5 (1) 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) completion of the Dental Assistant certification examination(s) administered by the Dental
- 10 Assisting National Board and current certification in CPR; or
- 11 (3) completion of:
- 12 (a) after completing Sub-Items 3(b) – (f) and full-time employment as a chairside assistant
- 13 for two years (3,000 hours) of the preceding five;
- 14 ~~(a)~~ (b) a 3-hour course in sterilization and infection control;
- 15 ~~(b)~~ (c) a 3-hour course in dental office emergencies; and
- 16 ~~(c)~~ (d) current certification in CPR.
- 17 ~~(d)~~ (e) after completing Sub-Items (3)(b), (c), and (d) of this Rule, and during the two year
- 18 (3,000 hours) time frame, dental assistants may be trained in any dental delivery setting
- 19 and allowed to perform the functions of a Dental Assistant II under the direct control and
- 20 supervision of a licensed dentist, except as listed in Sub-Item ~~3(e)~~ 3(f) of this Rule.
- 21 ~~(e)~~ (f) dental assistants may take radiographs after completing radiology training consistent with
- 22 G.S. 90-29(c)(12).
- 23 (4) All Dental Assistant IIs must maintain current CPR certification at all times.
- 24 (5) No Dental Assistant II may take radiographs before completing radiology training consistent with
- 25 G.S. 90-29(c) (12).

26
27 *History Note: Authority G.S. 90-29(c)(9);*

28 *Eff. September 3, 1976;*

29 *Readopted Eff. September 26, 1977;*

30 *Amended Eff. July 1, 2016; April 1, 2015; August 1, 2000; November 1, 1996; January 1, 1994;*

31 *September 1, 1998; May 1, 1989; October 1, 1986.*

32

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Dental Examiners

RULE CITATION: 21 NCAC 16H .0203

DEADLINE FOR RECEIPT: Wednesday, July 13, 2016

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In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

In (a), please provide a cross-reference to what acts or procedures may be performed by a Dental Assistant I. Perhaps 21 NCAC 16H .0201?

What is your authority to specify that dentists "shall be personally and professionally responsible and liable for any and all consequences or results arising from performance of such acts and functions"? Are you relying exclusively on G.S. 90-41?

In (a)(21)(A), please delete or define "appropriate."

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

Amber Cronk May
Commission Counsel
Date submitted to agency: June 28, 2016

1 21 NCAC 16H .0203 is proposed for amendment as follows:

2
3 **21 NCAC 16H .0203 PERMITTED FUNCTIONS OF DENTAL ASSISTANT II**

4 (a) A Dental Assistant II may perform all acts or procedures that may be performed by a Dental Assistant I. In
5 addition, a Dental Assistant II may be delegated the following functions to be performed under the direct control and
6 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, provided that the dentist first
8 examined the patient and prescribed the procedure:

- 9 (1) Take impressions for study models and opposing casts that ~~will not~~ may be used for the
10 construction of temporary or permanent dental appliances, ~~but may be used for the fabrication of~~
11 adjustable 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;
- 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;
- 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, 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 that affect function, fit or occlusion of any restoration or appliance;
- 31 (20) Initially form and size orthodontic arch wires and place arch wires after final adjustment and
32 approval by the dentist; and
- 33 (21) Polish the clinical crown, pursuant to Paragraph (b) of this Rule using only:
- 34 (A) a hand-held brush and appropriate polishing agents; or
- 35 (B) a combination of a slow speed handpiece (not to exceed 10,000 rpm) with attached
36 rubber cup or bristle brush, and appropriate polishing agents.

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

8
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. July 1, 2016; April 1, 2015; January 1, 2014; September 1, 2009; September 1,
13 2008; August 1, 2000; October 1, 1996; January 1, 1994; May 1, 1989; October 1, 1985; March
14 1, 1985.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Dental Examiners

RULE CITATION: 21 NCAC 16I .0109

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In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Please make clear within the body of the Rule that the license being referred to is the Dental Hygienist License.

Who are considered to be the "authorized agents" of the Board of Dental Examiners? Do you mean its investigators?

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

Amber Cronk May
Commission Counsel
Date submitted to agency: June 28, 2016

1 21 NCAC 16I .0109 is amended as published in 30:19 NCR 2044 as follows:

2

3 **21 NCAC 16I .0109 CERTIFICATE DISPLAYED**

4

5 (a) The original license and current certificate of renewal of license shall at all times be displayed in a conspicuous
6 place where it is visible to patients receiving treatment at the office where the dental hygienist is employed,
7 employed, and whenever requested the license and the current certificate of renewal shall be exhibited to or
8 produced before

9 (b) Hygienists providing treatment at more than one office shall only be required to display a current renewal
10 certificate of license at each additional office where they provide dental hygiene services, as long as the original
11 license is displayed in at least one office.

12 (c) Hygienists shall produce their original license and current renewal certificate on demand of the North Carolina
13 State Board of Dental Examiners or its authorized agents.

14

15 *History Note: Authority G.S. 90-227;*

16 *Eff. September 3, 1976;*

17 *Readopted Eff. September 26, 1977;*

18 *Transferred and Recodified from 21 NCAC 16I .0005 Eff. May 1, 1994.*

19

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Dental Examiners

RULE CITATION: 21 NCAC 16R .0110

DEADLINE FOR RECEIPT: Wednesday, July 13, 2016

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In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Please make clear within the body of the Rule that the license being referred to is the Dentist's License.

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

Amber Cronk May
Commission Counsel
Date submitted to agency: June 28, 2016

1 21 NCAC 16R .0110 is amended as published in 30:19 NCR 2044-45 as follows:

2

3 **21 NCAC 16R .0110 RENEWAL CERTIFICATE MUST BE DISPLAYED**

4

5 The current certificate of renewal of license shall be posted where it is visible to patients receiving treatment in the
6 office where the dentist is employed, and shall be exhibited or produced to the North Carolina State Board of Dental
7 Examiners or its investigators during every visit to the office. ~~Photocopies may not be substituted for the current~~
8 ~~certificate of renewal or duplicates issued by the Board.~~

9

10 *History Note: Authority G.S. 90-33;*

11 *Eff. July 1, 2015.*

12

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Dental Examiners

RULE CITATION: 21 NCAC 16R .0201

DEADLINE FOR RECEIPT: Wednesday, July 13, 2016

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In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Please delete "a minimum of" as Rules generally set the minimum requirement and this language is not necessary.

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

In (d), are the "mandatory continuing education hours" those that are set forth in Paragraph (a) of this Rule?

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

Amber Cronk May
Commission Counsel
Date submitted to agency: June 28, 2016

1 21 NCAC 16R .0201 is proposed for amendment as follows:

2 **21 NCAC 16R .0201 CONTINUING EDUCATION REQUIRED**

3 (a) Except as permitted in Rule .0204 of this Section as a condition of license renewal, every dentist shall complete
4 ~~at least a minimum of~~ 15 clock hours of continuing education each calendar year.

5 (b) One hour of the total required continuing education hours must consist of a course designed to address
6 prescribing practices, including instruction on controlled substance prescribing practices and controlled substance
7 prescribing for chronic pain management.

8 (c) Any or all of the hours may be acquired through self-study courses, provided that the self-study courses shall be
9 related to clinical patient care and offered by a Board approved sponsor listed in Rule .0202 of this Section. The
10 dentist shall pass a test following every self-study course and obtain a certificate of completion.

11 (d) Courses taken to maintain current CPR certification shall not count toward the mandatory continuing education
12 hours.

13

14 *History Note: Authority G.S. 90-31.1;*

15 *Eff. July 1, 2015.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Dental Examiners

RULE CITATION: 21 NCAC 16V .0101

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In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

In Item (1), do you mean "Rule", rather than "Section"?

In Item (11), what is your authority to limit a dentist to 2 dental hygienists? Is this set forth elsewhere in Rule or Statute?

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

Amber Cronk May
Commission Counsel
Date submitted to agency: June 28, 2016

1 21 NCAC 16V .0101 is proposed for amendment as follows:

2

3 **21 NCAC 16V .0101 DEFINITION: UNPROFESSIONAL CONDUCT BY A DENTIST**

4 Unprofessional conduct by a dentist shall include the following:

- 5 (1) Having professional discipline imposed, including the denial of licensure, by the dental licensing
6 authority of another state, territory, or country. ~~country;~~ ~~(For~~ For purposes of this Section, the
7 surrender of a license under threat of disciplinary action shall be considered the same as if the
8 licensee had been disciplined; ~~disciplined~~);
- 9 (2) ~~Intentionally presenting~~ Presenting false or misleading testimony, statements, or records to the
10 Board or the Board's investigator or employees during the scope of any investigation, or at any
11 hearing of the Board;
- 12 (3) Committing any act ~~which that~~ would constitute sexual assault or battery as defined by Chapter 14
13 of the North Carolina General Statutes in connection with the provision of dental services;
- 14 (4) Violating any order of the Board previously entered in a disciplinary hearing, or failing to comply
15 with a subpoena of the Board;
- 16 (5) Conspiring with any person to commit an act, or committing an act ~~which that~~ would tend to
17 coerce, intimidate, or preclude any patient or witness from testifying against a licensee in any
18 disciplinary hearing, or retaliating in any manner against any patient or other person who testifies
19 or cooperates with the Board during any investigation under the Dental Practice or Dental Hygiene
20 Acts;
- 21 (6) Failing to identify to a patient, patient's guardian, or the Board the name of an employee,
22 employer, contractor, or agent who renders dental treatment or services upon request;
- 23 (7) Prescribing, procuring, dispensing, or administering any controlled substance for personal ~~use~~ use,
24 which does not include ~~except~~ those prescribed, dispensed, or administered by a practitioner
25 authorized to prescribe them;
- 26 (8) Pre-signing blank prescription forms or using pre-printed or rubber stamped prescription forms
27 containing the dentist's signature or the name of any controlled substance;
- 28 (9) Forgiving the co-payment provisions of any insurance policy, insurance contract, health
29 prepayment contract, health care plan, or nonprofit health service plan contract by accepting the
30 payment received from a third party as full payment, unless the dentist discloses to the third party
31 that the patient's payment portion will not be collected;
- 32 (10) Failing to provide radiation safeguards required ~~by~~ by the State Department of Health and Human
33 Services, the federal Occupational and Safety Health Administration, the Food and Drug
34 Administration ~~Administration~~, and the Environmental Protection Agency;
- 35 (11) Having professional connection with or lending one's name to the unlawful practice of dentistry;

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

30
31 *History Note: Authority G.S. 90-28; 90-29; 90-41; 90-48;*
32 *Eff. August 1, 1998;*
33 *Amended Eff. July 1, 2015; October 1, 2001; August 1, 2000.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Dental Examiners

RULE CITATION: 21 NCAC 16V .0102

DEADLINE FOR RECEIPT: Wednesday, July 13, 2016

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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

In Item (1), do you mean "Rule", rather than "Section"?

In Item (13), what is your authority to limit a dentist to 2 dental hygienists? Is this set forth elsewhere in Rule or Statute?

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

Amber Cronk May
Commission Counsel
Date submitted to agency: June 28, 2016

1 21 NCAC 16V .0102 is amended as published in 30:16 NCR 1821 as follows:

2

3 **21 NCAC 16V .0102 DEFINITION: UNPROFESSIONAL CONDUCT BY A DENTAL HYGIENIST**

4 Unprofessional conduct by a dental hygienist shall include the following:

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

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

8

9 *History Note: Authority G.S. 90-29; 90-221; 90-223; 90-229;*

10 *Eff. August 1, 1998;*

11 *Amended Eff. June 1, 2016, July 1, 2015; October 1, 2001; August 1, 2000; September 1, 1998.*