

21 NCAC 16C .0101 is amended as published in 36:16 NCR 1385 as follows:

SUBCHAPTER 16C - LICENSURE DENTAL HYGIENISTS

SECTION .0100 - GENERAL PROVISIONS

21 NCAC 16C .0101 LICENSURE

(a) All dental hygienists shall be licensed by the ~~North Carolina State Board of Dental Examiners~~ before practicing dental hygiene in this State. All persons desiring to practice dental hygiene in this State shall pass Board approved written and clinical examinations, as set forth in Rule .0303 of this Subchapter, before receiving a license.

(b) The examination requirement set forth in Paragraph (a) of this Rule shall not apply to persons who do not hold a North Carolina dental hygiene license who are seeking volunteer licenses pursuant to G.S. 90-21.107, or licensure by military endorsement pursuant to Rules 21 NCAC 16G .0107 or .0108. ~~.0108 of this Chapter or licensure by credentials pursuant to Rule .0501 of this Subchapter.~~

(c) All dental hygienists shall maintain an unexpired CPR certification at all times.

History Note: Authority G.S. 90-223; 90-224;

Eff. September 3, 1976;

Readopted Eff. September 26, 1977;

Amended Eff. September 1, 2014; September 1, 2013; June 1, 2006; May 1, 1989; January 1, 1983;

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

Amended Eff. July 1, 2022; October 1, 2019.

21 NCAC 16F .0102 is amended as published in 36:16 NCR 1385 as follows:

21 NCAC 16F .0102 APPLICATION FOR CERTIFICATION OF LICENSURE

(a) For purposes of formation of a professional entity, an application ~~Applications~~ for certification that all proposed owners of shares of stock in a professional corporation or association or all proposed managers and members of a professional limited liability company are licensed to practice dentistry in North Carolina shall be submitted on a form available on the Board's website, www.ncdentalboard.org, or by letter to the Board's office requesting such certification, and setting forth the following information: shall include:

(1) ~~The proposed name of the corporation or professional limited liability company; the information and materials set out in Rule .0104(a) and (b) of this Subchapter; and~~

(2) ~~The names of all proposed owners of the shares of stock to be issued by the corporation, or all members and managers of the professional limited liability company together with their addresses and current dental license numbers; and~~

~~(3)~~(2) ~~The name or names the names, addresses, and North Carolina dental license numbers of the proposed incorporators of a professional corporation or association or the members who executed the articles of organization of the professional limited liability company, their addresses, and the current dental license numbers of such of them as are duly licensed to practice dentistry in the State of North Carolina.~~

(b) For an existing professional entity to issue or transfer shares of stock or an ownership interest to another person, an application for certification that the person proposed to acquire shares or an ownership interest is licensed to practice dentistry in North Carolina shall be submitted on a form available on the Board's website, www.ncdentalboard.org, and shall include the name of the professional entity and the name, address, and dental license number of the person proposed to acquire the shares or ownership interest.

History Note: Authority G.S. ~~55B-4(4); 55B-4; 55B-6; 57D-2-01; 57D-2-02; 90-48;~~

Eff. September 3, 1976;

Readopted Eff. September 26, 1977;

Amended Eff. April 1, 1994; May 1, 1989;

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

Amended Eff. July 1, 2022.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Board of Dental Examiners

RULE CITATION: 21 NCAC 16F .0104

DEADLINE FOR RECEIPT: Friday, June 10, 2022.

PLEASE NOTE: This request may extend to 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 email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In the History Note, is the reference to G.S. 57D-2-01 necessary?

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

21 NCAC 16F .0104 is amended as published in 36:16 NCR 1385-86 as follows:

21 NCAC 16F .0104 CERTIFICATE OF REGISTRATION

(a) Each professional ~~entity corporation, association, or limited liability company~~ shall submit an application for a certificate of registration on the form available on the Board's website, www.ncdentalboard.org, provided by the Board ~~for that purpose,~~ and shall include the following information:

- (1) name of the company;
- (2) street address of the company;
- (3) mailing address of the company, if different from the street address;
- (4) email address of the company;
- (5) name, address, and dental license number of each shareholder or member, and each dentist to be employed by the company once it is registered;
- (6) name, address, and occupation of each corporation director and officer, or each limited liability company manager; and
- (7) ~~name, address, and duties of each person, other than dentists, to be employed by the company once it is registered.~~ disclosure of any disciplinary action taken by or investigation pending before the Board with respect to any licensed dentist identified as an incorporator, officer, director, shareholder, member, manager, or employee.

(b) The application shall be:

- (1) signed and notarized in accordance with Rule .0110 of this Subchapter; ~~by the president or vice president of the professional corporation or association or by a manager of the professional limited liability company, and notarized;~~
- (2) accompanied by a statement of the capacity in which the person signs and the person's authority to submit the application on behalf of the professional entity;
- ~~(2)(3)~~ submitted to the Board with all the information listed in Paragraph (a) of this Rule; and
- ~~(3)(4)~~ accompanied by the registration fee of fifty dollars ~~(\$50.00).~~ (\$50.00); and
- ~~(4)~~ accompanied by a certified copy of the certificate of incorporation and articles of incorporation of the professional corporation or association or a certified copy of the articles of organization of the professional limited liability company. For purposes of this Subparagraph, "certified" means the copy is accompanied by certification of filing from the Secretary of State as set forth in G.S. 55D-17.

(c) In addition to the requirements set out in Paragraphs (a) and (b) of this Rule, a certificate of registration shall not be issued until the Board receives a copy of the certificate of incorporation and articles of incorporation of the professional corporation or association, or a copy of the articles of organization of the professional limited liability company, accompanied by certification of filing from the Secretary of State as set forth in G.S. 55D-17.

1 ~~(e)~~(d) The initial certificate of registration shall remain effective for one year from the date of issuance, unless
2 suspended or terminated as provided in G.S. 55B-13, and each subsequent renewal of the certificate shall be effective
3 for a period of one year from the date of issue.
4

5 *History Note: Authority G.S. 55B-10; 57D-2-01; 57D-2-02; 90-48;*

6 *Eff. September 3, 1976;*

7 *Readopted Eff. September 26, 1977;*

8 *Amended Eff. August 1, 2009; April 1, 1994; May 1, 1989;*

9 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9,*
10 *2018;*

11 *Amended Eff. July 1, 2022; September 1, 2020.*
12
13

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Board of Dental Examiners

RULE CITATION: 21 NCAC 16F .0105

DEADLINE FOR RECEIPT: Friday, June 10, 2022.

PLEASE NOTE: This request may extend to 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 email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In (a)(8), line 19, please add commas around the clause “or investigation pending before”.

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

21 NCAC 16F .0105 is amended as published in 36:16 NCR 1383-84 as follows:

21 NCAC 16F .0105 APPLICATION FOR RENEWAL OR REINSTATEMENT

(a) ~~At least 20 days prior to the date of expiration of the~~ The certificate of registration shall be renewed each year based on the anniversary of the date of issuance. ~~registration, the~~ Within 30 days after the anniversary date, the professional entity ~~corporation or limited liability company~~ shall submit its application for renewal upon a form ~~provided by the Board, available on the Board's website, www.ncdentalboard.org,~~ and shall include the following information:

- (1) name of the company as shown on the certificate of registration;
- (2) name of the company as of the date of the application for renewal, if the company name has been amended;
- (3) street address of the company;
- (4) mailing address of the company, if different from the street address;
- (5) email address of the company; ~~and~~
- (6) ~~name~~ name, address, and dental license number of each shareholder or member, and each dentist practicing under the company;
- (7) name, address, and occupation of each corporation director and officer, or each limited liability company manager; and
- (8) disclosure of any disciplinary action taken by or investigation pending before the Board with respect to any licensed dentist identified as an incorporator, officer, director, shareholder, member, manager, or employee.

(b) The application shall be submitted by the president or vice president of the professional corporation or association or by a manager of the professional limited liability company to the Board with all the information listed in Paragraph (a) of this Rule, accompanied by the renewal fee of twenty-five dollars (\$25.00).

(c) If the application for renewal of the certificate of registration is not submitted within 30 days after the anniversary of the date of issuance, the certificate of registration shall be suspended. The professional entity may apply for reinstatement of the certificate of registration by satisfying the requirements of Paragraphs (a) and (b) of this Rule including payment of the renewal fee, plus payment of the penalty fee of ten dollars (\$10.00) as set out in G.S. 55B-11.

History Note: Authority G.S. 55B-11; 57D-2-01; 57D-2-02; 90-48;

Eff. September 3, 1976;

Readopted Eff. September 26, 1977;

Amended Eff. April 1, 1994; May 1, 1989;

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

Amended Eff. July 1, 2022; September 1, 2020.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Board of Dental Examiners

RULE CITATION: 21 NCAC 16F .0107

DEADLINE FOR RECEIPT: Friday, June 10, 2022.

PLEASE NOTE: This request may extend to 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 email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

As this Rule also incorporates amendments made by restatement of the articles under G.S. 57D-2-23, please consider explicitly saying so in the body of the Rule.

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

21 NCAC 16F .0107 is amended as published in 36:16 NCR 1386 as follows:

21 NCAC 16F .0107 AMENDMENTS TO ARTICLES OF INCORPORATION OR ~~ORGANIZATION~~
ORGANIZATION, OR ARTICLES OF DISSOLUTION

Amendments to the articles of incorporation or articles of ~~organization~~organization, or articles of dissolution shall be forwarded to the Board's office within 10 days after the filing of the same in the office of the Secretary of State of North Carolina.

History Note: *Authority G.S. 55B-12; 57D-2-01; 57D-2-02; 57D-2-22; 57D-2-23; 90-48;*

Eff. September 3, 1976;

Readopted Eff. September 26, 1977;

Amended Eff. April 1, 1994; May 1, 1989;

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

Amended Eff. July 1, 2022.

21 NCAC 16F .0110 is amended as published in 36:16 NCR 1386 as follows:

**21 NCAC 16F .0110 CORPORATE OFFICERS OR MANAGERS ~~MUST~~ SHALL EXECUTE
DOCUMENTS**

All documents required by these Rules to be submitted to the Board by the ~~professional entity corporation or limited liability company~~ shall be executed by the president or vice president of the corporation ~~and attested to by the secretary/treasurer or by the managers~~ and attested to by the president or vice president of the corporation or by the managers or a manager of the limited liability company authorized to submit the documents on behalf of the professional entity, and notarized. ~~company, and duly acknowledged before a notary public or some other officer qualified to administer oaths.~~

History Note: Authority G.S. 55B-12; 57D-2-01; 90-48;

Eff. September 3, 1976;

Readopted Eff. September 26, 1977;

Amended Eff. April 1, 1994; May 1, 1989;

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

Amended Eff. July 1, 2022.

21 NCAC 16G .0103 is amended as published in 36:16 NCR 1386 as follows:

21 NCAC 16G .0103 PROCEDURES PROHIBITED

Those procedures that require the professional education and skill of a dentist and shall not be delegated to a dental hygienist include:

- (1) performing comprehensive examination, diagnosis, and treatment planning;
- (2) performing surgical or cutting procedures on hard or soft tissues, including laser, air abrasion, or micro-abrasion procedures;
- (3) placing or removing therapeutic sulcular nonresorbable agents;
- (4) issuing prescription drugs, medications, or work authorizations;
- (5) performing the final placement or intraoral adjustment of a fixed or removable appliance;
- (6) performing intraoral occlusal adjustments that affect function, fit, or occlusion of any temporary or permanent restoration or appliance;
- (7) performing direct pulp capping or pulpotomy;
- (8) placing sutures;
- (9) performing final placement or cementation of orthodontic bands or brackets;
- (10) performing the placement or cementation of final restorations;
- (11) administering any anesthetic by any route except ~~administering topically applied agents intended to anesthetize only cutaneous tissue; the administration of:~~
 - (a) topically-applied agents intended to anesthetize only cutaneous tissue; or
 - (b) local anesthetics by dental hygienists certified in accordance with G.S. 90-221(a) and this Section, and administered under the direct supervision of a North Carolina licensed dentist;
- (12) using a high-speed handpiece intraorally;
- (13) performing cementation of endodontic posts;
- (14) condensing Amalgam;
- (15) using a transcutaneous electrical nerve stimulation (TENS) unit;
- (16) applying formocresol;
- (17) placing stainless steel crown on permanent or primary teeth;
- (18) performing pulp vitality testing;
- (19) performing curettage;
- (20) placing periodontal or surgical dressing;
- (21) performing oral brush biopsy;
- (22) taking bite registration or ~~Elastometrics; elastometrics;~~
- (23) placing eugenol wick in dry socket;
- (24) fabricating or delivering sleep apnea appliance;
- (25) removing, replacing, or torqueing either impression or prosthetic implant abutments; and

(26) administering any sedation or general anesthesia pharmacological agents, including drawing a dosage into a syringe.

*History Note: Authority G.S. 90-221(a); 90-223(b);
Eff. September 3, 1976;
Readopted Eff. September 26, 1977;
Amended Eff. August 1, 2016; August 1, 2008; August 1, 2000; May 1, 1989; March 1, 1985;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018;
Amended Eff. July 1, 2022; September 1, 2020; April 1, 2018.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Board of Dental Examiners

RULE CITATION: 21 NCAC 16G .0109

DEADLINE FOR RECEIPT: Friday, June 10, 2022.

PLEASE NOTE: This request may extend to 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 email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In (c), line 27, did you mean to say "Subchapter"?

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

21 NCAC 16G .0109 is adopted as published in 36:16 NCR 1386-87 as follows:

21 NCAC 16G .0109 DENTAL HYGIENIST CERTIFICATION TO ADMINISTER LOCAL ANESTHETICS

(a) To apply for certification to administer local anesthetics by block or infiltration techniques:

(1) a dental hygienist holding a valid dental hygiene license issued or renewed by the Board on or after October 1, 2021, shall submit to the Board a certificate of completion from a dental hygiene program meeting the requirements set out in G.S. 90-225.2 that was completed within five years prior to the date of the application; or

(2) a dental hygienist licensed in North Carolina or any other state or territory who has been practicing dental hygiene for the two year period set out in G.S. 90-225.3(a)(2) shall submit to the Board evidence that, within five years prior to the date of the application, the applicant completed a course or courses meeting the requirements of G.S. 90-225.3(a)(3), including a certified letter stating the applicant's completion of the required injections in a course. For purposes of this Rule, "certified" shall mean the letter bears:

(A) the notarized signature of a licensed dentist instructor who supervised the applicant's completion of the injections during the course or courses; or

(B) the official seal or stamp of the school, college, or continuing education provider through which the applicant completed the course or courses.

(b) If an applicant completed the course of study required pursuant to G.S. 90-225.2 or G.S. 90-225.3(a)(3) more than five years prior to submitting the application materials set out in Paragraph (a) of this Rule, the applicant shall retake a course or courses meeting the requirements of G.S. 90-225.3(a)(3) before the applicant may be certified to administer local anesthetics, unless the applicant submits documentation showing the applicant has been practicing dental hygiene, including the administration of local anesthetics by infiltration and block techniques, for the two year period prior to the date of the application.

(c) The requirements set out in Paragraph (a) of this Rule are in addition to any other applicable requirements set out in this Chapter for the issuance or renewal of a dental hygiene license.

(d) As a condition to renew a certificate to administer local anesthetics, each dental hygienist shall complete two clock hours of continuing education each calendar year in satisfaction of the requirements of G.S. 90-225.3(c), which may be among those chosen to satisfy the requirements set out in 21 NCAC 16I .0201(a).

(e) A dental hygienist certified in accordance with this Rule shall conduct administration of local anesthetics only under the direct supervision of a North Carolina licensed dentist.

*History Note: Authority G.S. 90-221; 90-223; 90-225.2; 90-225.3;
Temporary Adoption Eff. November 1, 2021;
Eff. July 1, 2022.*

21 NCAC 16I .0202 is amended as published in 36:16 NCR 1387 as follows:

21 NCAC 16I .0202 APPROVED COURSES AND SPONSORS

(a) Courses ~~in satisfaction of~~ allowed to satisfy the continuing education requirement ~~must~~ shall be related to clinical patient care. Hours spent reviewing dental or dental hygiene publications or videos shall not count toward fulfilling the continuing education requirement, with the exception of self study courses as described in Rule .0201 of this Subchapter that are offered by a Board approved continuing education sponsor.

(b) Approved continuing education course sponsors include:

- (1) providers recognized by the American Dental Association's Continuing Education Recognition Program, the Academy of General Dentistry, the American Dental Hygienists' Association, or components of such organizations;
- (2) North Carolina Area Health Education Centers;
- (3) educational institutions with dental, dental hygiene or dental assisting schools or departments;
- (4) national, ~~state-state,~~ or local societies or associations; ~~and~~
- (5) local, ~~state-state,~~ or federal governmental ~~entities.~~ entities; and
- (6) Federally Qualified Health Centers.

History Note: Authority G.S. 90-225.1;

Eff. May 1, 1994;

Amended Eff. November 1, 2008; April 1, 2001; August 1, 1998;

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

Recodified from 21 NCAC 16I .0103 Eff. January 1, ~~2020-2020;~~

Amended Eff. July 1, 2022.

21 NCAC 16Q .0704 is amended as published in 36:16 NCR 1387 as follows:

21 NCAC 16Q .0704 INSPECTION AUTHORIZED

Incident to the renewal of an anesthesia or sedation permit or any itinerant permit, or incident to an investigation pursuant to Subchapter 16U of this Chapter, in order to ensure compliance, the Board may require an on-site inspection of the dentist's facility, equipment, personnel, and procedures. The inspection shall be conducted in accordance with the ~~applicable rules and requirements of this Subchapter.~~ Subchapter applicable to the type of permit.

History Note: Authority G.S. 90-28; 90-30.1;

Eff. February 1, 1990;

Amended Eff. January 1, 1994;

Transferred and Recodified from 16Q .0403 to 16Q .0503;

Temporary Amendment Eff. December 11, 2002;

Amended Eff. August 1, 2004;

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

Amended Eff. August 1, 2018;

Recodified from 21 NCAC 16Q .0503 Eff. November 9, ~~2020~~ 2020;

Amended Eff. July 1, 2022.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Board of Dental Examiners

RULE CITATION: 21 NCAC 16R .0202

DEADLINE FOR RECEIPT: Friday, June 10, 2022.

PLEASE NOTE: This request may extend to 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 email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In (a), line 6, please add a comma following "publications."

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

Brian Liebman
Commission Counsel
Date submitted to agency: May 27, 2022

21 NCAC 16R .0202 is amended as published in 36:16 NCR 1387-88 as follows:

21 NCAC 16R .0202 APPROVED COURSES AND SPONSORS

(a) Courses allowed to satisfy the continuing education requirement shall be related to clinical patient care. Hours devoted to financial issues or practice development topics shall not be counted toward the continuing education requirement. Hours spent reviewing dental journals, publications or videos shall not count toward fulfilling the continuing education requirement, with the exception of self-study courses as described in Rule .0201 of this Section offered by Board approved sponsors.

(b) Approved continuing education course sponsors include:

- (1) those recognized by the Continuing Education Recognition Program of the American Dental Association;
- (2) the Academy of General Dentistry;
- (3) North Carolina Area Health Education Centers;
- (4) educational institutions with dental, dental hygiene or dental assisting schools or departments;
- (5) national, ~~state-state,~~ or local societies or associations; ~~and~~
- (6) local, ~~state-state,~~ or federal governmental ~~entities~~; and
- (7) Federally Qualified Health Centers.

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

Eff. July 1, 2015;

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

Amended Eff. July 1, 2022.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Board of Dental Examiners

RULE CITATION: 21 NCAC 16V .0101

DEADLINE FOR RECEIPT: Friday, June 10, 2022.

PLEASE NOTE: This request may extend to 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 email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In (14), p.2, line 11, does the “form” referenced comply with G.S. 150B-2(8a)(d)? Is this form available on the Board’s website?

In (24), line 33, can you define “harm”? Does this mean mental or physical harm?

Also in (24), what does “in connection with the provision of dental services” mean? What acts does it encompass?

Also in (24), what State or federal statutes or regulations are you referring to? In G.S. 90-41, it is already grounds for professional discipline to be convicted of or enter a plea of nolo contendere to any felony or misdemeanor charge involving moral turpitude, or to any state or federal narcotic/barbiturate law.

*Finally in (24), when you say “State or federal statutes or **regulations**” do you mean violation of other provisions of the NCAC? If so, is this limited to 21 NCAC 16?*

Also, if you do intend to refer to State rules, we generally distinguish between “State rules” and “federal regulations”.

Is (28) not duplicative of G.S. 90-41(a)(5)?

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

Brian Liebman
Commission Counsel
Date submitted to agency: May 27, 2022

21 NCAC 16V .0101 is amended as published in 36:16 NCR 1388-89 as follows:

SUBCHAPTER 16V – UNPROFESSIONAL CONDUCT

SECTION .0100 - UNPROFESSIONAL CONDUCT

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

Unprofessional conduct by a dentist as set out in G.S. 90-41(a)(26) shall include the following:

- (1) having professional discipline imposed, including the denial of licensure, by the dental licensing authority of another state, territory, or country. For purposes of this Rule, the surrender of a license under threat of disciplinary action shall be considered the same as if the licensee had been disciplined;
- (2) presenting false or misleading testimony, statements, omissions, or records in any communication to the Board or the Board's ~~investigator or employees~~ investigators, employees, or agents regarding any matter subject to the provisions of the Dental Practice Act or Dental Hygiene Act; ~~during the scope of any investigation, or at any hearing of the Board;~~
- (3) being convicted of or entering a plea of guilty or nolo contendere to any charge for a crime that is violent or sexual in nature;
- (4) violating any order of the Board previously entered in a disciplinary hearing, or failing to comply with a subpoena of the Board;
- (5) conspiring with any person to commit an act, or committing an act that would coerce, intimidate, or preclude any patient or witness from testifying against a licensee in any disciplinary hearing, or retaliating in any manner against any patient or other person who testifies or cooperates with the Board during any investigation under the Dental Practice or Dental Hygiene Acts;
- (6) failing to identify to a patient, patient's guardian, or the Board the name of an employee, employer, contractor, or agent who renders dental treatment or services upon request;
- (7) prescribing, procuring, dispensing, or administering any controlled substance for personal use, which does not include those prescribed, dispensed, or administered by a practitioner authorized to prescribe them;
- (8) pre-signing blank prescription forms or using pre-printed or rubber stamped prescription forms containing the dentist's signature or the name of any controlled substance;
- (9) forgiving the co-payment provisions of any insurance policy, insurance contract, health prepayment contract, health care plan, or nonprofit health service plan contract by accepting the payment received from a third party as full payment, unless the dentist discloses to the third party that the patient's payment portion will not be collected;

- 1 (10) failing to provide radiation safeguards required by the State Department of Health and Human
2 Services, the federal Occupational and Safety Health Administration, the Food and Drug
3 Administration, or the Environmental Protection Agency;
- 4 (11) having professional connection with or lending one's name to the unlawful practice of dentistry,
5 including as set forth in G.S. 90-41(a)(9);
- 6 (12) using the name of any deceased or retired dentist on any office door, directory, stationery, bill
7 heading, or any other means of communication any time after one year following the death or
8 retirement from practice of said dentist;
- 9 (13) failing to comply with any provision of any contract or agreement with the Caring Dental
10 Professionals Program;
- 11 (14) failing to ~~file-submit~~ a truthful response to a notice of complaint filed against the licensee with the
12 Board-Board, or to any related request, accompanied by a signed verification on a form provided by
13 the Board with the notice or request, within the time allowed in the notice, by the Board;
- 14 (15) failing to notify the Board of a change in current primary physical address, which shall be either a
15 personal address or a business address at the licensee's election, within 10 business days;
- 16 (16) permitting more than two dental hygienists for each licensed dentist in the office to perform clinical
17 hygiene tasks, as set forth in G.S. 90-233(b);
- 18 (17) failing to produce diagnostic radiographs or other treatment records on request of the Board or its
19 investigator;
- 20 (18) soliciting employment of potential patients in person or by telephone or permitting or directing
21 another to do so;
- 22 (19) giving or accepting anything of value in exchange for a promise to refer or referral of potential
23 patients;
- 24 (20) failing to offer 30 days of emergency care upon dismissing a patient from a dental practice;
- 25 (21) withholding or refusing to complete a treatment procedure for an existing patient conditioned upon
26 payment of an outstanding balance;
- 27 (22) using protected ~~patient~~-health information, as defined by 45 CFR 160.103, to solicit potential
28 patients;
- 29 (23) making misleading or untruthful statements for the purpose of procuring potential patients, or
30 directing or allowing an employee or agent to do so;
- 31 (24) ~~making false statements or omissions in any communication with the Board or its agents regarding~~
32 ~~the subject of any disciplinary matter under investigations by the Board;~~ committing any act that
33 results in harm to a patient, employee, or independent contractor in connection with the provision
34 of dental services and violates State or federal statutes or regulations, such as the Health Insurance
35 Portability and Accountability Act;
- 36 (25) refusing to permit a Board agent or employee to conduct a sterilization inspection;
- 37 (26) acquiring any controlled substance from any source by fraud, deceit or misrepresentation;

1 (27) practicing outside the scope of dentistry, as set forth in G.S. 90-29; ~~and~~
2 ~~(28) committing any act that violates State or federal statutes or regulations governing controlled~~
3 ~~substances; and~~
4 ~~(28)~~(29) committing any act that would constitute civil assault or civil battery in connection with the
5 provision of dental services. The North Carolina Pattern Jury Instructions for Civil 800.50, Assault,
6 and for Civil 800.51, Battery, are hereby incorporated by reference, including subsequent
7 amendments and editions. These documents may be accessed at no cost at
8 [https://www.sog.unc.edu/resources/microsites/north-carolina-pattern-jury-instructions/north-](https://www.sog.unc.edu/resources/microsites/north-carolina-pattern-jury-instructions/north-carolina-pattern-jury-instructions-civil-cases)
9 [carolina-pattern-jury-instructions-civil-cases](https://www.sog.unc.edu/resources/microsites/north-carolina-pattern-jury-instructions/north-carolina-pattern-jury-instructions-civil-cases).
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11 *History Note:* Authority G.S. 90-22(a); 90-28; 90-29; 90-40; 90-40.1; 90-41; 90-48; 90-223(b);
12 Eff. August 1, 1998;
13 Amended Eff. August 1, 2016; July 1, 2015; October 1, 2001; August 1, 2000;
14 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9,
15 2018;
16 Amended Eff. July 1, 2022; November 1, 2019.
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REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Board of Dental Examiners

RULE CITATION: 21 NCAC 16V .0102

DEADLINE FOR RECEIPT: Friday, June 10, 2022.

PLEASE NOTE: *This request may extend to 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 email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In (11), line 32, does the “form” referenced comply with G.S. 150B-2(8a)(d)? Is this form available on the Board’s website?

In (18), p.2, line 11, can you define “harm”? Does this mean mental or physical harm?

Also in (18), what does “in connection with the provision of dental services” mean? What acts does it encompass?

Also in (18), what State or federal statutes or regulations are you referring to? In G.S. 90-229, it is already grounds for professional discipline to be convicted of or enter a plea of nolo contendere to any felony or misdemeanor charge involving moral turpitude.

*Finally in (18), when you say “State or federal statutes or **regulations**” do you mean violation of other provisions of the NCAC? If so, is this limited to 21 NCAC 16?*

Also, if you do intend to refer to State rules, we generally distinguish between “State rules” and “federal regulations”.

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

21 NCAC 16V .0102 is amended as published in 36:16 NCR 1389-90 as follows:

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

Unprofessional conduct by a dental hygienist as set out in G.S. 90-229(a)(12) shall include the following:

- (1) having professional discipline imposed, including the denial of licensure, by the dental hygiene licensing authority of another state, territory, or country. For purposes of this Rule, the surrender of a license under threat of disciplinary action shall be considered the same as if the licensee had been disciplined;
- (2) presenting false or misleading testimony, statements, omissions, or records in any communication to the Board or the Board's investigator or employees-investigators, employees, or agents regarding any matter subject to the provisions of the Dental Practice Act or Dental Hygiene Act; during the scope of any investigation or at any hearing of the Board;
- (3) being convicted of or entering a plea of guilty or nolo contendere to any charge for a crime that is violent or sexual in nature;
- (4) violating an order of the Board previously entered in a disciplinary hearing or failing to comply with a subpoena of the Board;
- (5) conspiring with any person to commit an act, or committing an act that would coerce, intimidate, or preclude any patient or witness from testifying against a licensee in any disciplinary hearing, or retaliating in any manner against any patient or other person who testifies or cooperates with the Board during any investigation under the Dental Practice or Dental Hygiene Acts;
- (6) failing to identify to a patient, patient's guardian, an employer, or the Board the name of any person or agent who renders dental treatment or services upon request;
- (7) procuring, dispensing, or administering any controlled substance for personal use except those prescribed, dispensed, or administered by a practitioner authorized to prescribe them;
- (8) acquiring any controlled substance from any pharmacy or other source by misrepresentation, fraud or deception;
- (9) having professional connection with or lending one's name to the illegal practice of dental hygiene, including as set forth in G.S. ~~90-229(11)~~;90-229(a)(11);
- (10) failing to comply with any provision of any contract or agreement with the Caring Dental Professionals Program;
- (11) failing to ~~file-submit~~ a truthful response to a notice of complaint filed against the licensee with the Board-Board, or to any related request, accompanied by a signed verification on a form provided by the Board, within the time allowed ~~in the notice; by the Board;~~
- (12) failing to notify the Board of a change in current primary physical address, which shall be either a personal address or a business address at the licensee's election, within 10 business days;
- (13) working in a clinical hygiene position if the ratio of hygienists to licensed dentists present in the office is greater than 2:1, as set forth in G.S. 90-233(b);

- 1 (14) soliciting employment of potential patients in person or by telephone or permitting or directing
2 another to do so;
- 3 (15) giving or accepting anything of value in exchange for a promise to refer or referral of potential
4 patients;
- 5 (16) using protected ~~patient~~ health information, as defined by 45 CFR 160.103, to solicit potential
6 patients;
- 7 (17) making misleading or untruthful statements for the purpose of procuring potential patients or
8 assisting another to do so;
- 9 (18) ~~making false statements or omissions in any communication with the Board or its agents regarding~~
10 ~~the subject of any disciplinary matter under investigation by the Board; committing any act that~~
11 results in harm to a patient in connection with the provision of dental services and violates State or
12 federal statutes or regulations, such as the Health Insurance Portability and Accountability Act;
- 13 (19) practicing outside the scope of dental hygiene, as defined in G.S. 90-221(a); ~~and~~
- 14 (20) committing any act that violates State or federal statutes or regulations governing controlled
15 substances; and
- 16 ~~(20)~~(21) committing any act that would constitute civil assault or civil battery in connection with the
17 provision of dental hygiene services. The North Carolina Pattern Jury Instructions for Civil 800.50,
18 Assault, and for Civil 800.51, Battery, are hereby incorporated by reference, including subsequent
19 amendments and editions. These documents may be accessed at no cost at
20 [https://www.sog.unc.edu/resources/microsites/north-carolina-pattern-jury-instructions/north-](https://www.sog.unc.edu/resources/microsites/north-carolina-pattern-jury-instructions/north-carolina-pattern-jury-instructions-civil-cases)
21 [carolina-pattern-jury-instructions-civil-cases](https://www.sog.unc.edu/resources/microsites/north-carolina-pattern-jury-instructions/north-carolina-pattern-jury-instructions-civil-cases).

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23 *History Note: Authority G.S. 90-29; 90-221; 90-223; 90-229;*
24 *Eff. August 1, 1998;*
25 *Amended Eff. August 1, 2016; July 1, 2015; October 1, 2001; August 1, 2000; September 1, 1998;*
26 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9,*
27 *2018;*
28 *Amended Eff. July 1, 2022; November 1, 2019.*
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REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Board of Dental Examiners

RULE CITATION: 21 NCAC 16Z .0101

DEADLINE FOR RECEIPT: Friday, June 10, 2022.

PLEASE NOTE: This request may extend to 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 email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Is this Rule necessary? It seems that the Rule largely repeats what is in G.S. 90-233(a1).

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

21 NCAC 16Z .0101 is amended as published in 36:16 NCR 1390 as follows:

SUBCHAPTER 16Z - LIMITED SUPERVISION HYGIENISTS

21 NCAC 16Z .0101 ELIGIBILITY TO PRACTICE HYGIENE OUTSIDE DIRECT SUPERVISION

(a) To be eligible to perform the clinical hygiene procedures set out in G.S. 90-221(a) without the direct supervision of a dentist, a dental hygienist shall:

- (1) maintain an active license to practice dental hygiene in this State;
- (2) have no prior disciplinary history in any ~~State; state;~~
- (3) complete at least three years of experience in clinical dental hygiene or at least 2,000 hours of performing prophylaxis or periodontal debridement under the supervision of a dentist licensed in this State within the five calendar years immediately preceding initial approval to work without direct supervision;
- (4) maintain current CPR certification; and
- (5) complete at least six hours of Board approved continuing education in dental office medical emergencies, in addition to the minimum hours of continuing education required for license renewal.

A list of Board-approved sponsors appears in 21 NCAC 16I .0202.

(b) To retain eligibility to perform the clinical hygiene procedures set out in G.S. 90-221(a) without direct supervision of a dentist, a dental hygienist shall:

- (1) complete at least six hours of Board approved continuing education in dental office medical emergencies each year, in addition to the minimum hours of continuing education required for license renewal;
- (2) maintain current CPR certification;
- (3) comply with all provisions of the N.C. Dental Practice Act and all rules of the Dental Board applicable to dental hygienists; and
- (4) cooperate with all Board inspections of any facility at which the hygienist provides dental hygiene services without direct supervision of a dentist.

(c) Nothing in this Rule shall be construed to permit a dental hygienist to administer local anesthetics as set out in G.S. 90-221(a) without the direct supervision of a North Carolina licensed dentist.

History Note: Authority G.S. 90-221; 90-229; 90-233;

Eff. February 1, 2008;

Amended Eff. July 1, 2015;

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

Amended Eff. July 1, 2022.