

Burgos, Alexander N

Subject: FW: [External] RE: Dental Board of Examiners Rules for June RRC Meeting - Requests for Changes

From: Dauna Bartley <dauna@brockerlawfirm.com>
Sent: Wednesday, June 8, 2022 11:17 AM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>
Cc: Doug Brocker <doug@brockerlawfirm.com>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] RE: Dental Board of Examiners Rules for June RRC Meeting - Requests for Changes

CAUTION: External email. Do not click links or open attachments unless you verify. Send all suspicious email as an attachment to [Report Spam](#).

Hi Brian,

Yes, please go ahead and send the revised versions to Dana for filing. I would like to attend next week's meeting via Webex, so please send me an evite whenever they go out.

Thanks again!
Dauna

This transmission is intended by the sender and proper recipient to be confidential, intended only for the proper recipient and may contain information that is privileged, attorney work product or exempt from disclosure under applicable law. If you are not the intended recipient, you are notified that the dissemination, distribution or copying of this message is strictly prohibited. If you receive this message in error, or are not the proper recipient, please notify the sender at either the e-mail address or telephone number above and delete this e-mail from your computer. Receipt by anyone other than the proper recipient is not a waiver of any attorney-client, work product, or other applicable privilege. Thank you.

From: Liebman, Brian R <brian.liebman@oah.nc.gov>
Sent: Wednesday, June 8, 2022 11:10 AM
To: Dauna Bartley <dauna@brockerlawfirm.com>
Cc: Doug Brocker <doug@brockerlawfirm.com>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] RE: Dental Board of Examiners Rules for June RRC Meeting - Requests for Changes

Hi Dauna,

No, I think we have everything. With your OK, I will send the revised versions of the Rules you sent me yesterday to Dana for filing. Otherwise, just let me know if you or anyone else from the Dental Board will be attending next week's meeting, and whether you intend to be there in person or via Webex, so we can get evites out to you.

Thanks,
Brian

Brian Liebman
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984)236-1948
brian.liebman@oah.nc.gov

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law N.C.G.S. Chapter 132 and may be disclosed to third parties.

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? We believe it is necessary since it is part of the Board's authority to require proof that each member is a licensee, and it gives effect to 57D-2-02.

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

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

AGENCY: North Carolina Board of Dental Examiners

RULE CITATION: 21 NCAC 16F .0105

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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”. **Done.***

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

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

AGENCY: North Carolina Board of Dental Examiners

RULE CITATION: 21 NCAC 16F .0107

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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. **Done.***

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

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.

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

In (c), line 27, did you mean to say "Subchapter"? No, this is intended to say "Chapter."

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

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.

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

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

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

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.

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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? The form is compliant with the APA because this rule sets out the “contents or substantive requirements” of the form as required by 150B-2(8a)(d). The form is signed by the licensee solely to verify the truth and completeness of their response to a complaint. It is not available on the Board’s website because it is provided by the Board to the licensee.

In (24), line 33, can you define “harm”? Does this mean mental or physical harm? This is intended to encompass any type of harm as determined by the Board upon hearing the evidence. The concept of harm is also part of the Board’s disciplinary factors (in 16N .0607). Here, it is limited in that the act causing the harm must be in connection with provision of dental services and must also violate NC or federal statutes or regs.

Also in (24), what does “in connection with the provision of dental services” mean? What acts does it encompass? The act that harms the person is done while, or as part of, or in relation to the licensee doing any of the acts deemed to be the practice of dentistry or dental hygiene pursuant to the Dental Practice Act and Dental Hygiene Act. The regulated public understands what this means.

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. This refers to any State or federal law, rule, or regulation that applies to a dentist while s/he is practicing. HIPAA is provided as an example to illustrate. The Board needs to ensure it can capture harmful acts by licenses in the dental office, but it is not possible or prudent to attempt to list out every State or federal law/rule/regulation that applies to licensees on the job.

*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? This*

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

is intended to mean any rule in the NCAC if it applies to a dentist while s/he is practicing dentistry.

Also, if you do intend to refer to State rules, we generally distinguish between "State rules" and "federal regulations". Modified to "State or federal statutes, rules, or regulations."

Is (28) not duplicative of G.S. 90-41(a)(5)? No, this is not a criminal conviction. This provision applies to, for example, violation of DEA regulations related to the records that must be kept for the dispensing of controlled substances, or violation of the requirement to check the NC Controlled Substance Reporting System before prescribing.

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

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.

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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? **The form is compliant with the APA because this rule sets out the “contents or substantive requirements” of the form as required by 150B-2(8a)(d). The form is signed by the licensee solely to verify the truth and completeness of their response to a complaint. It is not available on the Board’s website because it is provided by the Board to the licensee.***

*In (18), p.2, line 11, can you define “harm”? Does this mean mental or physical harm? **This is intended to encompass any type of harm as determined by the Board upon hearing the evidence. The concept of harm is also part of the Board’s disciplinary factors (in 16N .0607). Here, it is limited in that the act causing the harm must be in connection with provision of dental services and must also violate NC or federal statutes or regs.***

*Also in (18), what does “in connection with the provision of dental services” mean? What acts does it encompass? **The act that harms the person is done while, or as part of, or in relation to the licensee doing or assisting a dentist doing any of the acts deemed to be the practice of dentistry or dental hygiene pursuant to the Dental Practice Act and Dental Hygiene Act. The regulated public understands what this means.***

*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. **This refers to any State or federal law, rule, or regulation that applies to a dental hygienist while s/he is practicing or assisting. HIPAA is provided as an example to illustrate. The Board needs to ensure it can capture harmful acts by licenses in the dental office, but it is not possible or prudent to attempt to list out every State or federal law/rule/regulation that applies to licensees on the job.***

*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? **This***

Brian Lieberman

Commission Counsel

Date submitted to agency: May 27, 2022

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

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

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

AGENCY: North Carolina Board of Dental Examiners

RULE CITATION: 21 NCAC 16Z .0101

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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). The statutory requirements were included along with the additional provisions for clarity.

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

Burgos, Alexander N

Subject: FW: [External] RE: Dental Board of Examiners Rules for June RRC Meeting - Requests for Changes

From: Dauna Bartley <dauna@brockerlawfirm.com>

Sent: Tuesday, June 7, 2022 6:29 PM

To: Liebman, Brian R <brian.liebman@oah.nc.gov>

Cc: Doug Brocker <doug@brockerlawfirm.com>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: [External] RE: Dental Board of Examiners Rules for June RRC Meeting - Requests for Changes

CAUTION: External email. Do not click links or open attachments unless you verify. Send all suspicious email as an attachment to [Report Spam](#).

Thank you, Brian!!

Do you need anything else for next week's meeting?

Dauna

This transmission is intended by the sender and proper recipient to be confidential, intended only for the proper recipient and may contain information that is privileged, attorney work product or exempt from disclosure under applicable law. If you are not the intended recipient, you are notified that the dissemination, distribution or copying of this message is strictly prohibited. If you receive this message in error, or are not the proper recipient, please notify the sender at either the e-mail address or telephone number above and delete this e-mail from your computer. Receipt by anyone other than the proper recipient is not a waiver of any attorney-client, work product, or other applicable privilege. Thank you.

o third parties by an authorized state official.

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

AGENCY: North Carolina Board of Dental Examiners

RULE CITATION: 21 NCAC 16F .0104

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In the History Note, is the reference to G.S. 57D-2-01 necessary? We believe it is necessary since it is part of the Board's authority to require proof that each member is a licensee, and it gives effect to 57D-2-02.

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

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

AGENCY: North Carolina Board of Dental Examiners

RULE CITATION: 21 NCAC 16F .0105

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

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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 16F .0107

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*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. **Done.***

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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 16G .0109

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In (c), line 27, did you mean to say "Subchapter"? No, this is intended to say "Chapter."

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

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

AGENCY: North Carolina Board of Dental Examiners

RULE CITATION: 21 NCAC 16R .0202

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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 .0101

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

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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

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*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? **This***

Brian Lieberman

Commission Counsel

Date submitted to agency: May 27, 2022

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

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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

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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). The statutory requirements were included along with the additional provisions for clarity.

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 with changes 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] **by**, or investigation pending [**before**] **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.

21 NCAC 16F .0107 is amended with changes 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~~, including amendments made by restated articles of 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 16R .0202 is amended with changes 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.

21 NCAC 16V .0101 is amended with changes 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;

- (10) failing to provide radiation safeguards required by the State Department of Health and Human Services, the federal Occupational and Safety Health Administration, the Food and Drug Administration, or the Environmental Protection Agency;
- (11) having professional connection with or lending one's name to the unlawful practice of dentistry, including as set forth in G.S. 90-41(a)(9);
- (12) using the name of any deceased or retired dentist on any office door, directory, stationery, bill heading, or any other means of communication any time after one year following the death or retirement from practice of said dentist;
- (13) failing to comply with any provision of any contract or agreement with the Caring Dental Professionals Program;
- (14) 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 with the notice or request, within the time allowed ~~in the notice~~; by the Board;
- (15) 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;
- (16) permitting more than two dental hygienists for each licensed dentist in the office to perform clinical hygiene tasks, as set forth in G.S. 90-233(b);
- (17) failing to produce diagnostic radiographs or other treatment records on request of the Board or its investigator;
- (18) soliciting employment of potential patients in person or by telephone or permitting or directing another to do so;
- (19) giving or accepting anything of value in exchange for a promise to refer or referral of potential patients;
- (20) failing to offer 30 days of emergency care upon dismissing a patient from a dental practice;
- (21) withholding or refusing to complete a treatment procedure for an existing patient conditioned upon payment of an outstanding balance;
- (22) using protected ~~patient~~-health information, as defined by 45 CFR 160.103, to solicit potential patients;
- (23) making misleading or untruthful statements for the purpose of procuring potential patients, or directing or allowing an employee or agent to do so;
- (24) ~~making false statements or omissions in any communication with the Board or its agents regarding the subject of any disciplinary matter under investigations by the Board; committing any act that results in harm to a patient, employee, or independent contractor in connection with the provision of dental services and violates State or federal [statutes] statutes, rules, or regulations, such as the Health Insurance Portability and Accountability Act;~~
- (25) refusing to permit a Board agent or employee to conduct a sterilization inspection;
- (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.
17
18

21 NCAC 16V .0102 is amended with changes 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] statutes, rules, or regulations, such as the Health Insurance Portability and
13 Accountability Act;
- 14 (19) practicing outside the scope of dental hygiene, as defined in G.S. 90-221(a); ~~and~~
- 15 ~~(20) committing any act that violates State or federal statutes or regulations governing controlled~~
16 ~~substances; and~~
- 17 ~~(20)(21)~~ committing any act that would constitute civil assault or civil battery in connection with the
18 provision of dental hygiene services. The North Carolina Pattern Jury Instructions for Civil 800.50,
19 Assault, and for Civil 800.51, Battery, are hereby incorporated by reference, including subsequent
20 amendments and editions. These documents may be accessed at no cost at
21 [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)
22 [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)

23

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

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Burgos, Alexander N

From: Liebman, Brian R
Sent: Tuesday, June 7, 2022 6:11 PM
To: Dauna Bartley
Cc: Doug Bocker; Burgos, Alexander N
Subject: RE: [External] RE: Dental Board of Examiners Rules for June RRC Meeting - Requests for Changes

Hi Dauna,

Same here, I'm glad we were able to make sure we were on the same page before you submitted these written responses.

After review of your responses, I am comfortable recommending approval of these rules to RRC next week.

Take care,
Brian

Brian Liebman
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984)236-1948
brian.liebman@oah.nc.gov

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From: Dauna Bartley <dauna@brockerlawfirm.com>
Sent: Tuesday, June 7, 2022 4:23 PM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>
Cc: Doug Bocker <doug@brockerlawfirm.com>
Subject: [External] RE: Dental Board of Examiners Rules for June RRC Meeting - Requests for Changes

CAUTION: External email. Do not click links or open attachments unless you verify. Send all suspicious email as an attachment to [Report Spam](#).

Hi Brian!

Thanks for taking the time to talk through your questions with me today. I am attaching our responses to your questions and change requests along with the rules that have been changed. Please let me know if you have any questions or need additional information.

Thanks!
Dauna

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number above and delete this e-mail from your computer. Receipt by anyone other than the proper recipient is not a waiver of any attorney-client, work product, or other applicable privilege. Thank you.

From: Liebman, Brian R <brian.liebman@oah.nc.gov>
Sent: Friday, May 27, 2022 6:27 PM
To: Dauna Bartley <dauna@brockerlawfirm.com>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: Dental Board of Examiners Rules for June RRC Meeting - Requests for Changes

Hi Dauna!

I'm the attorney who reviewed the Rules submitted by the Dental Board of Examiners for the June 2022 RRC meeting. The RRC will formally review these Rules at its meeting on Thursday, June 16, 2022, at 9:00 a.m. The meeting will be a hybrid of in-person and WebEx attendance, and an invite should be sent to you as we get closer to the meeting. If there are any other representatives from your agency who will want to attend virtually, let me know prior to the meeting, and we will get invites out to them as well.

Please submit the revised Rules to me via email, no later than 5 p.m. on Friday, June 10, 2022. In the meantime, please feel free to reach out to me via email with any questions or concerns.

Have a great weekend!

Brian

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