



NOTICE OF TEXT
[Authority G.S. 150B-21.2(c)]

OAH USE ONLY

VOLUME:

ISSUE:

CHECK APPROPRIATE BOX:

- Notice with a scheduled hearing**
 Notice without a scheduled hearing
 Republication of text. Complete the following cite for the volume and issue of previous publication, as well as blocks 1 - 4 and 7 - 14. If a hearing is scheduled, complete block 5.
Previous publication of text was published in Volume: Issue:

1. Rule-Making Agency: The North Carolina State Board of Dental Examiners

2. Link to agency website pursuant to G.S. 150B-19.1(c): www.ncdentalboard.org

3. Proposed Action -- Check the appropriate box(es) and list rule citation(s) beside proposed action:

ADOPTION:

AMENDMENT: 21 NCAC 16A .0101; 21 NCAC 16B .0101; 21 NCAC 16B .0303; 21 NCAC 16C .0101; 21 NCAC 16H .0201; 21 NCAC 16I .0106; 21 NCAC 16N .0501; 21 NCAC 16N .0603; 21 NCAC 16V .0101; 21 NCAC 16V .0102; 21 NCAC 16W .0102

REPEAL:

READOPTION with substantive changes:

READOPTION without substantive changes:

REPEAL through READOPTION:

4. Proposed effective date: October 1, 2019

5. Is a public hearing planned? **Yes** **No**

If yes: Public Hearing date: July 11, 2019

Public Hearing time: 6:30 p.m.

Public Hearing location: 2000 Perimeter Park Drive, Suite 160, Morrisville, NC 27560

6. If no public hearing is scheduled, provide instructions on how to demand a public hearing:

7. Explain Reason For Proposed Rule(s): 21 NCAC 16A .0101 is proposed for amendment to revise the definitions used in this Chapter, specifically defining supervision, direct supervision and supervision and direction, as well as direction and under direction. 21 NCAC 16B .0101 is proposed for amendment to revise the examinations required for persons desiring to practice dentistry and the exemptions to the examination requirement.
 21 NCAC 16B .0303 is proposed for amendment to further clarify the qualifications for an approved testing agency.
 21 NCAC 16C .0101 is proposed for amendment to clarify that the examination requirement does not apply to dental hygienists who are seeking licensure by credentials.
 21 NCAC 16H .0201 is proposed for amendment to correct a cross-reference to another section of a rule that was amended.
 21 NCAC 16I .0106 is proposed for amendment to remove the \$25 fee for each duplicate of any license or certificate.
 21 NCAC 16N .0501 is proposed for amendment to clarify who has the right to a hearing and acceptable methods of service.
 21 NCAC 16N .0603 is proposed for amendment to provide a time period for objection to the subpoena and to give the Presiding Officer authority to conduct the hearing and rule on objections.
 21 NCAC 16V .0101 is proposed for amendment to further define unprofessional conduct by a dentist.
 21 NCAC 16V .0102 is proposed for amendment to further define unprofessional conduct by a dental hygienist.
 21 NCAC 16W .0102 is proposed for amendment to further define appropriate training for public health hygienists, as well as permitting the public health hygienist to place sealants under direction of a licensed dentist.

8. Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Rule(s) is automatically subject to legislative review. Cite statutory reference:

9. The person to whom written comments may be submitted on the proposed rule(s):

Name: Bobby White

Address: 2000 Perimeter Park Drive, Suite 160, Morrisville, NC 27560

Phone (optional):

Fax (optional):

E-Mail (optional):

10. Comment Period Ends: August 16, 2019

11. Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- State funds affected
- Local funds affected
- Substantial economic impact (\geq \$1,000,000)
- Approved by OSBM
- No fiscal note required

12. Rule-making Coordinator: Douglas J. Brocker, Esq.

Phone: 919-424-6334

E-Mail: doug@brockerlawfirm.com

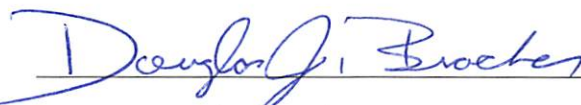
Additional agency contact, if any:

Phone:

E-mail:

13. The Agency formally proposed the text of this rule(s) on Date: December 7, 2018

14. Signature of Agency Head* or Rule-making Coordinator:



Typed Name: Douglas J. Brocker, Esq.

Title: Rule Making Coordinator

**If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.*

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

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3 **SUBCHAPTER 16A – ORGANIZATION**

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5 **21 NCAC 16A .0101 DEFINITIONS**

6 As used in this Chapter:

- 7 (1) "Applicant" means a person applying for any license or permit issued by the Board;
- 8 (2) "Board" means the North Carolina State Board of Dental Examiners;
- 9 (3) "Candidate" means a person who has applied and been accepted for examination to practice dentistry
10 or dental hygiene in North Carolina;
- 11 (4) "Current license" means a license that is renewed by the licensing ~~board;~~ board as required;
- 12 (5) "CPR certification" means that the licensee has ~~successfully~~ completed a CPR course that meets
13 American Red Cross or American Heart Association standards for certification and that provides
14 manikin testing on the subjects of cardio-pulmonary resuscitation. The course must also cover the
15 use of an automatic external defibrillator, unconscious and conscious choking and rescue breathing,
16 provided that the foregoing requirements shall not be interpreted in any way that violates the
17 Americans with Disabilities Act. The manikin testing must be provided by an instructor who is
18 ~~physically~~ present with the students;
- 19 (6) "Internship" means practice in an educational training program. Internship does not mean practice
20 under an intern permit while holding an unrestricted general dental or dental specialty license issued
21 by a state, U.S. territory or the District of Columbia; ~~and~~
- 22 (7) "Unrestricted license" means a license that is not under suspension or inactivation, or subject to the
23 terms of a consent order or other disciplinary action imposed by the jurisdiction that issued the
24 license, or limited by supervision or location ~~requirements;~~ requirements;
- 25 (8) ~~Except where otherwise defined by these Rules or by statute, "supervision," "direct supervision,"~~
26 and "supervision and direction" means that the dentist overseeing treatment is present in the same
27 facility or location and available during the performance of the acts that are being performed
28 pursuant to that dentist's order, control, and approval and that the dentist must examine and evaluate
29 the results of such acts; and
- 30 (9) ~~Except where otherwise defined by these Rules or by statute, "direction" or "under direction" means~~
31 that the dentist ordering treatment does not have to be present in the same facility or location during
32 the performance of the acts that are being performed pursuant to that dentist's order, control, and
33 approval, but that dentist shall be responsible for all consequences or results arising from such acts.

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35 *History Note:* Authority G.S. 90-26; 90-28; 90-29(a); 90-29.3; 90-29.4; 90-29.5; 90-30; 90-37.1; 90-43; 90-48;
36 90-224; 90-224.1; 90-226;
37 *Eff. September 3, 1976;*

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Readopted Eff. September 26, 1977;
Amended Eff. May 1, 1991; May 1, 1989; September 1, 1988; October 1, 1986;
Temporary Amendment Eff. January 1, 2003;
Amended Eff. May 1, 2011; January 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9,
~~2018-2018;~~
Amended Eff. _____.

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

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3 **SUBCHAPTER 16B - LICENSURE DENTISTS**

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5 **SECTION .0100 - GENERAL PROVISIONS**

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7 **21 NCAC 16B .0101 EXAMINATION REQUIRED; EXEMPTIONS**

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9 (a) All persons desiring to practice dentistry in North Carolina ~~are required to~~ shall pass a Board ~~approved, as set~~
10 ~~forth in these Rules, approved~~ written and clinical ~~examinations~~ examinations, as set forth in Rule 16B.0303 ~~these~~
11 Rules, before receiving a license.

12 (b) The examination requirement ~~does~~ shall not apply to persons who do not hold a North Carolina dental license and
13 who are seeking volunteer licenses pursuant to ~~G.S. 90-21.107~~ G.S. 90-21.107, or licensure by endorsement pursuant
14 to Rules .1001 and .1002 of this Subchapter, or licensure by credentials pursuant to Rule .0501 of this Subchapter.

15 (c) All persons practicing dentistry in North Carolina shall maintain ~~current~~ unexpired CPR certification at all times.

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17 *History Note: Authority G.S. 90-21.107; 90-28; 90-30; 90-36; 90-38; 90-48;*

18 *Eff. September 3, 1976;*

19 *Readopted Eff. September 26, 1977;*

20 *Amended Eff. September 1, 2014; September 1, 2013; March 1, 2006; May 1, 1991; May 1, 1989;*

21 *January 1, 1983;*

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

23 ~~*2018-2018;*~~

24 *Amended Eff. _____.*

1 21 NCAC 16B .0303 is proposed for amendment as follows:

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3 **21 NCAC 16B .0303 BOARD APPROVED EXAMINATIONS**

4 (a) All applicants for dental licensure shall achieve ~~a passing scores~~ score of at least eighty percent (80%) on the
5 Board's sterilization and jurisprudence examinations. Applicants may take reexamination in accordance with
6 ~~Reexamination on the written examinations shall be governed by Rule .0317 of this Section.~~

7 (b) All applicants for dental licensure shall achieve passing scores on ~~Parts I and II of the Dental National Board the~~
8 examination administered by the Joint Commission on National Dental Examinations ~~and written~~ and clinical
9 examinations administered by ~~the Board or~~ Board approved testing agencies. The Board shall determine which testing
10 agencies are approved based on the requirements set forth in Paragraphs (c) and (d) of this Rule.

11 (c) ~~To qualify as an approved testing agency, the test-development~~ Test development agencies shall permit ~~must allow~~
12 a representative of the Board representation to serve on the Board of Directors and the Examination Review Committee
13 of the agency, or equivalent committee and allow Board input in the examination development and administration.

14 (d) To qualify as an approved testing agency, the ~~The clinical examination administered by a testing agency shall:~~

15 ~~(1) — be substantially equivalent to or an improvement to the clinical licensure examination most recently~~
16 ~~administered by the Board;~~

17 ~~(2)~~(1) include procedures performed on human subjects as part of the assessment of restorative clinical
18 competencies;

19 ~~(3)~~(2) include evaluations in clinical periodontics and at least three of the following subject matter areas:

- 20 (A) endodontics, clinical abilities testing;
21 (B) amalgam preparation and restoration;
22 (C) anterior composite preparation and restoration;
23 (D) posterior ceramic or composite preparation and restoration;
24 (E) prosthetics, written or clinical abilities testing;
25 (F) oral diagnosis, written or clinical abilities testing; or
26 (G) oral surgery, written or clinical abilities testing; and

27 ~~(4)~~(3) provide the following:

- 28 (A) anonymity between applicants and examination graders;
29 (B) standardization and calibration of graders;
30 (C) a mechanism for post exam analysis;
31 (D) conjunctive scoring, which is scoring that requires applicants to earn a passing grade on all
32 sections or areas tested and that does not allow weighted, averaged or overall scoring to
33 compensate for failures in individual subject areas;
34 (E) a minimum passing score set by the testing agency for each subject area tested;
35 (F) an annual review of the examination;
36 (G) a task analysis performed at least once every seven years, ~~which that~~ surveys dentists
37 nationwide to determine the content of the examination;

1 (H) a ~~defined~~ system of quality assurance to ensure uniform, consistent administration of the
2 examination at each testing site; and

3 (I) does not permit a dental instructor to grade candidates at any institution at which the
4 instructor is employed.

5 (e) The Board shall accept examination scores for five years following the date of ~~such the~~ examinations. Each
6 applicant shall arrange for and ensure the submission to the Board office the applicant's scores. Individuals who apply
7 more than five years after the examination date to seek licensure must re-take the examination.

8 (f) The applicant shall comply with all requirements of the testing agency in applying for and taking the examination.

9 ~~(g) The Board shall determine which examinations meet the criteria set out in Paragraph (d) of this Rule.~~

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11 *History Note: Authority G.S. 90-30; 90-48;*

12 *Eff. September 3, 1976;*

13 *Readopted Eff. September 26, 1977;*

14 *Amended Eff. September 1, 2014; June 1, 2009; March 1, 2006; August 1, 1998; March 1, 1988;*

15 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9,*
16 *~~2018-2018;~~*

17 *Amended Eff. _____.*

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

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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.
- (b) The examination requirement ~~does 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 license~~ G.S. 90-21.107, licensure by endorsement pursuant to Rules 16G .0107 or .0108 of this ~~Chapter~~ Chapter or licensure by credentials pursuant to Rule .0501 of this Subchapter.
- (c) All dental hygienists shall maintain ~~current an unexpired~~ current 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,
~~2018-2018;~~
Amended Eff. _____.

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

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SECTION .0200 – PERMITTED FUNCTIONS OF DENTAL ASSISTANT

21 NCAC 16H .0201 GENERAL PERMITTED FUNCTIONS OF DENTAL ASSISTANT I

(a) A Dental Assistant I may assist a dentist as a chairside assistant ~~as long as~~ provided that the acts and functions of the Dental Assistant I do not constitute the practice of dentistry or dental hygiene.

(b) A Dental Assistant I may do and perform only routine dental assisting procedures such as oral hygiene ~~instruction;~~ instruction, chairside ~~assisting;~~ assisting, application of topical fluorides or topical ~~anesthetics;~~ anesthetics, and exposure of radiographs, provided that the assistant can show ~~evidence of~~ compliance with radiography training consistent with G.S. 90-29(c)(12). ~~However, functions~~ Functions of a Dental Assistant II also may be delegated to a Dental Assistant I pursuant to ~~21 NCAC 16H .0104(2)(a).~~ 21 NCAC 16H .0104(b).

History Note: Authority G.S. 90-29(c)(9); 90-48;
Eff. September 3, 1976;
Readopted Eff. September 26, 1977;
Amended Eff. August 1, 2000; May 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9,
~~2018, 2018;~~
Amended Eff. _____.

1 21 NCAC 16I .0106 is proposed for amendment as follows:

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3 **21 NCAC 16I .0106 FEE FOR LATE FILING AND DUPLICATE LICENSE**

4 ~~(a)~~—If the application for a renewal certificate, accompanied by the renewal fee of eighty-one dollars (\$81.00) and
5 annual fee to assist in funding for programs for impaired dentists of twenty-five (\$25.00), ~~required,~~ is not received in
6 the Board's office before the close of business on January 31 of each year, an additional fee of fifty dollars (\$50.00)
7 shall be charged for the renewal certificate.

8 ~~(b) A fee of twenty five dollars (\$25.00) shall be charged for each duplicate of any license or certificate issued by the~~
9 ~~Board.~~

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11 *History Note: Authority G.S. 90-39; 90-227; 90-232;*

12 *Eff. September 3, 1976;*

13 *Readopted Eff. September 26, 1977;*

14 *Amended Eff. May 1, 1989;*

15 *Transferred and Recodified from 21 NCAC 16I .0002 Eff. May 1, 1994;*

16 *Amended Eff. February 1, 2008; April 1, 2003; August 1, 1998;*

17 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9,*
18 *~~2018-2018;~~*

19 *Amended Eff. _____.*

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1 21 NCAC 16N .0501 is proposed for amendment as follows:
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3 **SECTION .0500 - ADMINISTRATIVE HEARING PROCEDURES**

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5 **21 NCAC 16N .0501 RIGHT TO HEARING**

6 When the Board acts, or proposes to act, other than in rulemaking or declaratory ruling proceedings, in a manner that
7 ~~which~~ will affect the rights, duties, or privileges of a ~~person,~~ licensee or applicant for a license or permit, such person
8 has a right to an administrative hearing. When the Board proposes to act in such a manner, it shall give such person
9 notice of his right to a hearing by mailing by certified mail to him at his last known address a notice of the proposed
10 action and a notice of a right to a hearing. Notice of hearing may also be given by any method of service permitted in
11 G.S. 150B-38(c), by a signed acceptance of service from such person, or by delivery to the person's attorney of record
12 who accepts service on behalf of the person.

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14 *History Note: Authority G.S. 150B-38(h);*

15 *Eff. August 25, 1977;*

16 *Amended Eff. May 1, 1989; November 20, 1980;*

17 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9,*
18 *~~2018-2018;~~*

19 *Amended Eff. _____.*
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1 21 NCAC 16N .0603 is proposed for amendment as follows:

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

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

- 6 (1) be made in writing to the Board;
- 7 (2) identify any documents sought with specificity; ~~and~~
- 8 (3) include the ~~full~~ name and home or business address of all persons to be subpoenaed; and
- 9 (4) if known, the date, time, and place for responding to the subpoena.

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

11 (c) Subpoenas shall contain:

- 12 (1) the caption of the case;
- 13 (2) the name and address of the person subpoenaed;
- 14 (3) the date, hour and location of the hearing in which the witness is commanded to appear;
- 15 (4) a ~~particularized~~ description of the books, papers, records, or objects the witness is directed to bring
16 with him to the hearing, if any;
- 17 (5) the identity of the party on whose application the subpoena was issued; and
- 18 (6) a return of service form.

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

23 (e) Subpoenas shall be served as permitted by Rule 45 of the North Carolina Rules of Civil Procedure, as set forth in
24 G.S. 1A-1.

25 (f) Any person receiving a subpoena from the Board may object thereto by filing a written objection to the subpoena
26 with the Board's office. Such objection shall include a statement of all reasons why the subpoena should be revoked
27 or modified. These reasons may include any basis sufficient in law for holding the subpoena invalid, such as that the
28 evidence is privileged, that the burden of appearance or production would be so disruptive as to be unreasonable in
29 light of the significance outweighs the relevance of the evidence sought, or other undue hardship.

30 (g) Any objection to a subpoena shall be served on the party who requested the subpoena simultaneously with the
31 filing of the objection with the Board.

32 (h) The party who requested the ~~subpoena subpoena, at such time as may be granted by the Board,~~ may file a written
33 response to the ~~objection objection~~ within ten days of receipt or seven days prior to the contested case hearing,
34 whichever is sooner. The written response shall be served by the requesting party on the objecting witness
35 simultaneously with the filing of the response with the Board.

36 (i) After receipt of the objection and response thereto, if any, the Board shall issue a notice to the party who requested
37 the subpoena and the party challenging the subpoena, and ~~may shall~~ notify any other party or parties of a hearing.

1 ~~hearing, at which evidence and testimony may be presented, limited to the narrow questions raised by the objection~~
2 ~~and response.~~

3 (j) ~~The majority Presiding Officer of the Board members hearing the contested case shall conduct the hearing and~~
4 ~~rule on the objection challenge and issue a written decision to all parties and made a part of the record. or, in his or~~
5 ~~her discretion, may involve the other Board members. The Presiding Officer may either permit the parties to submit~~
6 ~~affidavits in advance of the hearing or, if deemed necessary, permit the parties to present evidence and testimony at~~
7 ~~the hearing, limited to the narrow questions raised by the objection and response.~~

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9 *History Note: Authority G.S. 90-28; 90-48; 90-223(b); 150B-39; 150B-40*
10 *Eff. August 25, 1977;*
11 *Legislative Objection Lodged Eff. November 20, 1980;*
12 *Legislative Objection Removed Eff. March 19, 1981;*
13 *Amended Eff. April 1, 2015; May 1, 1989; March 1, 1988; October 1, 1986; March 1, 1985;*
14 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9,*
15 *2018-2018;*
16 *Amended Eff. _____.*
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1 21 NCAC 16V .0101 is proposed for amendment as follows:
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3 **SECTION .0100 - UNPROFESSIONAL CONDUCT**
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5 **21 NCAC 16V .0101 DEFINITION: UNPROFESSIONAL CONDUCT BY A DENTIST**

6 Unprofessional conduct by a dentist shall include the following:

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

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

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33 *History Note: Authority G.S. 90-28; 90-29; 90-41; 90-48; 90-223(b);*
34 *Eff. August 1, 1998;*
35 *Amended Eff. August 1, 2016; July 1, 2015; October 1, 2001; August 1, 2000;*
36 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9,*
37 *2018-2018;*

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Amended Eff. _____.

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

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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~~ having professional discipline imposed, including the denial of licensure, by the dental
6 hygiene licensing authority of another state, territory, or country. For purposes of this Rule, the
7 surrender of a license under threat of disciplinary action shall be considered the same as if the
8 licensee had been disciplined;

9 (2) ~~Presenting~~ presenting false or misleading testimony, statements, or records to the Board or a Board
10 employee during the scope of any investigation or at any hearing of the Board;

11 (3) ~~Committing~~ committing any act that would constitute assault or battery, including sexual assault or
12 ~~battery~~ battery, as defined by Chapter 14 of the North Carolina General ~~Statutes~~ Statutes, in
13 connection with the provision of dental hygiene services;

14 (4) ~~Violating~~ violating an order of the Board previously entered in a disciplinary hearing or failing to
15 comply with a subpoena of the Board;

16 (5) ~~Conspiring~~ conspiring with any person to commit an act, or committing an act 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 with
19 the Board during any investigation of any licensee;

20 (6) ~~Failing~~ 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,~~ procuring dispensing, or administering any controlled substance for personal use except
23 those prescribed, dispensed, or administered by a practitioner authorized to prescribe them;

24 (8) ~~Acquiring~~ acquiring any controlled substance from any pharmacy or other source by
25 misrepresentation, fraud or deception;

26 (9) ~~Having~~ having professional connection with or lending one's name to the illegal practice of dental
27 hygiene;

28 (10) ~~Failing~~ failing to comply with any provision of any contract or agreement with the Caring Dental
29 Professionals Program;

30 (11) ~~Failing~~ failing to file a truthful response to a notice of complaint, within the time allowed in the
31 notice;

32 (12) ~~Failing~~ failing to notify the Board of a change in current physical address within 10 business days;

33 (13) ~~Working~~ working in a clinical hygiene position if the ratio of hygienists to licensed dentists present
34 in the office is greater than 2:1;

35 (14) ~~Soliciting~~ soliciting employment of potential patients in person or by telephone or assisting another
36 person to do so;

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

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11 *History Note:* Authority G.S. 90-29; 90-221; 90-223; 90-229;
12 Eff. August 1, 1998;
13 Amended Eff. August 1, 2016; July 1, 2015; October 1, 2001; August 1, 2000; September 1, 1998;
14 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9,
15 ~~2018-2018~~;
16 Amended Eff. _____.

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

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21 NCAC 16W .0102 TRAINING FOR PUBLIC HEALTH HYGIENISTS

(a) Prior to performing clinical procedures pursuant to G.S. 90-233(a) under the direction of a duly licensed dentist, a public health hygienist must have:

- (1) five years of experience in clinical dental hygiene;
- (2) ~~current-unexpired~~ CPR certification, taken in a live hands-on course;
- (3) six hours of continuing education in medical emergencies each year in addition to the minimum continuing education required for license renewal; and
- (4) ~~such~~ other training as may be required by the ~~Dental~~ Oral Health Section of the Department of Health and Human Services.

(b) For purposes of this Rule, a minimum of 4,000 hours, the majority of which must be spent performing primarily prophylaxis or periodontal debridement under the supervision of a duly licensed ~~dentist-dentist~~, shall be equivalent to five years experience in clinical dental hygiene.

(c) Notwithstanding subparagraph (a)(1) and paragraph (b) of this Rule, a public health hygienist may place sealants under the direction of a duly licensed dentist if the hygienist has a minimum of 2,000 hours of clinical experience assisting in the placement of sealants with the Oral Health Section of the Department of Health and Human Services.

*History Note: Authority G.S. 90-223; 90-233(a);
Temporary Adoption Eff. October 1, 1999;
Eff. April 1, 2001;
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. _____.*