



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: 21 NCAC 16A .0105 and 21 NCAC 16N .0607

AMENDMENT:

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 .0105 is proposed regarding the suspension of the Board's authority to expend funds to satisfy a statutory requirement.

21 NCAC 16N .0607 is proposed to provide a list of the disciplinary factors considered once the Board concludes that the Respondent has violated the Dental Practice Act, the Dental Hygiene Practice Act, or the Board's Rules.

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 .0105 is proposed for adoption as follows:

2

3 **21 NCAC 16A.0105 SUSPENSION OF AUTHORITY TO EXPEND FUNDS**

4

5 If the Board's authority to expend funds is suspended pursuant to G.S. 93B-2(d), the Board shall continue to issue and
6 renew licenses, registrations, and permits and to collect all fees pursuant to G.S. 90-39 and the rules of this Chapter,
7 but all fees tendered shall be placed in an escrow account maintained by the Board for this purpose. Once the Board's
8 authority is restored, the funds shall be moved from the escrow account into the general operating account.

9

10

11

12 *History Note: Authority G.S. 90-28; 90-39; 93B-2(d).*

13 *Eff. _____.*

14

15

1 21 NCAC 16N .0607 is proposed for adoption as follows:

2
3 **21 NCAC 16N.0607 DISCIPLINARY FACTORS**
4

5 If the Board concludes that the Respondent has violated the Dental Practice Act, the Dental Hygiene Practice Act, or
6 the Board's Rules, it shall consider the following factors relevant to the discipline to be imposed:

7 (1) The Board shall consider revocation of a license or permit if it concludes that lesser discipline is
8 insufficient to protect the public and that one or more of the following factors applies:

9 (a) Respondent caused or contributed to a patient's death, permanent organic brain dysfunction,
10 physical injury, or severe medical emergency requiring hospitalization;

11 (b) Respondent committed a felony or committed a misdemeanor involving moral turpitude; or

12 (c) Respondent engaged in fraud, dishonesty, misrepresentation, deceit, or fabrication related to the
13 practice of dentistry or dental hygiene, including attempts to obtain or collect any fees.

14 (2) The Board shall consider revocation or suspension of a license or permit if it concludes that lesser
15 discipline is insufficient to protect the public and that one or more of the following factors applies:

16 (a) Respondent's ability to practice dentistry or dental hygiene is impaired;

17 (b) Respondent is mentally, emotionally or physically unfit to practice dentistry or dental hygiene;

18 (c) Respondent is incompetent in the practice of dentistry or dental hygiene;

19 (d) Respondent's violations resulted in harm or potential harm to a patient, the public, or the dental
20 or dental hygiene profession;

21 (e) Respondent failed to comply with a prior Board decision or consent order;

22 (f) Respondent's violations demonstrate a lack of honesty, trustworthiness, or integrity;

23 (g) Respondent committed acts of fraud, misrepresentation, deceit, or fabrication;

24 (h) Respondent committed multiple instances of negligence or malpractice in treating patients,
25 including failure to complete treatment for patients;

26 (i) Respondent distributed or caused to be distributed any intoxicant, drug, or narcotic for an
27 unlawful purpose;

28 (j) Respondent failed to participate in the Board's investigation and disciplinary process;

29 (k) Respondent aided a person or entity not licensed in this State to perform acts or services that can
30 only be performed by a dentist or dental hygienist licensed in this state; or

31 (l) Respondent committed any acts set forth in Subparagraphs (1)(a)-(c) of this Rule.

32 (3) In all cases, the Board shall consider the following factors in imposing discipline, including revocation,
33 suspension, censure, probative terms, and other disciplinary measures:

34 (a) effect of Respondent's violation on a patient or other individuals;

35 (b) Respondent's elevation of his or her interest above that of the patient or the public;

36 (c) prior disciplinary violation in this state or any other jurisdiction, or the absence thereof;

37 (d) dishonest or selfish motive for the violation found, or the absence thereof;

- 1 (e) a pattern of violations;
- 2 (f) Respondent's intent, or lack thereof, either to commit acts where the harm or potential harm is
- 3 foreseeable or to cause the harm or potential harm resulting from the acts;
- 4 (g) vulnerability of patient or victim, including violations involving an individual with a physical or
- 5 mental disability or impairment;
- 6 (h) Respondent's failure to respond, or provide responsive documents or information, to requests or
- 7 subpoenas from the Board during an investigation or disciplinary proceedings;
- 8 (i) Respondent's obstruction of the disciplinary proceedings by intentionally failing to comply with
- 9 rules or orders of the Board;
- 10 (j) Respondent's submission of false evidence, false statements, or other deceptive practices during
- 11 the Board's investigation or disciplinary process;
- 12 (k) Respondent's refusal to acknowledge the wrongful nature of the violation;
- 13 (l) impact of Respondent's actions on the patient's or public's perception of the dental or dental
- 14 hygiene profession;
- 15 (m) Respondent's efforts to make restitution or to rectify consequences of misconduct, or the failure
- 16 to do so;
- 17 (n) Respondent's physical or mental disability or impairment diagnosed by a treating medical
- 18 professional, which condition caused or contributed to Respondent's conduct in the opinion
- 19 of the treating medical professional;
- 20 (o) the degree of Respondent's rehabilitation, if any, prior to any disciplinary action;
- 21 (p) Respondent's voluntary disclosure to the Board or cooperative attitude toward the proceedings;
- 22 (q) Respondent's remorse for the violation or effect of the violation;
- 23 (r) Respondent's character or reputation in the community;
- 24 (s) Remoteness in time of any prior violation by or discipline of Respondent;
- 25 (t) Respondent's degree of experience in the practice of dentistry or dental hygiene;
- 26 (u) imposition of other penalties or sanctions on Respondent for the conduct constituting the
- 27 violation; and
- 28 (v) any other factors found to be pertinent to the consideration of the discipline to be imposed on
- 29 Respondent.

31 History Note: Authority G.S. 90-41;G.S. 90-229;
32 Eff. _____.