

21 NCAC 16N .0607 DISCIPLINARY FACTORS

If the Board concludes that a dentist or dental hygienist (the "Respondent") has violated the Dental Practice Act, the Dental Hygiene Practice Act, or the Board's Rules, it shall consider the following factors relevant to the discipline to be imposed:

- (1) The Board shall consider revocation of a license or permit if it concludes that lesser discipline is insufficient to protect the public and that one or more of the following factors applies:
 - (a) Respondent caused or contributed to a patient's death, permanent organic brain dysfunction, physical injury, or severe medical emergency requiring hospitalization;
 - (b) Respondent has been convicted of or entered a plea of guilty or nolo contendere to a felony charge; or
 - (c) Respondent engaged in fraud, dishonesty, misrepresentation, deceit, or fabrication related to the practice of dentistry or dental hygiene, including attempts to obtain or collect any fees.
- (2) The Board shall consider revocation or suspension of a license or permit if it concludes that lesser discipline is insufficient to protect the public and that one or more of the following factors applies:
 - (a) Respondent's ability to practice dentistry or dental hygiene is impaired;
 - (b) Respondent is mentally, emotionally, or physically unfit to practice dentistry or dental hygiene;
 - (c) Respondent is incompetent in the practice of dentistry or dental hygiene;
 - (d) Respondent's violations resulted in harm or potential harm to a patient, the public, or the dental or dental hygiene profession;
 - (e) Respondent failed to comply with a prior Board decision or consent order;
 - (f) Respondent's violations demonstrate a lack of honesty, trustworthiness, or integrity;
 - (g) Respondent has been convicted of or entered a plea of guilty or nolo contendere to charges involving or found liable for acts of fraud, misrepresentation, deceit, or fabrication that are not related to the practice of dentistry or dental hygiene;
 - (h) Respondent committed multiple instances of negligence or malpractice in treating patients, including failure to complete treatment for patients;
 - (i) Respondent distributed or caused to be distributed any intoxicant, drug, or narcotic for an unlawful purpose;
 - (j) Respondent failed to participate in the Board's investigation and disciplinary process;
 - (k) Respondent aided a person or entity not licensed in this State to perform acts or services that can only be performed by a dentist or dental hygienist licensed in this State; or
 - (l) Respondent committed any acts set forth in Sub-items (1)(a)-(c) of this Rule.
- (3) In all cases, the Board shall consider the following factors in imposing disciplinary measures:
 - (a) effect of Respondent's violation on a patient or other individuals;
 - (b) Respondent's elevation of his or her interest above that of the patient or the public;
 - (c) prior disciplinary violation in this State or any other jurisdiction, or the absence thereof;
 - (d) dishonest or selfish motive for the violation found, or the absence thereof;
 - (e) a pattern of violations;
 - (f) Respondent's intent either to commit acts where the harm or potential harm is foreseeable or to cause the harm or potential harm resulting from the acts;
 - (g) vulnerability of patient or victim, including violations involving an individual with a physical or mental disability or impairment;
 - (h) Respondent's failure to respond, or provide responsive documents or information, to requests or subpoenas from the Board during an investigation or disciplinary proceedings;
 - (i) Respondent's obstruction of the disciplinary proceedings by intentionally failing to comply with rules or orders of the Board;
 - (j) Respondent's submission of false evidence, false statements, or other deceptive practices during the Board's investigation or disciplinary process;
 - (k) Respondent's refusal to acknowledge the wrongful nature of the violation;
 - (l) impact of Respondent's actions on the patient's or public's perception of the dental or dental hygiene profession;
 - (m) Respondent's efforts to make restitution or to rectify consequences of misconduct, or the failure to do so;

- (n) Respondent's physical or mental disability or impairment diagnosed by a treating medical professional, which condition caused or contributed to Respondent's conduct in the opinion of the treating medical professional;
- (o) the degree of Respondent's rehabilitation, if any, prior to any disciplinary action;
- (p) Respondent's voluntary disclosure to the Board or cooperative attitude toward the proceedings;
- (q) Respondent's remorse for the violation or effect of the violation;
- (r) Respondent's character or reputation in the community;
- (s) remoteness in time of any prior violation by or discipline of Respondent;
- (t) Respondent's degree of experience in the practice of dentistry or dental hygiene;
- (u) imposition of other penalties or sanctions on Respondent for the conduct constituting the violation; and
- (v) any other factors found to be pertinent to the consideration of the discipline to be imposed on Respondent.

*History Note: Authority G.S. 90-41; 90-229;
Eff. October 1, 2019.*