

SUBCHAPTER 16N - RULEMAKING AND ADMINISTRATIVE HEARING PROCEDURES

SECTION .0100 - PETITIONS FOR ADOPTION OF RULES

21 NCAC 16N .0101 PETITION FOR RULEMAKING HEARINGS

Any person wishing to submit a petition requesting the adoption, amendment or repeal of a rule by the Board shall address the petition to the Board's office. The envelope containing the petition should clearly bear the notation: RULEMAKING PETITION RE: and then the subject area, for example, DENTAL PRACTICE ACT or DENTAL HYGIENE ACT.

*History Note: Authority G.S. 150B-16;
Eff. August 25, 1977;
Amended Eff. May 1, 1989; March 1, 1985;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.*

21 NCAC 16N .0102 CONTENTS OF PETITION

The petition shall include the following information:

- (1) An indication of the subject area to which the petition is directed; for example, "This is a petition to hold a rulemaking hearing to amend Rule .0000 of Subchapter X pertaining to delegable duties to dental auxiliaries";
- (2) Either a draft of the proposed rule or a summary of its contents;
- (3) Reasons for the proposal;
- (4) The effect on existing rules or orders;
- (5) Any data supporting the proposal;
- (6) Affect of the proposed rule on existing practices in the area involved, including cost factors;
- (7) Names of those most likely to be affected by the proposed rule, with addresses if reasonably known; and
- (8) Name and address of each petitioner.

*History Note: Authority G.S. 150B-16;
Eff. August 25, 1977;
Amended Eff. May 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.*

21 NCAC 16N .0103 DISPOSITION OF PETITIONS

(a) The Board will determine whether the public interest would be served by the adoption, amendment or repeal of the requested rule. Prior to making this determination, the Board may:

- (1) Request additional information from the petitioner;
- (2) Contact interested persons or those likely to be affected by the proposed rule and request comments; and
- (3) It may use any other appropriate method for obtaining information on which to base its determination. It will consider all the contents of the petition submitted plus any other information obtained by the means described herein.

(b) The Board shall act on a petition at its next regularly scheduled meeting or within 120 days after submission of a petition.

*History Note: Authority G.S. 150B-16;
Eff. August 25, 1977;
Amended Eff. May 1, 1989; October 1, 1986; January 1, 1983;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.*

SECTION .0200 - NOTICE OF RULEMAKING HEARINGS

21 NCAC 16N .0201 NOTICE OF PROCEEDINGS

History Note: Authority G.S. 90-28; 90-48; 90-223(b); 150B-12; 150B-60;
Eff. August 25, 1977;
Amended Eff. October 1, 1986;
Repealed Eff. May 1, 1989.

21 NCAC 16N .0202 NOTICE OF MAILING LIST

The Board maintains a mailing list of persons that have requested notice of rulemaking, and sends notices of rulemaking to persons on the mailing list by electronic mail. Any person or agency desiring to be placed on the mailing list for the Board's rulemaking notices may submit a written request by email, fax, or first-class mail to the Board's office. The request shall provide the email address to which notices will be sent. If circumstances require that rulemaking notices be sent by first-class mail, the Board may require reasonable postage and stationery costs to be paid by those requesting the notices.

History Note: Authority G.S. 90-48; 150B-21.2(d);
Eff. August 25, 1977;
Amended Eff. 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. August 1, 2024.

21 NCAC 16N .0203 ADDITIONAL INFORMATION

History Note: Authority G.S. 90-48; 90-223(b); 150B-12;
Eff. August 25, 1977;
Amended Eff. March 1, 1985;
Expired Eff. February 1, 2018 pursuant to G.S. 150B-21.3A.

SECTION .0300 - RULEMAKING HEARINGS

21 NCAC 16N .0301 REQUEST TO PARTICIPATE

History Note: Authority G.S. 90-48; 150B-12(a);
Eff. August 25, 1977;
Amended Eff. May 1, 1989;
Repealed Eff. April 1, 2014.

21 NCAC 16N .0302 CONTENT OF REQUEST: GENERAL TIME LIMITATIONS

Presentations at Board rule making hearings shall be limited to 15 minutes unless the Board prescribes some other time limit.

History Note: Authority G.S. 90-48; 90-223(b); 150B-12(a);
Eff. August 25, 1977;
Amended Eff. April 1, 2014; May 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.

21 NCAC 16N .0303 RECEIPT OF REQUEST: SPECIFIC TIME LIMITS

History Note: Authority G.S. 90-48; 90-223(b); 150B-12(a);
Eff. August 25, 1977;
Amended Eff. May 1, 1989.
Repealed Eff. April 1, 2014.

21 NCAC 16N .0304 WRITTEN SUBMISSIONS

Any person may file a written submission containing data, comments or arguments after publication of notice of a rulemaking hearing up to the date of hearing. The Board may in its discretion grant an additional 30 days after a hearing for further comment and argument. These written comments should be sent to the Board's office. They should clearly state the rule or proposed rule to which such comments are addressed.

History Note: Authority G.S. 90-48; 90-223(b); 150B-12;
Eff. August 25, 1977;
Amended Eff. May 1, 1989; March 1, 1988; October 1, 1986; March 1, 1985;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.

21 NCAC 16N .0305 BOARD PRESIDENT TO PRESIDE: POWERS AND DUTIES

The president of the Board shall preside at a rulemaking hearing and shall be authorized to do the following:

- (1) Grant any extension of time in connection with a request for the presentation of oral data, views or arguments;
- (2) Recognize any prospective speaker;
- (3) Extend or shorten the time allotted for any particular presentation; and
- (4) Direct the overall proceedings including management of any questions directed to any speaker by any Board member.

History Note: Authority G.S. 90-48; 90-223(b); 150B-12(a);
Eff. August 25, 1977;
Amended Eff. May 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.

21 NCAC 16N .0306 STATEMENT OF REASONS FOR DECISION

History Note: Authority G.S. 90-28; 150B-60(4); 90-48; 90-223(b); 150B-12(e);
Eff. August 25, 1977;
Repealed Eff. May 1, 1989.

21 NCAC 16N .0307 RECORD OF PROCEEDINGS

A record of all rulemaking proceedings will be maintained in the Board's office for as long as the rule is in effect, and for five years thereafter, following filing. This record will contain: the original petition if any, the notice, all written memoranda and information submitted, and any record or summary of oral presentations, if any. A record of the rulemaking proceedings will be available for public inspection during the regular office hours of the Board.

History Note: Authority G.S. 90-48; 90-223(b); 150B-12(e);
Eff. August 25, 1977;
Amended Eff. May 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.

21 NCAC 16N .0308 TEMPORARY RULES

History Note: Authority G.S. 90-28; 150B-13;
Eff. August 25, 1977;
Amended Eff. April 1, 1988;
Repealed Eff. May 1, 1989.

SECTION .0400 - DECLARATORY RULINGS

21 NCAC 16N .0401 SUBJECTS OF DECLARATORY RULINGS

History Note: Authority G.S. 90-28; 90-48; 90-223(b); 150B-17;
Eff. August 25, 1977;
Amended Eff. October 1, 1986;
Repealed Eff. May 1, 1989.

21 NCAC 16N .0402 SUBMISSION OF REQUEST FOR RULING

All requests for declaratory rulings shall be written and mailed to the Board's office. The envelope containing the request should bear the notation: REQUEST FOR DECLARATORY RULING. The request must include the following information:

- (1) Name and address of petitioner;
- (2) Statute or rule to which petition relates;
- (3) Concise statement of the manner in which petitioner is aggrieved by the rule or statute or its potential application to him; and
- (4) A statement of whether an oral hearing is desired and if so, the reason therefor.

History Note: Authority G.S. 150B-4;
Eff. August 25, 1977;
Amended Eff. May 1, 1989; October 1, 1986; March 1, 1985;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.

21 NCAC 16N .0403 DISPOSITION OF REQUESTS

- (a) When the Board deems it appropriate to issue a declaratory ruling, it shall issue the declaratory ruling as soon as practicable but no longer than the period set out in G.S. 150B-4(a1).
- (b) A declaratory ruling proceeding may consist of written submissions or other procedures the Board determines to be in the interests of justice and judicial economy based on the content and circumstances of the request.
- (c) Whenever the Board finds good cause exists to deny the request for a declaratory ruling, the Board may deny the request to issue a declaratory ruling. In that event, the Board shall notify the petitioner of its decision in writing, stating the reasons for the denial of the declaratory ruling.
- (d) For purposes of Paragraph (c) of this Rule, good cause for the denial of a declaratory ruling request may include one of the following:
 - (1) the petitioner does not show that the circumstances are changed since the adoption of the rule and a declaratory ruling would be warranted;
 - (2) at the time the rule was adopted, the Board gave full consideration to the factors specified in the request for a declaratory ruling;
 - (3) there has been a previous determination of a contested case involving similar factual questions; or
 - (4) the subject matter of the request is involved in pending litigation in any State or federal court in North Carolina.

History Note: Authority G.S. 150B-4;
Eff. August 25, 1977;
Amended Eff. May 1, 1989; October 1, 1986;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018;
Amended Eff. September 1, 2020.

21 NCAC 16N .0404 RECORD OF DECISION

A record of all declaratory ruling proceedings will be maintained in the Board's office for as long as the ruling is in effect and for five years thereafter. This record will contain: the request, all written submissions filed on the request, whether filed by the petitioner or any other person, and a record or summary of all the oral presentations, if any. Records of declaratory ruling proceedings will be available for public inspection during the Board's regular office hours.

History Note: Authority G.S. 150B-4;
Eff. August 25, 1977;

Amended Eff. May 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.

21 NCAC 16N .0405 DEFINITION

History Note: Authority G.S. 90-28; 150B-17; 90-48; 90-223(b); 150B-60(4); 150B-12(e);
Eff. August 25, 1977;
Repealed Eff. May 1, 1989.

SECTION .0500 - ADMINISTRATIVE HEARING PROCEDURES

21 NCAC 16N .0501 RIGHT TO HEARING

- (a) When the Board acts or proposes to act in a manner that will affect the rights, duties, or privileges of a licensee or applicant, the licensee or applicant has a right to an administrative hearing.
- (b) Except in contested cases for which the Board serves a notice of hearing in accordance with G.S. 150B-3 and 150B-38, the Board shall give the affected person notice of the right to a hearing by mail to the affected person's last known address. If the affected person desires a hearing, they shall request a hearing within 30 days of the date of the Board's notice of right to a hearing. The request shall be in writing, and shall contain a clear and specific statement of request for a hearing. The request shall be sent to the Board's office by email, fax, or delivery to the Board's mailing address, as set out in 21 NCAC 16A .0107. Upon receipt of the affected person's request for a hearing, the Board shall issue a notice of hearing in accordance with G.S. 150B-38 and Rule .0504 of this Section.
- (c) The right to an administrative hearing does not apply to rulemaking or declaratory ruling proceedings, to applicants for reinstatement after revocation, or to applicants for license by comity or credentials pursuant to G.S. 90-36.

History Note: Authority G.S. 90-41.1; 150B-3; 150B-38;
Eff. August 25, 1977;
Amended Eff. May 1, 1989; November 20, 1980;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018;
Amended Eff. August 1, 2024; October 1, 2019.

21 NCAC 16N .0502 REQUEST FOR HEARING

- (a) A licensee or applicant who believes their rights, duties, or privileges have been affected by the Board's administrative action, and who has not received a notice of a hearing or notice of a right to an administrative hearing, may submit to the Board a request for a hearing within 30 days of the date of the action taken by the Board which is challenged.
- (b) The licensee or applicant shall submit the request to the Board's office by email, fax, or delivery to the Board's mailing address, as set out in 21 NCAC 16A .0107. The request shall contain:
- (1) the name and address of the petitioner;
 - (2) a concise statement of the action taken by the Board which is challenged;
 - (3) a concise statement of the way in which petitioner has been aggrieved; and
 - (4) a clear and specific statement of request for a hearing.

History Note: Authority G.S. 150B-38;
Eff. August 25, 1977;
Amended Eff. April 1, 2015; May 1, 1989; March 1, 1985; November 20, 1980;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018;
Amended Eff. August 1, 2024.

21 NCAC 16N .0503 GRANTING OR DENYING HEARING REQUEST

- (a) Upon receipt of a request for a hearing submitted in accordance with Rule .0502 of this Section, the Board will decide whether to grant the request. Whenever the Board finds good cause exists to deny a request for a hearing, the Board may deny the request. For purposes of this Rule, good cause for denial of a hearing request exists when:

- (1) the petitioner has not demonstrated a right to an administrative hearing pursuant to Rule .0501 of this Section;
- (2) the request does not satisfy all the requirements set out in Rule .0502 of this Section; or
- (3) the Board determines that the request should be denied for some other reason consistent with the Board's prior decisions, the Board's rules, and applicable laws including those found in Chapter 90 of the General Statutes.

(b) The denial of a request for a hearing will be issued in writing upon decision, no later than 60 days after the submission of the request. The denial shall state the reasons leading the Board to deny the request.

(c) Approval of a request for a hearing will be signified by the Board issuing a notice of hearing in accordance with G.S. 150B-38 and Rule .0504 of this Section.

History Note: Authority G.S. 90-28; 90-48; 150B-38;
Eff. August 25, 1977;
Amended Eff. May 1, 1989; April 1, 1988; October 1, 1986; November 20, 1980;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018;
Amended Eff. August 1, 2024.

21 NCAC 16N .0504 NOTICE OF HEARING

(a) The Board shall give the party or parties in a contested case a notice of hearing by one of the following methods:

- (1) a signed acceptance of service from the party;
- (2) delivery to the party's attorney of record who accepts service on behalf of the party; or
- (3) any method of service permitted pursuant to G.S. 150B-38(c).

(b) If the Board determines that the public health, safety, or welfare requires emergency action, it may issue an order summarily suspending a license pursuant to G.S. 150B-3. The licensee to whom the order is directed shall cease practicing in North Carolina effective on the date of service of the order. The Board shall give notice of hearing pursuant to G.S. 150B-3 and 150B-38 following service of the order. The suspension shall remain in effect pending issuance by the Board of a final agency decision pursuant to G.S. 150B-42.

History Note: Authority G.S. 90-41.1; 150B-3; 150B-38;
Eff. August 25, 1977;
Amended Eff. April 1, 2015; May 1, 1989; April 1, 1988; October 1, 1986; November 20, 1980;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018;
Amended Eff. August 1, 2024.

21 NCAC 16N .0505 WHO SHALL HEAR CONTESTED CASES

All administrative hearings shall be conducted by a panel consisting of a majority of Board members eligible to vote on the issue, or an administrative law judge designated to hear the case pursuant to G.S. 150B-40(e).

History Note: Authority G.S. 150B-38; 150B-40;
Eff. August 25, 1997;
Amended Eff. April 1, 2015; March 1, 1988; October 1, 1986; November 20, 1980;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.

21 NCAC 16N .0506 PETITION FOR INTERVENTION

(a) A person desiring to intervene in a contested case shall file a written petition with the Board's office. The request shall bear the notation: PETITION TO INTERVENE IN THE CASE OF (NAME OF CASE).

(b) The petition shall include the following information:

- (1) the name and address of petitioner;
- (2) the business or occupation of petitioner;
- (3) the name and citation of the hearing in which petitioner is seeking to intervene;
- (4) the grounds for intervention or a statement that no grounds exist;
- (5) any claim or defense in respect to which intervention is sought; and
- (6) a summary of the arguments or evidence petitioner seeks to present.

- (c) The person desiring to intervene shall serve copies of the petition on all parties to the case.
- (d) If the Board determines to allow intervention, it shall send written notice to the petitioner and all parties. In cases of discretionary intervention, such notification shall include a statement of any limitations of time, subject matter, evidence or whatever else the Board deems necessary that are imposed on the intervenor.
- (e) If the Board decides to deny intervention it shall send written notice to the petitioner and all parties, stating the reasons for the denial.

*History Note: Authority G.S. 150B-38;
Eff. August 25, 1977;
Amended Eff. April 1, 2015; May 1, 1989; March 1, 1985; November 20, 1980;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.*

21 NCAC 16N .0507 TYPES OF INTERVENTION

- (a) Intervention of Right. A petition to intervene of right, as provided in the North Carolina Rules of Civil Procedure, Rule 24, will be granted if the petitioner meets the criteria of that rule and his petition is timely.
- (b) Permissive Intervention. A petition to intervene permissively, as provided in the North Carolina Rules of Civil Procedure, Rule 24, will be granted if the petitioner meets the criteria of that rule and the Board determines that:
 - (1) There is sufficient legal or factual similarity between the petitioner's claimed rights, privileges, or duties and those of the parties to the hearings; and
 - (2) Permitting intervention by the petitioner as a party would aid the purpose of the hearing.
- (c) Discretionary Intervention. The Board may allow discretionary intervention, with whatever limits and restrictions are deemed appropriate. Upon the filing of a timely petition, discretionary intervention will be deemed advisable if:
 - (1) The information petitioner desires to present is relevant, not repetitious and cumulative; and
 - (2) The petitioner would lend added impact to the arguments of the parties.

*History Note: Authority G.S. 150B-38;
Eff. August 25, 1977;
Legislative Objection Lodged Eff. February 19, 1980;
Amended Eff. November 20, 1980;
Legislative Objection Removed Eff. March 19, 1981;
Amended Eff. May 1, 1989; April 2, 1981;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.*

21 NCAC 16N .0508 DISQUALIFICATION OF BOARD MEMBERS

- (a) Self Disqualification. If a Board member determines that personal bias or other factors render that member unable to hear a contested case and perform all duties in an impartial manner, that Board member shall voluntarily decline to participate in the hearing or decision.
- (b) Petition for Disqualification. If any party in a contested case believes that a Board member is personally biased or otherwise unable to hear a contested case and perform all duties in an impartial manner, the party may file a sworn, notarized affidavit with the Board. The title of such affidavit shall bear the notation: AFFIDAVIT OF DISQUALIFICATION OF BOARD MEMBER IN THE CASE OF (NAME OF CASE).
- (c) Contents of Affidavit. The affidavit shall state all facts the party deems to be relevant to the disqualification of the Board member.
- (d) Timeliness and Effect of Affidavit. An affidavit of disqualification shall be considered timely if filed 10 days before commencement of the hearing. Any other affidavit shall be considered timely provided it is filed at the first opportunity after the party becomes aware of facts which give rise to a reasonable belief that a Board member may be disqualified under this Rule. When a petition for disqualification is filed less than 10 days before or during the course of a hearing, the hearing shall continue with the challenged Board member sitting. The petitioner shall have the opportunity to present evidence supporting his or her petition, and the petition and any evidence presented at the hearing shall be made a part of the record. The Board, before rendering its decision, shall decide whether the evidence justifies disqualification. In the event of disqualification, the disqualified member shall not participate in further deliberation or decision of the case.
- (e) Procedure for Determining Disqualification:

- (1) The Board shall appoint a Board member to investigate the allegations of the affidavit.
- (2) The investigator shall report to the Board the findings of the investigation.
- (3) The Board shall decide whether to disqualify the challenged individual.
- (4) The person whose disqualification is to be determined shall not participate in the decision but may be called upon to furnish information to the other members of the Board.
- (5) When a Board member is disqualified, the hearing shall continue with the remaining members sitting, provided that the remaining members still constitute a majority of the Board who are eligible to vote.
- (6) If a majority of the members of the Board who are eligible to vote are disqualified pursuant to this Rule, the Board shall petition the Office of Administrative Hearings to appoint an administrative law judge to hear the contested case pursuant to G.S. 150B-40(e).

History Note: Authority G.S. 150B-38; 150B-40;
 Eff. August 25, 1977;
 Amended Eff. April 1, 2015; May 1, 1989; October 1, 1986; November 20, 1980;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.

SECTION .0600 - ADMINISTRATIVE HEARINGS: DECISIONS: RELATED RIGHTS AND PROCEDURES

21 NCAC 16N .0601 FAILURE TO APPEAR

History Note: Authority G.S. 90-28; 90-48; 90-223(b); 150B-25(a); 150B-60(4);
 Eff. August 25, 1977;
 Amended Eff. November 20, 1980;
 Repealed Eff. April 1, 1988.

21 NCAC 16N .0602 SIMPLIFICATION OF ISSUES

The parties to a contested case, specifically including the Board, may agree in advance to simplify the hearing by decreasing the number of the issues to be contested at the hearing, accepting the validity of certain proposed evidence, accepting the findings in some other case which relates to the case at hand or agreeing to such other matters as may expedite the hearing.

History Note: Authority G.S. 150B-38; 150B-40;
 Eff. August 25, 1977;
 Amended Eff. May 1, 1989; November 20, 1980;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.

21 NCAC 16N .0603 SUBPOENAS

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

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

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

(c) Subpoenas shall contain:

- (1) the caption of the case;
- (2) the name and address of the person subpoenaed;
- (3) the date, hour and location of the hearing in which the witness is commanded to appear;
- (4) a description of the books, papers, records, or objects the witness is directed to bring with him to the hearing, if any;

- (5) the identity of the party on whose application the subpoena was issued; and
 - (6) a return of service form.
- (d) The "return of service" form, as filled out, shall show the name and capacity of the person serving the subpoena, the date the subpoena was delivered to the person directed to make service, the date service was made, the person on whom service was made, the manner in which service was made, and the signature of the person making service.
- (e) Subpoenas shall be served as permitted by Rule 45 of the North Carolina Rules of Civil Procedure, as set forth in G.S. 1A-1.
- (f) Any person receiving a subpoena from the Board may object thereto by filing a written objection to the subpoena with the Board's office. Such objection shall include a statement of all reasons why the subpoena should be revoked or modified. These reasons may include any basis sufficient in law for holding the subpoena invalid, such as that the evidence is privileged, that the burden of appearance or production outweighs the relevance of the evidence sought, or other undue hardship.
- (g) Any objection to a subpoena shall be served on the party who requested the subpoena simultaneously with the filing of the objection with the Board.
- (h) The party who requested the subpoena may file a written response to the objection within 10 days of receipt or 7 days prior to the contested case hearing, whichever is sooner. The written response shall be served by the requesting party on the objecting witness simultaneously with the filing of the response with the Board.
- (i) After receipt of the objection and response thereto, if any, the Board shall issue a notice to the party who requested the subpoena and the party challenging the subpoena, and shall notify any other party or parties of a hearing.
- (j) The Presiding Officer of the Board members hearing the contested case shall conduct the hearing and rule on the objection unless the interests of justice and judicial economy allow the Presiding Officer to involve the other Board members. On the basis of the content of the written objection and the response, the Presiding Officer shall either permit the parties to submit affidavits in advance of the hearing or permit the parties to present evidence and testimony at the hearing, limited to the narrow questions raised by the objection and response.

History Note: Authority G.S. 90-28; 90-48; 90-223(b); 150B-39; 150B-40;
Eff. August 25, 1977;
Legislative Objection Lodged Eff. November 20, 1980;
Legislative Objection Removed Eff. March 19, 1981;
Amended Eff. April 1, 2015; May 1, 1989; March 1, 1988; October 1, 1986; March 1, 1985;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018;
Amended Eff. October 1, 2019.

21 NCAC 16N .0604 FINAL DECISION

The Board will issue the final decision in all contested cases. This decision is the prerequisite "final agency decision" for the right to judicial review.

History Note: Authority G.S. 90-48; 90-223(b); 150B-43;
Eff. August 25, 1977;
Amended Eff. May 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.

21 NCAC 16N .0605 PROPOSALS FOR DECISIONS

- (a) When an administrative law judge conducts a hearing pursuant to G.S. 150B-40(e), a "proposal for decision" shall be rendered. Any party may file written exceptions to this "proposal for decision" and submit their own proposed findings of fact and conclusions of law. Exceptions and alternative proposals must be received within ten days after the party has received the "proposal for decision" as drafted by the administrative law judge.
- (b) Any exceptions to the procedure during the hearing, the handling of the hearing by the administrative law judge, rulings on evidence, or any other matter must be written and refer specifically to pages of the record or otherwise precisely identify the occurrence to which the exception is taken. Exceptions must be filed with the Board within ten days of the receipt of the proposal for decision. The written exceptions must bear the notation: EXCEPTIONS TO THE PROCEEDINGS IN THE CASE (NAME OF CASE).

(c) Any party may present oral argument to the Board upon request. The request must be included with the written exceptions.

(d) Upon receipt of request for further oral argument, notice will be issued promptly to all parties designating the time and place for such oral argument.

(e) Giving due consideration to the proposal for decision and the exceptions and arguments of the parties, the Board may adopt the proposal for decision or may modify it as the Board deems necessary. The decision rendered will be a part of the record and a copy thereof shall be given to all parties. The Board decision becomes the "final agency decision" for the right to judicial review. Said decision will be rendered by the Board within 60 days of the next regularly scheduled meeting following the oral arguments, if any. If there are no oral arguments presented, the decision will be rendered within 60 days of the next regularly scheduled Board meeting following receipt of the written exceptions.

History Note: Authority G.S. 150B-38; 150B-40;
Eff. August 25, 1977;
Amended Eff. May 1, 1989; March 1, 1988; October 1, 1986; November 20, 1980;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.

21 NCAC 16N .0606 FAILURE TO APPEAR

Should a party fail to appear at a scheduled hearing, the Board, or the designated administrative law judge, may proceed with the hearing and make its decision in the absence of the party, provided that the party has been given proper notice. The Board or the administrative law judge may order a continuance in order to give the party another opportunity to appear.

History Note: Authority G.S. 90-28; 90-48; 90-223(b); 150B-25(a); 150B-60(4);
Eff. May 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.

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.*