

SUBCHAPTER 16U - INVESTIGATIONS

SECTION .0100 - PROCEDURES

21 NCAC 16U .0101 SECRETARY-TREASURER

The Board's Secretary-Treasurer or another Board member appointed by the Secretary-Treasurer shall supervise and direct investigations of acts or practices that might violate the provisions of the Dental Practice Act, the Dental Hygiene Act or the Board's Rules. The Secretary-Treasurer or other Board member appointed by the Secretary-Treasurer in consultation with the Investigative Panel, shall determine whether cases involving licensees, interns or applicants for licenses or permits shall be set for hearing or settlement conference and recommend to the Board dispositions of cases that are not set for hearing or settlement conference.

History Note: Authority G.S. 90-28; 90-41; 90-41.1; 90-48; 90-223; 90-231;
Eff. October 1, 1996;
Amended Eff. July 1, 2015;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.

21 NCAC 16U .0102 INVESTIGATIVE PANEL

The Secretary-Treasurer or another Board member appointed by the Secretary-Treasurer shall chair the Investigative Panel. The Board's Counsel, Director of Investigations, Investigators and other staff members appointed by the Secretary-Treasurer shall serve on the Panel. The Investigative Panel shall conduct investigations and prepare and present the Board's case in all reinstatement cases, and disciplinary proceedings and in civil actions to enjoin the unlawful practice of dentistry.

History Note: Authority G.S. 90-28; 90-41; 90-41.1; 90-48; 90-223; 90-231; 150B-40;
Eff. October 1, 1996;
Amended Eff. July 1, 2015;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.

21 NCAC 16U .0103 REPORTS FROM THE CONTROLLED SUBSTANCES REPORTING SYSTEM

(a) Pursuant to G.S. 90-113.74(b1)(2), the Department of Health and Human Services (DHHS) may report to the Board information regarding the prescribing practices of those dentists who have issued:

- (1) at least 10 prescriptions for an opioid with at least 75 morphine milligram equivalents per day;
- (2) a benzodiazepine and an opioid to at least five patients where the patient's prescriptions overlap for at least two days; or
- (3) at least five "atypical prescriptions," which is defined as either:
 - (A) medications classified as a stimulant, muscle relaxant, or hypnotic; or
 - (B) at least 120 doses of an opioid or benzodiazepine.

(b) Pursuant to G.S. 90-113.74(b1)(2), DHHS may report to the Board information regarding the prescribing practices of those dentists who have had a patient death due to opioid poisoning where the dentist prescribed 30 or more tablets of an opioid to the patient within 60 days of the patient's death.

(c) Pursuant to G.S. 90-113.74(c)(7), DHHS may submit reports to the Board upon the Board's request for information regarding the prescribing practices of specific dentists, containing the information described in G.S. 90-113.73(b).

(d) The reports and communications between DHHS and the Board shall remain confidential pursuant to G.S. 90-41 and G.S. 90-113.74.

History Note: Authority G.S. 90-41; 90-48; 90-113.74;
Eff. July 1, 2015;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018;
Amended Eff. March 1, 2022.

21 NCAC 16U .0104 COOPERATION WITH BOARD INQUIRY

- (a) A licensee shall cooperate with the Board in connection with any inquiry it shall make. Cooperation includes:
- (1) acknowledging and responding in a timely manner to all inquiries from the Board or its representatives;
 - (2) claiming Board correspondence in a timely manner from the U. S. Postal Service or other delivery service, including correspondence by email;
 - (3) being available in a timely manner for investigative interviews with Board representatives; and
 - (4) providing accurate and complete information in response to all Board inquiries.
- (b) For purposes of this Rule, an "inquiry" means any request from the Board or its representatives for information or documentation, including investigative subpoenas and interview requests. "Timely" means within the time specified by the Board for response to an inquiry or, if no time is specified, within five business days of receipt.
- (c) A licensee shall notify the Board in writing within 10 business days of any change in the licensee's addresses or telephone numbers, and shall provide the Board with an email address through which the Board may communicate inquiries to the licensee.

History Note: Authority G.S. 90-27; 90-28; 90-41; 90-48;
Eff. August 1, 2024.

SECTION .0200 - COMPLAINTS

21 NCAC 16U .0201 PROCESSING

Licensees shall be notified of patient complaints against them and given an opportunity to respond except:

- (1) In cases requiring emergency action for the protection of the public health, safety or welfare; or
- (2) In cases where notification may jeopardize the preservation or procurement of relevant evidence.

History Note: Authority G.S. 90-28; 90-41; 90-41.1; 90-48; 90-223; 90-231; 150B-41;
Eff. October 1, 1996;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.

21 NCAC 16U .0202 DISPOSITION

The Secretary-Treasurer or other Board member chairing the Investigative Panel shall direct one or more of the following dispositions of each complaint or other investigation:

- (1) Submission to the Board with a recommendation to dismiss with no action;
- (2) Submission to the Board with a recommendation to resolve by consent;
- (3) Scheduling for pre-hearing conference with the Investigative Panel;
- (4) Scheduling for settlement conference with the Board; or
- (5) Scheduling, with appropriate notice, for contested case hearing.

History Note: Authority G.S. 90-28; 90-41; 90-41.1; 90-48; 90-223; 90-229; 90-231; 150B-38; 150B-41;
Eff. October 1, 1996;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.

21 NCAC 16U .0203 PRE-HEARING CONFERENCES

- (a) A pre-hearing conference shall not be conducted unless the Respondent agrees to participate.
- (b) A pre-hearing conference shall be conducted before the Investigative Panel. At the pre-hearing conference, a Board investigator shall summarize the circumstances of the investigation. The Respondent shall have an opportunity to respond and to submit documentation. The pre-hearing conference shall not be recorded nor open to the public.
- (c) Following the pre-hearing conference, the Respondent shall be advised in writing of the proposal for disposition of the matter by the Board member presiding over the pre-hearing conference. If the Board member presiding over the pre-hearing conference deems sanctions are appropriate, a Consent Order or letter of reprimand shall be proposed. Should the Respondent accept the terms, the proposed Consent Order or letter of reprimand must be approved by the full Board. Should the Respondent reject the terms of a proposed Consent Order or letter of reprimand, the Board member presiding over the pre-hearing conference shall direct disposition of the matter under Rule .0202 of this Subchapter.

History Note: Authority G.S. 90-28; 90-41; 90-41.1; 90-48; 90-223; 90-229; 90-231; 150B-41; Eff. October 1, 1996; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.

21 NCAC 16U .0204 SETTLEMENT CONFERENCES

- (a) A settlement conference shall not be conducted unless the Respondent agrees to participate and to waive any objection to the Board being exposed to a forecast of the evidence.
- (b) A settlement conference shall be conducted before the Board or a panel of the Board appointed by the President. At the settlement conference, a Board investigator shall summarize the circumstances of the investigation and present a forecast of the Board's evidence. The Respondent shall have an opportunity to forecast his or her evidence. Forecasts of the evidence may be presented orally or in writing and exhibits may be presented. Witnesses may forecast their own testimony but shall not be sworn nor cross-examined. The settlement conference shall not be recorded nor open to the public. The allowed time for initial presentations shall be agreed upon by counsel ten days prior to the conference, subject to approval by the presiding Board member.
- (c) If the Board deems sanctions are appropriate, a Consent Order or letter of reprimand shall be proposed. Should the Respondent reject the terms of the Consent Order or letter of reprimand, a contested case hearing may be scheduled.

History Note: Authority G.S. 90-28; 90-41; 90-41.1; 90-48; 90-223; 90-229; 90-231; 150B-41; Eff. October 1, 1996; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.