

From: -Adm-Legislative Council
Sent: Friday, February 20, 2015 1:02 PM
To: Behrens, Sara R.; -Info-ND Insurance Dept.; ritamichel@aol.com; ndsbd@aptnd.com; Jeffcoat-Sacco, Illona; Fedorchak, Julie L.
Cc: Richter, Vonette J.
Subject: Administrative Rules

ADMINISTRATIVE RULES COMMITTEE MEETING

The Legislative Management's Administrative Rules Committee reviews all rules recently adopted by administrative agencies. The committee will hold its next meeting on March 6, 2015, in the Prairie Room, State Capitol.

You are invited to appear before the committee and describe the procedure followed by your agency in adopting the rules published in the April 2015 supplement to the North Dakota Administrative Code.

A copy of the agenda can be found at <http://www.legis.nd.gov/assembly/64-2015/interim/17-5006-02000-meeting-agenda.pdf> for your reference. Please note the time on the agenda scheduled for your presentation. If you or a representative are unable to appear at that time, please notify me as soon as possible.

With respect to the rules published in the April 2015 supplement, the committee is interested in and would like you to testify before the committee concerning the following matters:

1. Whether the rules resulted from statutory changes made by the Legislative Assembly.
2. Whether the rules are related to any federal statute or regulation. If so, please indicate whether the rules are mandated by federal law or explain any options your agency had in adopting the rules.
3. A description of the rulemaking procedure followed in adopting the rules, e.g., the type of public notice given and the extent of public hearings held on the rules.
4. Whether any person has presented a written or oral concern, objection, or complaint for agency consideration with regard to these rules. If so, describe the concern, objection, or complaint and the response of the agency, including any change made in the rules to address the concern, objection, or complaint. Please summarize the comments of any person who offered comments at the public hearings on these rules.
5. The approximate cost of giving public notice and holding any hearing on the rules and the approximate cost (not including staff time) of developing and adopting the rules.
6. An explanation of the subject matter of the rules and the reasons for adopting those rules.
7. Whether a regulatory analysis was required by North Dakota Century Code (NDCC) Section 28-32-08 and whether that regulatory analysis was issued. Please provide a copy.
8. Whether a regulatory analysis or economic impact statement of impact on small entities was required by NDCC Section 28-32-08.1 and whether that regulatory analysis or impact statement was issued. Please provide copies.

1

30 **GE-14-763** Filed: 2/20/2015 Pages: 71
Admin. Rules Committee notice, agenda, rules

Legislative Council
Vonette Richter, Assist. Code Revisor

23 **GS-14-761** Filed: 2/20/2015 Pages: 71
Admin. Rules Committee notice, agenda, rules

Legislative Council
Vonette Richter, Assist. Code Revisor

23 **AD-14-762** Filed: 2/20/2015 Pages: 71
Admin. Rules Committee notice, agenda, rules

Legislative Council
Vonette Richter, Assist. Code Revisor

34 **RC-12-166** Filed: 2/20/2015 Pages: 71
Admin. Rules Committee notice, agenda, rules

Legislative Council
Vonette Richter, Assist. Code Revisor

9. Whether these rules have a fiscal effect on state revenues and expenditures, including any effect on funds controlled by your agency. If so, please provide copies of a fiscal note.
10. Whether a constitutional takings assessment was prepared as required by NDCC Section 28-32-09. Please provide a copy if one was prepared.
11. If these rules were adopted as emergency (interim final) rules under NDCC Section 28-32-03, provide the statutory grounds from that section for declaring the rules to be an emergency and the facts that support that declaration and provide a copy of the Governor's approval of the emergency status of the rules. If these rules were adopted as emergency (interim final) rules, what steps were taken to make the rules known to persons who can reasonably be expected to have a substantial interest in the rules?

Please provide the committee with **written** testimony.

The April 2015 rules of your agency can be found at <http://www.legis.nd.gov/admcode/arc201504356.pdf> in the form they will be presented to the committee at the meeting. The page numbers should be used as references for the committee because committee members will have pages with the same numbering. Please contact this office if you have any questions.

VONETTE J. RICHTER - ASSISTANT CODE REVISOR

VJR/BM

This transmission, email and any files transmitted with it, may be: (1) subject to the Attorney-Client Privilege; (2) an attorney work product; or (3) strictly confidential under federal or state law. If you are not the intended recipient of this message, you may not use, disclose, print, copy or disseminate this information. If you have received this transmission in error, notify the sender (only) and delete the message. This message may also be subject to disclosure under the North Dakota Open Records Laws.

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Tentative Agenda

ADMINISTRATIVE RULES COMMITTEE

Friday, March 6, 2015
Prairie Room, State Capitol
Bismarck, North Dakota

- 1:30 p.m. Call to order
Roll call
Consideration of the minutes of the December 8, 2014, meeting
- 1:35 p.m. Presentation by a representative of the State Board of Dental Examiners regarding the rules of the board carried over for consideration from the December 2014 meeting (pages 1-42)
- 2:00 p.m. Presentation by a representative of the Insurance Commissioner regarding April 2015 rules of the Insurance Commissioner (pages 43-48)
- 2:20 p.m. Presentation by a representative of the Public Service Commission regarding April 2015 rules of the Public Service Commission (pages 49-66)
- 2:40 p.m. Committee discussion and directives
- 3:00 p.m. Adjourn

Committee Members

Representatives: Bill Devlin (Chairman), Randy Boehning, Joshua A. Boschee, Robert Frantsvog, Ben Koppelman, Kim Koppelman, Mark S. Owens, Mike Schatz, Peter F. Silbernagel, Blair Thoreson, Nathan Toman, Robin Weisz

Senators: Kelly M. Armstrong, Joan Heckaman, Jerry Klein, Connie Triplett

Staff Contact: Vonette J. Richter, Assistant Code Revisor

NORTH DAKOTA ADMINISTRATIVE CODE

Supplement 356

April 2015

**Prepared by the Legislative Council staff
for the
Administrative Rules Committee**

TABLE OF CONTENTS

State Board of Dental Examiners 1
Insurance Commissioner 43
Public Service Commission 49

TITLE 20
STATE BOARD OF DENTAL EXAMINERS

APRIL 2015

CHAPTER 20-01-02

20-01-02-01. Definitions. Unless specifically stated otherwise, the following definitions are applicable throughout this title:

1. "Advertising" means any public communication, made in any form or manner, about a licensee's professional service or qualifications, for the purpose of soliciting business.
2. "Anxiolysis" means diminution or elimination of anxiety.
3. "Basic full upper and lower denture" means replacement of all natural dentition with artificial teeth. This replacement includes satisfactory tissue adaptation, satisfactory function, and satisfactory aesthetics. Materials used in these replacements must be nonirritating in character and meet all the standards set by the national institute of health and the bureau of standards and testing agencies of the American dental association for materials to be used in or in contact with the human body.
4. "Board certified" means the dentist has been certified in a specialty area in which there is a certifying body approved by the commission on dental accreditation of the American dental association.
5. "Board eligible" means the dentist has successfully completed a duly accredited training program or in the case of a dentist in practice at the time of the adoption of these rules has experience equivalent to such a training program in an area of dental practice in which there is a certifying body approved by the commission on dental accreditation of the American dental association.
6. "Bona fide specialties" means the specialties of dental public health, endodontics, oral and maxillofacial pathology, oral and maxillofacial radiology, oral and maxillofacial surgery, orthodontics and dentofacial orthopedics, pediatric dentistry, periodontics, and prosthodontics.

7. "Cardiopulmonary resuscitation course" means the American heart association's health care provider course, the American red cross professional rescuer course, or an equivalent course.
8. "Certified dental assistant" means a dental assistant who meets the education or experience prerequisites, or both, established by the dental assisting national board and passes the dental assisting national board's certified dental assistant examination (including radiation health and safety, infection control, and general chairside components), is currently cardiopulmonary resuscitation-certified, and continues to maintain the credential by meeting the dental assisting national board requirements.
9. "Code of ethics" means the ~~January 2009~~ April 2012 version of the American dental association's principles of ethics and code of professional conduct.
10. "Combination inhalation - enteral conscious sedation" (combined conscious sedation) means conscious sedation using inhalation and enteral agents.

When the intent is anxiolysis only, and the appropriate dosage of agents is administered, then the definition of enteral or combined inhalation-ental conscious sedation (combined conscious sedation), or both, does not apply.

Nitrous oxide/oxygen when used in combination or with sedative agents may produce anxiolysis, conscious or deep sedation, or general anesthesia.

11. "Complete evaluation" means an examination, review of medical and dental history, the formulation of a diagnosis, and the establishment of a written treatment plan, documented in a written record to be maintained in the dentist's office or other treatment facility or institution.
12. "Conscious sedation" means depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command and that is produced by a pharmacological or nonpharmacological method or a combination thereof. The drugs or technique, or both, should carry a margin of safety wide enough to render unintended loss of consciousness unlikely. Patients whose only response is reflex withdrawal from repeated painful stimuli would not be considered to be in a state of conscious sedation.
13. Contiguous supervision" means that the supervising oral and maxillofacial surgeon whose patient is being treated and has personally authorized the procedures to be performed. The supervising oral surgeon is continuously onsite and physically present in the treatment

facility while the procedures are performed by the dental anesthesia auxiliary and capable of responding immediately in the event of an emergency. The term does not require a supervising dentist to be physically present in the operatory.

- ~~43.~~ 14. "Coronal polishing" is the mechanical polishing of clinical crowns using a rubber cup or brush only and not to include any instrumentation. ~~Examination for calculus and instrumentation must be done by the dentist or hygienist.~~
- ~~44.~~ 15. "Deep sedation" is an induced state of depressed consciousness accompanied by partial loss of protective reflexes, including the inability to continually maintain an airway independently or to respond purposefully to physical stimulation or verbal command, and is produced by pharmacological or nonpharmacological method, or combination thereof.
- ~~45.~~ 16. "Dental technician" means any individual who offers or undertakes to perform the fabrication or repair of corrective or prosthetic dental devices according to the written instructions of a licensed dentist. A certified dental technician is an individual who is specifically qualified through education and experience and who has successfully completed the written and practical certification examinations administered by the national board for certification, and who further maintains certification through compliance with continuing education requirements as stipulated by the national board for certification.
- ~~46.~~ 17. "Direct supervision" means the dentist is in the dental office or treatment facility, personally diagnoses the condition to be treated, personally authorizes the procedures and remains in the dental office or treatment facility while the procedures are being performed by the dental hygienist or dental assistant, and before dismissal of the patient, evaluates the performance of the dental hygienist or dental assistant.
18. "Direct visual supervision" means supervision by an oral and maxillofacial surgeon by verbal command and under direct line of sight.
- ~~47.~~ 19. "Evaluation" means the act or process by a dentist of assessing and determining the significance, quality or work of something such as the patient's oral health status, the progress of dental therapy, or the performance of the dental hygienist or dental assistant.
- ~~48.~~ 20. "General anesthesia" means an induced state of unconsciousness accompanied by a partial or complete loss of protective reflexes, including the inability to continually maintain an airway independently and respond purposefully to physical stimulation or verbal command, and is produced by a pharmacological or nonpharmacological method, or a combination thereof.

- 19: 21. "General supervision" means the dentist has authorized the procedures and they are carried out in accordance with the dentist's diagnosis, if necessary, and treatment plan. The dentist is not required to be in the treatment facility. Limitations are contained in North Dakota Century Code section 43-20-03.
- 20: 22. "Inactive status" means the licensee shall not engage in the practice of dentistry or dental hygiene in the state of North Dakota. The license that is placed on inactive status remains on that status until such time as the license is reinstated.
- 21: 23. "Indirect supervision" means that a dentist is in the dental office or treatment facility, has personally diagnosed the condition to be treated, authorizes the procedures, and remains in the dental office or treatment facility while the procedures are being performed by the dental hygienist or dental assistant.
- 22: 24. "Local anesthesia" means the elimination of sensations in one part of the body by regional injection of drugs without causing the loss of consciousness.
25. "Oral assessment" means the evaluation of data pertaining to the patient's condition to help identify dental problems leading to a professional treatment plan. The final diagnosis of disease or treatment plan is the sole responsibility of the supervising or collaborative dentist.
- 23: 26. ~~"Oral hygiene treatment planning" means the process of assessing and determining, by the dentist and the hygienist, the services the dental hygienist will perform, including preventative, educational, and instrumentation. This treatment plan is an organized sequence of events that is a part of the dentist's total treatment plan. The total treatment plan and diagnosis are to be determined by the dentist is a component of a comprehensive treatment plan developed by the hygienist or dentist to provide the hygienist a framework for addressing the preventative, educational, and clinical treatment needs of the patient.~~
- 24: 27. "Patient of record" means a patient who has undergone a complete dental evaluation performed by a licensed dentist.
- 25: 28. "Primary practice site" means the office location that is to be considered the main location of the dental practice. This office location would be listed first on the biennial registration.
- 26: 29. "Satellite office" means an office, building, or location used at any time by a dentist for the practice of dentistry other than the office listed on the dentist's biennial registration certificate.

30. "Supragingival scaling" means to remove hard deposits and accretions from the coronal surfaces of teeth or tooth replacements.

History: Effective September 1, 1980; amended effective February 1, 1992; October 1, 1993; May 1, 1996; August 1, 1998; April 1, 2000; June 1, 2002; July 1, 2004; April 1, 2006; October 1, 2007; January 1, 2011; April 1, 2015.

General Authority: NDCC 43-20-10; 43-28-06

Law Implemented: NDCC 43-20, 43-28

CHAPTER 20-02-01 GENERAL REQUIREMENTS

Section	
20-02-01-01	Advertising
20-02-01-02	Office Emergency
20-02-01-03	Nitrous Oxide
20-02-01-03.1	Additional Requirements for Licensure by Examination
20-02-01-03.2	Additional Requirements for Licensure by Credential Review
20-02-01-03.3	Additional Requirements for Applications
20-02-01-03.4	Clinical Competency Examination Retakes
20-02-01-04	Temporary License to Practice Dentistry
20-02-01-04.1	Restricted License to Practice Dentistry [Repealed]
20-02-01-04.2	Volunteer License to Practice Dentistry
20-02-01-04.3	Inactive Status - License Reinstatement
20-02-01-05	Permit for Anesthesia Use
20-02-01-06	Continuing Dental Education for Dentists
20-02-01-07	Removable Dental Prostheses Owner Identification
20-02-01-08	Discontinuance of Practice - Retirement - Discontinuance of Treatment
20-02-01-09	Retention of Records
20-02-01-10	Authorization of Laboratory Services
<u>20-02-01-11</u>	<u>Permit for the Use of Dermal Fillers and Botulinum Toxin for Dental Use</u>

20-02-01-01. Advertising.

1. Advertising by dentists is permitted to disseminate information for the purpose of providing the public a sufficient basis upon which to make an informed selection of dentists. In the interest of protecting the public health, safety, and welfare, advertising which is false, deceptive, or misleading is prohibited.
2. All advertising must contain the legal name of the dentist, or a reasonable variation thereof. In the case of a partnership or corporation, the name used in the advertisement may be the true name of the partnership or corporation. The advertisement must also contain the location, or locations, of the dentist, partnership, or corporation.
3. A dentist engaged in general practice who wishes to announce the services available in the dentist's practice is permitted to announce the availability of those services as long as the dentist avoids using language that expresses or implies that the dentist is a specialist. If a dentist, other than a specialist, wishes to advertise a limitation of practice, such advertisement must state that the limited practice is being conducted by a general dentist. A dentist who is a specialist may announce the dentist's specialization bona fide specialty provided that the dentist has successfully completed an educational program

accredited by the commission on accreditation of dental and dental auxiliary educational programs, two or more years in length, as specified by the commission on dental accreditation of the American dental association or be a diplomate of a nationally recognized certifying board. Such a dentist may announce that the dentist's practice is limited to the special area of dental practice in which the dentist has or wishes to announce.

4. A dentist who advertises on radio or television must retain a recorded copy of such advertising for a period of one year following the termination of the use of such advertising, and is responsible to make recorded copies of such advertising available to the North Dakota state board of dental examiners within thirty days following a request from the board for such copies.
5. No dentist may advertise the dentist, the dentist's staff, the dentist's services, or the dentist's method or methods of delivery of dental services to be superior to those of any other licensed dentist, unless such claim or claims can be substantiated by the advertiser, upon whom rests the burden of proof.
6. No advertising by a dentist may contain representations or other information contrary to the provisions of North Dakota Century Code section 43-28-18 or North Dakota Administrative Code title 20.

History: Effective September 1, 1980; amended effective February 1, 1992; October 1, 1993; April 1, 2015.

General Authority: NDCC 43-28-06

Law Implemented: NDCC 43-28-06

20-02-01-03. Nitrous oxide. A duly licensed dentist may use nitrous oxide for treating patients only when the following conditions are met:

1. Documentation has been provided by the dentist to the board that verifies completion of fourteen hours of instruction or continuing professional education dealing specifically with the use of nitrous oxide. In the absence of documentation of classroom training, the dentist must provide proof acceptable to the board that demonstrates three years of practical experience in the use of nitrous oxide.
2. A dentist who induces a patient into a state of psychosedation or relative analgesia using nitrous oxide shall ensure that the patient will be continually and personally monitored by a dentist. A dentist may delegate the monitoring tasks to a licensed dental hygienist or a registered dental assistant utilizing ~~direct~~ indirect supervision only after the patient has been stabilized at the desired level of conscious sedation or relative analgesia by the action of the dentist. The licensed dental hygienist or registered dental assistant who is assigned the monitoring task shall remain in the treatment room with the patient

at all times. A dental hygienist or a dental assistant may not initiate the administration of nitrous oxide to a patient. A dental hygienist or a registered dental assistant may terminate or reduce the amount of nitrous oxide previously administered by the dentist.

3. The dentist must provide and document training for the dental hygienist or registered dental assistant in the proper and safe operation of the analgesia machine being used prior to the registered dental hygienist or registered dental assistant monitoring the patient. Training shall include emergency procedures to be employed if required.

History: Effective February 1, 1992; amended effective May 1, 1996; April 1, 2000; October 1, 2007; January 1, 2011; April 1, 2015.

General Authority: NDCC 43-20-10, 43-28-06

Law Implemented: NDCC 43-20-03, 43-20-10, 43-20-12, 43-20-13, 43-28-06

20-02-01-03.1. Additional requirements for licensure by examination.

The board may grant a license to practice dentistry to an applicant who has met the requirements of North Dakota Century Code section 43-28-10.1 and all the following requirements:

1. The applicant has passed the examination administered by the joint commission on national dental examiners or the national dental examining board of Canada within five years of application.
2. The applicant has passed, within five years of application, a clinical competency examination. Required component shall include a patient-based periodontal component, a patient-based restorative component, an endodontic component, administered by one or more of the following:
 - a. Central regional dental testing service.
 - b. Council of interstate testing agencies.
 - c. ~~Northeast regional examining board of dental examiners, except after December 31, 2009, the examination approved by the American board of dental examiners.~~
 - d. ~~Southern regional testing agency, except the applicant must pass the periodontal part of an examination administered by another approved regional dental testing service.~~
 - e. Western regional examining board.
3. The applicant has successfully completed a cardiopulmonary resuscitation course within two years of application.

4. The applicant has the physical health and visual acuity to enable the applicant to meet the minimum standards of professional competence.

History: Effective January 1, 2011; amended effective April 1, 2015.

General Authority: NDCC 43-28-06

Law Implemented: NDCC 43-28-10.1

20-02-01-03.3. Additional requirements for applications. Applications must be completed within six months of filing. The board may require an interview with the applicant. In addition to the application requirements of North Dakota Century Code sections 43-28-11 and 43-28-17, the board may require an application to include:

1. Proof of identity, including any name change.
2. An official transcript sent by an accredited dental school directly to the board.
3. Evidence demonstrating the applicant passed the examination administered by the joint commission on national dental examinations within five years of application.
4. Evidence demonstrating the applicant passed a clinical competency examination, approved by the board, within five years of application.
- ~~5. An interview by the board.~~
- ~~6.~~ 5. Anything necessary for a criminal history record check pursuant to North Dakota Century Code section 43-28-11.2.
- ~~7.~~ 6. A certification, from the licensing board of every jurisdiction in which the applicant is licensed, that the applicant is licensed in good standing.
- ~~8.~~ 7. Certification that the applicant has completed a cardiopulmonary resuscitation course within two years of application.
- ~~9.~~ 8. Verification of physical health and visual acuity.
- ~~10.~~ 9. For applications for licensure by credential review, the law and rules stating the requirements for licensure, when the applicant was licensed, of the jurisdiction in which the applicant is licensed.
- ~~11.~~ 10. For applications for licensure by credential review and reinstatement from inactive status, proof of completion of thirty-two hours of continuing education in accordance with section 20-02-01-06 within two years of application.

- 42: 11. Any information required by the application forms prescribed by the board.

History: Effective January 1, 2011; amended effective April 1, 2015.

General Authority: NDCC 43-28-06

Law Implemented: NDCC 43-28-10.1, 43-28-11, 43-28-11.2, 43-28-15, 43-28-17

20-02-01-04. Temporary license to practice dentistry. The board may grant a nonrenewable temporary license to practice dentistry in the state of North Dakota for a period not to exceed one year. ~~The temporary license will be issued only for special purposes that are unique and cannot be satisfied by the normal means to licensure.~~ Between meetings of the board, the executive director of the board may review the temporary license application and grant a provisional license if all requirements are met.

1. A temporary license to practice dentistry in North Dakota may be granted to a dentist when the dentist:
 - a. Has applied to the board as prescribed in North Dakota Century Code section 43-28-11.
 - b. Has paid the nonrefundable application and license fee that may be prescribed by the board.
 - c. Holds an active dental license in another jurisdiction, has been a full-time student or resident of a dental program accredited by the American dental association's commission on dental accreditation within the last six months, or has held a North Dakota dental license within the previous five years.
 - d. Has provided a statement from the licensing authority of all the states in which the dentist is licensed that the dentist's license is unencumbered, unrestricted, and that the dentist's professional record is free of blemish for professional misconduct, substandard care, or violations of the state's practice act.
 - e. Has certified that no disciplinary actions are pending in other states or jurisdictions.
 - f. Has authorized the board to seek information concerning the dentist's professional and personal background and agrees to hold harmless those individuals who may provide such information to the board.
2. The board may apply such restrictions as it deems appropriate to limit the scope of the practice of dentistry under the authority of the temporary license.

3. The board may restrict the licensee to engage in dental practice, as may be limited above, only at certain and specifically defined practice locations.
4. The board may require the North Dakota jurisprudence examination.

History: Effective February 1, 1992; amended effective October 1, 2007; January 1, 2011; April 1, 2015.

General Authority: NDCC 43-28-06

Law Implemented: NDCC 43-28-06

20-02-01-04.2. Volunteer license to practice dentistry. A patient who is seen by a dentist who holds a volunteer license to practice dentistry shall not be considered a patient of record of the volunteer dentist. The dentist is not obligated to treat the patient outside of the volunteer practice setting. The board may grant a Between meetings of the board, the executive director of the board may review the volunteer license application and grant a provisional license if all the requirements are met. A volunteer license to practice dentistry in North Dakota, renewable annually by application to the board, may be granted when the following conditions are met:

1. The applicant was formerly licensed and actively practicing in the state of North Dakota and is in good standing with the board. or another jurisdiction for at least three of the five years immediately preceding application, where the requirements are at least substantially equivalent to those of this state; or
 - a. The applicant is the resident of a board-approved speciality program; or
 - b. The board determines that the applicant is qualified and satisfies the criteria specified under North Dakota Century Code section 43-28-10.1.
2. The applicant agrees to provide primary health services without remuneration in a board-approved setting.
3. The applicant holds a current cardiopulmonary resuscitation course certification.
4. The applicant has completed continuing education requirements of the board.
5. The applicant has made application for a volunteer dental license in a manner prescribed by the board.
6. The board may collect from the applicant ~~has paid~~ the nonrefundable application and license fee prescribed by the board.

7. The board may apply such restrictions as it deems appropriate to limit the scope of the practice of dentistry under the authority of the volunteer license.

History: Effective April 1, 2000; amended effective January 1, 2011; April 1, 2015.

General Authority: NDCC 43-28-06

Law Implemented: NDCC 43-28-06

20-02-01-05. Permit for anesthesia use.

1. The rules in this chapter are adopted for the purpose of defining standards for the administration of anesthesia by dentists. The standards specified in this chapter shall apply equally to general anesthesia, deep sedation, moderate (conscious) sedation, or a combination of any of these with inhalation, but do not apply to sedation administered through inhalation alone. A dentist licensed under North Dakota Century Code chapter 43-28 and practicing in North Dakota may not use any form of sedation if the intent is beyond anxiolysis on any patient unless such dentist has a permit, currently in effect, issued by the board, ~~initially for a period of twelve months~~ and renewable biennially thereafter, authorizing the use of such general anesthesia, deep sedation, moderate (conscious) sedation, or minimal sedation when used in combination with inhalation.
2. An applicant may not be issued a permit initially as required in subsection 1 unless:
 - a. The board of dental examiners approves the applicant's facility and any other facility, clinic, or mobile dental clinic where anesthesia services are provided after an inspection conducted by an individual or individuals designated by the dental examiners;
 - b. The board of dental examiners is satisfied that the applicant is in compliance with the American dental association's most recent policy statement: the use of sedation and general anesthesia by dentists;
 - c. The initial application includes payment of a fee in the amount determined by the dental examiners; and
 - d. If the application appears to be in order, the board may issue a temporary permit prior to the site evaluation. The temporary permit may be revoked if the applicant fails the site inspection or if the applicant fails to cooperate with the timely scheduling of the site inspection.
3. The board of dental examiners may renew such permit biennially, provided:

- a. Requirements of the permit application have been met;
 - b. Application for renewal and renewal fee is received by the dental examiners before the date of expiration of such permit. If the renewal application and renewal fee have not been received by the expiration of the permit, late fees as determined by the board shall apply; and
 - c. An onsite evaluation of the dentist's facility may be conducted by an individual designated by the board of dental examiners, and the board of dental examiners must approve the results of each such evaluation. Each facility where anesthesia is administered must be evaluated.
4. The board shall reevaluate the credentials, facilities, equipment, personnel, and procedures of a permitholder five years following a successful initial application.

History: Effective October 1, 1993; amended effective May 1, 1996; June 1, 2002; July 1, 2004; April 1, 2006; October 1, 2007; January 1, 2011; April 1, 2015.

General Authority: NDCC 43-28-06

Law Implemented: NDCC 43-28-06

20-02-01-06. Continuing dental education for dentists. Each dentist shall provide evidence on forms supplied by the board that the dentist has attended or participated in continuing dental education in accordance with the following conditions:

1. Continuing education activities include publications, seminars, symposiums, lectures, college courses, and online education.
2. The continuing dental education hours will accumulate on the basis of one hour of credit for each hour spent in education. Subject matter directly related to clinical dentistry will be accepted by the board without limit.
3. The minimum number of hours required within a two-year cycle for dentists is thirty-two. Of these hours, a dentist may earn no more than sixteen hours from publications and online education. The continuing education must include:
 - a. Two hours of ethics or jurisprudence. Passing the laws and rules examination is the equivalent of two hours of ethics or jurisprudence.
 - b. Two hours of infection control.
 - c. A cardiopulmonary resuscitation course.

- d. For anesthesia permitholders, four hours related to sedation or anesthesia.
4. Mere registration at a dental convention without specific attendance at continuing education presentations will not be creditable toward the continuing dental education requirement.
5. All dentists must hold a current cardiopulmonary resuscitation certificate. Anesthesia permitholders are required to maintain current advanced cardiac life support certification or pediatric advanced life support as specified by permit.
6. The board may audit the continuing education credits of a dentist. Each licensee shall maintain certificates or records of continuing education activities from the previous renewal cycle. Upon receiving notice of an audit from the board, a licensee shall provide satisfactory documentation of attendance at, or participation in the continuing education activities listed on the licensee's continuing education form. Failure to comply with the audit is grounds for nonrenewal of or disciplinary action against the license.

History: Effective October 1, 1993; amended effective May 1, 1996; August 1, 1998; June 1, 2002; April 1, 2006; October 1, 2007; January 1, 2011; April 1, 2015.

General Authority: NDCC 43-28-06

Law Implemented: NDCC 43-28-06, 43-28-16.2

20-02-01-08. Discontinuance of practice - Retirement - Discontinuance of treatment. These rules are adopted for the purpose of avoiding practice abandonment. A licensed dentist shall maintain patient records in a manner consistent with the protection of the welfare of the patient. Upon request of the patient or patient's legal guardian, the dentist shall furnish the dental records or copies of the records, including dental radiographs or copies of the radiographs. The dentist may charge a nominal fee for duplication of records as provided by North Dakota Century Code section 23-12-14, but may not refuse to transfer records for nonpayment of any fees.

1. A licensee, upon retirement, or upon discontinuation of the practice of dentistry, or upon moving from a community, shall notify all active patients in writing and by publication once a week for three consecutive weeks in a newspaper of general circulation in the community that the licensee intends to discontinue the practice of dentistry. The licensee shall make reasonable arrangements with active patients for the transfer of patient records, or copies thereof, to the succeeding licensee. In the event of a transfer of patient records to another licensee assuming the practice, written notice must be furnished to all patients as hereinbefore specified. "Active patient" is defined as a person whom the licensee has examined, treated, cared for, or otherwise consulted with during the two-year period prior to the discontinuation of the practice of dentistry by the licensee. In the event of a nontransfer of records, a licensee

shall have the ongoing obligation of not less than two years to afford the licensee's prior patients access to those records not previously provided to the patient.

2. In the event of termination of a dentist-patient relationship by a licensee, notice of the termination must be provided to the patient. A dentist-patient relationship exists if a dentist has provided treatment to a patient on at least one occasion within the preceding year. The dentist who is the owner or custodian of the patient's dental records shall mail notice of the termination of the dentist's relationship to the patient, which shall provide the following:
 - a. The date that the termination becomes effective, and the date on which the dentist and patient relationship may resume, if applicable;
 - b. A location at which the patient may receive emergency dental care for at least thirty days following the termination of the dentist and patient relationship;
 - c. A statement of further dental treatment required, if any; and
 - d. ~~A means for the patient to obtain a copy of the patient's dental records.~~ The dentist shall respond to a written request to examine or copy a patient's record within ten working days after receipt. A dentist shall comply with North Dakota Century Code section 23-12-14 for all patient record requests.
3. If a licensee dies or becomes unable to practice dentistry due to disability, for the purpose of selling or otherwise disposing of the deceased or disabled licensee's dental practice, a person who is not licensed to practice dentistry but who is the personal representative of the estate of a deceased dentist or the personal representative of a disabled dentist may contract with a dentist to manage the dental practice for a period not to exceed twenty-four months.
4. If a dentist agrees to provide dental care without remuneration to underserved patients in the absence of a public health setting, the patient may not be considered a patient of record of the dentist providing the donated dental service.

History: Effective April 1, 2006; amended effective April 1, 2015.

General Authority: NDCC 43-28-06

Law Implemented: NDCC 43-28-06

20-02-01-11. Permit for the use of dermal fillers and botulinum toxin for dental use.

1. The rules in this chapter are adopted for the purpose of defining standards for the administration of dermal fillers and botulinum toxin by a dentist if the use is limited to the practice of dentistry as defined in North Dakota Century Code 43-28-01(7). Notwithstanding a dentist who specializes in oral and maxillofacial surgery, the board may issue a permit to a dentist who applies on forms prescribed by the board and pays the fee as required by section 20-05-01-01(1) to administer botulinum toxin or dermal fillers for the purpose of functional, therapeutic, and aesthetic dental treatment purposes under the following conditions:

a. The dentist provides evidence that demonstrates:

(1) The applicant has completed a course and received satisfactory training in a residency or other educational program accredited by the commission on dental accreditation of the American dental association; or

(2) The applicant has successfully completed a board-approved continuing education course of instruction within the previous three months of application which includes neurophysiology, including facial tissues, parasympathetic, sympathetic, and peripheral nervous systems relative to the peri-oral tissue, and facial architecture, and:

(a) Patient assessment and consultation for botox and dermal fillers;

(b) Indications and contraindications for techniques;

(c) Proper preparation and delivery techniques for desired outcomes;

(d) Enhancing and finishing esthetic dentistry cases with dermal fillers;

(e) Botulinum neurotoxin treatment of temporomandibular joint syndrome and bruxism;

(f) Knowledge of adverse reactions and management and treatment of possible complications;

(g) Patient evaluation for best esthetic and therapeutic outcomes;

(h) Integrating botulinum neurotoxin and dermal filler therapy into dental therapeutic and esthetic treatment plans; and

- (i) Live patient hands-on training, including diagnosis, treatment planning, and proper dosing and delivery of botox and dermal fillers.

History: Effective April 1, 2015.

General Authority: NDCC 43-28-06

Law Implemented: NDCC 43-28-02

CHAPTER 20-03-01 DUTIES

Section	
20-03-01-01	Duties
<u>20-03-01-01.1</u>	<u>Expanded Duties of Registered Dental Assistants</u>
<u>20-03-01-01.2</u>	<u>Registered Dental Assistant in a Public Health Setting</u>
20-03-01-02	Prohibited Services
20-03-01-03	Annual Registration of Dental Assistants Performing Expanded Duties [Repealed]
20-03-01-04	Criteria for Dental Assistants Placing Sealants [Repealed]
20-03-01-05	Registration of Registered and Qualified Dental Assistants
<u>20-03-01-05.1</u>	<u>Additional Expanded Duties of Registered Dental Assistants</u>
20-03-01-06	Continuing Dental Education for Qualified and Registered Dental Assistants

20-03-01-01. Duties. A dental assistant may perform the duties listed in subsections 1 through 6 5 under direct, indirect, or general supervision of a dentist: ~~A qualified dental assistant may perform duties set forth in subsections 1 through 7 under direct supervision of a dentist. A registered dental assistant may perform the duties set forth in subsections 1 through 24 under indirect supervision of a dentist. A registered dental assistant may perform duties set forth in subsections 25 through 31 under direct supervision of a dentist. A registered dental assistant may perform duties set forth in subsections 32 and 33 under general supervision of a dentist.~~ as follows:

- ~~1. Take and record pulse, blood pressure, and temperature.~~
- ~~2. Take and record preliminary dental and medical history for the interpretation by the dentist.~~
- ~~3. Apply topical medications and drugs to oral tissues, including topical anesthetic, but not including desensitizing or caustic agents or anticariogenic agents.~~
- ~~4. Receive removable dental prosthesis for cleaning or repair.~~
- ~~5. Take impressions for study casts.~~
- ~~6. Hold impression trays in the mouth (e.g., reversible hydrocolloids; rubber base).~~
- ~~7. Take dental radiographs.~~
- ~~8. Apply anticariogenic agents topically.~~
- ~~9. Apply desensitizing solutions to the external surfaces of the teeth.~~
- ~~10. Dry root canal with paper points.~~

- ~~11. Place and remove rubber dams.~~
- ~~12. Take occlusal bite registration for study casts.~~
- ~~13. Place retraction cord in the gingival sulcus of a prepared tooth prior to the dentist taking an impression of the tooth.~~
- ~~14. Remove excess cement from inlays, crowns, bridges, and orthodontic appliances with hand instruments only.~~
- ~~15. Perform nonsurgical clinical and laboratory oral diagnosis tests, including pulp testing, for interpretation by the dentist.~~
- ~~16. Apply pit and fissure sealants if the registered dental assistant has provided documentation of a board-approved sealant course. Adjust sealants with slow-speed handpiece.~~
- ~~17. Polish the coronal surfaces of the teeth with a rubber cup or brush only after necessary scaling by a hygienist or dentist.~~
- ~~18. Polish restorations.~~
- ~~19. Place and remove periodontal dressings, dry socket medications, and packing.~~
- ~~20. Remove sutures.~~
- ~~21. Monitor a patient who has been inducted by a dentist into nitrous-oxide relative analgesia.~~
- ~~22. Take impressions for fixed or removable orthodontic appliances, athletic mouth guards, bleaching trays, bite splints, flippers, and removable prosthetic repairs.~~
- ~~23. Preselect and prefit orthodontic bands.~~
- ~~24. Place, tie, and remove ligature wires and elastic ties, and place orthodontic separators.~~
- ~~25. Place and remove arch wires or appliances that have been activated by a dentist.~~
- ~~26. Acid-etch enamel surfaces prior to direct bonding of orthodontic brackets or composite restorations.~~
- ~~27. Place orthodontic brackets using an indirect bonding technique by seating the transfer tray loaded with brackets previously positioned in the dental laboratory by a licensed dentist.~~

- 28. ~~Take face bow transfers.~~
- 29. ~~Place and remove matrix bands and wedges.~~
- 30. ~~Adjust permanent crowns outside of the mouth.~~
- 31. ~~Orally transmit a prescription that has been authorized by the supervising dentist.~~
- 32. ~~Fabricate, adjust, place, recement, or remove a temporary crown, bridge, or onlay or temporary restorative material. This applies only to dentitions actively under treatment for which a permanent restoration is being fabricated.~~
- 33. ~~Cut and remove arch wires or replace loose bands, loose brackets, or other orthodontic appliances for palliative treatment.~~

1. A dental assistant who is not registered with the board employed by a dentist may perform the following duties under direct supervision:

- a. Take and record pulse, blood pressure, and temperature.
- b. Take and record preliminary dental and medical history for the interpretation by the dentist.
- c. Apply topical medications and drugs to oral tissues, including topical anesthetic, but not including desensitizing or caustic agents or anticariogenic agents.
- d. Receive removable dental prosthesis for cleaning or repair.
- e. Take impressions for study casts.
- f. Hold impression trays in the mouth (e.g., reversible hydrocolloids, rubber base).

2. A qualified dental assistant may perform the duties set forth in subsection 1 and take dental radiographs under the direct supervision of a dentist.

3. A registered dental assistant may perform the duties set forth in subsection 2 and the following duties under the direct supervision of a dentist:

- a. Place and remove arch wires or appliances that have been activated by a dentist.
- b. Acid etch enamel surfaces prior to direct bonding of orthodontic brackets or composite restorations.

- c. Place orthodontic brackets using an indirect bonding technique by seating the transfer tray loaded with brackets previously positioned in the dental laboratory by a licensed dentist.
 - d. Take face bow transfers.
 - e. Place and remove matrix bands and wedges.
 - f. Adjust permanent crowns outside of the mouth.
 - g. Orally transmit a prescription that has been authorized by the supervising dentist.
 - h. Administer emergency medications to a patient in order to assist the dentist in an emergency.
4. A registered dental assistant may perform the following duties under the direct or indirect supervision of a dentist:
- a. Apply anticariogenic agents topically.
 - b. Apply desensitizing solutions to the external surfaces of the teeth.
 - c. Dry root canal with paper points.
 - d. Place and remove rubber dams.
 - e. Take occlusal bite registration for study casts.
 - f. Place retraction cord in the gingival sulcus of a prepared tooth prior to the dentist taking an impression of the tooth.
 - g. Remove excess cement from inlays, crowns, bridges, and orthodontic appliances with hand instruments only.
 - h. Perform nonsurgical clinical and laboratory diagnosis tests, including pulp testing, for interpretation by the dentist.
 - i. Apply pit and fissure sealants if the registered dental assistant has provided documentation of a board-approved sealant course. Adjust sealants with slow-speed handpiece.
 - j. Polish the coronal surfaces of the teeth with a rubber cup or brush.
 - k. Polish restorations with a slow-speed handpiece.
 - l. Place and remove periodontal dressings, dry socket medications, and packing.

- m. Monitor a patient who has been inducted by a dentist into nitrous oxide relative analgesia.
 - n. Take impressions for fixed or removable orthodontic appliances, athletic mouth guards, bleaching trays, bite splints, flippers, and removable prosthetic repairs.
 - o. Preselect and prefit orthodontic bands.
 - p. Place, tie, and remove ligature wires and elastic ties, and place orthodontic separators.
5. A registered dental assistant may perform the following duties under the direct, indirect, or general supervision of a dentist:
- a. Take and record pulse, blood pressure, and temperature.
 - b. Take and record preliminary dental and medical history for the interpretation by the dentist.
 - c. Apply topical medications and drugs to oral tissues, including topical anesthetic, but not including desensitizing or caustic agents or anticariogenic agents.
 - d. Receive removable dental prosthesis for cleaning or repair.
 - e. Take impressions or occlusal bite registrations for study casts.
 - f. Fabricate, adjust, place, recement, or remove a temporary crown, bridge, or onlay or temporary restorative material. This applies only to dentitions actively under treatment for which a permanent restoration is being fabricated.
 - g. Remove sutures.
 - h. Cut and remove arch wires or replace loose bands, loose brackets, or other orthodontic appliances for palliative treatment.
 - i. Provide oral hygiene education and instruction.
 - j. Provide an oral assessment for interpretation by the dentist.

- k. Repack dry socket medication and packing for palliative treatment.

History: Effective September 1, 1980; amended effective February 1, 1992; October 1, 1993; May 1, 1996; August 1, 1998; April 1, 2000; June 1, 2002; July 1, 2004; April 1, 2006; January 1, 2011; April 1, 2015.

General Authority: NDCC 43-20-10

Law Implemented: NDCC 43-20-01.1, 43-20-08, 43-20-10, 43-20-13

20-03-01-01.1. Expanded duties of registered dental assistants. A registered dental assistant shall apply for a permit to perform the following duties:

1. A registered dental assistant under the direct supervision of a dentist may perform the following restorative functions:
 - a. Place, carve, and adjust class I and class V supragingival amalgam or glass ionomer restorations with hand instruments or a slow-speed handpiece;
 - b. Adapt and cement stainless steel crowns; and
 - c. Place, contour, and adjust class I and class V supragingival composite restorations where the margins are entirely within the enamel with hand instruments or a slow-speed handpiece.
2. A registered dental assistant authorized by permit and under the direct supervision of a dentist may perform supragingival scaling duties to a patient that is at least twelve years of age or less.
3. A registered dental assistant authorized by permit and under the contiguous supervision of an oral and maxillofacial surgeon may provide anesthesia duties as follows:
 - a. Initiate and discontinue an intravenous line for a patient being prepared to receive intravenous medications, sedation or general anesthesia; and
 - b. Adjust the rate of intravenous fluids infusion only to maintain or keep the line patent or open.
4. A registered dental assistance authorized by permit and under the direct visual supervision of an oral and maxillofacial surgeon shall provide anesthesia duties as follows:
 - a. Draw up and prepare medications;
 - b. Follow instructions to deliver medication into an intravenous line upon verbal command;

- c. Adjust the rate of intravenous fluids infusion beyond a keep-open rate;
- d. Adjust an electronic device to provide medications, such as an infusion pump.

History: Effective April 1, 2015.

General Authority: NDCC 43-20-10

Law Implemented: NDCC 43-20-01.1, 43-20-08, 43-20-10, 43-20-13

20-03-01-01.2. Registered dental assistant in a public health setting.

For the purposes of this section a public health setting shall include schools, nursing homes and long-term care facilities, medical facilities, mobile dental health programs, head start programs, and any other facilities or programs where Medicaid-eligible and other vulnerable populations are targeted. A registered dental assistant under the general supervision of a dentist and in a public health setting may perform the following duties:

1. Assist a dental hygienist who is performing services within the scope and supervision requirements as provided by chapter 20-04-01.
2. Take and record pulse, blood pressure, and temperature.
3. Take and record preliminary dental and medical history for the interpretation by the dentist.
4. Apply topical medications and drugs to oral tissues, including topical anesthetic, but not including desensitizing or caustic agents or anticariogenic agents.
5. Receive removable dental prosthesis for cleaning or repair.
6. Take impressions for study casts.
7. Take occlusal bite registration for study casts.
8. Apply pit and fissure sealants if the registered dental assistant has provided documentation of a board-approved sealant course. Adjust sealants with a slow-speed handpiece.
9. Polish the coronal surfaces of the teeth with a rubber cup or brush.
10. Polish restorations with a slow-speed handpiece.
11. Place and remove periodontal dressings, dry socket medications, and packing.
12. Remove sutures.

13. Fabricate, adjust, place, recement, or remove a temporary crown, bridge, or onlay or temporary restorative material. This applies only to dentitions actively under treatment for which a permanent restoration is being fabricated.
14. Cut and remove arch wires or replace loose bands, loose brackets, or other orthodontic appliances for palliative treatment.
15. Provide oral hygiene education and instruction.
16. Provide an oral assessment for interpretation by the dentist.
17. Repack dry socket medication and packing for palliative treatment.

History: Effective April 1, 2015.

General Authority: NDCC 43-20-10

Law Implemented: NDCC 43-20-01.1, 43-20-08, 43-20-10, 43-20-13

20-03-01-02. Prohibited services. A dental assistant, qualified dental assistant, or registered dental assistant may not perform the following services:

1. Diagnosis and treatment planning.
2. Surgery on hard or soft tissue.
3. Administer ~~or titrate~~ local anesthetics, sedation or general anesthesia drugs or titrate local anesthetics, sedation or general anesthesia drugs without a board authorized permit.
4. Any irreversible dental procedure or procedures which require the professional judgment and skill of a licensed dentist.
5. ~~Placing a final restoration.~~
- 6: 5. ~~Contouring a final restoration, excluding Adjust a crown which has not been cemented by a dentist.~~
- 7: 6. ~~Activating Activate any type of orthodontic appliance.~~
- 8: 7. ~~Cementing or bonding Cement or bond orthodontic bands or brackets that have not been previously placed by a dentist.~~
- 9: 8. ~~Placing Place bases or cavity liners.~~
- 10: 9. ~~Sealing Subgingival scaling, root planing, or gingival curettage.~~
- 11: 10. ~~Measuring Measure the gingival sulcus with a periodontal probe.~~

11. Use a high-speed handpiece inside the mouth.

History: Effective February 1, 1992; amended effective October 1, 1993; April 1, 2000; June 1, 2002; July 1, 2004; January 1, 2011; April 1, 2015.

General Authority: NDCC 43-20-10

Law Implemented: NDCC 43-20-01.1, 43-20-08, 43-20-10, 43-20-13

20-03-01-05.1. Additional expanded duties of registered dental assistants. The board may grant a permit to a registered dental assistant for the following:

1. The board may issue or renew a permit authorizing a registered dental assistant to provide anesthesia assistance under the supervision of a dentist who specializes in oral and maxillofacial surgery, and meets the following requirements:
 - a. The applicant submits evidence on forms prescribed by the board that the applicant meets any of the following requirements:
 - (1) The applicant has completed a board-approved dental anesthesia assistant education and training course within one year of application and has proof of current certification status from a board-approved competency examination.
 - (2) The applicant has completed a board-approved dental anesthesia assistant education and training course and has proof of current certification status from a board-approved competency examination.
 - b. The applicant has successfully completed training in intravenous access or phlebotomy that includes experience starting and maintaining intravenous lines;
 - c. The applicant holds current and valid certification for health care provider basic life support, or advanced cardiac life support or pediatric advanced life support; and
 - d. The applicant provides a copy of a valid North Dakota general anesthesia permit of the oral and maxillofacial surgeon where the registered dental assistant will be performing anesthesia assistant services.
2. The board may issue or renew a permit on forms prescribed by the board authorizing a registered dental assistant under the direct supervision of a dentist to provide restorative functions under the following conditions:
 - a. The applicant meets any of the following requirements:

- (1) The applicant has successfully completed a board-approved curriculum from a program accredited by the commission on dental accreditation of the American dental association or other board-approved course and successfully passed the western regional examining board's restorative examination or other equivalent examinations approved by the board within the last five years, and successfully completed the restorative function component of the dental assisting national board's certified restorative functions dental assistant certification examination; or
 - (2) The applicant has successfully passed the western regional examining board's restorative examination or other board-approved examination over five years from the date of application and successfully completed the restorative function component of the dental assistant certification examination and provide evidence from another state or jurisdiction where the applicant legally is or was authorized to perform restorative functions and certification from the supervising dentist of successful completion of at least twenty-five restorative procedures within the immediate five years from the date of application.
- b. A registered dental assistant may perform the placement and finishing of direct alloy or direct composite restorations, under the direct supervision of a licensed dentist, after the supervising dentist has prepared the dentition for restoration.
- c. The restorative functions shall only be performed after the patient has given informed consent for the placement of the restoration by a restorative functions dental assistant.
- d. Before the patient is released, the final restorations shall be checked and documented by the supervising dentist.
3. The board may issue or renew a permit on forms prescribed by the board authorizing a registered dental assistant under the direct supervision of a dentist to provide supragingival scaling if the applicant meets any of the following requirements:
 - a. The applicant has successfully completed a board-approved supragingival didactic and clinical training course and successfully passed an examination approved by the board within one year of application. The board may require a competency examination.
 - b. The applicant provides verification of successfully completed a supragingival scaling didactic and clinical training approved by the board and provides verification of continuous use in another

jurisdiction during the past five years. The board may require a competency examination. Verification may consist of:

- (1) A letter from the program with the school seal affixed. Photocopies will not be accepted.
- (2) A notarized copy of the certificate of completion from the board-approved course.
- (3) A notarized letter stating that the registered dental assistant has performed supragingival scaling within the last five years.
- (4) A notarized copy of the dental assisting program transcript with the supragingival course recorded.

History: Effective April 1, 2015.

General Authority: NDCC 43-20-10

Law Implemented: NDCC 43-20-13.2

20-03-01-06. Continuing dental education for qualified and registered dental assistants. Each qualified or registered dental assistant shall provide evidence on forms supplied by the board that the qualified or registered dental assistant has attended or participated in continuing dental education in accordance with the following conditions:

1. Continuing education activities include publications, seminars, symposiums, lectures, college courses, and online education.
2. The continuing dental education hours will accumulate on the basis of one hour of credit for each hour spent in education. Subject matter directly related to clinical dentistry will be accepted by the board without limit.
3. The minimum number of hours required within a two-year cycle is sixteen. Of these hours, a qualified or registered dental assistant may earn no more than eight hours from publications and online education. The continuing education must include:
 - a. Two hours of ethics or jurisprudence. Passing the laws and rules examination is the equivalent of two hours of ethics or jurisprudence.
 - b. Two hours of infection control.
 - c. A cardiopulmonary resuscitation course.
 - d. For registered dental anesthesia assistant permitholders, two hours related to sedation or anesthesia.

- e. For registered dental restorative assistant permitholders, two hours related to restorative dentistry.
- 4. Mere registration at a dental convention without specific attendance at continuing education presentations will not be creditable toward the continuing dental education requirement.
- 5. All qualified or registered dental assistants must hold a current cardiopulmonary resuscitation certificate.
- 6. The board may audit continuing education credits of a registered dental assistant. Proof of continuing education shall be maintained from the previous renewal cycle. Upon receiving notice of an audit from the board, a registered dental assistant shall provide satisfactory documentation of attendance at, or participation in, the continuing education activities listed on the licensee's continuing education form. Failure to comply with the audit is grounds for nonrenewal of or disciplinary action against the registration.

History: Effective January 1, 2011; amended effective April 1, 2015.

General Authority: NDCC 43-20-10

Law Implemented: NDCC 43-20-13.1

CHAPTER 20-04-01 DUTIES

Section	
20-04-01-01	Duties
20-04-01-02	Prohibited Services
20-04-01-03	Duties of Dental Hygienists
<u>20-04-01-03.1</u>	<u>Duties of the Dental Hygienist Requiring a Permit</u>
20-04-01-04	Additional Requirements for Licensure by Examination
<u>20-04-01-04.1</u>	<u>Clinical Competency Examination Retakes</u>
20-04-01-05	Additional Requirements for Licensure by Credential Review
20-04-01-06	Additional Requirements for Applications
20-04-01-07	Inactive Status - License Reinstatement
20-04-01-08	Continuing Dental Education for Dental Hygienists

20-04-01-01. Duties. A dental hygienist may perform the following services under the general, direct, or indirect supervision of a dentist:

1. Complete prophylaxis to include removal of accumulated matter, deposits, accretions, or stains from the natural and restored surfaces of exposed teeth. The dental hygienist may also do root planing and soft tissue curettage upon direct order of the dentist.
2. Polish and smooth existing restorations with a slow-speed handpiece.
3. Apply topical applications of drugs to the surface tissues of the mouth and to exposed surfaces of the teeth, including anticariogenic agents and desensitizing solutions.
4. Take impressions for study casts.
5. Take and record preliminary medical and dental histories for the interpretation by the dentist.
6. Take and record pulse, blood pressure, and temperature.
7. Provide oral hygiene treatment planning after an oral assessment or dentist's diagnosis.
8. Take dental radiographs.
9. Apply therapeutic agents subgingivally for the treatment of periodontal disease.
10. Hold impression trays in the mouth after placement by a dentist (e.g., reversible hydrocolloids, rubber base, etc.).
11. Receive removable dental prosthesis for cleaning and repair.

12. Dry root canal with paper points.
13. Place and remove rubber dams.
14. Place and remove matrix bands or wedges.
15. Take occlusal bite registration for study casts.
16. Place retraction cord in the gingival sulcus of a prepared tooth prior to the dentist taking an impression of the tooth.
17. Fabricate, adjust, place, recement, or remove a temporary crown, bridge, onlay, or temporary restorative material. This applies only to dentitions actively under treatment for which a permanent restoration is being fabricated.
18. Adjust permanent crowns outside of the mouth.
19. Perform nonsurgical clinical and laboratory oral diagnostic tests for interpretation by the dentist.
20. Apply pit and fissure sealants. Adjust sealants with slow-speed handpiece.
21. Place and remove periodontal dressings, dry socket medications, and packing.
22. Remove sutures.
23. Monitor a patient who has been inducted by a dentist into nitrous-oxide relative analgesia.
24. Take impressions for fixed or removable orthodontic appliances, athletic mouth guards, bleaching trays, bite splints, flippers, and removable prosthetic repairs.
25. Preselect and prefit orthodontic bands.
26. Place, tie, and remove ligature wires and elastic ties, and place orthodontic separators.
27. Place and remove arch wires or appliances that have been activated by a dentist.
28. Cut and remove arch wires or replace loose bands, loose brackets, or other orthodontic appliances for palliative treatment.
29. Acid-etch enamel surfaces prior to pit and fissure sealants, direct bonding of orthodontic brackets, or composite restorations.

30. Place orthodontic brackets using an indirect bonding technique by seating the transfer tray loaded with brackets previously positioned in the dental laboratory by a dentist.
31. Take face bow transfers.
32. Orally transmit a prescription that has been authorized by the supervising dentist.
33. Repack dry socket medication and packing for palliative treatment.
34. Administer emergency medications to a patient in order to assist the dentist.
35. A dental hygienist authorized by the board under contiguous supervision of an oral and maxillofacial surgeon may:
 - a. Initiate and discontinue an intravenous line for a patient being prepared to receive intravenous medications, sedation or general anesthesia; and
 - b. Adjust the rate of intravenous fluids infusion only to maintain or keep the line patent or open.
36. A dental hygienist authorized by the board under direct visual supervision of an oral and maxillofacial surgeon may:
 - a. Draw up and prepare medications;
 - b. Follow instructions to deliver medication into an intravenous line upon verbal command;
 - c. Adjust the rate of intravenous fluids infusion beyond a keep-open rate; and
 - d. Adjust an electronic device to provide medications, such as an infusion pump.
37. A dental hygienist under the direct supervision of a dentist may:
 - a. Place, carve, and adjust class I and class V supragingival amalgam or glass ionomer restorations with hand instruments or a slow-speed handpiece;
 - b. Adapt and cement stainless steel crowns; and

- c. Place, contour, and adjust class I and class V supragingival composite restorations where the margins are entirely within the enamel with hand instruments or a slow-speed handpiece.

History: Effective September 1, 1980; amended effective February 1, 1992; October 1, 1993; May 1, 1996; August 1, 1998; April 1, 2000; July 1, 2004; April 1, 2006; January 1, 2011; April 1, 2015.

General Authority: NDCC 43-20-10

Law Implemented: NDCC 43-20-03, 43-20-11, 43-20-12

20-04-01-02. Prohibited services. A dental hygienist may not perform the following services:

1. Diagnosis and treatment planning.
2. Surgery on hard or soft tissue.
3. Administer ~~or titrate~~ anesthetics, except topical and local anesthetic, as permitted under sections 20-04-01-01 and 20-04-01-03, or titrate local anesthetics, sedation or general anesthesia drugs without a board authorized permit.
4. Any irreversible dental procedure or procedures which require the professional judgment and skill of a dentist.
5. ~~Place a final restoration.~~
6. ~~5. Contour a final restoration, excluding Adjust~~ a crown which has not been cemented by a dentist.
7. ~~6. Activating Activate~~ any type of orthodontic appliance.
8. ~~7. Cementing or bonding Cement or bond~~ orthodontic bands or brackets that have not been previously placed by a dentist.
9. ~~8. Placing Place~~ bases or cavity liners.
9. Use a high-speed handpiece inside the mouth.

History: Effective February 1, 1992; amended effective October 1, 1993; July 1, 2004; January 1, 2011; April 1, 2015.

General Authority: NDCC 43-20-10

Law Implemented: NDCC 43-20-03; 43-20-11, 43-20-12, 43-20-12.3

20-04-01-03.1. Duties of the dental hygienist requiring a permit. The board may issue or renew a permit to a dental hygienist for the following:

1. The board may issue or renew a permit authorizing a dental hygienist to provide anesthesia assistance under the supervision of a dentist who

specializes in oral and maxillofacial surgery, and meets the following requirements:

- a. The applicant submits evidence on forms prescribed by the board that the applicant meets any of the following requirements:
 - (1) The applicant has completed a board-approved dental anesthesia assistant education and training course within one year of application and has proof of current certification status from a board-approved competency examination.
 - (2) The applicant has completed a board-approved dental anesthesia assistant education and training course and has proof of current certification status from a board-approved competency examination.
 - b. The applicant has successfully completed training in intravenous access or phlebotomy that includes experience starting and maintaining intravenous lines;
 - c. The applicant holds current and valid certification for health care provider basic life support, or advanced cardiac life support or pediatric advanced life support; and
 - d. The applicant provides a copy of a valid North Dakota general anesthesia permit of the oral and maxillofacial surgeon where the registered dental hygienist will be performing anesthesia assistant services.
2. The board may issue or renew a permit on forms prescribed by the board to authorize a dental hygienist under the direct supervision of a dentist to provide restorative functions under the following conditions:
- a. The applicant meets any of the following requirements:
 - (1) The applicant successfully completes a board-approved curriculum from a program accredited by the commission on dental accreditation of the American dental association or other board-approved course and successfully passed the western regional examining board's restorative examination or other equivalent examinations approved by the board within the last five years, and was successfully completed the restorative function component of the dental assisting national board's certified restorative functions dental assistant certification examination; or
 - (2) Successfully passed the western regional examining board's restorative examination or other board-approved examination over five years from the date of application and provides

evidence from another state or jurisdiction where the applicant legally is or was authorized to perform restorative functions and certification from the supervising dentist of successful completion of at least twenty-five restorative procedures within the previous five years from the date of application.

- b. A dental hygienist may perform the placement and finishing of direct alloy or direct composite restorations, under the direct supervision of a licensed dentist, after the supervising dentist has prepared the dentition for restoration.
- c. The restorative functions shall only be performed after the patient has given informed consent for the placement of the restoration by a restorative functions dental hygienist.
- d. Before the patient is released, the final restorations shall be checked and documented by the supervising dentist.

History: Effective April 1, 2015.

General Authority: NDCC 43-20-10

Law Implemented: NDCC 43-20-03

20-04-01-04.1. Clinical competency examination retakes. A dental hygiene applicant may take a clinical examination three times before remedial training is required. After failing the examination for a third time, and prior to the fourth attempt of the examination, an applicant shall:

- 1. Submit to the board a detailed plan for remedial training by an accredited dental hygiene school. The board must approve the proposed remedial training.
- 2. Submit proof to the board of passing the remedial training within twenty-four months of its approval by the board. The board may grant or deny a fourth attempt of the clinical examination. A fourth attempt must occur within twelve months of the date of the board's decision. If an applicant fails any part of the examination after remedial training, the board must approve additional retakes.

History: Effective April 1, 2015.

General Authority: NDCC 43-20-10

Law Implemented: NDCC 43-20-01.2

20-04-01-06. Additional requirements for applications. Applications must be completed within twelve months of filing. The board may require an interview with the applicant. In addition to the application requirements of North Dakota Century Code sections 43-20-01.2, 43-20-01.3, and 43-20-06, the board may require an application to include:

1. Proof of identity, including any name change.
2. An official transcript sent by an accredited dental school directly to the board.
3. Evidence demonstrating the applicant passed the examination administered by the joint commission on national dental examinations within two years of application.
4. Evidence demonstrating the applicant passed a clinical competency examination, approved by the board, within two years of application.
- ~~5. An interview by the board.~~
- ~~6.~~ 5. A certification, from the licensing board of every jurisdiction in which the applicant is licensed, that the applicant is licensed in good standing.
- ~~7.~~ 6. Certification that the applicant has completed a cardiopulmonary resuscitation course within two years of application.
- ~~8.~~ 7. Verification of physical health and visual acuity.
- ~~9.~~ 8. For applications for licensure by credential review, the law and rules stating the requirements for licensure, when the applicant was licensed, of the jurisdiction in which the applicant is licensed.
- ~~10.~~ 9. For applications for licensure by credential review and reinstatement from inactive status, proof of completion of sixteen hours of continuing education in accordance with section 20-04-01-08 within two years of application.
- ~~11.~~ 10. Any information required by the application forms prescribed by the board.

History: Effective January 1, 2011; April 1, 2015.

General Authority: NDCC 43-20-10

Law Implemented: NDCC 43-20-01.2, 43-20-01.3, 43-20-06

20-04-01-08. Continuing dental education for dental hygienists. Each dental hygienist shall provide evidence on forms supplied by the board that the dental hygienist has attended or participated in continuing dental education in accordance with the following conditions:

1. Continuing education activities include publications, seminars, symposiums, lectures, college courses, and online education.
2. The continuing dental education hours will accumulate on the basis of one hour of credit for each hour spent in education. Subject matter

- directly related to clinical dentistry will be accepted by the board without limit.
3. The minimum number of hours required within a two-year cycle is sixteen. Of these hours, a dental hygienist may earn no more than eight hours from publications and online education. The continuing education must include:
 - a. Two hours of ethics or jurisprudence. Passing the laws and rules examination is the equivalent of two hours of ethics or jurisprudence.
 - b. Two hours of infection control.
 - c. A cardiopulmonary resuscitation course.
 - d. For registered dental anesthesia hygienist permitholders, two hours related to sedation or anesthesia.
 - e. For registered dental restorative hygienist permitholders, two hours related to restorative dentistry.
 4. Mere registration at a dental convention without specific attendance at continuing education presentations will not be creditable toward the continuing dental education requirement.
 5. All dental hygienists must hold a current cardiopulmonary resuscitation certificate.

History: Effective January 1, 2011; amended effective April 1, 2015.

General Authority: NDCC 43-20-10

Law Implemented: NDCC 43-20-01.4

CHAPTER 20-05-01

20-05-01-01. Fees. The board shall charge the following nonrefundable fees:

1. For dentists:

a.	License by examination application fee	\$440.00
b.	License by credential review application fee	\$1,200.00
c.	Renewal fee	\$400.00
d.	Late fee	\$400.00
e.	Temporary license application and license fee	\$250.00
f.	Volunteer license application and license fee	\$65.00
g.	Inactive status application fee	\$35.00
h.	Inactive status renewal fee	\$35.00
i.	Inactive status reinstatement fee	\$400.00
j.	<u>Dermal fillers and botulinum toxin permit</u>	<u>\$200.00</u>

2. For dental hygienists:

a.	License by examination application fee	\$200.00
b.	License by credential review application fee	\$450.00
c.	Renewal fee	\$150.00
d.	Late fee	\$150.00
e.	Inactive status application fee	\$35.00
f.	Inactive status renewal fee	\$35.00
g.	Inactive status reinstatement fee	\$150.00

3. For registered and qualified dental assistants:

a.	Application fee	\$130.00
b.	Renewal fee	\$100.00
c.	Late fee	\$100.00

4. For anesthesia permits:

a.	Application fee	\$200.00
b.	Inspection fee	actual cost
c.	Renewal fee	\$200.00

d.	Late fee	\$200.00
5.	For a duplicate license, registration, or permit	\$45.00

History: Effective May 1, 1992; amended effective October 1, 1993; May 1, 1996; August 1, 1998; April 1, 2000; June 1, 2002; July 1, 2004; April 1, 2006; January 1, 2008; January 1, 2011; April 1, 2015.

General Authority: NDCC 43-20-10, 43-28-06

Law Implemented: NDCC 43-20-01.2, 43-20-01.3, 43-20-01.4, 43-20-06, 43-20-13.1, 43-20-13.2, 43-28-11, 43-28-16.2, 43-28-17, 43-28-24, 43-28-27

TITLE 45
INSURANCE COMMISSIONER

APRIL 2015

CHAPTER 45-05-09
DEFENSE EXPENSES WITHIN THE LIMIT OF LIABILITY PROVISIONS

<u>Section</u>	
<u>45-05-09-01</u>	<u>Defense Expenses Within Limit of Liability Prohibited - Exceptions</u>
<u>45-05-09-02</u>	<u>Policies Within Which Defense Expenses Within Limit of Liability Permitted</u>
<u>45-05-09-03</u>	<u>Notice Required</u>
<u>45-05-09-04</u>	<u>Acknowledgment</u>
<u>45-05-09-05</u>	<u>Defense-Only Policies Excepted</u>

45-05-09-01. Defense expenses within limit of liability prohibited - Exceptions. No admitted insurer shall issue or renew a policy of liability insurance in this state that includes defense expenses within the limit of liability unless the policy's minimum limit per occurrence or the aggregate liability limit for all liability risks and coverages under the policy is at least:

1. One million dollars for primary coverages; and
2. One hundred thousand dollars for secondary coverages.

"Primary coverages" means the main or intended coverage of the policy.

"Secondary coverages" means coverage which is in addition to the main policy by endorsement, rider, or additional coverages.

History: Effective April 1, 2015.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-04-02

45-05-09-02. Policies within which defense expenses within limit of liability permitted. Defense expenses within the limit of liability provisions are allowed only within the following types of policies or coverages within a policy with the limits of liability as required in section 45-05-09-01:

1. Cyber liability;
2. Fiduciary liability;
3. Directors and officers liability;
4. Errors and omissions liability;
5. Employer practices liability;
6. Medical malpractice liability;
7. Pollution liability;
8. Liquor liability;
9. Nuclear liability;
10. Fidelity bond;
11. Umbrella and excess policies; and
12. Other policies permitted within the discretion of the insurance commissioner.

History: Effective April 1, 2015.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-04-02

45-05-09-03. Notice required. The fact that defense expenses are within the limit of liability must be disclosed on the declaration page in at least twelve-point bold print.

History: Effective April 1, 2015.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-04-02

45-05-09-04. Acknowledgment. The applicant or insured must sign a disclosure form as part of the application or renewal process wherein the applicant or insured acknowledges that the subject policy has limits of liability which may be reduced or completely eliminated by payments for legal defense costs and claims expenses.

History: Effective April 1, 2015.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-04-02

45-05-09-05. Defense-only policies excepted. Defense-only policies are excepted from the requirements of chapter 45-05-09. A defense-only policy is a

policy which is purchased solely to provide a legal defense and is not meant to provide indemnification or to be a source of payment for damages to a third party.

History: Effective April 1, 2015.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-04-02

TITLE 69
PUBLIC SERVICE COMMISSION

APRIL 2015

CHAPTER 69-02-02

69-02-02-02. Formal complaints.

1. **Complaints.** Complaints may be made by the commission on its own motion, or by any person. Complaints will be in writing and set forth the act or omission complained of. If the complaint is against the reasonableness of any rate or charge of any heat, gas, or electrical public utility, the commission cannot entertain it unless it is signed by the governing body of the county or city, if any, within which the alleged violation occurred, or by not less than ten percent of the consumers or purchasers of such heat, gas, or electrical service.
2. **Form and content.** A formal complaint must show the venue, "Before the Public Service Commission of North Dakota" and will contain a heading showing the name of the complainant and the name of each respondent. The complaint must include the name, address, and telephone number of each complainant's attorney, if any. The complaint will be drawn to fully advise the respondent and the commission of the factual and legal grounds of the complaint, the injury complained of, and the specific relief sought.
3. **Number of copies.** At the time the complaint is filed, the complainant must also file a copy for each respondent plus seven additional copies.
4. **Sufficiency of complaint.** Upon the filing of a formal complaint, the commission will determine whether it states a prima facie case and conforms to this article. If the complaint does not state a prima facie case or does not conform to this article, the commission will notify the complainant and provide the complainant an opportunity to amend within a specified time. If the complaint is not amended, it will be dismissed. The filing of an answer is not an admission of the sufficiency of the complaint.
5. **Service.**

- a. If the complaint is sufficient, the commission will serve a copy of the complaint ~~and the commission's notice~~ on each respondent.
- b. The commission will serve the complaint and notice of hearing personally or by certified mail at least forty-five days before the time specified for hearing. The complaint must be served at least forty-five days before the date of the hearing. Service of a complaint and notice of hearing may be waived, in writing, by the respondent. The parties may agree upon a time and place for hearing, with the consent of the commission. ~~In case of an emergency the commission may notice a proceeding for hearing upon its merits upon less than forty-five days' notice. The time provided for the respondent's answer must be adjusted accordingly. However, hearings on a renewal, suspension, or revocation of a license may not be held on less than ten days' notice, unless a statute specifically allows or requires suspension or revocation without a hearing.~~
- c. In case of an emergency, the commission may notice a proceeding for hearing upon its merits upon less than forty-five days' notice. The time provided for the respondent's answer must be adjusted accordingly.
- d. Notwithstanding subparagraph c, hearings on a renewal, suspension, or revocation of a license may not be held on less than ten days' notice, unless a statute specifically allows or requires suspension or revocation without a hearing.

History: Amended effective September 1, 1992; January 1, 2001; April 1, 2015.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-05, 49-01-07

69-02-02-03. Answers.

1. **Filing.** Answers to complaints must be filed within twenty days after service of the ~~notice of hearing and~~ complaint.
2. **Content.** Each answer must contain:
 - a. The title of the proceeding and docket number;
 - b. The name and address of each answering party;
 - c. A specific denial of each material allegation of the complaint which is controverted by the respondent;
 - d. A statement of any new matter which may constitute a defense; and

- e. The name, address, and telephone number of each of the respondent's attorneys, if any.

If the answering party has no information or belief upon the subject sufficient to enable the party to answer an allegation of the complaint, the party may so state in the answer and place the denial upon that ground.

- 3. **Service and number of copies.** The original answer and seven copies thereof must be filed with the executive secretary of the commission. The respondent shall serve a copy of its answer personally, or by certified mail, upon each complainant. The respondent shall certify to the commission that the service has been made.

History: Amended effective September 1, 1992; January 1, 2001; April 1, 2015.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-05, 49-01-07

CHAPTER 69-02-09
TRADE SECRET PROCEDURES FOR PROTECTING INFORMATION FROM
DISCLOSURE

Section	
69-02-09-01	Application to Protect Information
69-02-09-02	Filing of Application
69-02-09-03	Processing the Application
69-02-09-04	Protective Order
69-02-09-05	Request for Hearing - Who May Request - Time - Burden of Proof
69-02-09-06	Request for Hearing - Contents
69-02-09-07	Viewing Trade Secret <u>Protected</u> Information
69-02-09-08	References to Trade Secret <u>Protected</u> Material at Hearings
69-02-09-09	Protection of Trade Secret <u>Protected</u> Information
69-02-09-10	Copies of Information Used During Hearing
69-02-09-11	Documents Certified on Appeal
69-02-09-12	Disposal of Trade Secret <u>Protected</u> Information
<u>69-02-09-13</u>	<u>Information Filed Under Sections 69-09-05-12 and 69-09-05-12.1</u>

69-02-09-01. Application to protect information. ~~An~~ Except as provided in section 69-02-09-13, an applicant requesting trade secret protection of information in an administrative proceeding or in a response to a commission request for information shall file an application with the commission. The application must include at least the following:

- ~~1. A general description of the nature of the information sought to be protected;~~
 - ~~2. An explanation of why the information derives independent economic value, actual or potential, from not being generally known to other persons;~~
 - ~~3. An explanation of why the information is not readily ascertainable by proper means by other persons;~~
 - ~~4. A general description of the persons or entities that would obtain economic value from disclosure or use of the information;~~
 - ~~5. A specific description of known competitors and competitors' goods and services that are pertinent to the tariff or rate filing; and~~
 - ~~6. A description of the efforts used to maintain the secrecy of the information.~~
2. The specific law or rule on which protection is based.
 3. If the basis for protection is that the information is trade secret:

- a. An explanation of why the information derives independent economic value, actual or potential, from not being generally known to other persons;
 - b. An explanation of why the information is not readily ascertainable by proper means by other persons;
 - c. A general description of the persons or entities that would obtain economic value from disclosure or use of the information;
 - d. A specific description of known competitors and competitors' goods and services that are pertinent to the tariff or rate filing; and
 - e. A description of the efforts used to maintain the secrecy of the information.
4. If the basis for protection is a reason other than that the information is trade secret, the specific basis or bases upon which the information qualifies for protection.
 5. A redacted public version of the information, unless this requirement is waived by the commission. The amount redacted must be as minimal as possible. If it is not possible to file a redacted public version, a specific written request for waiver of the requirement and the reasons for requesting a waiver must be filed.

History: Effective March 1, 1994; amended effective April 1, 2015.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-06, 47-25.1

69-02-09-02. Filing of application. The application must be addressed to and filed with the executive secretary of the commission. The ~~trade secret~~ protected material filed with the application must be separately bound and placed in a sealed envelope, or other appropriate, sealed container, which must be labeled: **TRADE SECRET PROTECTED INFORMATION - PRIVATE**. An original and seven copies of the public portion of the application must be filed unless this requirement is waived by the commission. Only one copy of the ~~trade secret~~ protected material must may be filed.

History: Effective March 1, 1994; amended effective April 1, 2015.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-06, 47-25.1

69-02-09-03. Processing the application. When an application for ~~trade secret~~ protection of information is filed, the commission staff shall examine the information and application, and make file and serve a prima-facie response that includes a recommendation of on whether the information qualifies for protection. If the basis for requesting protection is that the information is trade secret, the staff response must include a recommendation on whether the information is

relevant and ~~a~~ is trade secret, under the definition of trade secret in North Dakota Century Code section 47-25.1-01. The commission will make a determination on the application from the application ~~and~~, the recommendation, and any response received from those served.

History: Effective March 1, 1994; amended effective April 1, 2015.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-06, 47-25.1

69-02-09-04. Protective order. Upon a determination that information is relevant ~~and trade secret~~ qualifies for protection, the commission shall issue a protective order limiting disclosure.

History: Effective March 1, 1994; amended effective April 1, 2015.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-06, 47-25.1

69-02-09-05. Request for hearing - Who may request - Time - Burden of proof.

1. Upon a determination that the information is ~~relevant but not trade secret, or upon a determination of irrelevance~~ does not qualify for protection, the applicant will be notified and has seven days to request a hearing before the commission, or obtain appropriate injunctive relief from the courts. If no hearing is requested or the commission is not otherwise restrained, the information will become part of the public record without protection. The burden of proof in such a hearing is on the party seeking to prevent disclosure.
2. If any person disagrees with the designation of information as ~~trade secret~~ protected or with its nondisclosure, the person shall first attempt to informally dispose of the dispute with the party seeking to prevent disclosure. If the dispute cannot be resolved, any person may request a hearing before the commission to determine the ~~trade secret~~ protected status.

History: Effective March 1, 1994; amended effective April 1, 2015.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-06, 47-25.1

69-02-09-06. Request for hearing - Contents. A request for hearing must be in writing. An original and seven copies of the request must be filed with the executive secretary of the commission. The request must identify the reason the information should be disclosed, or not ~~considered trade secret~~ protected. In any hearing the burden of proof is on the party seeking to prevent disclosure.

History: Effective March 1, 1994; amended effective April 1, 2015.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-06, 47-25.1

69-02-09-07. Viewing ~~trade-secret~~ protected information.

1. The commission and its staff, and any outside counsel retained by the commission, may view protected information filed with the commission at any time. However, the commission and its staff are bound by the terms of these rules to keep the information confidential and must execute the protective agreement as required in subsection 3. The originator (applicant for ~~trade-secret~~ protected status) may ~~also~~ view the information at any time without the necessity of executing the protective agreement required in subsection 3.
2. Others who wish to view protected information, including experts who are not regular full-time employees of the commission, and opposing counsel and experts, may do so only after ~~written~~ authorization from the commission. The commission may grant authorization when the person wishing to view the information submits a written request that includes all of the following:
 - a. The name and address of the person who will view the information;
 - b. Identification, as specifically as possible, of the information requested;
 - c. A showing of good cause why the information is needed;
 - d. Identification of the purpose of the review;
 - e. Identification of the intended use of the information; and
 - f. An estimate of the time needed for review.

The requesting person shall file an the original and seven copies of the written request with the commission and serve it upon the originator at least ten days prior to the time the person desires to view the information unless the originator agrees to a shorter notice period.

3. Any person ~~requesting review of the~~ reviewing protected information filed with the commission shall ~~also~~ execute a protective agreement form provided by the commission. A new protective agreement form must be executed for each work day in which information is viewed.
4. The commission shall disclose the information unless ~~the originator shows good cause why disclosure should not be granted. When disclosed, trade secret information may not be removed from commission offices, and may be used only for purposes of the proceeding.;~~
 - a. The commission is prohibited by law from disclosure under any circumstances or;

- b. The originator shows good cause why disclosure should not be granted.

When disclosed, protected information may not be removed from commission offices and must be returned for secure filing prior to the end of the workday on which the information was disclosed, and may be used only for purposes of the proceeding or case.

History: Effective March 1, 1994; amended effective April 1, 2015.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-06, 47-25.1

69-02-09-08. References to ~~trade-secret~~ material protected information at hearings. To the extent that reference is made to any ~~trade-secret~~ protected information by a person afforded access to such information during any aspect of the proceeding, the information should be referenced only by its title or its exhibit identification, or in a manner that does not unnecessarily disclose the confidential information. If specific disclosure of the confidential information is necessary during oral testimony or argument, it must be on such prior notice as is feasible and, in any event, on sufficient notice to clear the hearing room of persons not bound by this chapter.

History: Effective March 1, 1994; amended effective April 1, 2015.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-06, 47-25.1

69-02-09-09. Protection of ~~trade-secret~~ protected information. Any part of the record of a proceeding containing ~~trade-secret~~ protected information, including exhibits and transcript pages, must be protected unless otherwise ordered by the commission. If a commission order requires a finding based on ~~trade-secret~~ protected information, the order must reference the confidential nature of the finding and a separate, confidential document must be prepared to state fully the finding of fact and the ~~trade-secret~~ protected information relied upon to support the finding.

History: Effective March 1, 1994; amended effective April 1, 2015.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-06, 47-25.1

69-02-09-10. Copies of information used during hearing. Copies of the ~~trade-secret~~ protected information may be made for use during a hearing for persons bound by these rules. If copies are made for hearing purposes, they must be numbered. Upon the completion of the hearing, all copies of the information must be returned to the disclosing party or commission staff.

History: Effective March 1, 1994; amended effective April 1, 2015.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-06, 47-25.1

69-02-09-11. Documents certified on appeal. When an order of the commission is appealed and the documents are certified to court, copies must be made of the ~~trade-secret~~ protected information. The copies of ~~trade-secret~~ protected information must be placed in a sealed envelope, or other appropriate, sealed container, and labeled: "**TRADE-SECRET PROTECTED INFORMATION - PRIVATE**". The originals of the ~~trade-secret~~ protected information must be retained in the commission's ~~trade-secret~~ protected information file. When the court issues its decision and returns the case record to the commission, the copies of ~~trade secret~~ protected information must be filed with the originals in the commission's ~~trade-secret~~ protected information file.

History: Effective March 1, 1994; amended effective April 1, 2015.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-06, 47-25.1

69-02-09-12. Disposal of ~~trade-secret~~ protected information. ~~When~~ Except for information filed under section 69-02-09-13, when a case or file containing ~~trade-secret~~ protected information has been closed for one year the commission will dispose the ~~trade-secret~~ protected information by shredding.

History: Effective January 1, 2001; amended effective April 1, 2015.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-06, 47-25.1

69-02-09-13. Information filed under sections 69-09-05-12 and 69-09-05-12.1. Information filed to comply with subdivision b of subsection 3 of section 69-09-05-12 or section 69-09-05-12.1 is protected without need for the originator to file an application and without further action by the commission, unless the commission orders otherwise. Sections 69-02-09-01 through 69-02-09-04 do not apply to information filed to comply with subdivision b of subsection 3 of section 69-09-05-12, or subsections 1, 2, or 3 of section 69-09-05-12.1.

History: Effective April 1, 2015.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-06, 47-25.1

CHAPTER 69-05.2-10

69-05.2-10-09. Permit applications - Ownership and control requirements for permittees after permit issuance.

1. Within thirty days of being issued a cessation order under subdivision b of subsection 1 of North Dakota Century Code section 38-14.1-28, the permittee must provide or update all the information required under section 69-05.2-06-01.
2. A permittee does not have to submit information under subsection 1 if a court of competent jurisdiction grants a stay of the cessation order and the stay remains in effect.
3. Within sixty days of any addition, departure, or change in position of any person identified in subdivision e of subsection 1 of section 69-05.2-06-01, the permittee must provide:
 - a. The date of any departure; and
 - b. ~~A certification, under oath, from the natural person with the greatest level of effective control over the entire proposed surface coal mining operation that the person controls the proposed surface coal mining operation.~~ The following for that person:
 1. The person's name, address, and phone number.
 2. The person's position title and relationship to the permittee, including percentage of ownership and location in the organizational structure.
 3. The date the person began functioning in that position.

History: Effective April 1, 2013; amended effective April 1, 2015.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-21, 38-14.1-22, 38-14.1-23

**CHAPTER 69-07-02
LICENSING**

Section	
69-07-02-01	License Application
69-07-02-02	Grain Warehouse - Bond Schedule <u>Bonds</u>
69-07-02-02.1	Grain Buyer - Bond Schedule <u>Bonds</u>
69-07-02-02.2	Hay Buyer - Bond Schedule
69-07-02-03	License Renewal
69-07-02-04	Business Documents - Revisions
69-07-02-05	Physically Disconnected Lease Space
69-07-02-06	Universal Nonpublic Use

69-07-02-02. Grain warehouse - ~~Bond schedule~~ Bonds. The warehouse ~~A licensee's required minimum~~ bond is determined by the licensee's total physical capacity licensed by the licensee in the state. The capacity of each warehouse, bin, annex, or any additional space must be specifically identified. The bond amounts are: the length of time the license has been licensed, the licensee's annual grain purchase volume, and the licensee's scale ticket conversion policy. A licensee's required minimum bond may not be less than \$50,000.

Capacity to 100,000 bushels	\$ 50,000
From 100,001 bushels through 125,000 bushels	62,500
From 125,001 bushels through 150,000 bushels	75,000
<hr/>	
From 150,001 bushels through 175,000 bushels	\$87,500
From 175,001 bushels through 200,000 bushels	100,000
From 200,001 bushels through 225,000 bushels	112,500
From 225,001 bushels through 250,000 bushels	125,000
From 250,001 bushels through 275,000 bushels	137,500
From 275,001 bushels through 300,000 bushels	150,000
<hr/>	
From 300,001 bushels through 325,000 bushels	\$162,500
From 325,001 bushels through 350,000 bushels	175,000
From 350,001 bushels through 375,000 bushels	187,500
From 375,001 bushels through 400,000 bushels	200,000
<hr/>	
From 400,001 bushels through 425,000 bushels	\$212,500
From 425,001 bushels through 450,000 bushels	225,000
From 450,001 bushels through 475,000 bushels	237,500

~~From 475,001 bushels through 500,000 bushels~~

~~250,000~~

~~A licensee with a capacity in excess of five hundred thousand bushels must furnish additional bond coverage of five thousand dollars for each twenty-five thousand bushels of capacity or fraction thereof.~~

~~Unless the commission determines that an increase is necessary to accomplish the purpose of North Dakota Century Code chapter 60-02, the bond of a warehouseman shall not exceed one million five hundred thousand dollars.~~

1. If no special circumstances described in this section applies, the required bond is based on capacity and years licensed.

<u>a.</u>	<u>≤ 6 years</u>	<u>≥ 7 years</u>
<u>Capacity to 100,000 bushels</u>	<u>\$65,000</u>	<u>\$50,000</u>
<u>From 100,001 bushels through 125,000 bushels</u>	<u>\$81,250</u>	<u>\$62,500</u>
<u>From 125,001 bushels through 150,000 bushels</u>	<u>\$97,500</u>	<u>\$75,000</u>
<u>From 150,001 bushels through 175,000 bushels</u>	<u>\$113,750</u>	<u>\$87,500</u>
<u>From 175,001 bushels through 200,000 bushels</u>	<u>\$130,000</u>	<u>\$100,000</u>
<u>From 200,001 bushels through 225,000 bushels</u>	<u>\$146,250</u>	<u>\$112,500</u>
<u>From 225,001 bushels through 250,000 bushels</u>	<u>\$162,500</u>	<u>\$125,000</u>
<u>From 250,001 bushels through 275,000 bushels</u>	<u>\$178,750</u>	<u>\$137,500</u>
<u>From 275,001 bushels through 300,000 bushels</u>	<u>\$195,000</u>	<u>\$150,000</u>
<u>From 300,001 bushels through 325,000 bushels</u>	<u>\$211,250</u>	<u>\$162,500</u>

<u>From 325,001 bushels through 350,000 bushels</u>	<u>\$227,500</u>	<u>\$175,000</u>
<u>From 350,001 bushels through 375,000 bushels</u>	<u>\$243,750</u>	<u>\$187,500</u>
<u>From 375,001 bushels through 400,000 bushels</u>	<u>\$260,000</u>	<u>\$200,000</u>
<u>From 400,001 bushels through 425,000 bushels</u>	<u>\$276,250</u>	<u>\$212,500</u>
<u>From 425,001 bushels through 450,000 bushels</u>	<u>\$292,500</u>	<u>\$225,000</u>
<u>From 450,001 bushels through 475,000 bushels</u>	<u>\$308,750</u>	<u>\$237,500</u>
<u>From 475,001 bushels through 500,000 bushels</u>	<u>\$325,000</u>	<u>\$250,000</u>

- b. If a licensee's total capacity is more than five hundred thousand bushels, additional bond is required. The additional required bond is six thousand five hundred dollars for each twenty-five thousand bushels of capacity or fraction of twenty-five thousand bushels of capacity over five hundred thousand bushels, if licensed less than seven years, and five thousand dollars for each twenty-five thousand bushels of capacity or fraction of twenty-five thousand bushels of capacity over five hundred thousand bushels, if licensed seven years or more.
2. If the total annual grain purchase volume of a licensee is more than seven times the licensee's bonded capacity, additional bond coverage is required. The additional required bond is five thousand dollars for each twenty-five thousand bushels or fraction of twenty-five thousand bushels by which the licensee's total annual purchase volume exceeds seven times the licensee's bonded capacity. The application of this section to a new licensee will be based upon the licensee's projected annual grain purchase volume.
3. A required bond may be reduced based on a licensee's conversion policy. The required bond is reduced by thirty percent for a licensee that establishes and follows a conversion policy approved by the public service commission of ten days or less, and by fifteen percent for a licensee that establishes and follows a conversion policy approved by the public service commission of eleven to twenty-one days. A reduction

under this subsection cannot be used to reduce a required minimum bond to an amount less than fifty thousand dollars.

4. Except as provided in subsection e, the bond of a warehouseman may not exceed two million dollars.
5. The commission may require an increase in the amount of any bond when necessary to accomplish the purposes of North Dakota Century Code chapter 60-02.

History: Amended effective May 1, 1984; August 1, 1999; April 1, 2015.

General Authority: NDCC 60-02-03

Law Implemented: NDCC 60-02-02, 60-02-07, 60-02-09

69-07-02-02.1. Grain buyer - ~~Bond schedule~~ Bonds. ~~The grain buyer bond is determined by the three-year rolling average of grain purchased annually in this state by the grain buyer. The bond amounts are:~~ A licensee's required minimum bond is determined by the volume of grain the licensee purchases annually in the state.

Up to 100,000 bushels	\$50,000
For each additional 100,000 bushels or fraction thereof in excess of 100,000 and up to 1,000,000	\$20,000
For each additional 100,000 bushels or fraction thereof in excess of 1,000,000	\$5,000

~~For a new licensee, the first year's bond shall be based on the projected purchase volume and the second year's bond and third year's bond shall be based on the average actual volume according to the above schedule.~~

~~Unless the commission determines that an increase is necessary to accomplish the purpose of North Dakota Century Code chapter 60-02.1, the bond of a facility-based grain buyer shall not exceed one million dollars nor shall the bond of a non-facility-based grain buyer exceed one million five hundred thousand dollars.~~

1. As used in subsection b "grain purchase volume" means:
 - a. A three year rolling average of total annual grain purchase volume for a licensee licensed more than three years.
 - b. An actual three year average of total annual grain purchase volume for a licensee licensed three years.
 - c. An actual two year average of total annual grain purchase volume for a licensee licensed two years.

- d. Total annual grain purchase volume for a licensee licensed one year.
 - e. The licensee's projected annual grain purchase volume for a new licensee.
2. The required minimum bond for a facility-based grain buyer is:
- a. Fifty cents per bushel if a licensee's total annual grain purchase volume is one hundred thousand bushels or less, with a minimum of fifty thousand dollars.
 - b. If a licensee's total annual grain purchase volume is more than one hundred thousand bushels up to and including one million bushels, the required minimum bond is the amount in subdivision 1 plus twenty cents per bushel for each bushel by which the licensee's total annual grain purchase volume exceeds one hundred thousand bushels up to and including one million bushels.
 - c. If a licensee's total annual grain purchase volume is more than one million bushels, the required minimum bond is the amount in subdivisions 1 and 2 plus five cents per bushel for each bushel by which the licensee's total annual grain purchase volume exceeds one million bushels.
3. The required minimum bond for a roving grain buyer is:
- a. Fifty cents per bushel if the licensee's total projected annual grain purchase volume is five hundred thousand bushels or less, with a required minimum bond of fifty thousand dollars.
 - b. If a licensee's total projected annual grain purchase volume is more than five hundred thousand bushels, the required minimum bond is the amount in subdivision 1 plus twenty cents per bushel for each bushel by which the licensee's total projected annual grain purchase volume exceeds five hundred thousand bushels.
4. Except as provided in subsection e, the bond of a grain buyer may not exceed two million dollars.
5. The commission may require an increase in the amount of any bond when necessary to accomplish the purposes of North Dakota Century Code chapter 60-02.1.

History: Effective August 1, 1999; amended effective August 1, 2000; April 1, 2015.

General Authority: NDCC 60-02.1-03

Law Implemented: NDCC 60-02.1-03, 60-02.1-08

**CHAPTER 69-09-03
GAS PIPELINE SAFETY**

Section

69-09-03-01

Safety

69-09-03-02

Adoption of Regulations

69-09-03-01. Safety. ~~Gas pipeline Pipeline~~ facilities used for the intrastate distribution and transmission of natural and other gas, liquefied natural gas, or hazardous liquids shall be designed, constructed, and operated to meet the safety standards set forth in regulations of the United States department of transportation adopted in section 69-09-03-02. The commission may require such proof of compliance as it deems necessary.

History: Amended effective July 1, 1986; January 1, 1988; April 1, 2015.

General Authority: NDCC 28-32-02, 49-02-04

Law Implemented: NDCC 49-02-01.2, 49-02-04

69-09-03-02. Adoption of regulations. The following parts of title 49, Code of Federal Regulations in effect as of ~~June 22, 2014~~ November 6, 2014, are adopted by reference:

1. Part 190 - ~~Department of Transportation Pipeline Safety Enforcement Programs and Rulemaking Procedures.~~
2. Part 191 - ~~Department of Transportation Regulations for Transportation of Natural Gas and other gas by Pipeline; Annual Reports of Leaks, Incident Reports, and Safety-Related Condition Reports.~~
3. Part 192 - Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards.
4. Part 195 - Transportation of Hazardous Liquids by Pipeline.
4. Part 199 - ~~Control of Drug Use in Natural Gas, Liquefied Natural Gas, and Hazardous Liquids Pipelines~~ Alcohol Testing.
- 5.

Copies of these regulations may be obtained from:

Public Service Commission
600 East Boulevard, Dept. 408
Bismarck, ND 58505-0480

History: Effective June 1, 1984; amended effective July 1, 1986; January 1, 1988; March 1, 1990; February 1, 1992; August 1, 1993; August 1, 1994; February 1, 1996; July 1, 1997; July 1, 1998; September 1, 1999; August 1, 2000; January 1, 2002; November 1, 2003; May 1, 2005; July 1, 2006; April 1, 2008; January 1, 2010; April 1, 2012; April 1, 2015.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 49-02-01.2