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Effective Date: 10/31/16

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Tennessee Board of Medical Examiners
Division:	
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Revision Type (check all that apply):

- ☒ Amendment
☐ New
☐ Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only **ONE Rule Number/Rule Title per row)**

Chapter Number	Chapter Title
0880-02	General Rules and Regulations Governing the Practice of Medicine
Rule Number	Rule Title
0880-02-.16	Telemedicine Licensure

Chapter 0880-02
General Rules and Regulations Governing the Practice of Medicine

Amendments

Rule 0880-02-.16 Telemedicine Licensure is amended by deleting the rule in its entirety, including its title, and substituting instead the following language, so that as amended, the new rule and rule title shall read:

0880-02-.16 Telemedicine Licensure and the Practice of Telemedicine. No person shall engage in the practice of medicine, either in person or remotely using information transmitted electronically or through other means, on a patient within the state of Tennessee unless duly licensed by the Board in accordance with the provisions of the current statutes and rules. Unless specifically set out in this rule, this rule is not intended to and does not supersede any pre-existing federal or state statutes or rules and is not meant to alter or amend the applicable standard of care in any particular field of medicine or to amend any requirement for the establishment of a physician-patient relationship.

(1) Definitions –

- (a) Facilitator – The facilitator is an individual often affiliated with a local system of care or a parent or legal guardian of the patient. The facilitator must be physically present with the patient and is responsible for verifying the identity and location of the patient and for the origination, collection and transmission of data in the form of images or clinical data to the physician performing the evaluation remotely.
- (b) Medical interpretation – The performance of a medical interpretation by a physician is the rendering of a diagnosis regarding a particular patient by examination of radiologic imaging studies, tissue specimens, bodily fluid specimens (including, but not limited to urine, blood and cerebrospinal fluid) or medical records requested by another physician or licensed health care provider.
- (c) Patient encounter – The rendering of a documented medical opinion concerning evaluation, diagnosis, and/or treatment of a patient whether the physician is physically present in the same room, in a remote location within the state or across state lines.
- (d) Physician-patient relationship – A physician-patient relationship exists when a physician serves a patient's medical needs whether or not there has been an encounter in person between the physician and patient.
- (e) Research hospital – A hospital at which fifty percent (50%) or more of the inpatients treated during the previous calendar year were treated pursuant to research protocols.
- (f) Store-and-forward technology – The use of asynchronous electronic communications between a patient and healthcare services provider at a distant site for the purpose of diagnostic and therapeutic assistance in the care of patients and includes the transferring of medical data from one site to another through the use of a device that records or stores images that are sent or forwarded via electronic communication to another site for consultation.
- (g) Telemedicine – Telemedicine is the practice of medicine using electronic communication, information technology or other means, between a licensee in one location and a patient in another location. Telemedicine is not an audio only telephone conversation, email/instant messaging conversation or fax. It typically involves the application of secure video conferencing or store-and-forward to provide or support healthcare delivery by replicating the interaction of a traditional encounter between a provider and a patient.

- (2) Telemedicine Licenses Issued Under Previous Rule – As of the effective date of this rule, the Board will no longer issue what was previously termed a “telemedicine license.” Individuals previously granted a telemedicine license under the former version of this rule may apply to have the license converted to a full license. Such individuals must complete the application for a full license and provide all necessary documentation, though no new application fee will be required as long as application is made within two years of the effective date of this rule. Individuals who do not convert to a full license (or do not qualify for full licensure) will retain the telemedicine license subject to the following conditions:
- (a) The license must be timely renewed on a biennial basis, as required pursuant to Rule 0880-02-.09. Notwithstanding Rule 0880-02-.09, however, licenses not timely renewed will not be subject to re-instatement and affected individuals wishing to engage in the practice of medicine on patients located in Tennessee will be required to make application for a full license, including payment of the application fee.
 - (b) Telemedicine license holders must maintain current ABMS specialty board-certification. Licensees who do not maintain ABMS specialty board-certification will not be entitled to renewal of the license.
 - (c) Licensees retaining a telemedicine license are limited to the provision of medical interpretation services in the area of their specialty board-certification. Such license holders do not possess prescriptive authority in Tennessee.
 - (d) All telemedicine licenses are subject to discipline for the same causes and pursuant to the same procedures as active, unrestricted licenses.
- (3) Effect of License - The issuance by the Board of a license to practice medicine subjects the licensee to the jurisdiction of the Board in all matters set forth in the Medical Practice Act and implementing rules and regulations, including all matters related to discipline. The licensee agrees by acceptance of such license to produce patient medical records and materials as requested by the Board and to appear before the Board upon receipt of notice from the Board commanding such appearance. Failure of the licensee to appear and/or to produce records or materials as requested, after appropriate notice, shall constitute grounds to suspend or revoke the license at the Board’s discretion.
- (4) Exempted from the provisions of these rules are the following:
- (a) Licensed physicians of other states when called in consultation regarding specific clinical or scientific aspects of the field of medicine by a Tennessee licensed/registered physician as provided by T.C.A. § 63-6-204(a)(3);
 - (b) US Military physicians operating within the Federal jurisdiction and regulations related to their duties as provided by T.C.A. § 63-6-204(a)(3);
 - (c) The informal practice of medicine between physicians in the form of uncompensated professional dialogue regarding aspects of the field of medicine; and
 - (d) A recognized, highly specialized, licensed physician from another state or country who specializes in the diagnosis and/or treatment of rare or orphan diseases and who provides consultation to research hospitals, with or without compensation or the expectation of compensation.
- (5) Physicians who are contractually obligated to provide and/or deliver medical services in Tennessee must be licensed to practice medicine in Tennessee, regardless of whether such services are in exchange for direct compensation.

(6) Notwithstanding the requirements of Rule 0880-02-.14(7), a physician licensed in Tennessee may engage in the practice of telemedicine under the following circumstances:

(a) Except as provided under paragraphs seven (7) and eight (8) of this rule, the patient encounter to establish or maintain the physician-patient relationship via telemedicine between the physician in a remote location and the patient in Tennessee may occur with or without the use of a facilitator so long as such encounter is consistent with parts 1 and 2 of this Rule:

1. If no facilitator is present:

- (i) The patient must utilize adequately sophisticated technology to enable the remote provider to verify the patient's identity and location with an appropriate level of confidence; and
- (ii) The patient must transmit all relevant health information at the level of store-and-forward technology or secure video conferencing; and
- (iii) The remote provider must disclose his or her name, current and primary practice location, medical degree and recognized specialty area, if any, and in accordance with T.C.A. § 63-1-109.

2. If a facilitator is present:

- (i) The facilitator must personally verify the identity of the patient; however, all relevant health information must be transmitted to the remote provider using at least the level of store-and-forward technology. The facilitator and the patient may interact with the provider at the remote location via secure video conferencing or store-and-forward technology; and
- (ii) The facilitator must identify themselves, their role, and their title to the patient and the remote physician; and
- (iii) The remote provider must disclose his or her name, current and primary practice location, medical degree and recognized specialty area, if any, and all additional information required pursuant to T.C.A. § 63-1-109.

(b) For patient encounters conducted via telemedicine, the physician should have appropriate patient record(s) or be able to obtain such information during the telemedicine encounter.

(c) The physician engaging in telemedicine is responsible for ensuring that the medical record contains all pertinent data and information gleaned from the encounter. Any physician conducting a patient encounter via telemedicine must so document in the patient record and must state the technology used. All records for Tennessee patients are subject to inspection pursuant to T.C.A. § 63-1-117.

(d) If the information transmitted through electronic or other means as part of a patient's encounter is not of sufficient quality or does not contain adequate information for the physician to form an opinion, the physician must declare they cannot form an opinion to make an adequate diagnosis and must request direct referral for inspection and actual physical examination, request additional data, or recommend the patient be evaluated by the patient's primary physician or other local health care provider.

(7) A physician licensed by the Board may, if requested to do so by another physician licensed by the Board, engage in medical interpretation as defined in these rules and render an opinion based on data which is transmitted electronically. In such cases, the physician providing the medical interpretation need not examine the patient and need not have the complete medical record

accessible, unless the interpreting physician believes that additional information is necessary. Any opinion rendered by such interpreting physician must be reduced to writing which includes the name and electronic signature of the interpreting physician.

- (8) No patient seeking care via telemedicine who is under the age of eighteen (18) years of age can be treated unless there is a facilitator present, except as otherwise authorized by law.

Authority: T.C.A. §§ 63-6-101, 63-6-209, 63-6-214 and Public Chapter 261 of the 109th Tennessee General Assembly.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Michael D. Zanolli, M.D.	X				
Subhi D. Ali, M.D.			X		
Dennis Higdon, MD	X				
Michael John Baron, M.D.	X				
Neal Beckford, M.D.	X				
Keith Lovelady, M.D.	X				
Clinton A. Musil, Jr., MD	X				
Patricia Eller	X				
Barbara Outhier	X				
Nina Yeiser	X				
W. Reeves Johnson, Jr. MD	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Board of Medical Examiners (board/commission/ other authority) on 05/19/2014 and 03/16/2015 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 02/11/14 and 01/20/15 (mm/dd/yy)

Rulemaking Hearing(s) Conducted on: (add more dates) 05/19/14 and 03/16/15 (mm/dd/yy)

Date: 8-17-15

Signature: [Signature]

Name of Officer: Andrea Huddleston

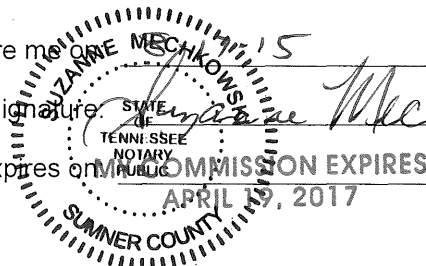
Chief Deputy General Counsel

Title of Officer: Department of Health

Subscribed and sworn to before me on 08-17-15

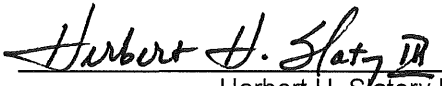
Notary Public Signature: [Signature]

My commission expires on APRIL 15, 2017



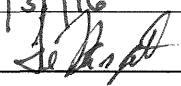
Tennessee Board of Medical Examiners
Rules 0880-02-.16
General Rules and Regulations Governing the Practice of Medicine
Telemedicine

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.


Herbert H. Slatery III
Attorney General and Reporter
7/27/2016
Date

Department of State Use Only

Filed with the Department of State on: 8/2/16

Effective on: 10/31/16

Tre Hargett
Secretary of State

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SECRETARY OF STATE
PUBLICATIONS

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

Telemedicine Rulemaking Hearings
May 19, 2014 and March 16, 2015

Public Hearing Comments

There were both oral and written comments received by the Board regarding the rule amendments. The Board responded to each comment by written correspondence and made the necessary amendments to the rule.

Several written and oral comments were received regarding the initial proposed rules of the Board contained in the original Notice of Rulemaking Hearing. Following the original rulemaking hearing in May 2014, the Board considered the comments and made significant changes. A new Notice of Rulemaking Hearing reflecting the revised proposed rules was filed and another rulemaking hearing conducted in March 2015.

For example, several public comments were received addressing concerns over the face-to-face examination "initially and then annually thereafter in all circumstances" requirement. This requirement was deleted from the revised rule contained herein.

Additionally, several public comments were received addressing concerns over the requirement for a facilitator (except when the patient is a minor). Again, the requirement of a facilitator was deleted in the revised proposed rules contained herein (with the exception that a facilitator is required when the patient is a minor). The definition of a facilitator was also amended to include a parent or legal guardian.

The Board also received many comments and concerns pertaining to the requirement for board-certification for medical interpretation. The Board deleted this requirement from the rule.

There were also many comments received regarding the controlled substance language in the rules, which prohibited most controlled substance prescribing via telemedicine. In response and based on Public Chapter 261, which prohibits health related boards from establishing a more restrictive standard of professional practice than that permitted or authorized by statute, the Board deleted this provision regarding prescription of controlled substances.

The Board received many concerns regarding the definition of telemedicine. In response, the Board amended the definition for telemedicine.

The Board received a concern regarding provisions containing requirements for consultations and referrals. In response, the Board deleted this language in the rule.

The Board received a comment regarding patient record-keeping and security of those records. The Board responded that the proposed rules as revised contain multiple provisions relating to record-keeping, as do other rules of the Board already in place. It also stated that other state and federal laws regarding record-keeping and record security will apply to this practice as with any other traditional practice.

The Board also received comments pertaining to accessibility of patient records. In response, the Board amended the provision regarding accessibility of the patient record.

A few commenters also requested the Board to amend the telemedicine language to include, or authorize, other medical professions, specifically nurse practitioners, to engage in telemedicine. The Board responded to each

commenter and stated that, other than with regard to the physician supervisory role, the Board does not have authority to create rules for Tennessee nurse practitioners. As such, the Board was unable to comply with these requests.

A few commenters expressed concern regarding rare occasions when highly-specialized physicians from out-of-state may be consulted, but may not wish to take the time or go to the expense of getting licensed in Tennessee. As such, the Board created an exemption to the rule language to include that physicians licensed in other states or countries who specialize in the diagnosis and treatment of rare or orphan diseases, and who provide consultation to research hospitals, be able to provide these services according to the rule.

One commenter merely sought clarification as to whether the rule intended for telemedicine license holders would be permitted to renew such licenses indefinitely, as long as they did so timely. The Board responded and confirmed that the proposed rules do allow for existing telemedicine licenses to be renewed indefinitely, consistent with the requirements of the maintenance of that license.

In addition to the above comments, the Board also received general comments in favor of the practice of telemedicine, but these comments did not raise any particular concerns or issues with the proposed rules and required no response.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

(1) The extent to which the rule or rule may overlap, duplicate, or conflict with other federal, state, and local governmental rules.

The proposed rules do not overlap, duplicate, or conflict with other federal, state, or local government rules.

(2) Clarity, conciseness, and lack of ambiguity in the rule or rules.

The proposed rules exhibit clarity, conciseness, and lack of ambiguity.

(3) The establishment of flexible compliance and/or reporting requirements for small businesses.

The proposed rules are not written with special consideration for flexible compliance and/or reporting requirements because the licensing boards have, as their primary mission, the protection of the health, safety and welfare of Tennesseans. However, the proposed rules are written with a goal of avoiding unduly onerous regulations.

(4) The establishment of friendly schedules or deadlines for compliance and/or reporting requirements for small businesses.

The compliance requirements throughout the proposed rules are as “user-friendly” as possible while still complying with the statute and allowing the Board to achieve its mission of protecting Tennesseans.

(5) The consolidation or simplification of compliance or reporting requirements for small businesses.

Compliance requirements are not consolidated or simplified for small businesses in the proposed rules for the protection of the health, safety and welfare of Tennesseans.

(6) The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule.

The proposed rules create neither design nor operational nor performance standards.

(7) The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

The proposed rules do not create unnecessary entry barriers or other effects that would stifle entrepreneurial activity or curb innovation.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

1. **Type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rule:**

These amendments should have a positive impact on small businesses, by increasing access to health care.

2. **Projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:**

These amendments do not implement any changes in reporting, recordkeeping or other administrative costs.

3. **Statement of the probable effect on impacted small businesses and consumers:**

These amendments should have a positive effect on small businesses and consumers, by increasing access to health care.

4. **Description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent, such alternative means might be less burdensome to small business:**

There are no less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of these amendments.

5. **Comparison of the proposed rule with any federal or state counterparts:**

Federal: None.

State: These rules are similar to those of other state medical boards.

6. **Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.**

There are no exemptions for small businesses contained in these amendments.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The proposed rule amendments should not have a financial impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

These proposed rule amendments would delete the current telemedicine rule in its entirety and replace with the proposed language. Under the current rule, applicants may apply for a telemedicine license if they are licensed in good standing in another state and are board-certified or board-eligible by a recognized specialty board. Issuance of a telemedicine license only allows the physician to practice in that specialty area and to practice telemedicine as defined. Such licensees do not undergo the full application for licensure and do not necessarily meet all of the requirements for full licensure (i.e. they may not have attended a medical school that otherwise would allow them licensure in Tennessee and may not have the appropriate exam scores that would allow them such licensure). In addition, such telemedicine licensees are required by this rule to provide the board the name, address and telephone number of a Tennessee-licensed physician who will act as the licensee's agent for purposes of service of process.

The proposed rule amendments would allow physicians who have previously been granted telemedicine licensure to transfer to a full license status or, if they do not qualify, to maintain the existence of the license and provide the same restrictions currently in place (most importantly, a restriction to practicing only in the area of board certification).

Paragraph (1) of the rule amendments merely contains definitions.

Paragraph (2), regarding the effect of licensure, tracks the current rule.

Paragraph (3) contains jurisdictional policies regarding licensure. The issuance of the license subjects the licensee to the jurisdiction of the Board in all matters set forth in the Medical Practice Act and implementing rules and regulations, including all matters related to discipline.

Paragraph (4) allows for exemptions in the following circumstances: physicians offering consultation with Tennessee physicians regarding specific clinical or scientific aspects of the field of medicine, US military physicians, uncompensated professional dialogue regarding aspects of medical practice, and a recognized, highly specialized, licensed physician from another state or country who specializes in the diagnosis and/or treatment of rare or orphan diseases and who provides consultation to research hospitals, with or without compensation or the expectation of compensation.

Paragraph (5) states that physicians who are contractually obligated to provide and/or deliver medical services in Tennessee must be licensed to practice medicine in Tennessee, regardless of whether such services are in exchange for direct compensation.

Paragraph (6) lists circumstances, other than those provided in Rule 0880-02-.14(7), where a physician may practice telemedicine without a facilitator.

Paragraph (7) allows a physician fully-licensed by the Board to engage in medical interpretation of imaging studies or tissue samples and to render an opinion based on the electronically submitted data without examining the patient or having the complete medical record of the patient.

Paragraph (8) states that no one under the age of eighteen (18) years of age can be treated unless there is a facilitator present.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

None.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

The rule amendments affect all current holders of telemedicine licensure as well as all current and future holders of a Tennessee medical license.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

None.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

These rules should not result in any increase or decrease in state or local government revenues or expenditures.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Andrea Huddleston, Chief Deputy General Counsel, Department of Health and Michael Zanolli, M.D., President, Tennessee Board of Medical Examiners.

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Andrea Huddleston, Chief Deputy General Counsel, Department of Health and Michael Zanolli, M.D., President, Tennessee Board of Medical Examiners.

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Office of General Counsel, Department of Health, 665 Mainstream Drive, Nashville, Tennessee 37243, (615) 741-1611, Andrea.Huddleston@tn.gov and Tennessee Board of Medical Examiners, Division of Health Related Boards, 665 Mainstream Drive, 2nd Floor, Nashville, Tennessee 37243, (615) 741-8402, mzanolli@mac.com.

- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

None.

**RULES
OF
TENNESSEE BOARD OF MEDICAL EXAMINERS**

**CHAPTER 0880-02
GENERAL RULES AND REGULATIONS GOVERNING THE PRACTICE OF MEDICINE**

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0880-02-.01 DEFINITIONS. As used in this Chapter of Rules the following terms and acronyms shall have the following meanings ascribed to them:

- (1) Board - The Tennessee Board of Medical Examiners.
- (2) Board's Administrative Office - The office of the administrator assigned to the Tennessee Board of Medical Examiners and housed within the Division.
- (3) Board Designee - Any person who has received written delegation of authority from the Board to perform Board functions subject to review and ratification by the full Board where provided by these rules.
- (4) Derogatory Information - As this term is used in T.C.A. § 63-6-210, shall mean wherever it appears in these rules any communication or information received during the licensure, renewal or reinstatement process which indicates either legal, ethical, competency, mental or physical problems which reflect in any manner not inconsistent with the Americans With Disabilities Act on the individuals fitness or competency to safely practice or continuing to safely practice medicine in Tennessee without restriction. Such communications or information include but are not limited to, conviction of a crime, malpractice lawsuits, loss or restriction of hospital privileges, licensure discipline in another state or country, previous licensure action either formal or informal in this state, ongoing investigation or prosecution of a disciplinary action in this or any other state or country and any physical/medical condition which is not otherwise ameliorated by compliance with physician orders, treatment program requirements or voluntary restrictions of the individual in compliance with the Americans With Disabilities Act.
- (5) Division - The Tennessee Department of Health, Division of Health Related Boards, from which the Board receives administrative support.
- (6) E.C.F.M.G. - The Educational Committee for Foreign Medical Graduates or its successor organization.

GENERAL RULES AND REGULATIONS GOVERNING
THE PRACTICE OF MEDICINE

CHAPTER 0880-02

(Rule 0880-02-.01, continued)

- (7) FCVS - The Federation Credentials Verification Service which is a service offered by the Federation of State Medical Boards that provides primary source identification and verification of physician core credentials as required in licensure applications by the states.
- (8) FLEX - The Federation Licensing Examination I -II.
- (9) Formulary - A list of legend and non-legend drugs arranged by therapeutic categories, included in the protocols, that are approved to be prescribed and/or issued by a physician assistant, which may include controlled substances listed in Schedules II, III, IV and V of the Tennessee Code Annotated, Title 39, Chapter 17, Part 4.
- (10) Licensee - Any person who has been lawfully issued a license to practice medicine in Tennessee by the Board.
- (11) N.B.M.E. - The National Board of Medical Examiners examination.
- (12) Physician Assistant - A person who is licensed to practice as a physician assistant in Tennessee pursuant to T.C.A. § 63-19-105
- (13) Protocols - Written guidelines for medical management developed jointly by the supervising physician and the physician assistant.
- (14) Supervising Physician - A licensed and actively practicing physician who has been identified as accepting responsibility for supervising a physician assistant.
- (15) U.S.M.L.E. - The United States Medical Licensing Examination.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, 63-19-104, 63-6-207, and Public Chapter 33, Public Acts of 1999. **Administrative History:** Original rule filed October 13, 1983; effective November 14, 1983. Subsequently repealed and replaced twice, the last replacement was effective April 12, 1991. Amendment filed April 14, 1994; effective June 28, 1994. Amendment filed February 23, 1995; effective May 9, 1995. Amendment filed September 22, 1997; effective December 6, 1997. Amendment filed February 3, 1998; effective April 19, 1998. Amendment filed April 10, 2000; effective June 24, 2000. Amendment filed September 5, 2002; effective November 19, 2002. Amendment filed September 3, 2014; effective December 2, 2014.

0880-02-.02 FEES.

- (1) The fees authorized by the Tennessee Medical Practice Act (T.C.A. §§63-6-101 through 63-6-104 and T.C.A. §§63-6-201 through 63-6-227) and other applicable statutes to be established by the Board are established as follows:
 - (a) Application Fee - a non refundable fee to be paid by all licensure applicants regardless of the type of license applied for. It must be paid each time an application for licensure is filed.\$400.00
 - (b) Examination Fee - This fee is to be paid each time the USMLE Step 3 examination is taken.....\$100.00
 - (c) Inactive Pro Bono Licensure Renewal Fee.....\$ 00.00
 - (d) Special Training License Fee.....\$ 25.00

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(Rule 0880-02-.15, continued)

(g) Destruction of Medical Records -

1. No medical record shall be singled out for destruction other than in accordance with established office operating procedures.
 2. Records shall be destroyed only in the ordinary course of business according to established office operating procedures that are consistent with these rules.
 3. Records may be destroyed by burning, shredding, or other effective methods in keeping with the confidential nature of the records.
 4. When records are destroyed, the time, date and circumstances of the destruction shall be recorded and maintained for future reference. The record of destruction need not list the individual patient medical records that were destroyed but shall be sufficient to identify which group of destroyed records contained a particular patient's medical records.
- (5) Violations - Violation of any provision of these rules is grounds for disciplinary action pursuant to T.C.A. §§ 63-6-214 (b) (1), and/or (2).

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-2-101, 63-2-102, 63-6-101, 63-6-204, and 63-6-214.

Administrative History: Original rule filed April 29, 2003; effective July 13, 2003. Amendment filed October 12, 2004; effective December 26, 2004. Amendments filed April 10, 2014; effective July 9, 2014.

~~0880-02-.16 TELEMEDICINE LICENSURE. No person shall engage in the practice of medicine across state lines in this State, hold himself out as qualified to do the same, or use any title, word, or abbreviation to indicate to or induce others to believe that he is licensed to practice medicine across state lines in this State unless he is actually so licensed in accordance with the provisions of this rule.~~

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- ~~(1) Definitions - As used in this rule, the practice of medicine across state lines (telemedicine) means:~~
- ~~(a) The rendering of a written or otherwise documented medical opinion concerning diagnosis or treatment of a patient within this State by a physician located outside this State as a result of transmission of individual patient data by electronic or other means from within this State to such physician or his agent; or~~
 - ~~(b) The rendering of treatment to a patient within this State by a physician located outside this State as a result of transmission of individual patient data by electronic or other means from within this State to such physician or his agent.~~
- ~~(2) Issuance of License - An applicant who has an unrestricted license in good standing in another state and maintains an unencumbered certification in a recognized specialty area; or is eligible for such certification and indicates a residence and a practice outside the State of Tennessee but proposes to practice medicine across state lines on patients within the physical boundaries of the State of Tennessee, shall in the discretion of the Board be issued a telemedicine license.~~
- ~~(a) To obtain a license, an applicant shall compile the following and when completed, submit them to the Board Administrative Office:~~
- ~~1. A Board approved application form; and~~
 - ~~2. All documentation required by rule 0880-02-.05 paragraphs (2), (4), (5), (6), (7) and (10).~~

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(Rule 0880-02-.16, continued)

- (b) ~~The practice of any person issued a telemedicine license shall be restricted to the specialty area of medicine in which that person is certified or in which the person is eligible for certification.~~
- (c) ~~All telemedicine licenses must be renewed, inactivated or retired according to the same procedure as active unrestricted licenses governed by rules 0880-02-.09 and 0880-02-.10.~~
- (d) ~~All telemedicine licenses are subject to discipline for the same causes and pursuant to the same procedures as active unrestricted licenses.~~
- (e) ~~In the event of previous disciplinary or other action against the applicant, the Board may, in its discretion, issue a license to practice medicine across state lines if it finds that the previous disciplinary or other action does not indicate that the physician is a potential threat to the public.~~
- (3) ~~Effect of License — The issuance by the Board of a special purpose license to practice medicine across state lines subjects the licensee to the jurisdiction of the Board in all matters set forth in the Medical Practice Act and implementing rules and regulations, including all matters related to discipline.~~
 - (a) ~~The licensee agrees by acceptance of such license to~~
 - 1. ~~Produce patient medical records and/or materials as requested by the Board and/or to appear before the Board upon receipt of notice commanding appearance issued by the Board. Failure of the licensee to appear and/or to produce records or materials as requested, after appropriate notice, shall constitute grounds to suspend or revoke the licensee's telemedicine license at the Board's discretion.~~
 - 2. ~~Designate on the licensure application the name, address and telephone number of a physician residing in Tennessee upon whom service of process for any disciplinary action filed against the licensee can be legally effected in the event that personal service upon the licensee has been shown to be unsuccessful. Service of process on that named individual, for acts or omissions that occurred during or as a result of the treatments provided or ordered by the licensee for patients physically located in Tennessee, is legally equivalent to personal service on the licensee.~~
- (4) ~~Patient Medical Records — Any licensee licensed under the provision of this rule shall comply with all applicable laws, rules, and regulations of this state governing the maintenance of patient medical records, including patient confidentiality requirements, regardless of the state where the medical records of any patient within this State are maintained.~~
- (5) ~~Any person who violates the provisions of these rules is subject to criminal prosecution for the unlicensed practice of medicine pursuant to T.C.A. §63-6-203, and/or injunctive or other action authorized in this State to prohibit or penalize continued practice without a license. Nothing in this rule shall be interpreted to limit or restrict the Board's authority to discipline any physician licensed to practice in this State who violates the Medical Practice Act while engaging in the practice of medicine within this or any other State.~~
- (6) ~~Exempted from the provisions of these rules are the following:~~
 - (a) ~~A physician who practices medicine across state lines in an emergency; or~~

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(Rule 0880-02-.16, continued)

- (b) ~~A physician who engages in the practice of medicine across state lines that occurs less than once a month or involves fewer than ten patients on an annual basis, or comprises less than one percent (1%) of the physician's diagnostic or therapeutic practice; or~~
- (c) ~~Physicians who engage in the practice of medicine across state lines without compensation or expectation of compensation unless the practice exceeds the limits established by paragraph (6)(b); or~~
- (d) ~~The informal practice of medicine in the form of uncompensated consultations regardless of their frequency; or~~
- (e) ~~Licensed/registered physicians or surgeons of other states when called in consultation by a Tennessee licensed/registered physician as provided by T.C.A. §63-6-204 (a) (3).~~
- (7) ~~Not exempted from these rules is the practice of medicine across state lines conducted within the parameters of a contractual relationship regardless of whether or not the practice is within the limits established by paragraph (6)(b) and regardless of whether or not it is for compensation or the promise of compensation.~~
- (8) ~~Submission of any document or set of documents required by this rule or submission of verification of the authenticity, validity and accuracy of the content of any document or set of documents required by this rule directly from the FCVS to the Board Administrative Office shall be deemed to be submission of originals of those documents or sets of documents by the issuing institution(s).~~

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0880-02-.16 Telemedicine Licensure and the Practice of Telemedicine. No person shall engage in the practice of medicine, either in person or remotely using information transmitted electronically or through other means, on a patient within the state of Tennessee unless duly licensed by the Board in accordance with the provisions of the current statutes and rules. Unless specifically set out in this rule, this rule is not intended to and does not supersede any pre-existing federal or state statutes or rules and is not meant to alter or amend the applicable standard of care in any particular field of medicine or to amend any requirement for the establishment of a physician-patient relationship.

(1) Definitions –

- (a) Facilitator – The facilitator is an individual often affiliated with a local system of care or a parent or legal guardian of the patient. The facilitator must be physically present with the patient and is responsible for verifying the identity and location of the patient and for the origination, collection and transmission of data in the form of images or clinical data to the physician performing the evaluation remotely.
- (b) Medical interpretation – The performance of a medical interpretation by a physician is the rendering of a diagnosis regarding a particular patient by examination of radiologic imaging studies, tissue specimens, bodily fluid specimens (including, but not limited to urine, blood and cerebrospinal fluid) or medical records requested by another physician or licensed health care provider.
- (c) Patient encounter – The rendering of a documented medical opinion concerning evaluation, diagnosis, and/or treatment of a patient whether the physician is physically present in the same room, in a remote location within the state or across state lines.

(Rule 0880-02-.16, continued)

- (d) Physician-patient relationship – A physician-patient relationship exists when a physician serves a patient's medical needs whether or not there has been an encounter in person between the physician and patient.
 - (e) Research hospital – A hospital at which fifty percent (50%) or more of the inpatients treated during the previous calendar year were treated pursuant to research protocols.
 - (f) Store-and-forward technology – The use of asynchronous electronic communications between a patient and healthcare services provider at a distant site for the purpose of diagnostic and therapeutic assistance in the care of patients and includes the transferring of medical data from one site to another through the use of a device that records or stores images that are sent or forwarded via electronic communication to another site for consultation.
 - (g) Telemedicine – Telemedicine is the practice of medicine using electronic communication, information technology or other means, between a licensee in one location and a patient in another location. Telemedicine is not an audio only telephone conversation, email/instant messaging conversation or fax. It typically involves the application of secure video conferencing or store-and-forward to provide or support healthcare delivery by replicating the interaction of a traditional encounter between a provider and a patient.
- (2) Telemedicine Licenses Issued Under Previous Rule – As of the effective date of this rule, the Board will no longer issue what was previously termed a "telemedicine license." Individuals previously granted a telemedicine license under the former version of this rule may apply to have the license converted to a full license. Such individuals must complete the application for a full license and provide all necessary documentation, though no new application fee will be required as long as application is made within two years of the effective date of this rule. Individuals who do not convert to a full license (or do not qualify for full licensure) will retain the telemedicine license subject to the following conditions:
- (a) The license must be timely renewed on a biennial basis, as required pursuant to Rule 0880-02-.09. Notwithstanding Rule 0880-02-.09, however, licenses not timely renewed will not be subject to re-instatement and affected individuals wishing to engage in the practice of medicine on patients located in Tennessee will be required to make application for a full license, including payment of the application fee.
 - (b) Telemedicine license holders must maintain current ABMS specialty board-certification. Licensees who do not maintain ABMS specialty board-certification will not be entitled to renewal of the license.
 - (c) Licensees retaining a telemedicine license are limited to the provision of medical interpretation services in the area of their specialty board-certification. Such license holders do not possess prescriptive authority in Tennessee.
 - (d) All telemedicine licenses are subject to discipline for the same causes and pursuant to the same procedures as active, unrestricted licenses.
- (3) Effect of License - The issuance by the Board of a license to practice medicine subjects the licensee to the jurisdiction of the Board in all matters set forth in the Medical Practice Act and implementing rules and regulations, including all matters related to discipline. The licensee

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(Rule 0880-02-.16, continued)

agrees by acceptance of such license to produce patient medical records and materials as requested by the Board and to appear before the Board upon receipt of notice from the Board commanding such appearance. Failure of the licensee to appear and/or to produce records or materials as requested, after appropriate notice, shall constitute grounds to suspend or revoke the license at the Board's discretion.

(4) Exempted from the provisions of these rules are the following:

- (a) Licensed physicians of other states when called in consultation regarding specific clinical or scientific aspects of the field of medicine by a Tennessee licensed/registered physician as provided by T.C.A. § 63-6-204(a)(3);
- (b) US Military physicians operating within the Federal jurisdiction and regulations related to their duties as provided by T.C.A. § 63-6-204(a)(3);
- (c) The informal practice of medicine between physicians in the form of uncompensated professional dialogue regarding aspects of the field of medicine; and
- (d) A recognized, highly specialized, licensed physician from another state or country who specializes in the diagnosis and/or treatment of rare or orphan diseases and who provides consultation to research hospitals, with or without compensation or the expectation of compensation.

(5) Physicians who are contractually obligated to provide and/or deliver medical services in Tennessee must be licensed to practice medicine in Tennessee, regardless of whether such services are in exchange for direct compensation.

(6) Notwithstanding the requirements of Rule 0880-02-.14(7), a physician licensed in Tennessee may engage in the practice of telemedicine under the following circumstances:

- (a) Except as provided under paragraphs seven (7) and eight (8) of this rule, the patient encounter to establish or maintain the physician-patient relationship via telemedicine between the physician in a remote location and the patient in Tennessee may occur with or without the use of a facilitator so long as such encounter is consistent with parts 1 and 2 of this Rule:

1. If no facilitator is present:

- (i) The patient must utilize adequately sophisticated technology to enable the remote provider to verify the patient's identity and location with an appropriate level of confidence; and
- (ii) The patient must transmit all relevant health information at the level of store-and-forward technology or secure video conferencing; and
- (iii) The remote provider must disclose his or her name, current and primary practice location, medical degree and recognized specialty area, if any, and in accordance with T.C.A. § 63-1-109.

2. If a facilitator is present:

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(Rule 0880-02-.16, continued)

- (i) The facilitator must personally verify the identity of the patient; however, all relevant health information must be transmitted to the remote provider using at least the level of store-and-forward technology. The facilitator and the patient may interact with the provider at the remote location via secure video conferencing or store-and-forward technology; and
- (ii) The facilitator must identify themselves, their role, and their title to the patient and the remote physician; and
- (iii) The remote provider must disclose his or her name, current and primary practice location, medical degree and recognized specialty area, if any, and all additional information required pursuant to T.C.A. § 63-1-109.
- (b) For patient encounters conducted via telemedicine, the physician should have appropriate patient record(s) or be able to obtain such information during the telemedicine encounter.
- (c) The physician engaging in telemedicine is responsible for ensuring that the medical record contains all pertinent data and information gleaned from the encounter. Any physician conducting a patient encounter via telemedicine must so document in the patient record and must state the technology used. All records for Tennessee patients are subject to inspection pursuant to T.C.A. § 63-1-117.
- (d) If the information transmitted through electronic or other means as part of a patient's encounter is not of sufficient quality or does not contain adequate information for the physician to form an opinion, the physician must declare they cannot form an opinion to make an adequate diagnosis and must request direct referral for inspection and actual physical examination, request additional data, or recommend the patient be evaluated by the patient's primary physician or other local health care provider.
- (7) A physician licensed by the Board may, if requested to do so by another physician licensed by the Board, engage in medical interpretation as defined in these rules and render an opinion based on data which is transmitted electronically. In such cases, the physician providing the medical interpretation need not examine the patient and need not have the complete medical record accessible, unless the interpreting physician believes that additional information is necessary. Any opinion rendered by such interpreting physician must be reduced to writing which includes the name and electronic signature of the interpreting physician.
- (8) No patient seeking care via telemedicine who is under the age of eighteen (18) years of age can be treated unless there is a facilitator present, except as otherwise authorized by law.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, 63-6-209, 63-6-214. Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, 63-6-209, 63-6-214 and Public Chapter 261 of the 109th Tennessee General Assembly.

Administrative History: *Original Rule filed January 26, 1998; effective April 11, 1998. Amendment filed February 3, 1998; effective April 19, 1998. Amendment filed November 23, 2005; effective February 6, 2006. Amendment filed March 14, 2006; effective May 28, 2006.*

0880-02-.17 CONSUMER RIGHT-TO-KNOW REQUIREMENTS.

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