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Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission:	Tennessee Board of Medical Examiners
Division:	
Contact Person:	Andrea Huddleston, Chief Deputy General Counsel
Address:	665 Mainstream Drive, Nashville, Tennessee 37243
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Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact:	ADA Coordinator
Address:	710 James Robertson Parkway, Andrew Johnson Building, 5th Floor, Nashville, Tennessee 37243
Phone:	(615) 741-6350
Email:	Tina.M.Harris2@tn.gov

Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	Metro Center		
Address 2:	665 Mainstream Drive, Iris Conference Room		
City:	Nashville		
Zip:	37228		
Hearing Date :	03/16/15		
Hearing Time:	09:00 A.M.	<input checked="" type="checkbox"/> X CST/CDT	<input type="checkbox"/> EST/EDT

Additional Hearing Information:

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Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. 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

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

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

Amendments

Rule 0880-02-.06 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. 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 a medical doctor, osteopathic physician, physician assistant, advanced practice nurse, registered nurse, or licensed practical nurse, affiliated with a local system of care who must be physically present with the patient and who is responsible for verifying the identity 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 images or tissue specimens 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) Store-and-forward telemedicine services means the use of asynchronous computer-based 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 camera or similar device that records or stores an image that is sent or forwarded via telecommunication to another site for consultation.
- (f) 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 transferred 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 transfer 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/registered physicians or surgeons 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); and
 - (c) The informal practice of medicine between physicians in the form of uncompensated professional dialogue regarding aspects of the field of medicine.
- (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 fully-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 subparagraphs (i) and (ii) of this Rule:
 - (i) If no facilitator is present:
 1. The patient must utilize adequately sophisticated technology to enable the remote provider to verify the patient's identity with an appropriate level of confidence; and
 2. The patient must transmit all relevant health information at the level of store-and-forward technology or secure video conferencing; and
 3. The remote provider must disclose his or her name, current and primary practice location, medical degree and specialty, and in accordance with T.C.A. § 63-1-109.

- (ii) If a facilitator is present:
 - 1. 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; and
 - 2. The facilitator must identify themselves, their role, and their title to the patient and the remote physician; and
 - 3. The remote provider must disclose his or her name, current and primary practice location, medical degree and specialty, and in accordance with T.C.A. § 63-1-109.
- (b) For patient encounters conducted via telemedicine, the physician must have adequate patient record(s) accessible prior to any diagnosis, treatment or consultation.
- (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 type or form of electronic mediation 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 fully-licensed by the Board may, if requested to do so by another physician licensed by the Board, engage in the medical interpretation of imaging studies or tissue samples 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) A physician may not prescribe via telemedicine any controlled substance (Schedules II, III, IV or V) for any reason except that a board-certified psychiatrist, a board-certified developmental-behavioral pediatrician or a board-certified child neurologist may prescribe to treat pediatric ADHD less than eighteen (18) years of age for pediatric ADHD when a facilitator is physically present.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, 63-6-209, 63-6-214.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: 1-20-2015

Signature: _____

Name of Officer: Andrea Huddleston

Chief Deputy General Counsel

Title of Officer: Tennessee Department of Health

Subscribed and sworn to before me on: _____

Notary Public Signature: _____

My commission expires on: _____



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Tre Hargett

Secretary of State

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