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Sequence Number: 01-13-15
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Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205

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-.08	Examination

(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-.08 Examination is amended by deleting part (2)(a)1 and its subparts and items in their entirety.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, and 63-6-207.

Rule 0880-02-.08 Examination is amended by adding subparagraph (2)(c) which shall read:

- (c) If an applicant fails any step of the USMLE or FLEX examinations more than three (3) times, then the Board shall require proof of board-certification by an ABMS-recognized specialty board and proof of meeting requirements for Maintenance of Certification prior to application before consideration for licensure.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, and 63-6-207.

Rule 0880-02-.08 Examination is amended by deleting paragraph (3) in its entirety and substituting instead the following language, so that as amended, the new paragraph (3) shall read:

- (3) Oral examination may be required pursuant to Rule 0880-02-.07(4). The Board may also, in its discretion, require an applicant for licensure to take and pass the SPEX examination prepared by the FSMB. The circumstances under which the Board may require the SPEX examination include, but are not limited to, applicants for licensure who have been disciplined in another state; applicants who would be subject to discipline in Tennessee based on their conduct or condition; or applicants who have not engaged in the clinical practice of medicine for more than two (2) years.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, and 63-6-207.

Rule 0880-02-.08 Examination is amended by deleting subparagraph (4)(e) and its parts in their entirety and substituting instead the following language, so that as amended, the new subparagraph (4)(e) shall read:

- (e) Extensions - The amount of time an applicant has actively served while in continuous training and practice in the armed forces of the United States shall not be counted in calculating the seven (7) year limitation for the USMLE contained in subparagraph (4)(b) of this rule.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, and 63-6-207.

* 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				
Jeff P. Lawrence, MD				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 (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: 03/24/2014 (mm/dd/yy)

Rulemaking Hearing(s) Conducted on: (add more dates). 05/19/14 (mm/dd/yy)

Date: 6-27-14

Signature: _____

Name of Officer: Andrea Huddleston

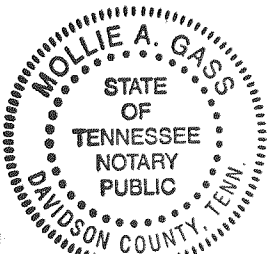
Chief Deputy General Counsel

Title of Officer: Department of Health

Subscribed and sworn to before me on: 6/27/14

Notary Public Signature: Mollie A. Gas

My commission expires on: 7/7/14



My Commission Expires JULY 7, 2014

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
Herbert H. Slatery III
Attorney General and Reporter
1/23/15 Date

Department of State Use Only

Filed with the Department of State on:

1/26/15

Effective on:

4/26/15

Tre Hargett

Tre Hargett
Secretary of State

SECRETARY OF STATE
RECEIVED

2015 JAN 26 PM 4: 14

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.

There were no public comments, either written or oral.

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 rules may overlap, duplicate, or conflict with other federal, state, and local governmental rules.

These rules do not overlap, duplicate, or conflict with other state or local governmental rules.

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

These rules exhibit clarity, conciseness, and lack of ambiguity.

3. The establishment of flexible compliance and/or reporting requirements for small business.

The compliance requirements contained in the rules are the same for large or small businesses. The rule amendments do not establish new reporting requirements.

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

These rule amendments do not contain any reporting requirements. Compliance requirements contained in the rules are the same for large or small businesses.

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

Compliance requirements contained in the rules are the same for large or small businesses. The rule amendments do not create any reporting requirements.

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

These rules do not establish performance, design, or operational standards.

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

These rules do not create unnecessary barriers or stifle entrepreneurial activity or innovation.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

Name of Board, Committee or Council: Board of Medical Examiners

Rulemaking hearing date: May 19, 2014

- 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 will not affect small businesses, except for ensuring that only safe and competent medical practitioners are licensed in Tennessee.

- 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 no effect on doing business in Tennessee but should have a positive impact on consumers by ensuring that only safe and competent medical practitioners are licensed in Tennessee.

- 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: Most states have an absolute restriction on the number of examination attempts acceptable to be licensed (typically 3-4 attempts).

- 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. § 4-5-228(a), "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 financial impact on local governments."

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 rule amendments delete the previous requirements for applicants who fail the USMLE or FLEX and adds new language containing amended requirements.

Rule 0880-02-.08(2)(c) adds requirements for licensees who fail the USMLE or FLEX three times.

Rule 0880-02-.08(3) allows the Board to additionally require certain applicants to sit for the SPEX examination prepared by the FSMB. This amendment also corrects an existing rule reference.

- (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 proposed rule amendments affect any individual seeking licensure as a medical doctor in Tennessee, as well as those seeking to employ such individuals.

- (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 rule amendments should not create any increase or decrease in state and local government revenues and expenditures.

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

Andrea Huddleston, Deputy General Counsel, Department of Health.

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

Andrea Huddleston, Deputy General Counsel, Department of Health will explain the rule at a scheduled meeting of the committees.

- (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

Andrea Huddleston, Deputy General Counsel, Department of Health, Office of General Counsel, 665 Mainstream Drive, Nashville, TN 37243, Andrea.Huddleston@tn.gov; (615)741-1611.

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

None

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(Rule 0880-02-.07, continued)

Amendment filed September 5, 2002; effective November 19, 2002. Amendment filed May 28, 2003; effective August 11, 2003. Amendment filed December 5, 2003; effective February 18, 2004. Amendment filed August 23, 2005; effective November 6, 2005. Amendments filed March 14, 2006; effective May 28, 2006.

0880-02-.08 EXAMINATION. All persons intending to apply for licensure as a physician in Tennessee must successfully complete a written examination pursuant to this rule. Such written examination must be completed prior to application for licensure. Certification of successful completion must be submitted by the examining agency directly to the Board Administrative Office as part of the application process contained in rule 0880-02-.03, 0880-02-.04 and 0880-02-.05.

- (1) The Board adopts FLEX, USMLE and the National Board of Medical Examiners (NBME) examination as its written licensure examinations. Successful completion of one of those examinations is a prerequisite to licensure according to the following:
 - (a) After December 31, 1999, with the exception of applicants applying pursuant to Rule 0880-02-.05, the only examination acceptable for licensure is the USMLE Steps 1, 2 and 3.
 - (b) The Board will accept any of the following examinations or combinations of examinations if completed prior to December 31, 1999:
 1. The NBME Parts I, II and III; or
 2. FLEX Components I and II; or
 3. Predecessor FLEX Days I, II and III; or
 4. NBME Part I or USMLE Step 1
plus
NBME Part II or USMLE Step 2
plus
NBME Part III or USMLE Step 3; or

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(Rule 0880-02-.08, continued)

5. FLEX Component I plus USMLE Step 3; or
 6. NBME Part I or USMLE Step 1
plus
NBME Part II or USMLE Step 2
plus
FLEX Component II
 7. Combinations of the Predecessor FLEX Days I, II and III are not allowed with any other examination.
- (2) Passing Scores - The Board accepts the following scores as constituting successful completion of the licensure examinations:
- (a) The Board adopts the NBME's and the USMLE's determination of the passing scores for each Part or Step of their examinations.
 - ~~1. Passing Score for Subsequent Attempts for Failure of any Part or Step~~
 - ~~(i) When an applicant fails to attain the passing score on any Part or Step of either the NBME or the USMLE and subsequently retakes that Part or Step, the passing score for each retake will be the NBME's and the USMLE's recommended minimum passing two-digit score plus one (1) additional point for each time that the Part or Step is retaken due to failure of the Part or Step.~~
 - ~~(ii) It is the intent of this rule to:~~
 - ~~(I) Not reward persons who have become familiar with a Step or Part of a licensure examination due to multiple retakes necessitated by previous failures; and~~
 - ~~(II) Increase the passing two-digit score cumulatively according to the number of times the applicant has had to retake the Part or Step because of a previous failure of that Part or Step. (Example - If an applicant has failed Step 2 of the USMLE on the three (3) previous attempts, the applicant as he or she attempts Step 2 for the fourth time will, in order to pass the Step, need to obtain the USMLE's~~

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(Rule 0880-02-.08, continued)

~~recommended minimum passing two-digit score for Step 2 plus one additional point for each of the previous three (3) failures.)~~

~~(iii) This cumulatively increasing passing score requirement of this rule shall not apply in clearly exigent circumstances when its application would work a manifest injustice or when the applicant, subsequent to the failure of any Part or Step of either examination, has obtained specialty board certification.~~

(b) The passing scores adopted by the Board for the FLEX examinations are as follows:

1. FLEX I and II
Component I = 75

Component II = 75

2. Predecessor FLEX Days I, II and III - A FLEX weighted average (FWA) of 75 or greater.

~~(c) If an applicant fails any step of the USMLE or FLEX examinations more than three (3) times, then the Board shall require proof of board-certification by an ABMS-recognized specialty board and proof of meeting requirements for Maintenance of Certification prior to application before consideration for licensure.~~

~~(3) Oral examination may be required pursuant to Rule 0880-02-.07(6).~~

~~(3) Oral examination may be required pursuant to Rule 0880-02-.07(4). The Board may also, in its discretion, require an applicant for licensure to take and pass the SPEX examination prepared by the FSMB. The circumstances under which the Board may require the SPEX examination include, but are not limited to, applicants for licensure who have been disciplined in another state; applicants who would be subject to discipline in Tennessee based on their conduct or condition; or applicants who have not engaged in the clinical practice of medicine for more than two (2) years.~~

(4) Deadlines - An applicant must have achieved passing scores on the licensure examinations within the following time frames:

(a) FLEX and Predecessor FLEX and NBME - Seven (7) years from the date on which either the Day I or Component I or Part I of the examinations was taken.

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(Rule 0880-02-.08, continued)

- (b) USMLE - Seven (7) years from the date of whichever step of the examination was successfully completed first.
- (c) The deadlines in subparagraphs (a) and (b) apply regardless of the combination of examinations utilized to apply for licensure. Provided however, if the seven (7) year limitation set forth in subsections (a) and/or (b) are not met, the applicant will be subsequently considered for licensure once it can be documented that the applicant has retaken and successfully completed the necessary steps or parts of the examination(s) in such a manner that all steps or parts of the examination(s) have been successfully completed within a seven (7) year time period.
- (d) The seven (7) year limitation for the USMLE contained in subparagraph (4) (b) of this rule will not apply to applicants who
 1. Are or have been working towards both an M.D. and Ph.D. degree in an institution or program accredited by the Association of American Medical Colleges' Liaison Committee on Medical Education and regional university accrediting body; and
 2. Was or is a student in good standing, who was or is enrolled in the institution or program; and
 3. Ph.D. studies are in a field of biological sciences tested on Step 1 of the USMLE. (These fields include but are not limited to anatomy, biochemistry, physiology, microbiology, pharmacology, pathology, genetics, neuroscience, and molecular biology. Fields explicitly not included are business, economics, ethics, history, and other fields not directly related to biological science); and
 4. Presents a verifiable and rational explanation for the fact that he or she was unable to meet the seven (7) year limit.

~~(e) Extensions~~

- ~~1. The seven (7) year limitation for the USMLE contained in subparagraph (4) (b) of this rule may be extended for applicants who are licensed in good standing and who have been engaged in continuous training and practice in another jurisdiction in which the applicants have been granted an extension or waiver from the seven (7) year limitation.~~
- ~~2. The amount of time an applicant has actively served while continuous training and practicing in the armed forces of the United States shall not be counted in calculating the seven (7) year limitation for the USMLE contained in subparagraph (4) (b) of this rule.~~
- ~~3. No extension may be granted that operates to authorize an applicant to take longer than ten (10) years to complete all three steps of the USMLE.~~

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(Rule 0880-02-.08, continued)

~~4. The provisions of this subparagraph (e) shall expire and no longer be valid on May 24, 2009.~~

(e) Extensions - The amount of time an applicant has actively served while in continuous training and practice in the armed forces of the United States shall not be counted in calculating the seven (7) year limitation for the USMLE contained in subparagraph (4)(b) of this rule.

- (5) All applicants for the USMLE shall submit all application inquiries, applications, fees and all necessary admission documentation, including evidence satisfactory to the USMLE administering agency of successful completion of a one (1) year post graduate medical educational training program for applicants for Step 3 of that examination, directly to the USMLE administering agency. The Board does not distribute or process applications for the USMLE.
- (6) 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).

Authority: T.C.A. §54-5-202, 4-5-204, 63-6-101, and 63-6-207. **Administrative History:** Original rule filed February 26, 1991; effective April 12, 1991. Amendment filed January 10, 1992; effective February 24, 1992. Amendment filed April 14, 1994; effective June 28, 1994. Amendment filed March 29, 1996; effective June 12, 1996. Amendment filed February 3, 1998; effective April 19, 1998. Amendment filed September 4, 1998; effective November 11, 1998. Amendment filed August 25, 2000; effective November 8, 2000. Amendment filed December 5, 2003; effective February 18, 2004. Amendment filed December 28, 2004; effective March 13, 2005. Amendment filed July 27, 2006; effective October 10, 2006. Amendment filed April 17, 2007; effective July 1, 2007. Amendment filed May 27, 2008; effective August 10, 2008.

0880-02-.09 LICENSURE RENEWAL AND REINSTATEMENT.

- (1) All licensees must renew their licenses to be able to legally continue in practice. License renewal is governed by the following:
- (a) The due date for license renewal is its expiration date which is the last day of the month in which a license holder's birthday falls pursuant to the Division of Health Related Boards "biennial birthdate renewal system" contained in rule 1200-10-01-.10.
- (b) Methods of Renewal - Licensees may accomplish renewal by one of the following methods: