

Notice of Rulemaking Hearing

Board of Medical Examiners

There will be a hearing before the Tennessee Board of Medical Examiners to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 63-1-101, 63-6-101, 63-6-207, 63-6-209, 63-6-210, 63-6-214, 63-6-230, 63-6-233, and 63-6-235. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Department of Health Conference Center’s Mockingbird Room on the First Floor of the Heritage Place Building located at 227 French Landing, Nashville, TN at 2:30 p.m. (CDT) on the 21st day of May, 2007.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Department of Health, Division of Health Related Boards to discuss any auxiliary aids or services needed to facilitate such participation or review. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date such party intends to review such filings), to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the ADA Coordinator at the Division of Health Related Boards, 227 Fr. Lndng., Ste. 300, Heritage Place, MetroCenter, Nashville, TN 37243, (615) 532-4397.

For a copy of the entire text of this notice of rulemaking hearing contact: Jerry Kosten, Regulations Manager, Division of Health Related Boards, 227 French Landing, Suite 300, Heritage Place, MetroCenter, Nashville, TN 37243, (615) 532-4397.

Substance of Proposed Rules

Amendments

Rule 0880-2-.02 Fees, is amended by deleting subparagraphs (1) (f) and (1) (j) in their entirety and substituting instead the following language, so that as amended, the new subparagraphs (1) (f) and (1) (j) shall read:

- (1) (f) Licensure Renewal Fee - To be paid biennially by all licensees except Inactive Pro Bono licensees. This fee also applies to licensees who reactivate a retired license.....\$ 225.00
- (1) (j) Licensure Upgrade Fee – To be paid when the holder of a license to practice administrative medicine issued pursuant to rule 0880-2-.07(7) applies to convert to full clinical licensure..... \$200.00

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-101, 63-6-101, 63-6-207, 63-6-209(b), and 63-6-210.

Rule 0880-2-.07 Application Review, Approval, Denial, Interviews and Conditioned, Restricted and Locum Tenens Licensure, is amended by deleting paragraph (1) in its entirety and substituting instead the following language, so that as amended, the new paragraph (1) shall read:

- (1) The Board’s administrative staff shall determine when an application file is complete. The Board may allow any applicant to withdraw any application at any time before the application is denied or at any time before the license or renewal granted by the Board is sent to the applicant by the Board’s administrative staff.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-101, 63-6-209(b) and 63-6-214.

Rule 0880-2-.07 Application Review, Approval, Denial, Interviews and Conditioned, Restricted and Locum Tenens Licensure, is amended by adding the following language as part (4) (d) 5., and is further amended by inserting the following language as paragraph (7) and renumbering the existing paragraph (7) as paragraph (8), so that as amended, the new part (4) (d) 5. and the new paragraph (7) shall read:

- (4) (d) 5. Because of the fact that competence to practice clinical medicine is often rapidly lost or deteriorates when practitioners have not engaged in it for even brief periods of time, any applicant who has not provided clinical patient care medical services on a regular basis during the twelve (12) months immediately preceding the date of application for licensure, who cannot document continued clinical competence to the satisfaction of the Board, must be denied licensure. Provided however, upon agreement of the applicant, a restricted license could be issued commensurate with their demonstrated competency to provide direct clinical patient care. Such restricted licenses must be reported to the federal practitioner data banks.
 - (i) In these circumstances unrestricted licensure can only be granted to those who are able to document clinical competence by whatever mechanism the Board determines is necessary based upon the length of time the applicant has been away from clinical practice. This rule also applies those who have not practiced during the twelve (12) months immediately preceding the date of either:
 - (I) their application for a new licensure due to a disciplinary revocation unless the disciplinary order specifically identifies the mechanism by which the applicant can return to clinical practice.
 - (II) their petition for an Order of Compliance pursuant to rule 0880-2-.12(2) in which the petitioner requests the lifting of a disciplinary licensure suspension unless the disciplinary order specifically identifies the mechanism by which the applicant can return to clinical practice.
 - (ii) Restricted licenses granted pursuant to this rule may be converted to full unrestricted status by submitting a petition pursuant to rule 0880-2-.12(2) and documenting clinical competence by whatever mechanism the Board determines is necessary based upon the length of time the applicant has been away from clinical practice.
 - (iii) The mechanisms by which clinical competency can be documented include, but are not limited to, the following in whatever order or combination the Board in its sole discretion determines necessary based upon the length of time the applicant has been away from clinical practice:
 - (I) Passage of the SPEX examination.
 - (II) Completion of a clinical residency or fellowship of a duration specified by the Board.

- (III) Successful completion of the USMLE or any individual step thereof with a score to be determined by the Board regardless of whether the applicant has previously successfully completed the examination or any or all of the steps thereof.
 - (IV) Completion of a competency evaluation by a Board approved recognized agency or program specifically designed to evaluate clinical medical competency and compliance with the recommendations resulting from that evaluation.
 - (V) Completion of a specified number and type of continuing medical education hours
 - (iv) This rule shall not apply to applicants for special training licenses or licensure exemptions.
 - (v) This type of restricted license cannot be used by, those who:
 - (I) Offer testimony as an medical expert witness on any legal issue relating to the standard of care for clinical medical services provided directly or through others to patients; or
 - (II) Make medical necessity determinations of any kind which directly or indirectly impact whether and/or what kind of medical treatments are to be provided for patients and especially for such determinations made for purposes of third party reimbursement for medical services because direct patient care clinical skills are absolutely necessary for those who make such medical necessity determinations.
 - (III) Serve as chief medical officer, medical director or in similar positions in any health care facility or clinic because direct patient care clinical skills are absolutely necessary for those who serve in such positions.
 - (vi) Physicians with licenses restricted pursuant to this rule are prohibited from providing supervision for any allied health professionals who are providing clinical medical services.
 - (vii) Any physician with a license restricted pursuant to this rule who practices in violation of the restrictions placed on the license are subject to discipline for such conduct.
- (7) Administrative Medical License - In today's practice environment the Board recognizes the fact that some circumstances exist in which a license to practice medicine at a non-clinical level not involving direct patient care is necessary, appropriate and contemplated by the statutes governing the practice of medicine.

- (a) Applicants who submit satisfactory documentation proving that they meet the qualifications for licensure contained in either rule 0880-2-.03, .04 or .05, may, upon completion and submission of an application form and payment of all necessary fee, at the sole discretion of the Board be granted a license to practice administrative medicine without having to prove current clinical competency.
1. This type of license precludes the provision of any direct clinical patient care medical services.
 2. Licenses granted pursuant to this rule may be converted to full clinical status by submitting an application for an upgrade, paying the Licensure Upgrade Fee as provided in rule 0880-2-.01 (1) (j), and documenting clinical competence by whatever mechanism the Board determines is necessary based upon the length of time the applicant has been away from clinical practice such as those identified in rule 0880-2-.07(4)(d)5.(iii).
 3. Individuals issued this type of license are subject to all the rules applicable to other licenses except those specifically applicable to clinical practitioners but specifically includes, but is not limited to, the rules governing renew, retirement, reactivation, reinstatement and continuing education.
 4. Licenses issued pursuant to this rule are subject to discipline for the same cause, to the same extent and pursuant to the same procedures as are clinically authorized licenses. In addition, any physician with a license issued pursuant to this rule who practices clinical medicine or in any way uses that license in violation of these rules is subject to discipline for such conduct.
 5. Physicians with licenses issued pursuant to this rule are prohibited from providing supervision for any allied health professionals who are providing clinical medical services.
- (b) This type of license is not available to, and cannot be used by, those who:
1. Offer testimony as an medical expert witness on any legal issue relating to the standard of care for clinical medical services provided directly or through others to patients; or
 2. Make medical necessity determinations of any kind which directly or indirectly impact whether and/or what kind of medical treatments are to be provided for patients and especially for such determinations made for purposes of third party reimbursement for medical services because direct patient care clinical skills are absolutely necessary for those who make such medical necessity determinations.
 3. Serve as chief medical officer, medical director or in similar positions in any health care facility or clinic because direct patient care clinical skills are absolutely necessary for those who serve in such positions.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-101, 63-6-209(b) and 63-6-214(b)(18).

Rule 0880-2-.10 Licensure Retirement/Inactivation and Reactivation, is amended by deleting the catchline in its entirety and substituting instead the following language, and is further amended by deleting paragraph (1) in its entirety and renumbering the existing paragraphs (2), (3) and (4) as paragraphs (1), (2) and (3), and is further amended by deleting renumbered paragraph (2) but not its subparagraphs and substituting instead the following language, and is further amended by deleting renumbered subparagraph (2) (d) in its entirety and substituting instead the following language, and is further amended by deleting the renumbered (2) (e) in its entirety, so that as amended, the new catchline, the newly renumbered paragraph (2) but not its subparagraphs, and the newly renumbered (2) (d) shall read:

0880-2-.10 Licensure Retirement and Reactivation.

- (2) Reactivation - Any licensee whose license has been retired may re-enter active practice by doing the following:
 - (2) (d) If licensure retirement was in excess of five (5) years, the licensee may be required to successfully complete the FLEX "Special Purpose Examination" as administered by the Board and/or meet such other requirements the Board feels necessary to establish current levels of competency.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, and 63-6-210.

Rule 0880-2-.16 Telemedicine Licensure, is amended by deleting subparagraph (2) (c) in its entirety and substituting instead the following language, so that as amended , the new subparagraph (2) (c) shall read:

- (2) (c) All telemedicine licenses must be renewed or retired according to the same procedure as active unrestricted licenses governed by rules 0880-2-.09 and 0880-2-.10.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, 63-6-209, and 63-6-210.

0880-2-.19 Continuing Medical Education, is amended by deleting part (1) (d) 1. in its entirety and substituting instead the following language, so that as amended, the new part (1) (d) 1. shall read:

- (1) (d) 1. Anyone whose license is retired pursuant to rule 0880-2-.10 is exempt from the requirements of these continuing medical education rules.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, 63-6-210, and 63-6-233.

Rule 0880-2-.22 Free Health Clinic, Inactive Pro Bono and Volunteer Practice Requirements, is amended by deleting subparagraph (2) (a) but not its parts and substituting instead the following language, and is further amended by deleting part (3) (a) 1. in its entirety and substituting instead the following language, and is further amended by deleting subparagraph (3) (d) in its entirety, so that as amended, the new subparagraph (2) (a) but not its parts and the new part (3) (a) 1. shall read:

- (2) (a) Any physician whose license to practice medicine in Tennessee is retired and who has not been disciplined by any medical licensure board may receive a "Special Volunteer License for Out-of-State Practice," which will entitle the licensee to practice without remuneration at benevolent or humanitarian service projects locations outside of the state by doing the following:
 - (3) (a) 1. Retire their active licenses pursuant to the provisions of rule 0880-2-.10; and

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, 63-6-210, and 63-6-230, and 63-6-235.

The notice of rulemaking set out herein was properly filed in the Department of State on the 21st day of March, 2007. (FS 03-23-07, DBID 602)