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 312 Rosa L. Parks, 8th Floor Snodgrass/TN Tower
 Nashville, TN 37243
 Phone: 615.741.2650
 Fax: 615.741.5133
 Email: register.information@tn.gov

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Sequence Number: 02-08-14
 Notice ID(s): 2129
 File Date: 2/11/14

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, Deputy General Counsel
Address: 665 Mainstream Drive, Nashville, Tennessee 37243
Phone: 615-741-1611
Email: Andrea.Huddleston@tn.gov

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
 710 James Robertson Parkway,
Address: 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:	05/19/14
Hearing Time:	2:00 p.m. <input checked="" type="checkbox"/> 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>)

Amendments

Chapter 0880-02 Table of Contents is amended by deleting the existing rule title for Rule 0880-02-.16 and substituting instead the following language, so that as amended, the new rule title for Rule 0880-02-.16 shall read:

0880-02-.16 Telemedicine Licensure and the Electronically-mediated Practice of Medicine.

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

0880-02-.16 Telemedicine Licensure and the Electronically-mediated Practice of Medicine. 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.

(1) Definitions –

- (a) Consultation using electronic or other technology – A consultation using electronic or other technology is an evaluation provided at the request of another physician for the purpose of receiving recommendation as to appropriate diagnosis and treatment.
- (b) Electronically-Mediated Practice of Medicine or “Telemedicine” – The electronically-mediated practice of medicine or “telemedicine” is defined as the delivery of clinical health care services by a licensed practitioner to provide patient evaluation or treatment from a distance through the use of health information and technology which allows appropriate examination of and interaction with the patient at the time services are provided. Application of telemedicine services is subject to established expectations for professional practice in the state of Tennessee.
- (c) Established patient encounter – An established patient encounter is an encounter with a patient who has been evaluated by the physician previously and may be for an existing or a new problem.
- (d) Facilitator – The facilitator is the licensed health care professional or medical assistant 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.
- (e) Initial patient encounter – An initial patient encounter is an encounter with a patient who has not previously been evaluated by the physician who is to render or has been asked to provide a diagnosis, treatment, or a consultation.
- (f) 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.
- (g) 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.
- (h) Referral using electronic or other technology – A referral is the sending of a patient from one physician to another for purposes of ongoing treatment and management of a specific problem or condition.

(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 make application to do so within two years of the effective date of this rule. 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 Tennessee patients 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) Not exempted from these rules is the practice of medicine in Tennessee or across state lines conducted within the parameters of a contractual relationship regardless of whether or not it is for compensation or the promise of compensation.
- (6) Notwithstanding the requirements of Rule 0880-02-.14(7), a physician fully-licensed in Tennessee may engage in the electronically-mediated practice of medicine under the following circumstances:
- (a) Except as provided under paragraph (7) of this rule, the initial patient encounter between the physician in a remote location and the patient requires a prior direct, face-to-face examination relevant to the specialty of medicine and to the reason for the referral or consultation by a licensed health care provider (MD, DO, APN or PA) in Tennessee. A facilitator must be present at the time of the transmission of information to the physician at the remote location.
 - (b) Established patient encounters may be conducted via the electronically-mediated practice of medicine, with or without a facilitator. However, the patient must be seen in person by the physician or a licensed health care provider (MD, DO, APN or PA) working under approved office protocols at least every fourth encounter or annually, whichever comes first.
 - (c) For patient encounters conducted via the electronically-mediated practice of medicine, the physician must have the patient record accessible prior to any diagnosis, treatment or consultation.

- (d) The physician engaging in the electronically-mediated practice of medicine 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 electronic mediation 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.
 - (e) The originating physician or licensed medical provider must comply with T.C.A. §63-1-109 regarding display and communication of the licensee's name and license. The facilitator must identify themselves, their role, and their title to the patient and the remote physician. A facilitator must also include the name of the supervising physician and licensed health care provider involved in the care of the patient.
 - (f) 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 referred to another physician or other health care provider.
 - (g) A consultation or referral using electronic or other technology may be conducted for a new or established problem only by an ABMS board-certified physician, or a candidate for ABMS board-certification, in the field of medicine appropriate for the problem identified by the referring physician.
- (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 or have a facilitator available 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. Medical interpretation via the electronically-mediated practice of medicine, relying solely on data or images provided by electronic or other technology, may be conducted only by an ABMS board-certified physician, or a candidate for ABMS board-certification, in the field of medicine appropriate for the problem identified by the referring physician.
 - (8) 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.
 - (9) A fully-licensed Tennessee physician may prescribe controlled substances to a patient where the physician has not personally performed and documented a physical examination of the patient only under the following circumstances:
 - (a) In admission orders for a newly hospitalized patient; or
 - (b) For continuation medications for established patients who, based on sound medical practices, the physician feels do not require a new physical examination before issuing new prescriptions. However, in no event shall a physician prescribe Schedule II controlled substances pursuant to an electronically-mediated encounter.

Authority: T.C.A. §§ 63-6-101 and 63-6-209.

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: 2-10-14

Signature: _____

Name of Officer: Andrea Huddleston

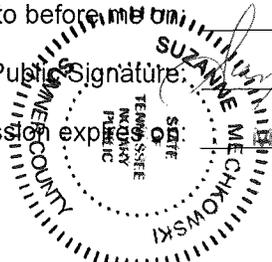
Deputy General Counsel

Title of Officer: Tennessee Department of Health

Subscribed and sworn to before me on: 2-10-14

Notary Public Signature: Suzanne Mechkowski

My commission expires: _____



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Filed with the Department of State on: 2/11/14

Tre Hargett

Tre Hargett
Secretary of State

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