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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. TCA Section 4-5-205*

<b>Agency/Board/Commission:</b>	Board of Medical Examiners
<b>Division:</b>	Tennessee Polysomnographic Professional Standards Committee
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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. Please enter only ONE Rule Number/Rule Title per row)**

Chapter Number	Chapter Title
0880-14	General Rules And Regulations Governing the Practice Of Polysomnography
Rule Number	Rule Title
0880-14-.01	Definitions
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(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 0880-14  
General Rules and Regulations Governing the  
Practice of Polysomnography

0880-14-.01 Definitions. As used in this Chapter of rules the following terms and acronyms will have the meaning ascribed to them:

- (1) "BRPT" means Board of Registered Polysomnographic Technologists.
- (2) "Board" means the Board of Medical Examiners.
- (3) "C.A.A.H.E.P." means the Commission on Accreditation of Allied Health Education Programs.
- (4) "Committee" means the Polysomnography Professional Standards Committee.
- (5) "Committee Designee" means any individual authorized by the Committee to conduct a review of the qualifications of an applicant for a license or temporary permit to practice polysomnography, to make an initial determination as to whether the applicant has met all the requirements to practice polysomnography, and to issue temporary authorizations to practice in accordance with T.C.A. § 63-1-142.
- (6) "Committee Office" means the office of the Unit Director assigned to the Committee located at 227 French Landing, Suite 300, Heritage Place, MetroCenter, Nashville, TN 37243.
- (7) "Department" means Tennessee Department of Health.
- (8) "Direct supervision" means the same as in T.C.A. § 63-31-101(3).
- (9) "Division" means the Division of Health Related Boards, in the Department of Health, responsible for all administrative, fiscal, inspectional, clerical and secretarial functions of the health related boards enumerated in T.C.A. § 68-1-101.
- (10) "General supervision" means the same as in T.C.A. § 63-31-101(4).
- (11) "License" means document issued by the Committee to an applicant who has completed the process for licensure, or temporary permit, or licensure by endorsement. The license takes the form of an artistically designed license as well as other versions bearing an expiration date.
- (12) "Licensee" means a person granted a license as a polysomnographic technologist by the Committee, in the Board's name.
- (13) "Scope of Practice" means the practice by polysomnographic technologists as governed by T.C.A. §63-31-101(9)(A).

Authority: T.C.A. §§ 63-31-101 and 63-31-104.

0880-14-.02 Fees. The following fees are nonrefundable and apply to all applicants and licensees.

- |     |  |                                 |
|-----|--|---------------------------------|
| (1) | Application Fee  | \$100.00                        |
| (2) | Biennial Renewal Fee   | \$50.00                         |
| (3) | State Regulatory Fee - To be paid upon application and annually thereafter to be collected at biennial renewal from all license holders. | \$ 5.00<br>(\$10.00 biennially) |

- |     |                         |          |
|-----|-------------------------|----------|
| (4) | Late Renewal Fee        | \$ 50.00 |
| (5) | Replacement License Fee | \$ 25.00 |

Authority: T.C.A. §§63-1-106, 63-1-112, 63-31-104, and 63-31-106.

0880-14-.03 Qualifications For Licensure.

- (1) Polysomnographic Technologist - To become licensed as a polysomnographic technologist an applicant must comply with the following procedures and requirements:
  - (a) An applicant shall complete an application that can be obtained from the Committee Office. The application form is not acceptable if any portion of it or any other documents required to be submitted by this rule or the application itself have been executed and dated prior to one year before filing with the Committee.
  - (b) An applicant shall respond truthfully and completely to every question or request for information contained in the application form and submit it along with all documentation and fees required by the form and these rules to the Committee Office. The required fees (application fee and state regulatory fee) may be paid in person, by mail or electronically by cash, check, money order, or by credit or debit cards accepted by the Division. If the fees are paid by certified, personal or corporate check they must be drawn against an account in a United States Bank, and made payable to the Polysomnography Professional Standards Committee.
  - (c) An applicant shall submit all documentation in support of an application to the Committee Office. All supporting documents must be received in the Committee Office within ninety (90) days of receipt of the application or the file will be closed. When necessary, all required documents shall be translated into English and such translation as well as the original document certified as to authenticity by the issuing source. Both versions must be submitted.
  - (d) An applicant shall have the Tennessee Bureau of Investigation send the result of a criminal background check of the applicant directly to the Committee Office.
  - (e) An applicant shall cause to be submitted to the Committee Office two letters of reference from any of the following providers:
    1. A supervising physician,
    2. An instructor who provided training to the applicant in a polysomnography training program, or
    3. A licensed polysomnographic technologist.
  - (f) If an applicant holds or has ever held a license or certification to practice polysomnography or any other profession in Tennessee or any other state, the applicant shall submit the equivalent of a Tennessee Certificate of Endorsement (verification of licensure or certification) from each such licensing agency which indicates the applicant holds or held an active license or certification and whether it has ever been disciplined or restricted.
  - (g) All applications shall be sworn to and signed by the applicant and notarized. All documents submitted for qualification of licensure become the property of the State of Tennessee and will not be returned.
  - (h) An applicant shall complete and obtain a passing score on the national certifying exam given by the BRPT within twelve months of applying for initial licensure unless the

applicant is seeking licensure by endorsement pursuant to Rule 0880-14-.03(1)(l) in which case the applicant only needs to demonstrate that they have obtained a passing score on the national certifying exam given by the BRPT prior to applying for licensure.

- (i) The applicant shall submit proof of completion of one of the educational requirements in T.C.A. § 63-31-106(b)(1), unless exempted by T.C.A. §63-31-106(c). The applicant shall have the school send directly to the Committee Office either a certificate of completion, diploma, or final official transcript.
  - (j) The applicant must be credentialed by the BRPT.
  - (k) Polysomnographic technologists by endorsement - The Committee may issue a license by endorsement to an applicant who is currently licensed to practice polysomnography under the laws of another state, territory or country if the qualifications of the applicant are deemed by the Committee to be equivalent to those required in Tennessee. Endorsement applicants must:
    - 1. Complete the Committee approved application,
    - 2. Provide proof of possessing a current license, in good standing, from another state,
    - 3. Demonstrate that they have completed the educational requirements in T.C.A. § 63-31-106(b)(1),
    - 4. Demonstrate current certification by the BRPT, and,
    - 5. Demonstrate that they have obtained a passing score on the national certifying exam given by the BRPT.
  - (l) Application review and licensure decisions shall be governed by Rule 0880-14-.04.
- (2) Polysomnographic Technician – An application for a temporary permit to practice as a polysomnographic technician pursuant to T.C.A. § 63-31-107(a)(1) shall comply with all requirements of Rule 0880-14-.03(1) and all application review and permit decisions shall be governed by 0880-14-.04.
- (a) Once the Committee receives notice that the Technician has obtained a passing score on the national certifying exam the applicant may be issued a license as a polysomnographic technologist.
  - (b) A technician has twelve months from the date of graduation from their accredited educational program to provide proof that they have passed the national certifying exam or their permit will be withdrawn. The Committee may in its sole discretion grant a one time extension of up to three (3) months beyond this one year period.
- (3) Polysomnographic Trainee - Persons seeking to provide services as a polysomnographic trainee pursuant to T.C.A. § 63-31-107(a)(2) shall give written notice to the Board, through the Committee, at least thirty (30) days before providing such services, and shall include the following information in their letter of notification:
- (a) Their full name,
  - (b) Their date of birth,
  - (c) Any other licenses, certificates, or permits they hold in Tennessee or another state,
  - (d) The facility or facilities where the person will be providing sleep-related services,
  - (e) Name of the educational program or institution in which the trainee is enrolled and in which he/she is receiving direct supervision,

- (f) Their social security number,
  - (g) Mailing and physical address, and
  - (h) Home telephone number.
- (4) BRPT eligible persons are credentialed in one of the health-related fields accepted by the BRPT and are seeking clinical experience to be eligible to sit for the BRPT examination pursuant to T.C.A. §63-31-107(a)(4). They shall:
- (a) Give written notice to the Board, through the Committee, and shall include the following information in their letter of notification:
    - 1. Their full name,
    - 2. Mailing and physical address,
    - 3. Home telephone number,
    - 4. Their date of birth,
    - 5. Any other licenses, certificates, or permits they hold in the State of Tennessee or any other state,
    - 6. Name and license number of the technologist providing direct supervision of the individual, and
    - 7. Their social security number.
  - (b) Only provide polysomnographic services for twelve (12) months from the date they give notice to the Committee of their intent to provide polysomnographic services unless they have been granted a license as a polysomnographic technologist or have completed all of the necessary requirements to provide polysomnographic services under T.C.A. § 63-31-107(a)(5).
- (5) All applicants seeking licensure or providing notice to the Committee under Rule 0880-14-.03(1) through (4) shall at the time they begin providing polysomnographic services designate a primary supervising physician or a polysomnographic technologist if allowed by law. The person providing polysomnographic services must submit in writing any change in the primary supervising physician or polysomnographic technologist to the Committee's Administrative Office within fifteen (15) days of any change.

Authority: T.C.A. §§ 63-6-101, 63-6-214, 63-31-101, 63-31-104, 63-31-106, 63-31-107 and 63-31-109.

0880-14-.04 Application Review, Approval, and Denial.

- (1) Application files are not complete until all information and fees have been received by the Committee Office. Preliminary review of all applications to determine whether or not the application file is complete may be delegated by the Committee to the Committee designee.
- (2) Completed applications may only be approved by a Committee member, by the Committee consultant, or by the Committee designee for a temporary authorization pursuant to T.C.A. §§ 63-1-142 and 63-31-107.
- (3) If an application is incomplete when received in the Committee Office, in addition to other reasonable efforts to correct the deficiency, a deficiency letter will be sent by mail to the applicant notifying them of the deficiency. This letter shall request specified additional material necessary to complete the application. The requested information must be received in the Committee Office on or before the sixtieth (60th) day after the mailing date of the notification. In the event it is not received within sixty (60) days then the application shall be closed and the applicant may reapply.

- (4) If a completed application is denied by the Committee, the action shall become final and the following shall occur:
  - (a) The Committee Office shall send notification of the denial by certified mail, return receipt requested. Specific reasons for denial will be stated, such as incomplete or unofficial records, examination failure, or other matters judged insufficient for licensure, and such notification shall contain all the specific statutory or administrative authorities for the denial.
  - (b) If an applicant believes that a denial was in error they may request, in writing, to appear before the Committee not less than thirty (30) days before the next regularly scheduled meeting of the Committee.
- (5) The issuance of a license or permit to an applicant who otherwise may be entitled to full licensure, may be withheld, denied, conditioned or restricted in any manner the Committee deems necessary to protect the public.

Authority: T.C.A. §§ 63-1-107, 63-31-104, 63-31-106, and 63-31-107.

#### 0880-14-.05 Licensure Renewal.

- (1) The due date for license renewal is set by the Division's biennial alternative interval renewal system. The due date is contained on the renewal document designated as the expiration date.
  - (a) Individuals may renew their licenses by obtaining a renewal application from either the Department's website on the internet or by using the paper renewal system.
  - (b) To be eligible for renewal an individual must submit to the Division, on or before the expiration date, the following:
    - 1. A completed and signed renewal application form;
    - 2. The renewal and state regulatory fees; and
    - 3. Documentation of compliance with continuing education requirements as provided in Rule 0880-14-.09.
  - (c) Licensees who fail to comply with the renewal rules concerning failure to timely renew shall have their licenses processed in accordance with Rule 1200-10-1-.10.
  - (d) Anyone submitting a signed renewal form or letter which is found to be untrue may be subject to disciplinary action.
- (2) Initial renewal issuance decisions pursuant to this rule may be made administratively by the Committee consultant pursuant to T.C.A. § 63-31-108 or by the Committee designee pursuant to T.C.A. § 63-1-142, subject to review and subsequent decision by the Committee.

Authority: T.C.A. §§ 63-1-107, 63-31-104, 63-31-106, 63-31-108, and 63-31-109.

#### 0880-14-.06 Retirement And Reinstatement.

- (1) A licensee who holds a current license and does not intend to practice as a polysomnographic technologist may apply to convert an active license to retired status. A licensee who holds a retired license will not be required to pay a renewal fee to maintain the license in retired status.
- (2) A licensee who holds an active license may apply for retired status in the following manner:

- (a) Obtain, complete, and submit to the Committee Office an Affidavit of Retirement form; or
  - (b) Submit to the Committee Office any other documentation which may be required.
- (3) The effective date of retirement will be the date the Affidavit of Retirement is received in the Committee Office.
- (4) A licensee whose license has been retired may re-enter active status by doing the following:
- (a) Obtain, complete, and submit to the Committee Office a Reinstatement Application form; and
  - (b) Pay the renewal fee and state regulatory fee as provided in Rule 0880-14-.02.
  - (c) If reinstatement is requested prior to the expiration of one (1) year from the date of retirement, then the licensee must pay the past due renewal fee and the late renewal fees.
  - (d) Provide verification of completion of continuing education requirements, as provided in Rule 0880-14-.09.
  - (e) If licensure retirement was in excess of two (2) years, the licensee may be required to successfully complete whatever educational and/or testing requirements the Committee determines is necessary to establish current levels of competency.
- (5) Reinstatement applications shall be treated as licensure applications and review decisions shall be governed by Rule 0880-14-.04.

Authority: T.C.A. §§63-1-107, 63-31-104, and 63-31-108.

0880-14-.07 Disciplinary Grounds, Actions, And Civil Penalties.

- (1) Actions - Upon a finding by the Committee that any provision of the Polysomnography Act or the rules promulgated pursuant thereto has been violated, the Committee may impose any of the following actions separately or in any combination deemed appropriate to the offense.
- (a) "Letter of warning" This is a written action. It is informal and advisory in nature and does not constitute a formal disciplinary action.
  - (b) "Formal reprimand" This is a written action. It is a formal disciplinary action.
  - (c) "Probation" This is a formal disciplinary action for a fixed period of time.
  - (d) "Licensure suspension" This is a formal disciplinary action which suspends an individual's right to practice for a fixed period of time. It contemplates the re-entry of the individual into the practice under the licensure previously issued.
  - (e) "Licensure revocation" This is a formal disciplinary action which removes an individual from the practice of the profession and terminates the license previously issued. No petition for reinstatement and no new application for licensure from a person whose license was revoked shall be considered prior to the expiration of at least one (1) year unless otherwise stated in the Committee's revocation order.
  - (f) Conditions - Any action deemed appropriate by the Committee to be required of a disciplined licensee in any of the following circumstances:
    - 1. During any period of probation, suspension;
    - 2. As a prerequisite to the lifting of probation or suspension; or

3. As a stand-alone requirement or requirements in any disciplinary action.
- (g) Civil penalty - A monetary disciplinary action assessed by the Committee pursuant to paragraph three (3) of this rule.
  - (h) Once ordered, probation, suspension, assessment of a civil penalty, or any other condition of any type of disciplinary action may not be lifted unless and until the licensee appears before the Committee after the period of initial probation, suspension, or other conditioning has run and all conditions placed on the probation, suspension, have been met, and after any civil penalties assessed have been paid.
- (2) Order Modifications – A licensee can petition the Committee to modify a previously issued disciplinary order if the licensee cannot fulfill the conditions of the imposed discipline. This procedure is only available after all reconsideration and appeal rights have been either exhausted or not timely pursued. This procedure cannot be used to modify any findings of fact, conclusions of law, or the reasons for the decision contained in the order.
    - (a) The Committee will entertain petitions for modification of the disciplinary portion of previously issued orders upon strict compliance with the procedures set forth in subparagraph (b) only when the petitioner can prove that compliance with any one or more of the conditions or terms of the discipline previously ordered is impossible. For purposes of this rule the term "impossible" does not mean that compliance is inconvenient or impractical for personal, financial, scheduling or other reasons.
    - (b) Procedures
      1. The petitioner shall submit a written and signed Petition for Order Modification to the Committee's Office that shall contain all of the following:
        - (i) A copy of the previously issued order; and
        - (ii) A statement of why the petitioner believes it is impossible to comply with the order as issued; and
        - (iii) A copy of all documents that proves that compliance is impossible. If proof of impossibility of compliance requires testimony of an individual(s), including that of the petitioner, the petitioner must submit signed and notarized statements from every individual the petitioner intends to rely upon attesting, under oath, to the reasons why compliance is impossible. No documentation or testimony other than that submitted will be considered in making an initial determination on, or a final order in response to, the petition.
      2. The Committee authorizes administrative staff to make an initial determination on the petition and take one of the following actions:
        - (i) Certify impossibility of compliance and forward the petition to the Office of General Counsel for presentation to the Committee as an uncontested matter; or
        - (ii) Deny the petition, after consultation with the Office of General Counsel, if impossibility of compliance with the provisions of the previous order is not proven and notify the petitioner of what proof of impossibility of compliance was either not sufficient or not submitted.
      3. If the petition is granted, a new order shall be issued reflecting the modifications authorized by the Committee that it deemed appropriate and necessary in relation to the violations found in the previous order.

4. If the petition is denied either initially by staff or after presentation to the Committee and the petitioner believes impossibility of compliance with the order has been sufficiently proven, the petitioner may request, in writing, to appear before the Committee not less than thirty (30) days before the next regularly scheduled meeting of the Committee.
- (3) Civil Penalties - The purpose of this rule is to set out a schedule designating the minimum and maximum civil penalties which may be assessed pursuant to T.C.A. § 63-1-134.
- (a) Schedule and Amount of Civil Penalties
1. A Type A civil penalty may be imposed whenever the Committee finds the person who is required to be licensed, permitted, or authorized by the Committee is guilty of a willful and knowing violation of T.C.A. § 63-31-101, et seq. or regulations promulgated pursuant thereto, to such an extent that there is, or is likely to be an imminent substantial threat to the health, safety and welfare of an individual client or the public. For purposes of this section, a type A penalty may be imposed in instances including but not limited to, those in which a person willfully and knowingly is or was practicing Polysomnography without a license from the Committee. Type A civil penalties shall be assessed in the amount of not less than \$500 and not more than \$1,000.
  2. A Type B civil penalty may be imposed whenever the Committee finds the person required to be licensed, permitted, or authorized by the Committee is guilty of a violation of T.C.A. § 63-31-101, et seq. or regulations promulgated pursuant thereto in such manner as to impact directly on the care of clients or the public. Type B civil penalties may be assessed in the amount of not less than \$100 and not more than \$500.
  3. A Type C civil penalty may be imposed whenever the Committee finds the person required to be licensed, permitted, or authorized by the Committee is guilty of a violation of T.C.A. § 63-31-101, et seq. or regulations promulgated pursuant thereto, which is neither directly detrimental to the clients or public, nor directly impacts their care, but only has an indirect relationship to client care or the public. Type C civil penalties may be assessed in the amount of not less than \$50 and not more than \$100.
- (b) Procedures for Assessing Civil Penalties
1. During a contested case proceeding the Committee may assess civil penalties in a type and amount which was not recommended by the Office of General Counsel.
  2. In assessing the civil penalties pursuant to these rules the Committee may consider the following factors:
    - (i) Whether the amount imposed will be a substantial economic deterrent to the violator;
    - (ii) The circumstances leading to the violation;
    - (iii) The severity of the violation and the risk of harm to the public;
    - (iv) The economic benefits gained by the violator as a result of non-compliance; and
    - (v) The interest of the public.
  3. All proceedings for the assessment of civil penalties shall be governed by the contested case provisions of T.C.A. Title 4, Chapter 5.

Authority: T.C.A. §§63-1-122, 63-1-134, 63-31-104, 63-31-109, and 63-31-110.

0880-14-.08 Officers, Consultants, Records, Advisory Rulings, and Screening Panels.

- (1) The Committee shall elect annually from its members the following officers:
  - (a) "Chairperson" who shall preside at all Committee meetings, and appoint committees.
  - (b) "Secretary" who in the absence of the chairperson shall preside at Committee meetings and who, along with the Committee's Director, shall be responsible for correspondence from the Committee and execution of all official documents requiring the seal of the Committee to be affixed.
- (2) The Committee shall select as a Committee consultant a member of the Committee who may serve as a consultant(s) to the Division and who may perform the following acts:
  - (a) Review complaints.
  - (b) Request patient records under T.C.A. § 63-1-117.
  - (c) Review and approve all types of applications for issuance of a temporary authorization pursuant to T.C.A. § 63-31-107, subject to subsequent ratification by the Committee before full licensure, renewal or reinstatement can issue.
- (3) Records and Complaints
  - (a) All requests, applications, notices, other communications and correspondence shall be directed to the Committee Office. Any requests or inquiries requiring a Committee decision or official Committee action, except documents relating to disciplinary actions or hearing requests, must be received at least fourteen (14) days prior to a scheduled Committee meeting. Requests or inquiries not timely received will be retained in the Committee Office and presented at the next Committee meeting.
  - (b) All records of the Committee, except those made confidential by law, are open for inspection and examination, under the supervision of an employee of the Division at the Committee Office during normal business hours.
  - (c) All complaints should be directed to the Committee Office.
- (4) Advisory Rulings - Any licensee who is affected by any matter within the jurisdiction of the Committee may submit a written request for an advisory ruling subject to the limitations imposed by T.C.A. § 63-31-104. The procedures for obtaining and for issuance of advisory rulings are as follows:
  - (a) The licensee shall submit the request to the Committee Office providing:
    1. The specific question or issue for which the ruling is requested;
    2. The facts that gave rise to the specific question or issue; and
    3. The specific statutes and/or rules which are applicable to the question or issue.
  - (b) The Committee may review the request at its next scheduled meeting.
  - (c) Upon adoption by the Committee an advisory ruling shall be transmitted to the requesting licensee. The ruling shall have only such affect as is set forth in T.C.A. § 63-31-104.

- (5) Screening Panels - The Committee adopts, as if fully set out herein, Rule 1200-10-1-.13, of the Division of Health Related Boards and as it may from time to time be amended, as its rule governing the screening panel process.
- (6) Reconsiderations and Stays - The Committee authorizes the member who chaired the Committee for a contested case to be the agency member to make the decisions authorized pursuant to Rule 1360-4-1-.18 regarding petitions for reconsiderations and stays in that case.

Authority: T.C.A. §§63-1-115, 63-1-117, 63-1-138, 63-6-101, 63-31-103, 63-31-104, and 63-31-112.

0880-14-.09 Continuing Education.

- (1) All licensees must comply with the following as a prerequisite to licensure renewal:
  - (a) Continuing Education - Hours Required
    1. A licensee must complete ten (10) hours of continuing education every calendar year (January 1-December 31).
    2. Continuing education for new licensees - For new licensees, submitting proof of successful completion of all education and training requirements required for licensure in Tennessee, pursuant to Rule 0880-14-.03, shall be considered proof of sufficient preparatory education to constitute continuing education credit for the calendar year in which such education and training requirements were completed.
    3. The Committee may approve a course for only the number of hours contained in the course. The approved hours of any individual course will not be counted more than once in a calendar year toward the required hourly total regardless of the number of times the course is attended or completed by any individual.
    4. The Committee may waive or otherwise modify the requirements of this rule in cases where there is retirement, or an illness, disability or other undue hardship that prevents a licensee from obtaining the requisite number of continuing education hours. Requests for waivers or modification must be sent in writing to the Committee Office prior to the expiration of the renewal period in which the continuing education is due.
  - (b) Continuing Education - Proof of Compliance
    1. The due date for completion of the required continuing education is December 31st of every calendar year.
    2. Licensees must, on the license renewal form, enter a signature, electronic or otherwise, which indicates completion of the required continuing education hours and that such hours were obtained during the applicable calendar years.
    3. All licensees must retain independent documentation of completion of all continuing education hours for a period of five (5) years from the end of the renewal period in which the continuing education was acquired. This documentation must be produced for inspection and verification, if requested in writing by the Division during its verification process. Documentation verifying the licensee's completion of the continuing education program(s) may consist of any one or more of the following:
      - (i) Certificates from the continuing education program's sponsor, indicating the date, length in minutes awarded (continuing education units must be converted to clock hours), program title, licensee's name, license number and social security number; or

- (ii) An original letter on official stationery from the continuing education program's sponsor indicating date, length in minutes awarded (continuing education units must be converted to clock hours), program title, licensee's name, license number and social security number.
- (c) Acceptable continuing education - To satisfy the continuing education requirements of this rule, the continuing education program must be approved in content, structure and format by the American Association of Sleep Technologists.
- (d) Violations
  - 1. A licensee who fails to obtain the required continuing education hours shall pay a fee of \$30.00 per hour deficient, may be subject to disciplinary action pursuant to Rule 0880-14-.07, and shall not be eligible for licensure renewal.
  - 2. A licensee who falsely attests to completion of the required hours of continuing education may be subject to disciplinary action pursuant to rule 0880-14-.07.
  - 3. Education hours obtained as a result of compliance with the terms of Committee and/or Board Orders in any disciplinary action shall not be credited toward the continuing education hours required to be obtained in any calendar year.

Authority: T.C.A. §§63-6-101, 63-31-104, and 63-31-109.

0880-14-.10 Code Of Ethics.

- (1) It shall be a violation of the Committee's rules and regulations, that may result in discipline, for a Polysomnographic Technologist, Technician, or person practicing polysomnography pursuant to T.C.A. § 63-31-107(a)(4) to do any of the following:
  - (a) Fail to maintain in strict confidence all privileged information concerning a patient except as disclosure or use of information is permitted or required by law.
  - (b) Have sexual relations with a current or former patient unless the practitioner has not provided any polysomnographic services to the patient within the one year period preceding the beginning of the sexual relationship.
  - (c) Have sexual relations with a close family member of a patient unless the practitioner has not provided any polysomnographic services to the patient within the one year period preceding the beginning of the sexual relationship.
  - (d) Either directly or indirectly solicit the patronage of patients by way of intimidation, threats, harassing conduct, undue influence, coercion, duress, unwarranted promises of benefits; or either directly or indirectly solicit a patient who is apparently in a mental condition that impairs judgment to make decisions about the products or services being offered.
  - (e) Claim or assert the authority to practice beyond the scope of practice for a polysomnographic technologist.
  - (f) Provide treatment or care beyond their competence and/or the instructions of the supervising physician.
  - (g) Fail to follow the necessary procedural protocols to ensure collection of appropriate data.
  - (h) Fail to demonstrate the knowledge and skills necessary to recognize and provide age-specific care in the treatment, assessment, and education of pediatric, adolescent, adult and geriatric patients.

Authority: T.C.A. §§63-1-107, 63-31-104, 63-31-106, 63-31-108, and 63- 31-109.

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)
Kelia Ingram	X				
Natasha C. Webb	X				
Kristin W. Lester	X				
Thomas G. Higgins, M.D.	X				
Paul A. Schmitz	X				
Donald A. Samples, Ed.D.	X				
Madelyn K. Cunningham	X				

Roll call vote by the Board of Medical Examiners on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Mitchell Mutter, M.D.	X				
Charles W. White, Sr., M.D.	X				
Subhi D. Ali, M.D.	X				
Neal Beckford, M.D.	X				
Monica Franklin	X				
George L. Eckles, M.D.				X	
Dennis Higdon, M.D.	X				
Keith Lovelady, M.D.	X				
Barrett F. Rosen, M.D.	X				
Regine Webster	X				
Irene Wells	X				
Michael D. Zanolli, M.D.	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Polysomnographic Professional Standards Committee on 12/08/2008, and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 09/30/08

Notice published in the Tennessee Administrative Register on: (10/15/08)

Rulemaking Hearing(s) Conducted on: (add more dates). 12/08/08

Date: 2/5/10

Signature: SK

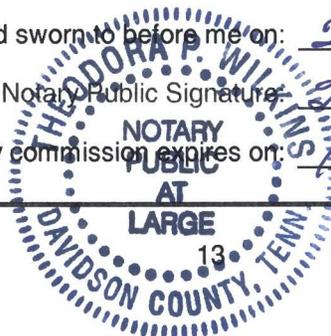
Name of Officer: Shiva K. Bozarth

Title of Officer: Deputy General Counsel

Subscribed and sworn to before me on: 2/5/10

Notary Public Signature: Theodor W. Wilkins

My commission expires on: 2/17/2011



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.

*Robert E. Cooper, Jr. by JEM*  
Robert E. Cooper, Jr.  
Attorney General and Reporter  
*March 1, 2010* \_\_\_\_\_  
Date

**Department of State Use Only**

Filed with the Department of State on: 3/2/10

Effective on: 5/31/10

*Tre Hargett*  
\_\_\_\_\_  
Tre Hargett  
Secretary of State

## **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.

## Regulatory Flexibility Addendum

Pursuant to Public Chapter 464 of the 105<sup>th</sup> General Assembly, prior to initiating the rule making process as described in § 4-5-202(a)(3) and § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

(If applicable, insert Regulatory Flexibility Addendum here)

### Regulatory Flexibility Analysis

(1) Type or types of small business subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rule:

- (a) Persons interested in providing polysomnographic services after July 1, 2010,
- (b) Medical centers providing polysomnographic services, and
- (c) Schools providing polysomnography training.

(2) Identification and estimate of the number of small businesses subject to the proposed rule:

The proposed rule changes would affect those medical centers that provide polysomnographic services. After July 1, 2010, only persons authorized by T.C.A. title 63, chapter 31 will be allowed to provide polysomnographic services. These rules also affect the requirements that will be taught in the polysomnographic training programs.

(3) 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:

The proposed amendments which have economic impact on small businesses have no increased or new reporting, recordkeeping and other administrative costs that are required for compliance.

(4) Statement of the probable effect on impacted small businesses and consumers:

It is possible there will be some increased labor costs as a result of the licensure requirements, however, these increased costs are offset by the increased safety and confidence that will be provided by licensed and formally trained providers.

(5) 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:

Given the legislative requirement that only licensees may provide polysomnographic services after July 1, 2010, there is no less burdensome means to accomplish the purpose of the legislation.

(6) Comparison of the proposed rule with any federal or state counterparts:

Federal: The Committee is not aware of any federal counterparts. Neither polysomnographers nor polysomnographic training centers are licensed by the federal government.

State: The Committee's proposed rules are similar to the regulation of polysomnography in other states where allowed by Tennessee state law.

(7) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

It is impossible to exempt small businesses from the regulatory requirements and achieve the intent of the legislation.

## Statement Of Economic Impact To Small Businesses

1. Name of Board, Committee or Council: Board of Medical Examiners' Polysomnographic Professional Standards Committee
2. Rulemaking hearing date: December 8, 2008
3. Type or types of small businesses that will be directly affected by the proposed rules:
  - (a) Persons interested in providing polysomnographic services after July 1, 2010,
  - (b) Medical centers providing polysomnographic services, and
  - (c) Schools providing polysomnography training.
4. Types of small businesses that will bear the cost of the proposed rules:
  - (a) Persons interested in providing polysomnographic services after July 1, 2010,
  - (b) Medical centers providing polysomnographic services, and
  - (c) Schools providing polysomnography training.
5. Types of small businesses that will directly benefit from the proposed rules:

Schools providing polysomnography training will benefit from the rule amendment.
6. Description of how small business will be adversely impacted by the proposed rules:

Medical centers that provide polysomnographic services may incur additional labor costs because there are currently no licensure requirements for persons providing sleep services.
7. Alternatives to the proposed rule that will accomplish the same objectives but are less burdensome, and why they are not being proposed:

Given the legislative requirement that only licensees may provide polysomnographic services after July 1, 2010, there is no less burdensome means to accomplish the purpose of the legislation.
8. Comparison of the proposed rule with any federal or state counterparts:
  - (a) Federal: The Committee is not aware of any federal counterparts. Neither polysomnographers nor polysomnographic training centers are licensed by the federal government.
  - (b) State: The Committee's proposed rules are similar to the regulation of polysomnography in other states where allowed by Tennessee state law.

## Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to TCA 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;

### Summary:

These will be the initial rules for the Polysomnographic Professional Standards Committee ("Committee"), which is scheduled to have its first meeting, August 19, 2008.

0880-14-.01 – *Definitions*: Provides the definitions for things and organizations that will be referred to in these rules.

0880-14-.02 – *Fees*: These are staff's reasonable estimates of the amounts necessary to ensure that the Committee is properly funded without knowing how many people will seek licensure.

0880-14-.03 – *Qualification for licensure*: These are the various requirements for obtaining either licensure or permission to provide sleep services. The organic statutes allow for a wide variety of persons to provide sleep services and these rules will give the committee the ability to monitor who is providing these services in Tennessee.

0880-14-.04 – *Application review, approval, and denial*: These rules detail the process by which the Board will approve or deny licenses.

0880-14-.05 – *Licensure renewal and replacement*: These rules detail the process that the Committee will utilize in granting renewals and replacements of licenses.

0880-14-.06 – *Retirement and reinstatement*: These rules detail the method for a licensee to retire his/her license and what if any additional retraining or education they would need to complete if they sought to reinstate their license.

0880-14-.07 – *Disciplinary grounds, actions, and civil penalties*: These rules state that a violation of the provisions of T.C.A. Title 63, Chapters 1 and 31 could result in disciplinary action against the licensee. These rules also detail the various penalties and licensure restrictions that the Committee may impose as well as mechanisms for obtaining order modifications and orders of compliance.

0880-14-.08 – *Committee officers, consultants, records, advisory rulings, and screening panels*: These rules detail the duties of the officers of the Committee as well as the Committee's consultant. Additionally, these rules deal with how licensees may seek advisory opinions, the screening panel process for disciplinary actions, and how Committee records may be obtained.

0880-14-.09 – *Continuing education*: These rules detail the continuing education requirements for licensees.

0880-14-.10 – *Code of ethics*: These rules set forth ethical requirements in addition to those found in the statutes.

- (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;

T.C.A. 63-31-101 et seq. established Polysomnography Professional Standards Committee and required committee to license and regulate practice of polysomnography in Tennessee.

- (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;

Tennessee Sleep Society urged adoption

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

Non applicable

- (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;

The rules should increase revenues proportional with the required expenditures. The intent of the rules is to be

revenue neutral.

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

Shiva K. Bozarth, Deputy General Counsel

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

Shiva K. Bozarth, Deputy General Counsel

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

Tennessee Department of Health, Office of General Counsel, Plaza 1 – Suite 210, 220 Athens Way, Nashville, TN 37243; Telephone (615) 741-1611

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

Non-applicable