

Rulemaking Hearing Rules

Board of Medical Examiners

Amendments

Chapter 0880-02

General Rules and Regulations Governing the Practice of Medicine

Rule 0880-02-.05 Licensure of Out-Of-State and International Applicants is amended by deleting part (9) (b) 1., subparagraph (9) (e) and subparagraph (9) (f) in their entirety and substituting instead the following language, so that as amended, the new part (9) (b) 1., the new subparagraph (9) (e) and the new subparagraph (9) (f) shall read:

- (9) (b) 1. A certification from an accredited medical college in Tennessee that the applicant has a full-time appointment at the rank of full professor; and
- (9) (e) The appointing medical college shall immediately notify the Board at any time that an applicant who obtains distinguished faculty licensure ceases to maintain a full-time appointment at the rank of full professor; and
- (9) (f) Any license issued to a distinguished faculty member shall automatically expire at any time the licensee fails to maintain a full-time appointment at the rank of full professor and authorized medical practice only in conjunction with the medical college at which the appointment is held.

Authority: T.C.A. §§ 63-6-101 and 63-6-211.

Rule 0880-02-.06 Training Licenses and Licensure Exemptions, is amended by deleting subparagraph (1) (b) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (1) (b) shall read:

- (1) (b) A special training license may be issued for a one (1) year period only but may be renewed each year on its anniversary date so long as the applicant is still in training and upon submission of a written renewal request from the training program director and payment of the Special Training License Fee as provided in rule 0880-02-.02 (1) (d).

Authority: T.C.A. §§ 63-6-101, 63-6-207, and 63-6-210.

Rule 0880-02-.12 Licensure Discipline and Civil Penalties, is amended by deleting subparagraph (1) (g) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (1) (g) shall read:

- (1) (g) Conditions - Any action deemed appropriate by the Board to be required of a disciplined licensee in any of the following circumstances:
  - 1. During any period of probation, suspension or revocation with leave to apply; or
  - 2. As a prerequisite to the lifting of probation or suspension; or
  - 3. As a stand-alone requirement(s) in any disciplinary order.

Authority: T.C.A. §§ 63-6-101 and 63-6-214.

Rule 0880-02-.13 Advertising, is amended by deleting subparagraph (3) (f) but not its parts and substituting instead the following language, so that as amended, the new subparagraph (3) (f) but not its parts shall read:

- (3) (f) Remote Services. Any physician, except those providing services on behalf of the Department of Health, Department of Correction, or Department of Mental Health and Developmental Disabilities, who pursuant to T.C.A. § 63-6-204 (b), is required to have control over and responsibility for medical services being provided at any location other than the primary location or office at which he or she practices medicine a majority of the time must have the following included in any advertisement for that location and on the most conspicuous sign at that location:

Authority: T.C.A. §§ 63-1-145, 63-6-101, 63-6-204, and 63-6-215.

## New Rules

### Chapter 0880-13

#### General Rules and Regulations Governing the Practice of Genetic Counselors

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0880-13-.01 Definitions. As used in these rules, the following terms and acronyms shall have the following meanings ascribed to them:

- (1) ABGC – The American Board of Genetic Counseling.
- (2) ABMG – The American Board of Medical Genetics.
- (3) Board – The Tennessee Board of Medical Examiners.
- (4) Board's administrative office - The office of the administrator assigned to the Board located at 227 French Landing, Suite 300, Heritage Place, MetroCenter, Nashville, TN 37243.

- (5) Division – The Division of Health Related Boards, Tennessee Department of Health, from which the Board receives administrative support.
- (6) Genetic counselor – A person licensed to engage in the practice of genetic counseling.
- (7) Practice of genetic counseling – The process of helping people understand and adapt to the medical, psychological and familial implications of genetic contributions to disease performed pursuant to a referral. This process integrates the following:
  - (a) Interpretation of family and medical histories to assess the chance of disease occurrence or recurrence;
  - (b) Education about inheritance, testing, management, prevention, resources and research; and
  - (c) Counseling to promote informed choices and adaptation to the risk or condition.
- (8) Referral – A written or telecommunicated authorization for genetic counseling services from a physician licensed to practice medicine in all its branches or an advanced practice nurse or physician assistant who has an agreement and signed protocols with a supervising physician that authorizes referrals to a genetic counselor.
- (9) Supervision – The ongoing, direct clinical review, for the purposes of training or teaching, by an approved supervisor who monitors the performance or a person’s supervised interaction with a client and provides regular documented face-to-face consultation, guidance, and instructions with respect to the clinical skills and competencies of the person supervised. Supervision may include, without being limited to, the review of case presentations, audio tapes, video tapes, and direct observation.

Authority: T.C.A. §§ 63-6-101, 63-6-802, and 63-6-806.

0880-13-.02 Scope of Practice. The scope of practice of all genetic counselors is governed by T.C.A. §§ 63-6-802(8) and 63-6-803.

Authority: T.C.A. §§ 63-6-101 and 63-6-802, 63-6-803, and 63-6-806.

0880-13-.03 Necessity of Licensure.

- (1) Except as provided in paragraph (3), no person shall engage in the practice of genetic counseling, act or represent such person to be a genetic counselor, or use such titles as “genetic counselor”, “licensed genetic counselor”, “gene counselor”, “genetic associate” or any words, letters, abbreviations or insignia indicating or implying that such person is a genetic counselor, unless such person holds a license or temporary license issued by the Board.
- (2) Use of Titles - Any person who possesses a valid, current and active license issued by the Board that has not been suspended or revoked has the right to use the titles listed in paragraph (1) and to practice genetic counseling, as defined in T.C.A. §§ 63-6-802 (8) and 63-6-803. Any person licensed by the Board to whom this rule applies must use one (1) of the titles authorized by this rule in every “advertisement” [as that term is defined in rule 0880-13-.14(2)(a)] he or she publishes or the failure to do so will constitute an omission of a material fact which makes the advertisement misleading and deceptive and subjects the genetic counselor to disciplinary action pursuant to T.C.A. § 63-6-807(b)(1), (b)(7), (b)(9) and (b)(10).

- (3) This rule shall not apply to:
- (a) Other qualified and licensed health care professionals who are practicing within their scope of practice. Individuals may not use the title “genetic counselor” or any other title tending to indicate they are a genetic counselor unless licensed as such in this state.
  - (b) Students enrolled in an approved academic program in genetic counseling, if practice constitutes a part of a supervised course of study and such student is designated by a title clearly indicating such student’s status as a student or trainee.
  - (c) An individual trained as a genetic counselor, who is reapplying for the ABGC certification examination and gathering logbook cases under supervision in an approved genetic counseling training site.
  - (d) Individuals employed by a state genetics center to provide education regarding single gene conditions, including, but not limited to, sickle cell, cystic fibrosis, and hemoglobinopathies. The individual may not use the title “genetic counselor” or any other title tending to indicate they are a genetic counselor unless licensed as such in this state.
  - (e) Visiting ABGC or ABMG certified genetic counselors from outside the state performing activities and services for a period of thirty (30) days each year. Visiting genetic counselors must be licensed if available in their home state.

Authority: T.C.A. §§ 63-1-145, 63-6-101, 63-6-214, 63-6-804, 63-6-806, 63-6-807.

0880-13-.04 Qualifications for Licensure. To qualify for a license to practice genetic counseling, a person shall have:

- (1) Earned a masters degree from a genetic counseling training program that is accredited by the ABGC, or an equivalent as determined by the ABGC or the ABMG; and
- (2) Met the examination requirement for certification and have current certification as a genetic counselor by the ABGC or the ABMG.

Authority: T.C.A. §§ 63-6-101 and 63-6-806.

0880-13-.05 Procedures for Licensure.

- (1) To become licensed as a genetic counselor in Tennessee a person shall do all of the following procedures:
  - (a) Obtain an application from the Board’s Internet web page or from the Board’s administrative office.
  - (b) 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 by rule 0880-13-.06, to the Board’s administrative office. It is the intent of this rule that activities necessary to accomplish the filing of the required documentation be completed prior to filing an application and that all documentation be filed simultaneously.

- (c) Submit a clear, recognizable, recently taken bust photograph which shows the full head, face forward from at least the top of the shoulder up.
  - (d) Cause a graduate transcript from a genetic counseling training program that is accredited by the ABGC or by an equivalent as determined by the ABGC or the ABMG to be submitted directly from the educational institution to the Board's administrative office. The transcript must contain the official seal of the institution, must show that the program has been successfully completed, and must indicate that the masters degree has been awarded.
  - (e) Cause proof of current certification as a genetic counselor to be sent directly from the ABGC or the ABMG to the Board's administrative office.
  - (f) Disclose the circumstances surrounding any of the following:
    1. Conviction of any criminal law violation of any country, state or municipality, except minor traffic violations.
    2. The denial of professional licensure/certification application by any other state or the discipline of licensure/certification in any state.
    3. Loss or restriction of professional licensure/certification.
    4. Any civil suit judgment or civil suit settlement in which the applicant was a party defendant including, without limitation, actions involving malpractice, breach of contract, antitrust activity or any other civil action remedy recognized under the country's or state's statutory common or case law.
    5. Failure of any professional licensure or certification examination.
  - (g) Cause to be submitted to the Board's administrative office directly from the vendor identified in the Board's licensure application materials, the result of a criminal background check.
  - (h) Cause to be submitted the equivalent of a Tennessee Certificate of Endorsement (verification of licensure/certification) from each licensing board of each state or country in which the applicant holds or has ever held a license/certificate to practice any profession that indicates the applicant holds or held an active license/certificate and whether it is in good standing presently or was at the time it became inactive. It is the applicant's responsibility to request this information be sent directly from each such licensing board to the Board's administrative office.
- (2) Temporary License – A temporary license to practice genetic counseling may be issued to an applicant who meets all of the requirements for licensure in Rule 0880-13-.04 except the examination requirement of Rule 0880-13-.04 (2), and has complied with all subparagraphs contained in paragraph (1) of this rule except subparagraph (e).
- (a) Temporary license applicants must have active candidate status conferred by the ABGC and take the next available certification examination.
  - (b) A temporary license will not be issued if the applicant has failed the ABGC certification examination more than twice.
  - (c) Temporary licensees must practice under the general supervision of a licensed genetic counselor or a licensed physician with current ABMG certification in clinical genetics.

- (d) A temporary license shall expire upon the earliest of one (1) of the following:
  - 1. issuance of full licensure;
  - 2. ninety (90) days after notification of failing the certification exam without obtaining current active candidate status; or
  - 3. the date printed on the temporary license.
- (3) Grandfathering – For one (1) year after the original effective date of this chapter of rules, any person who has practiced as a genetic counselor since 1980 is eligible to receive a license as a genetic counselor upon compliance with Rule 0880-13-.04 (1), and all subparagraphs contained in paragraph (1) of this rule except subparagraph (e) and upon further showing satisfactory proof of work history and scope of practice by submitting to the Board's administrative office, along with the licensure application:
  - (a) written job description(s) or letters from employers which cover the entire work period and explain the licensure applicant's scope of practice; and
  - (b) photocopies of paycheck(s), paycheck stub(s), or Internal Revenue Service (IRS) Forms W-2, 1099-Misc., or Schedules C or C-EZ for IRS Form 1040 to verify proof of income from the practice of genetic counseling.
- (4) Application review and licensure decisions shall be governed by Rule 0880-13-.07.

Authority: T.C.A. §§ 63-6-101 and 63-6-806.

0880-13-.06 Fees. All fees provided for in this rule are non-refundable.

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| (1) | Application fee to be submitted at the time of application for licensure   | \$ 50.00 |
| (2) | Licensure fee to be submitted at the time of application for licensure   | \$ 50.00 |
| (3) | Temporary licensure fee to be submitted at the time of application for licensure   | \$ 50.00 |
| (4) | Biennial renewal fee to be submitted every two (2) years when licensure renewal is due   | \$ 50.00 |
| (5) | Late renewal/reinstatement/reactivation fee  | \$100.00 |
| (6) | Duplicate licensure fee  | \$ 25.00 |
| (7) | Biennial state regulatory fee to be submitted at the time of application   | \$ 10.00 |
| (8) | Continuing education course approval fee   | \$100.00 |
| (9) | All fees may be paid in person, by mail or electronically by cash, check, money order, or by credit and/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 Tennessee Board of Medical Examiners. |          |

Authority: T.C.A. §§ 4-3-1011, 63-1-107, 63-6-101, and 63-6-806.

0880-13-.07 Application Review, Approval, and Denial.

- (1) Review of all applications to determine whether or not the application file is complete may be delegated to the Board's administrator.
- (2) A temporary authorization to practice, as described in T.C.A. § 63-1-142 may be issued to an applicant pursuant to an initial determination made by a Board designee who has both reviewed the completed application and determined that the applicant has met all the requirements for licensure, renewal or reinstatement. The temporary authorization to practice is valid for a period of six (6) months from the date of issuance of the temporary authorization to practice and may not be extended or renewed. If the Board subsequently makes a good faith determination that the applicant has not met all the requirements for licensure, renewal or reinstatement and therefore denies, limits, conditions or restricts licensure, renewal or reinstatement, the applicant may not invoke the doctrine of estoppel in a legal action brought against the state based upon the issuance of the temporary authorization to practice and the subsequent denial, limitation, conditioning or restricting of licensure.
- (3) If an application is incomplete when received by the Board's administrative office, or the reviewing Board member or designee determine additional information is required from an applicant before an initial determination can be made, the Board administrator shall notify the applicant of the information required. The applicant shall cause the requested information to be received in the Board's administrative office on or before the sixtieth (60th) day after receipt of the notification.
  - (a) Such notifications shall be sent certified mail, return receipt requested, from the Board's administrative office.
  - (b) If requested information is not timely received, the application file may be considered abandoned and may be closed by the administrator. If that occurs, the applicant shall be notified that the Board will not consider issuance of a license until a new application is received pursuant to the rules governing that process, including another payment of all fees applicable to the applicant's circumstances and submission of such new supporting documents as is required by the Board.
- (4) If a reviewing Board member or designee initially determines that a completed application should be denied, limited, conditioned or restricted, a temporary authorization shall not be issued. The applicant shall be informed of the initial decision and that a final determination on the application will be made by the Board at its next appropriate meeting. If the Board ratifies the initial denial, limitation, condition or restriction, the action shall become final and the following shall occur:
  - (a) A notification of the denial, limitation, condition or restriction shall be sent by the Board's administrative office by certified mail, return receipt requested, that contains the specific reasons for denial, limitation, condition or restriction, such as incomplete information, unofficial records, examination failure, or matters judged insufficient for licensure, and such notification shall contain all the specific statutory or rule authorities for the denial, limitation, condition or restriction.
  - (b) The notification, when appropriate, shall also contain a statement of the applicant's right to request a contested case hearing under the Tennessee Administrative Procedures Act (T.C.A. §§ 4-5-301, et seq.) to contest the denial, limitation, condition or restriction and the procedure necessary to accomplish that action.
    1. An applicant has a right to a contested case hearing only if the licensure denial, limitation, condition or restriction is based on subjective or discretionary criteria.

2. An applicant may be granted a contested case hearing if the licensure denial, limitation, condition or restriction is based on an objective, clearly defined criteria only if after review and attempted resolution by the Board's administrative staff, the application can not be approved and the reasons for continued denial, limitation, condition or restriction present genuine issues of fact and/or law which are appropriate for appeal. Requests for a hearing must be made in writing to the Board's administrative office within thirty (30) days of the receipt of the notice of denial, limitation, condition or restriction from the Board.
- (5) The initial determination procedures of this rule will not apply if the Board reviews and makes a final determination on any application during its meetings.
- (6) If the Board finds it has issued a license to any person who did not meet all the necessary prerequisites for that license, it will give written notice by certified mail of its intent to cancel the license. The notice will inform the person that they are not lawfully allowed to continue in practice and shall allow the applicant the opportunity to meet the requirements for licensure within thirty (30) days from the date of receipt of the notification and return to practice without having to file a new application. The provisions of sub paragraph (4)(b) of this rule shall be applied to the prerequisite(s) that was not met in order to determine whether the person is entitled to contest the cancellation.

Authority: T.C.A. §§ 63-6-101, 63-6-806, and 63-6-807.

0880-13-.08 Examination. Licensure Examinations - With the exception of applicants qualified pursuant to Rule 0880-13-.05 (2) and (3), all persons intending to apply for licensure must successfully meet the examination requirement for certification as a genetic counselor by the ABGC or the ABMG.

Authority: T.C.A. §§ 63-6-101 and 63-6-806.

0880-13-.09 Licensure Renewal. All licensed genetic counselors must renew their licenses to be able to legally continue in practice. License renewal is governed by the following:

- (1) 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" pursuant to rule 1200-10-1-.10.
- (2) Prior to the due date for renewal, licensees will have a renewal application form mailed to them at the last address provided by them to the Board. Failure to receive such notification does not relieve the individual of the responsibility of timely meeting all requirements for renewal. To be eligible for renewal a licensee must submit to the Division of Health Related Boards on or before the licensee's expiration date the following:
  - (a) A completed and signed renewal application form.
  - (b) The biennial renewal and state regulatory fees as provided in Rule 0880-13-.06.
  - (c) Documentation of compliance with continuing education requirements as provided in Rule 0880-13-.12.
- (3) Any renewal application received after the expiration date but before the last day of the month following the expiration date must be accompanied by the late renewal fee as provided in Rule 0880-13-.06.

- (4) Any individual who fails to comply with the license renewal rules and/or notifications sent to them concerning failure to timely renew shall have their license processed pursuant to rule 1200-10-1-.10.
- (5) Reinstatement of an Expired License:
  - (a) Reinstatement of a license that has expired as a result of failure to timely renew in accordance with Rule 1200-10-1-.10 may be accomplished by:
    - 1. submission of a completed renewal application; and
    - 2. payment of the reinstatement fee and all past due renewal fees as provided in Rule 0880-13-.06; and
    - 3. payment of the biennial state regulatory fee as provided in Rule 0880-13-.06; and
    - 4. submission of proof of having completed all required continuing education as provided in Rule 0880-13-.12.
  - (b) Individuals whose licenses have expired and who have moved to, been licensed in, and have practiced in another state must:
    - 1. Comply with all requirements of subparagraph (a); and
    - 2. If licensing is available from the other state, cause proof to be submitted directly from the other state licensing agencies to the Board's administrative office that the licenses held in all other states are not subject to penalty or restriction.
- (6) If derogatory information or communication is received during the renewal process or if requested by the Board or its duly authorized representative(s), the licensees shall appear for an interview before the Board, a duly constituted panel of the Board, a Board member, a screening panel of the Board when the individual is under investigation or the Board designee, and/or be prepared to meet or accept other conditions or restrictions as the Board may deem necessary to protect the public.
- (7) Renewal issuance decisions pursuant to this rule may be made administratively, or upon review by the Board or its designee.

Authority: T.C.A. §§ 4-3-1011, 63-1-107, 63-6-101, 63-6-806, and 63-6-807.

0880-13-.10 Reserved.

0880-13-.11 Retirement And Reactivation of License.

- (1) Licensees who wish to retain their licenses but not actively practice as a genetic counselor may avoid compliance with the licensure renewal process by obtaining, completing, and submitting, to the Board's administrative office, an affidavit of retirement form along with any documentation required by the form.
- (2) Upon successful application for retirement of licensure with completion and receipt of all proper documentation to the Board's satisfaction, the license shall be registered as retired. Any person who has a retired license may not practice as a genetic counselor in Tennessee.

- (3) Reactivation - Any licensee whose license has been retired may re-enter active practice by doing the following:
  - (a) Submit a written request for a reactivation application to the Board's administrative office; and
  - (b) Complete and submit the reactivation application along with the biennial renewal fee as provided in Rule 0880-13-.06 to the Board's administrative office. If reactivation was requested prior to the expiration of one (1) year from the date of retirement, the Board may require payment of the late renewal fee and past due renewal fees as provided in Rule 0880-13-.06; and
  - (c) Submit proof of having completed all required continuing education as provided in Rule 0880-13-.12.
  - (d) If requested, after review by the Board or a Board member, appear before either the Board, or a duly constituted panel of the Board, or another Board member, or the Board Designee for an interview regarding continued competence.
  - (e) In the event of licensure retirement or inactivity in excess of two (2) years or the receipt of derogatory information or communication during the reactivation process, the applicant should be prepared to meet or accept other conditions or restrictions as the Board may deem necessary to protect the public.
  - (f) If licensure retirement was in excess of five (5) years, the licensee may be required to successfully complete whatever educational and/or testing requirements the Board feels necessary to establish current levels of competency.
- (4) License reactivation applications shall be treated as licensure applications and review decisions shall be governed by Rule 0880-13-.07.

Authority: T.C.A. §§ 63-1-111, 63-6-101, 63-6-806, 63-6-807, and 63-6-808.

0880-13-.12 Continuing Education. All persons licensed as a genetic counselor must comply with the following continuing education rules as a prerequisite to licensure renewal.

- (1) Continuing Education - Hours Required
  - (a) All licensed genetic counselors must successfully complete five (5) CEUs (category 1 or 2) or fifty (50) contact hours approved for recertification purposes by the ABGC during the two (2) calendar years (January 1 - December 31) that precede the licensure renewal year.
  - (b) The approved hours of any individual course will not be counted more than once in a two (2) calendar year period toward the required hourly total regardless of the number of times the course is attended or completed by any individual.
  - (c) The Board 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 Board's administrative office prior to the expiration of the renewal period in which the continuing education is due.

- (2) Continuing Education - Proof of Compliance
- (a) The due date for completion of the required continuing education is December 31st of the two (2) calendar year (January 1 - December 31) period that precedes the licensure renewal year.
  - (b) Submission of proof of compliance with continuing education requirements must be sent along with the biennial renewal application as provided in Rule 0880-13-.09.
  - (c) All genetic counselors must retain independent documentation of completion of all continuing education hours. This documentation must be retained for a period of four (4) 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 licensed individual's completion of the continuing education program(s) may consist of any one or more of the following:
    - 1. Certificates from the continuing education program's sponsor, indicating the date, length in minutes awarded, program title, licensed individual's name and license number; or
    - 2. An original letter on official stationery from the continuing education program's sponsor indicating date, length in minutes awarded, program title, licensed individual's name and license number.
  - (d) If a person submits documentation for continuing education that is not clearly identifiable as appropriate continuing education, the Board will request a written description of the education and how it applies to the practice as a genetic counselor.
- (3) Violations
- (a) Any genetic counselor who submits false documentation of compliance with continuing education requirements or who falsely attests to completion of the required hours of continuing education may be subject to disciplinary action pursuant to Rule 0880-13-.15.
  - (b) Any genetic counselor who fails to obtain the required continuing education hours may be subject to disciplinary action pursuant to Rule 0880-13-.15 and may not be allowed to renew licensure.
  - (c) Education hours obtained as a result of compliance with the terms of 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, 63-6-806, and 63-6-807.

0880-13-.13 Professional Ethics.

- (1) All genetic counselors shall comply with the current Code of Ethics adopted by the National Society of Genetic Counselors except to the extent that they conflict with the laws of the state of Tennessee or the rules of the Board. If the Code of Ethics conflicts with state law or rules, the state law or rules govern the matter. Violation of the Code of Ethics or state law or rules may subject a licensee to disciplinary action pursuant to T.C.A. § 63-6 -807(b)(7) and/or (b)(9).

- (2) Each applicant or licensee is responsible for being familiar with and complying with the Code of Ethics.
- (3) A copy of the Code of Ethics may be obtained by writing the National Society of Genetic Counselors, 401 N. Michigan Avenue, Chicago, IL 60611 or by visiting the website [www.nsgc.org](http://www.nsgc.org).

Authority: T.C.A. §§ 63-6-101, 63-6-805, 63-6-806, and 63-6-807.

0880-13-.14 Advertising.

- (1) Policy Statement. The lack of sophistication on the part of many in the health care community concerning genetic counseling, the importance of the interests affected by the choosing of genetic counselors and the foreseeable consequences of unrestricted advertising by genetic counselors which is recognized to pose special possibilities for deception, require that special care be taken by genetic counselors to avoid misleading the health care community. Genetic counselors must be mindful that the benefits of advertising depend upon its reliability and accuracy. Since advertising by genetic counselors is calculated and not spontaneous, reasonable regulation designed to foster compliance with appropriate standards serves the public interest without impeding the flow of useful, meaningful, and relevant information to the health care community.
- (2) Definitions
  - (a) Advertisement – Informational communication to the health care community in any manner designed to attract attention to the genetic counselors which are licensed to practice in Tennessee.
  - (b) Licensee - Any person holding a license as a genetic counselor in the State of Tennessee. Where applicable this shall include partnerships and/or corporations.
  - (c) Material Fact - Any fact which a health care provider would need to know or rely upon in order to make an informed decision concerning the choice of genetic counselors to serve its particular needs.
  - (d) Health Care Community – Shall mean hospitals, ambulatory surgical treatment centers, medical practices, individual physicians, and other health care providers with legal authority to utilize genetic counselors.
- (3) Advertising Content. The following acts or omissions in the context of advertisement by any licensee shall constitute unprofessional conduct, and subject the licensee to disciplinary action pursuant to T.C.A. § 63-6-807(b)(1), (b)(7), (b)(9), and (b)(10).
  - (a) Claims that the services performed, personnel employed, materials or office equipment used are professionally superior to that which is ordinarily performed, employed, or used, or that convey the message that one licensee is better than another when superiority of services, personnel, materials or equipment cannot be substantiated.
  - (b) The misleading use of an unearned or non-health degree in any advertisement.
  - (c) Promotion of professional services which the licensee knows or should know is beyond the licensee's ability to perform.

- (d) Techniques of communication which intimidate, exert undue pressure or undue influence over a prospective client.
- (e) Any appeals to an individual's anxiety in an excessive or unfair manner.
- (f) The use of any personal testimonial attesting to a quality or competency of a service or treatment offered by a licensee that is not reasonably verifiable.
- (g) Utilization of any statistical data or other information based on past performances for prediction of future services, which creates an unjustified expectation about results that the licensee can achieve.
- (h) The communication of personal identifiable facts, data, or information about a patient without first obtaining patient consent.
- (i) Any misrepresentation of a material fact.
- (j) The knowing suppression, omission or concealment of any material fact or law without which the advertisement would be deceptive or misleading.
- (k) Statements concerning the benefits or other attributes of medical procedures or products that involve significant risks without including:
  - 1. A realistic assessment of the safety and efficiency of those procedures or products; and
  - 2. The availability of alternatives; and
  - 3. Where necessary to avoid deception, descriptions or assessment of the benefits or other attributes of those alternatives.
- (l) Any communication which creates an unjustified expectation concerning the potential results of any procedure.
- (m) Failure to comply with the rules governing advertising records.
- (n) Misrepresentation of a licensee's credentials, training, experience, or ability.
- (o) Failure to include the corporation, partnership or individual licensee's name, address, and telephone number in any advertisement. Any corporation, partnership or association which advertises by use of a trade name or otherwise fails to list all genetic counseling personnel practicing at a particular location shall:
  - 1. Upon request provide a list of all genetic counseling personnel practicing at that location; and
  - 2. Maintain and conspicuously display at the licensee's office, a directory listing all genetic counseling personnel practicing at that location.
- (p) Failure to disclose the fact of giving compensation or anything of value to representatives of the press, radio, television or other communicative medium in anticipation of or in return for any advertisement (for example, newspaper article) unless the nature, format or medium of such advertisement make the fact of compensation apparent.

- (q) After thirty (30) days of the licensee's departure, the use of the name of any genetic counseling personnel formerly practicing at or associated with any advertised location or on office signs or buildings. This rule shall not apply in the case of a retired or deceased former associate who practiced in association with one or more of the present licensees if the status of the former associate is disclosed in any advertisement or sign.
  - (r) Stating or implying that a certain licensee provides all services when any such services are performed by another licensee.
- (4) Advertising Records and Responsibility
- (a) Each licensee who is a principal partner, or officer of a firm or entity identified in any advertisement, is jointly and severally responsible for the form and content of any advertisement. This provision shall also include any licensed professional employees acting as an agent of such firm or entity.
  - (b) Any and all advertisements are presumed to have been approved by the licensee named therein.
  - (c) A recording of every advertisement communicated by electronic media, and a copy of every advertisement communicated by print media, and a copy of any other form of advertisement shall be retained by the licensee for a period of two (2) years from the last date of broadcast or publication and be made available for review upon request by the Board or its designee.
  - (d) At the time any type of advertisement is placed, the licensee must possess and rely upon information which, when produced, would substantiate the truthfulness of any assertion, omission or representation of material fact set forth in the advertisement or public information.
- (5) Severability. It is hereby declared that the sections, clauses, sentences and parts of these rules are severable, are not matters of mutual essential inducement, and any of them shall be rescinded if these rules would otherwise be unconstitutional or ineffective. If any one or more sections, clauses, sentences or parts shall for any reason be questioned in court, and shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provision or provisions so held unconstitutional or invalid, and the inapplicability or invalidity of any section, clause, sentence or part in any one or more instance shall not be taken to affect or prejudice in any way its applicability or validity in any other instance.

Authority: T.C.A. §§ 63-1-145, 63-1-146, 63-6-101, 63-6-805, 63-6-806, and 63-6-807.

0880-13-.15 Disciplinary Actions and Civil Penalties.

- (1) Upon a finding by the Board that a licensee has violated any provision of T.C.A. §§ 63-6-801, et seq., or the rules promulgated pursuant thereto, the Board may take any of the following actions separately or in any combination which is deemed appropriate to the offense;
  - (a) Reprimand - This is a written action issued for one time and less severe violations. It is a formal disciplinary action.
  - (b) Probation - This is a formal disciplinary action which places a genetic counselor on close scrutiny for a fixed period of time. This action may be combined with conditions that must be met before probation will be lifted and/or which restrict the individual's activities during the probationary period.

- (c) License Suspension - This is a formal disciplinary action that suspends the right to practice for a fixed period of time. It contemplates the re-entry into practice under the license previously issued.
  - (d) License Revocation - This is the most severe form of disciplinary action which removes an individual from the practice of the profession and terminates the licensure previously issued. The Board, in its discretion, may allow reinstatement of a revoked license upon conditions and after a period of time which it deems appropriate. No petition for reinstatement and no new application for licensure from a person whose license was revoked for cause shall be considered prior to the expiration of at least six (6) months from the effective date of the revocation order.
  - (e) Conditions - Any action deemed appropriate by the Board to be required of a disciplined licensee in any of the following circumstances:
    - 1. During any period of probation, suspension; or
    - 2. During any period of revocation after which the licensee may petition for an order of compliance to reinstate the revoked license; or
    - 3. As a prerequisite to the lifting of probation or suspension or as a prerequisite to the reinstatement of a revoked license; or
    - 4. As a stand-alone requirement(s) in any disciplinary order.
  - (f) Civil penalty - A monetary disciplinary action assessed by the Board pursuant to paragraph (5) of this rule
- (2) Once ordered, probation, suspension, revocation, assessment of a civil penalty, or any other condition of any type of disciplinary action may not be lifted unless and until the licensee petitions, pursuant to paragraph (3) of this rule, and appears before the Board after the period of initial probation, suspension, revocation, or other conditioning has run and all conditions placed on the probation, suspension, revocation, have been met, and after any civil penalties assessed have been paid.
  - (3) Order of Compliance - This procedure is a necessary adjunct to previously issued disciplinary orders and is available only when a petitioner has completely complied with the provisions of a previously issued disciplinary order, including an unlicensed practice civil penalty order, and wishes or is required to obtain an order reflecting that compliance.
    - (a) The Board will entertain petitions for an Order of Compliance as a supplement to a previously issued order upon strict compliance with the procedures set forth in subparagraph (b) in only the following three (3) circumstances:
      - 1. When the petitioner can prove compliance with all the terms of the previously issued order and is seeking to have an order issued reflecting that compliance; or
      - 2. When the petitioner can prove compliance with all the terms of the previously issued order and is seeking to have an order issued lifting a previously ordered suspension or probation; or
      - 3. When the petitioner can prove compliance with all the terms of the previously issued order and is seeking to have an order issued reinstating a license previously revoked.

(b) Procedures

1. The petitioner shall submit a Petition for Order of Compliance, as contained in subparagraph (c), to the Board's Administrative office that shall contain all of the following:
  - (i) A copy of the previously issued order; and
  - (ii) A statement of which provision of subparagraph (a) the petitioner is relying upon as a basis for the requested order; and
  - (iii) A copy of all documents that prove compliance with all the terms or conditions of the previously issued order. If proof of compliance requires testimony of an individual(s), including that of the petitioner, the petitioner must submit signed statements from every individual the petitioner intends to rely upon attesting, under oath, to the compliance. The Board's consultant and administrative staff, in their discretion, may require such signed statements to be notarized. 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 Board authorizes its consultant and administrative staff to make an initial determination on the petition and take one of the following actions:
  - (i) Certify compliance and have the matter scheduled for presentation to the Board as an uncontested matter; or
  - (ii) Deny the petition, after consultation with legal staff, if compliance with all of the provisions of the previous order is not proven and notify the petitioner of what provisions remain to be fulfilled and/or what proof of compliance was either not sufficient or not submitted.
3. If the petition is presented to the Board the petitioner may not submit any additional documentation or testimony other than that contained in the petition as originally submitted.
4. If the Board finds that the petitioner has complied with all the terms of the previous order an Order of Compliance shall be issued.
5. If the petition is denied either initially by staff or after presentation to the Board and the petitioner believes compliance with the order has been sufficiently proven the petitioner may, as authorized by law, file a petition for a declaratory order pursuant to the provisions of T.C.A. § 4-5-223 and rule 1200-10-1-.11.

(c) Form Petition

Petition for Order of Compliance  
Board of Medical Examiners

Petitioner's Name: \_\_\_\_\_  
Petitioner's Mailing Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Petitioner's E-Mail Address: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_

Attorney for Petitioner: \_\_\_\_\_  
Attorney's Mailing Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attorney's E-Mail Address: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_

The petitioner respectfully represents, as substantiated by the attached documentation, that all provisions of the attached disciplinary order have been complied with and I am respectfully requesting: (circle one)

1. An order issued reflecting that compliance; or
2. An order issued reflecting that compliance and lifting a previously ordered suspension or probation; or
3. An order issued reflecting that compliance and reinstating a license previously revoked.

Note – You must enclose all documents necessary to prove your request including a copy of the original order. If any of the proof you are relying upon to show compliance is the testimony of any individual, including yourself, you must enclose signed statements from every individual you intend to rely upon attesting, under oath, to the compliance. The Board's consultant and administrative staff, in their discretion, may require such signed statements to be notarized. No documentation or testimony other than that submitted will be considered in making an initial determination on, or a final order in response to, this petition.

Respectfully submitted this the \_ day of \_\_\_\_\_, 20\_\_\_\_. \_\_\_\_\_

\_\_\_\_\_  
Petitioner's Signature

- (4) Order Modifications - This procedure is not intended to allow anyone under a previously issued disciplinary order, including an unlicensed practice civil penalty order, to modify any findings of fact, conclusions of law, or the reasons for the decision contained in the order. It is also not intended to allow a petition for a lesser disciplinary action, or civil penalty other than the one(s) previously ordered. All such provisions of Board orders were subject to reconsideration and appeal under the provisions of the Uniform Administrative Procedures Act (T.C.A. §§ 4-5-301, et seq.). This procedure is not available as a substitute for reconsideration and/or appeal and is only available after all reconsideration and appeal rights have been either exhausted or not timely pursued. It is also not available for those who have accepted and been issued a reprimand.

- (a) The Board 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 on the form contained in subparagraph (c) to the Board’s Administrative 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 Board authorizes its consultant and 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 Board as an uncontested matter; or
    - (ii) Deny the petition, after consultation with legal staff, 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 presented to the Board the petitioner may not submit any additional documentation or testimony other than that contained in the petition as originally submitted.
  4. If the petition is granted a new order shall be issued reflecting the modifications authorized by the Board that it deemed appropriate and necessary in relation to the violations found in the previous order.
  5. If the petition is denied either initially by staff or after presentation to the Board and the petitioner believes impossibility of compliance with the order has been sufficiently proven the petitioner may, as authorized by law, file a petition for a declaratory order pursuant to the provisions of T.C.A. § 4-5-223 and rule 1200-10-1-.11.

(c) Form Petition

Petition for Order Modification  
Board of Medical Examiners

Petitioner's Name: \_\_\_\_\_  
Petitioner's Mailing Address: \_\_\_\_\_  
\_\_\_\_\_

Petitioner's E-Mail Address: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_

Attorney for Petitioner: \_\_\_\_\_  
Attorney's Mailing Address: \_\_\_\_\_  
\_\_\_\_\_

Attorney's E-Mail Address: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_

The petitioner respectfully represents that for the following reasons, as substantiated by the attached documentation, the identified provisions of the attached disciplinary order are impossible for me to comply with:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Note – You must enclose all documents necessary to prove your request including a copy of the original order. If any of the proof you are relying upon to show impossibility is the testimony of any individual, including yourself, you must enclose signed and notarized statements from every individual you intend 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, this petition.

Respectfully submitted this the \_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Petitioner's Signature

(5) Civil Penalties

(a) Purpose - 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.

(b) Schedule of Civil Penalties.

1. A "Type A" Civil Penalty may be imposed whenever the Board finds a person who is required to be licensed, certified, permitted, or authorized by the

Board, guilty of a willful and knowing violation of the Genetic Counselors' Licensing Act, 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 patient or the public. For purposes of this section, willfully and knowingly practicing as a genetic counselor without a permit, license, certificate, or other authorization from the Board is one of the violations of the Genetic Counselors' Licensing Act for which a "Type A" Civil Penalty is assessable.

2. A "Type B" Civil Penalty may be imposed whenever the Board finds the person required to be licensed, certified, permitted, or authorized by the Board is guilty of a violation of the Genetic Counselors' Licensing Act or regulations promulgated pursuant thereto in such manner as to impact directly on the care of patients or the public.
3. A "Type C" Civil Penalty may be imposed whenever the Board finds the person required to be licensed, certified, permitted, or authorized by the Board is guilty of a violation of the Genetic Counselors' Licensing Act or regulations promulgated pursuant thereto, which are neither directly detrimental to the patients or public, nor directly impact their care, but have only an indirect relationship to patient care or the public.

(c) Amount of Civil Penalties.

1. "Type A" Civil Penalties shall be assessed in the amount of not less than \$500 and not more than \$1000.
2. "Type B" Civil Penalties may be assessed in the amount of not less than \$100 and not more than \$500.
3. "Type C" Civil Penalties may be assessed in the amount of not less than \$50 and not more than \$100.

(d) Procedures for Assessing Civil Penalties.

1. The Division of Health Related Boards may initiate a civil penalty assessment by filing a Memorandum of Assessment of Civil Penalty. The Division shall state in the memorandum the facts and law upon which it relies in alleging a violation, the proposed amount of the civil penalty and the basis for such penalty. The Division may incorporate the Memorandum of Assessment of Civil Penalty with a Notice of Charges which may be issued attendant thereto.
2. Civil Penalties may also be initiated and assessed by the Board during consideration of any Notice of Charges. In addition, the Board may, upon good cause shown, assess a type and amount of civil penalty which was not recommended by the Division.
3. In assessing the civil penalties pursuant to these rules the Board 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.
4. All proceedings for the assessment of civil penalties shall be governed by the contested case provisions of Tennessee Code Annotated, Title 4, Chapter 5.

Authority: T.C.A. §§ 4-5-217, 4-5-223, 63-1-122, 63-1-134, 63-6-101, 63-6-806, and 63-6-807.

0880-13-.16 Replacement License. A license holder whose "artistically designed" license has been lost or destroyed may be issued a replacement document upon receipt of a written request in the Board's administrative office. Such request shall be accompanied by an affidavit (signed and notarized) stating the facts concerning the loss or destruction of the original document and the fee required pursuant to Rule 0880-13-.06.

Authority: T.C.A. §§ 63-1-106, 63-6-101, 63-6-806.

0880-13-.17 Change Of Name and/or Address.

- (1) Change of Name – Any licensee shall notify the Board in writing within thirty (30) days of a name change and will provide both the old and new names. A name change notification must also include a copy of the official document involved and reference the individual's profession and license number.
- (2) Change of Address - Each person holding a license who has had a change of address shall file in writing with the Board's administrative office his/her current address providing both the old and new addresses. Such requests must be received in the Board's administrative office no later than thirty (30) days after such change is effective and must reference the individual's name, profession, and license number.

Authority: T.C.A. §§ 63-1-108, 63-6-101, and 63-6-806.

The rulemaking hearing rules set out herein were properly filed in the Department of State on the 1st day of July, 2008, and will become effective on the 14th day of September, 2008. (FS 07-01-08; DBID 2916-2917)

#### Economic Impact Statement

The amendments to Rules 0880-02-.05, .06, .12 and .13 have no economic impact on small businesses. New Chapter 0880-13 is the only rules contained in this filing with economic impact on small businesses.

- (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) Medical doctors and medical practices that offer and provide genetic counseling services; and

- (b) Medical doctors and medical practices who pay for licensure of employees; and
- (c) Genetic counselors who provide services as independent contractors to physicians rather than as employees of physicians.

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

As of December 31, 2006, Tennessee had 18,776 licensed medical doctors who were eligible for licensure or certification renewal.

It is believed that there will be no more than forty (40) licensed genetic counselors.

(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 new chapter of rules contains reporting and recordkeeping requirements that are required for compliance as they pertain to continuing education and advertising. The associated costs are expected to be minimal and the new requirements require no additional professional skills.

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

The expenses associated with pre-licensure education, licensure, renewal of licensure, and continuing education will come directly out of the “bottom line” for the small businesses identified above.

Consumers will benefit by receiving genetic counseling services only from individuals who the Board has determined are minimally competent to practice.

(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:

There are no alternatives to the proposed chapter of rules that will accomplish the same objectives but are less burdensome because Public Chapter 366 of the Public Acts of 2007 requires the promulgation of these rules.

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

Federal            The Board is not aware of any federal counterparts. Physicians and genetic counselors are not licensed by the federal government.

State                The proposed rule language is based upon the “model rule” language used at almost all of the health-related licensing boards.

(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 not possible to exempt the impacted small businesses from all or any part of the requirements contained in the proposed rule because the impacted small businesses are the Board’s licensees. If there were to be an exemption, the proposed rule amendments would have no actual effect.