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 Rule ID(s): 4205-4208
 File Date: 08/04/09
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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

Agency/Board/Commission: Board of Dentistry

Division:

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Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0460-01	General Rules
Rule Number	Rule Title
0460-01-.04	Application Review, Approval, Denial, and Interviews
0460-01-.05	Continuing Education and C.P.R.
0460-01-.06	Disciplinary Actions, Civil Penalties, Procedures, Assessment of Costs, and Subpoenas

Chapter Number	Chapter Title
0460-02	Rules Governing the Practice of Dentistry
Rule Number	Rule Title
0460-02-.13	Free Health Clinic, Inactive Pro Bono and Volunteer Practice Requirements

Chapter Number	Chapter Title
0460-03	Rules Governing Practice of Dental Hygienists
Rule Number	Rule Title
0460-03-.02	Criteria Approval Licensure Process (Reciprocity)
0460-03-.11	Free Health Clinic and Volunteer Practice Requirements

Chapter Number	Chapter Title
0460-04	Rules Governing the Practice of Dental Assistants
Rule Number	Rule Title
0460-04-.07	Registration Retirement and Reactivation

(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>)

Rule 0460-1-.04, Application Review, Approval, Denial, and Interviews, is amended by adding the following language as new paragraph (7):

- (7) If the Board finds it has erred in the issuance of a license, the Board will give written notice by certified mail of its intent to revoke the license. The notice will allow the applicant the opportunity to meet the requirements for licensure within thirty (30) days from the date of receipt of the notification. If the applicant does not concur with the stated reason and the intent to revoke the license, the applicant shall have the right to proceed according to rule 0460-1-.04 (4) (b).

Authority: T.C.A. §§ 63-5-105 and 63-5-111.

Rule 0460-1-.05 Continuing Education and C.P.R., is amended by deleting subparagraphs (1) (a), (1) (b), (1) (c) and (1) (d) in their entirety and substituting instead the following language, so that as amended, the new subparagraphs (1) (a), (1) (b), (1) (c) and (1) (d) shall read:

- (a) Beginning January 3, 2003, each licensed dentist must successfully complete forty (40) hours of continuing education in courses approved by the Board during the two (2) calendar years (January 1st of an odd-numbered year through December 31st of the subsequent even-numbered year) that precede the licensure renewal year. At least two (2) hours of the forty (40) hour requirement shall pertain to chemical dependency education.
1. Example – To renew a license that expires in 2008, a dentist will attest on the renewal application that he/she completed forty (40) hours of continuing education from January 1, 2005 to December 31, 2006.
 2. Example – To renew a license that expires in 2009, a dentist will attest on the renewal application that he/she completed forty (40) hours of continuing education from January 1, 2007 to December 31, 2008.
 3. Example – To renew a license that expires in 2010, a dentist will attest on the renewal application that he/she completed forty (40) hours of continuing education from January 1, 2007 to December 31, 2008.
- (b) Beginning January 3, 2003, each licensed dental hygienist must successfully complete thirty (30) hours of continuing education in courses approved by the Board during the two (2) calendar years (January 1st of an odd-numbered year through December 31st of the subsequent even-numbered year) that precede the licensure renewal year. At least two (2) hours of the thirty (30) hour requirement shall pertain to chemical dependency education.
1. Example – To renew a license that expires in 2008, a dental hygienist will attest on the renewal application that he/she completed thirty (30) hours of continuing education from January 1, 2005 to December 31, 2006.
 2. Example – To renew a license that expires in 2009, a dental hygienist will attest on the renewal application that he/she completed thirty (30) hours of continuing education from January 1, 2007 to December 31, 2008.
 3. Example – To renew a license that expires in 2010, a dental hygienist will attest on the renewal application that he/she completed thirty (30) hours of continuing education from January 1, 2007 to December 31,

2008.

- (c) Beginning January 3, 2003, each registered dental assistant must successfully complete twenty-four (24) hours of continuing education in courses approved by the Board during the two (2) calendar years (January 1st of an odd-numbered year through December 31st of the subsequent even-numbered year) that precede the registration renewal year. At least two (2) hours of the twenty-four (24) hour requirement shall pertain to chemical dependency education.
1. Example – To renew a registration that expires in 2008, a dental assistant will attest on the renewal application that he/she completed twenty-four (24) hours of continuing education from January 1, 2005 to December 31, 2006.
 2. Example – To renew a registration that expires in 2009, a dental assistant will attest on the renewal application that he/she completed twenty-four (24) hours of continuing education from January 1, 2007 to December 31, 2008.
 3. Example – To renew a registration that expires in 2010, a dental assistant will attest on the renewal application that he/she completed twenty-four (24) hours of continuing education from January 1, 2007 to December 31, 2008.
- (d) New licensees and new registrants are exempt from the provisions of subparagraphs (1) (a), (1) (b), and (1) (c) during their initial two (2) calendar year (January 1 - December 31) cycle, starting with an odd-numbered year if it is the year of initial licensure or registration, or starting with the odd-numbered year if it precedes an even-numbered initial licensure or registration year.
1. Example – An individual whose new license or registration was granted in 2008 is exempt from the continuing education requirements for the period beginning January 1, 2007 and ending December 31, 2008.
 2. Example – An individual whose new license or registration was granted in 2009 is exempt from the continuing education requirements for the period beginning January 1, 2009 and ending December 31, 2010.
 3. Example – An individual whose new license or registration was granted in 2010 is exempt from the continuing education requirements for the period beginning January 1, 2009 and ending December 31, 2010.

Authority: T.C.A. §§ 63-5-105, 63-5-107, and 63-5-117.

Rule 0460-1-.06, Disciplinary Actions, Civil Penalties, Procedures, Assessment of Costs, and Subpoenas, is amended by deleting subparagraph (1) (f) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (1) (f) shall read:

- (f) 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 and/or 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 and/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.

Authority: T.C.A. §§ 63-5-105 and 63-5-124.

Rule 0460-2-.13, Free Health Clinic, Inactive Pro Bono and Volunteer Practice Requirements, is amended by deleting parts (1) (a) 3. and (2) (b) 1. in their entirety and substituting instead the following language, so that as amended, the new parts (1) (a) 3. and (2) (b) 1. shall read:

- (1)
 - (a)
 3. For dentists who have not been licensed in Tennessee, comply with all provisions of subparagraphs (1) (c), (1) (d), (1) (e), (1) (g) and (1) (h) of rule 0460-2-.01 and the Health Care Consumer-Right-To-Know Act compiled at T.C.A. §§ 63-51-101, et seq.; and
 - (2)
 - (b)
 1. Obtain a license by complying with all provisions of subparagraphs (1) (c), (1) (d), (1) (e), (1) (g), (1) (h) and (2) (b) of rule 0460-2-.01 and the Health Care Consumer-Right-To-Know Act compiled at T.C.A. §§ 63-51-101, et seq.; and

Authority: T.C.A. §§ 63-5-105, 63-5-110, 63-5-132, and 63-5-134.

Rule 0460-3-.02, Criteria Approval Licensure Process (Reciprocity), is amended by deleting subparagraph (13) (a) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (13) (a) shall read:

- (13)
 - (a) Active, licensed practice of dental hygiene in a private office setting, or in post-graduate dental hygiene study or in service as a dental hygiene faculty member for three (3) of the five (5) years immediately preceding application. Temporary absences from employment during the three (3) year period may under individual circumstances not be considered as a disqualifying factor at the discretion of the Board.

Authority: T.C.A. §§ 63-5-105 and 63-5-114.

Rule 0460-3-.11, Free Health Clinic and Volunteer Practice Requirements, is amended by deleting part (1) (a) 3. in its entirety and substituting instead the following language, so that as amended, the new part (1) (a) 3. shall read:

- (1)
 - (a)
 3. For dental hygienists who have not been licensed in Tennessee, comply with all provisions of subparagraph (3) (b) and paragraphs (4), (5), (8) and (9) of rule 0460-3-.01; and

Authority: T.C.A. §§ 63-5-105, 63-5-114, and 63-5-134.

Rule 0460-4-.07, Registration Retirement and Reactivation, is amended by adding the following language as new subparagraph (2) (d):

(2)

- (d) Comply with the continuing education provisions of rule 0460-1-.05 (6) applicable to reactivation of retired registrations.

Authority: T.C.A. §§ 63-5-105 and 63-5-107.

* 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)
Jeffery M. Clark, DDS	X				
James L. Smith, DDS	X				
Ruth E. Bailey, DDS	X				
Randall Prince, DDS	X				
John M. Douglass, Jr. DDS	X				
Michael P. Tabor, DDS	X				
Lawrence Hsai, DMD	X				
Katherine H. Cherry, RDH	X				
Beth A. Casey, RDH	X				
Betty Gail Fox, RDH	X				
Agnes S. Young	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Dentistry on 11/19/2007, 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: 09/21/2007

Notice published in the Tennessee Administrative Register on: 10/15/2007

Rulemaking Hearing(s) Conducted on: (add more dates). 11/19/2007

Date: 7/15/09

Signature: [Handwritten Signature]

Name of Officer: Shiva K. Bozarth

Deputy General Counsel

Title of Officer: Tennessee Department of Health

Subscribed and sworn to before me on: 7/15/09

Notary Public Signature: Theodora P. Wilkins

My commission expires on: 11/7/2011



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.

[Handwritten Signature]
Robert E. Cooper, Jr.
Attorney General and Reporter

7-26-09
Date

Department of State Use Only

Filed with the Department of State on: _____

8/4/09

Effective on: _____

11/2/09
Tre Hargett

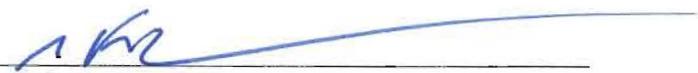
Tre Hargett
Secretary of State

Public Hearing Comments

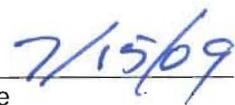
The rulemaking hearing for the Tennessee Board of Dentistry was called to order at 2:30 p.m. CST, on November 19, 2007 in the Department of Health Conference Center's Mockingbird Room on the first floor of the Heritage Place building located at 227 French Landing, Nashville, Tennessee. Thomas M. Miller served as the moderator of the hearing.

No members of the public attended the rulemaking hearing. Written comments were received in advance of the rulemaking hearing from Don M. Lunn, DDS of the Tennessee Dental Association, and Gary M. McCown, DDS, of the Tennessee Academy of General Dentistry. Both were in support of the amendments to the rules.

The rulemaking hearing concluded at 2:50 p.m. CST.



Shiva K. Bozarth
Deputy General Counsel
Tennessee Department of Health



Date

Regulatory Flexibility Addendum

Pursuant to Public Chapter 464 of the 105th 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

Board of Dentistry

- 1. The extent to which the rule or rules may overlap, duplicate, or conflict with other federal, state, and local governmental rules.**

The new rules do not overlap, duplicate, or conflict with other federal, state, and local governmental rules.

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

The new rules exhibit clarity, conciseness, and lack of ambiguity.

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

These rules establish flexible compliance and/or reporting requirements for small businesses. The proposed rules are not written with special consideration for flexible compliance and/or reporting requirements because the health-related licensing boards have, as their primary mission, the protection of the health, safety and welfare of Tennesseans. However, the proposed rules are written with a goal of avoiding unduly onerous regulations.

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

These rules establish friendly schedules or deadlines for compliance and/or reporting requirements. The schedules and deadlines throughout the proposed rules are as "user-friendly" as possible while still allowing the health-related licensing boards to achieve their primary mission. To be user-friendly, the proposed amendment to rule 0460-01-.05 contains many examples which explain how to be in compliance.

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

These rules consolidate or simplify compliance or reporting requirements for small businesses.

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

The rules establish performance standards for small businesses as opposed to design or operational standards. When the health-related licensing boards' rules contain standards, there are always statement included which specify what constitutes compliance with such standards.

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

The rules do not created unnecessary entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs. All of the health-related licensing boards' rules contain initial licensure requirements and requirements to maintain licensure, but these are necessary for the protection of the health, safety and welfare of Tennesseans. The proposed amendment to Rule 0460-03-.02 actually eases entry barriers for dental hygienists from other states who seek to become licensed in Tennessee.

Economic Impact Statement

The amendment to Rule 0460-3-.02 is the only amendment contained in this rule filing that has economic impact to 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) Dental hygienists from other states who seek to become licensed in Tennessee that intend to provide their services as independent contractors rather than as employees; and
- (b) Dentists and dentistry practices which employ dental hygienists or contract with dental hygienists.

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

As of December 31, 2006, Tennessee had 3,379 licensed dentists and 3,553 licensed dental hygienists who were eligible for licensure renewal. Only a small percentage of the dental hygienists were from other states. Even fewer have been denied licensure because their work experience was part-time experience.

- (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. The proposed amendments may actually reduce reporting, recordkeeping and other administrative costs that are required for compliance. No new professional skills are required.

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

By easing the experience requirement for dental hygienists from other states who seek to become licensed in Tennessee, the Board anticipates the proposed rule amendments will have favorable, rather than adverse, impact on small businesses. Consumers will benefit by improved access and availability to dental services if more competent individuals can become licensed in Tennessee as dental hygienists.

- (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:

The Board does not believe there are less burdensome alternatives to the proposed rule because easing the experience requirement for dental hygienists from other states who seek to become licensed in Tennessee is the less burdensome alternative.

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

Federal The Board is not aware of any federal counterparts. Dentists and dental hygienists are not licensed by the federal government.

State Most of the health-related licensing boards which provide an experience pathway to licensure do not restrict such experience to being full-time.

- (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.

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;

0460-1-.04 Application Review, Approval, Denial, and Interviews—The current rule does not contemplate licenses issued in error. The new rule sets forth the procedure whereby the Board will revoke a license issued in error.

0460-1-.05 Continuing Education and C.P.R.—The current rule includes several examples that pertain to calendar years which have already occurred. The new rule uses examples with future calendar years through 2010. Also, the current rule's continuing education requirement for dental assistants pertained to specific duties and specialty certifications. The new rule, pursuant to Public Chapter 340 of the Public Acts of 2007, describes continuing education requirements for dental assistants similarly to how they are described for dentists and dental hygienists.

0460-1-.06 Disciplinary Actions, Civil Penalties, Procedures, Assessment of Costs, and Subpoenas—The current rule contains language regarding conditions imposed upon disciplinary licensees which does not provide for such conditions to be imposed during any period of revocation after which the licensee may petition for an order of compliance to reinstate the revoked license, and does not provide for such conditions to be imposed as a stand-alone requirement in any disciplinary order. The new rule adds these provisions.

0460-2-.13 Free Health Clinic, Inactive Pro Bono and Volunteer Practice Requirements—The current rule does not require applicants for volunteer licenses to get a criminal background check. The new rule adds this requirement.

0460-3-.02 Criteria Approval Licensure Process (Reciprocity)—The current rule requires dental hygienist licensure applicants who are presently licensed in another state to have active practiced full-time for three (3) of the past five (5) years. The new rule deletes the requirement that the employment was full-time.

0460-3-.11 Free Health Clinic and Volunteer Practice Requirements—The current rule does not require applicants for volunteer licenses to get a criminal background check. The new rule adds this requirement.

0460-4-.07 Registration Retirement and Reactivation—The current rule does not mention the continuing education required to reactivate a retired registration. The new rule adds this requirement by referring the applicant to Rule 0460-1-.05 (6).

- (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;

Authority for these amendments comes from state statutes regarding the practice of dentistry, T.C.A §§ 63-5-101, et seq., and Public Chapter 340 of the Public Acts of 2007.

- (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;

Individuals most directly affected by these rules are all disciplined licensees and registrants, all applicants for volunteer licensure, and all dental hygienist licensure applicants who are presently licensed in another state.

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

There are no known opinions of the attorney general or any judicial ruling which relates to these rules.

- (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;

There is estimated to be no increase or decrease in revenues or expenditures because of these rule amendments.

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

The person possessing substantial knowledge and understanding of these rules would be Thomas M. Miller, Assistant General Counsel, 220 Athens Way, Plaza 1, Suite 210, Nashville, Tennessee 37243, 615-741-1611 and Dea Smith, Administrator, Board of Dentistry, 227 French Landing Drive, Suite 300, Nashville, TN 37243, (615) 532-5077.

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

The person who will explain the rules at the scheduled meeting of the Government Operations Committee will be Thomas M. Miller, Assistant General Counsel, 220 Athens Way, Plaza 1, Suite 210, Nashville, Tennessee 37243, 615-741-1611 and/or Dea Smith, Administrator, Board of Dentistry, 227 French Landing Drive, Suite 300, Nashville, TN 37243, (615) 532-5077.

- (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

Thomas M. Miller, Assistant General Counsel, 220 Athens Way, Plaza 1, Suite 210, Nashville, Tennessee 37243, 615-741-1611 and/or Dea Smith, Administrator, Board of Dentistry, 227 French Landing Drive, Suite 300, Nashville, TN 37243, (615) 532-5077.

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

None