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Sequence Number:	08-05-10
Rule ID(s):	4809-4810
File Date:	08/05/2010
Effective Date:	11/03/2010

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 Medical Examiners
Division:	Committee on Physician Assistants
Contact Person:	Mona Nicole Jean-Baptiste
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Revision Type (check all that apply):

x Amendment
___ New
___ Repeal

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

Chapter Number	**Chapter Title**
0880-03	General Rules Governing the Practice of a Physician Assistant
Rule Number	**Rule Title**
0880-03-.03	Necessity of License
0880-03-.07	Application Review, Approval and Denial
0880-03-.14	Temporary License
0880-03-.15	Disciplinary Grounds, Actions, and Civil Penalties

Chapter Number	**Chapter Title**
0880-10	General Rules Governing the Practice of an Orthopedic Physician Assistant
Rule Number	**Rule Title**
0880-10-.03	Necessity of Licensure
0880-10-.15	Disciplinary Grounds, Actions, and Civil Penalties

(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)

Substance of Proposed Amendments

Chapter 0880-03
General Rules Governing the Practice of a Physician Assistant

Amendments

Rule 0880-03-.03 Necessity of License is amended by inserting the following language as new paragraph (3) and renumbering the current paragraph (3) as paragraph (4):

(3) Use of Titles- Any person who holds a valid license or temporary license from the Committee shall have the right to use the title "physician assistant" or the abbreviations "PA" or "PA-C" and to practice as a physician assistant, as defined in T.C.A. §63-19-102. Any person licensed by the Committee to whom this rule applies must use one of the titles authorized by this rule in every "advertisement" [as that term is defined in Rule 0880-03-.20 (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 physician assistant to disciplinary action pursuant to Rule 0880-03-.15 (1) (a), (1) (c), (1) (h), (1) (p) and (1) (v).

Authority: T.C.A. §§ 63-1-145, 63-1-146, 63-6-101, 63-19-104 and 63-19-114.

Rule 0880-03-.07 Application Review, Approval and Denial is amended by deleting paragraph (3) in its entirety and renumbering the current paragraphs (4) through (8) as paragraphs (3) through (7), and is further amended by deleting the newly renumbered paragraph (6) and substituting instead the following language, so that as amended, the newly renumbered paragraph (6) shall read:

(6) If the Committee finds it has erred in the issuance of a license, the Committee 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 0880-03-.07(4)(b).

Authority: T.C.A. §§ 63-6-101, 63-19-104, 63-19-105 and 63-19-111.

Rule 0880-03-.14 Temporary License is amended by deleting paragraph (3) in its entirety and renumbering paragraph (4) as the new paragraph (3).

Authority: T.C.A. §§ 63-6-101 and 63-19-104.

Rule 0880-03-.15 Disciplinary Grounds, Actions, and Civil Penalties is amended by deleting subparagraph (2) (f) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (2) (f) shall read:

(2)

(f) Conditions - Any action deemed appropriate by the Board and Committee 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.

Authority: T.C.A. §§ 63-6-101, 63-19-111, and 63-19-104.

Chapter 0880-10
General Rules Governing the Practice of an Orthopedic Physician Assistant

Amendments

Rule 0880-10-.03 Necessity of Licensure is amended by inserting the following language as new paragraph (3) and renumbering the current paragraph (3) as paragraph (4):

(3) Use of Titles - Any person who holds a valid license or temporary license from the Committee shall have the right to use the title "orthopedic physician assistant" or the abbreviations "OPA-C" or "OPA" and to practice as an orthopedic physician assistant, as defined in T.C.A. § 63-19-102. Any person licensed by the Committee to whom this rule applies must use one of the titles authorized by this rule in every "advertisement" [as that term is defined in rule 0880-10-.20 (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 orthopedic physician assistant to disciplinary action pursuant to Rule 0880-10-.15 (1) (a), (1) (c), (1) (h), (1) (p), and (1) (v).

Authority: T.C.A. §§ 63-1-145, 63-1-146, 63-6-101, 63-19-201, and 63-19-210.

Rule 0880-10-.15 Disciplinary Grounds, Actions, and Civil Penalties is amended by deleting subparagraph (2) (f) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (2) (f) shall read:

(2)

(f) Conditions - Any action deemed appropriate by the Board and Committee 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.

Authority: T.C.A. §§ 63-6-101, 63-19-111, and 63-19-201.

* 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)
Glen Alexander—PA					
Anne Arney—PA					
William Blalock—PA					
Johnny S. Nowlin—PA					
Johnny W. Presley—PA				X	
Gary L. Tauxe—PA					
Jonathan S. White—PA					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Medical Examiners' Committee on Physician Assistants (board/commission/ other authority) on 04/18/2008 (mm/dd/yyyy), and is in compliance with the provisions of TCA 4-5-222.

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Subhi D. Ali, M.D.	X				
Michael J. Baron, M.D	X				
Monica Franklin	X				
Dennis Higdon, M.D.	X				
Barrett F. Rosen, M.D.	X				
Neal Beckford, M.D.	X				
Keith Lovelady, M.D.	X				
Mitchell Mutter, M.D.	X				
Charles W. White, Sr., 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 Board of Medical Examiners (board/commission/ other authority) on 07/20/2010 (mm/dd/yyyy), 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: 12/26/07

Notice published in the Tennessee Administrative Register on: 01/15/08

Rulemaking Hearing(s) conducted on: (add more dates). 02/20/2008

Date: 22 July 2010

Signature: Mona N. Jean-Baptiste

Name of Officer: Mona Nicole Jean-Baptiste

Title of Officer: Assistant General Counsel

Sworn to and subscribed before me on: 7/22/10

Notary Public Signature: Theodora P. Wilkins

THEODORA P. WILKINS NOTARY PUBLIC AT LARGE DAVIDSON COUNTY, TENN.

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.

Robert E. Cooper, Jr.
Attorney General and Reporter

8-2-10
Date

Department of State Use Only

Filed with the Department of State on: 8/5/10

Effective on: 11/3/10

Tre Hargett
Secretary of State

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SECRETARY OF STATE
PUBLICATIONS

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.

Public Hearing Comments

Board of Medical Examiners Committee on Physician Assistants

February 20, 2008

No members of the public attended the rulemaking hearing. No comments, written or oral were received prior to or during the rulemaking hearing.

Regulatory Flexibility Addendum

Pursuant to T.C.A. § 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 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)

(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) Physician assistants;

(b) Orthopedic physician assistants;

(c) Physician assistants who advertise;

(d) Orthopedic physician assistants who advertise; and

(e) Medical doctors and medical practices that employ physician assistants and advertise the services of physician assistants.

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

As of April 15, 2008, Tennessee 979 licensed physician assistants who were eligible for licensure renewal. The Board licenses approximately 103 individuals annually.

(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:

(a) The amendments regarding the usage of titles will require physician assistants, medical doctors and medical practices advertising the use of their services to revise advertisements that have been previously developed and/or currently running.

(b) The amendments with respect to disciplinary conditions will not have any effect on physician assistants.

(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:

(a) The Committee does not believe there are any less burdensome alternatives to amending the rules regarding the usage of titles as that amendment is mandated by TENN. CODE ANN. § 63-1-145 (Public Chapter 467 of the Public Acts of 2005).

(b) There is no less burdensome alternative to amending the rule regarding disciplinary conditions as this amendment enables the Committee to further its rehabilitative mission rather than being purely punitive.

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

Federal: The Board is not aware of any federal counterparts. Physician assistants are not licensed by the federal government.

State: The Committee's proposed amendments mirror the rules promulgated by similarly situated health related boards.

The proposed rule amendment regarding use of titles will be promulgated at 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.

Impact on Local Governments

Pursuant to T.C.A. 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (http://state.tn.us/sos/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

This rule will not have any impact on local governments.

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;

Rule 0880-03-.03, Necessity of License, creates the requirement that all persons intending to practice as physician assistants in the State of Tennessee are obligated to hold licenses prior to doing so. The amendment to this rule has added a new subsection (3), which allows those practicing as physician assistants to use one of two titles, "PA" or "PA-C" and renumbers the current subsection (3) as subsection (4). The amendment further requires that practicing physician assistants use one of the two titles in all advertisements.
Rule 0880-03-.07, Application Review, Approval and Denial, outlines the licensure application process and appeal procedures in case of denial. The amendment removes the provision for a temporary license during the application process (current subsection 3) and renumbers the remaining sections (4) through (8), (3) through (7). The new subsection (6) is deleting and language is inserted providing the Committee with recourse should a license be issued erroneously. Subsection (6) also gives the applicant an opportunity to meet all the requirements for licensure within thirty (30) days of notification of the Committee's intent to revoke the license issued in error.
Rule 0880-03-.14, Temporary License, outlines the conditions under which a person may obtain a temporary license to practice as a physician assistant in this state. The amendment removes the availability of a temporary license for those seeking to be licensed in Tennessee by reciprocity.
Rule 0880-03-.15, Disciplinary Grounds, Actions and, Civil Penalties, provides the grounds by which a physician assistant's license may be disciplined by the Committee. The amendment in subsection 2(f) expands the circumstances under which the Committee may impose conditions on a licensee to include periods of revocation after which a licensee may reinstate, as a prerequisite for lifting probation, suspension or reinstating a revoked license or as a stand alone requirement in any disciplinary order of the Committee.
Rule 0880-10-.03, Necessity of Licensure, creates the requirement that all persons intending to practice as physician assistants in the State of Tennessee are obligated to hold licenses prior to doing so. The amendment to this rule has added a new subsection (3), which allows those practicing as physician assistants to use one of two titles, "OPA" or "OPA-C" and renumbers the current subsection (3) as subsection (4). The amendment further requires that practicing physician assistants use one of the two titles in all advertisements.
Rule 0880-10-.15, Disciplinary Grounds, Actions and, Civil Penalties, provides the grounds by which a physician assistant's license may be disciplined by the Committee. The amendment in subsection 2(f) expands the circumstances under which the Committee may impose conditions on a licensee to include periods of revocation after which a licensee may reinstate, as a prerequisite for lifting probation, suspension or reinstating a revoked license or as a stand alone requirement in any disciplinary order of the Committee.

(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;

The amendments to rules 0880-03-.03 and 0880-10-.03 are being promulgated in accordance with TENN. CODE ANN. § 63-1-145 (Public Chapter 467 of the Public Acts of 2005). There are no other state or federal laws or regulations that mandate the aforementioned amendments.

(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;

Physician Assistants and Orthopedic Physician Assistants that advertise and medical doctors and medical practices that employ [orthopedic] physician assistants and advertise their services. It is unknown whether or not the aforementioned entities oppose or support the promulgation of these rules. There were no comments, either oral or written, at the rule making hearing.

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

The Department of Health is unaware of any opinion of the attorney general or any judicial ruling which directly 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;

These rule amendments are not expected to have any fiscal impact on the Department of Health.

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

Rosemarie Otto, Executive Director of the Board of Medical Examiners and I, Mona Nicole Jean-Baptiste, as Counsel for the Committee, possess substantial knowledge and understanding of these rules.

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

I, Mona Nicole Jean-Baptiste, will explain these rules at any scheduled meetings of the committees.

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

I may be reached at Department of Health, Office of General Counsel, Plaza I, Suite 210, 220 Athens Way, Nashville, Tennessee; Ph: (615) 741-1611; Mona.N.Jean-Baptiste@tn.gov

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

0880-03-.03 NECESSITY OF LICENSE.

(1) Prior to engagement of the practice as a physician assistant in Tennessee, a person must hold a current Tennessee license or temporary license issued pursuant to rule 0880-03-.14 unless exempted from licensure pursuant to T.C.A. §63-19-110.

(2) It is unlawful for any person who is not licensed in the manner prescribed in T.C.A. §§63-19-101 et seq. to represent himself as a licensed physician assistant or to hold himself out to the public as being licensed by means of using a title on signs, mailboxes, address plates, stationery, announcements, telephone listings, calling cards, or other instruments of professional identification.

(3) Use of Titles- Any person who holds a valid license or temporary license from the Committee shall have the right to use the title "physician assistant" or the abbreviations "PA" or "PA-C" and to practice as a physician assistant, as defined in T.C.A. §63-19-102. Any person licensed by the Committee to whom this rule applies must use one of the titles authorized by this rule in every "advertisement" [as that term is defined in Rule 0880-03-.20 (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 physician assistant to disciplinary action pursuant to Rule 0880-03-.15 (1) (a), (1) (c), (1) (h), (1) (p) and (1) (v).

(~~3~~4) The profession of physician assistant is one of the healing arts and as such the practice of which is restricted to those persons credentialed by the Committee. Person engaging in the practice as a physician assistant without being credentialed are in violation of T.C.A. §63-19-105.

Authority: *T.C.A. §§~~§§~~ 4-5-202, 63-1-116, 63-1-145, 63-1-146, 63-6-101, 63-19-104, 63-19-105, 63-19-108, and 63-19-114.* ***Administrative History:*** *Original rule filed August 5, 1993; effective October 18, 1993. Repeal and new rule filed July 7, 1995; effective September 20, 1995. Repeal and new rule filed March 31, 1999; effective July 29, 1999.*

0880-03-.04 QUALIFICATIONS FOR LICENSURE.

(1) Pursuant to T.C.A. §63-19-105, the Committee and Board shall license no person as a physician assistant unless:

(a) The person is a graduate of a physician assistant training program accredited by C.A.H.E.A., C.A.A.H.E.P. or A.R.C.-P.A.; and

(b) The person has successfully completed the examination of the National Commission on the Certification of Physician Assistants.

(2) Alternatively to 0880-03-.04(1), any person licensed/certified/registered as a physician assistant in another state may be licensed as a physician assistant in Tennessee if both of the following requirements are met:

(a) The person is a graduate of a physician assistant program accredited by C.A.H.E.A., C.A.A.H.E.P. or A.R.C.-P.A. at the time of graduation; and

(b) Has practiced as a physician assistant in another state for a period of ten (10) consecutive years immediately prior to seeking licensure in the State of Tennessee.

(c) All persons licensed pursuant to 0880-03-.04(2) must provide letters of verification of employment. All expenses of verification will be the applicant's responsibility.

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(Rule 0880-03-.06, continued)

(e) State Regulatory (biennial) $ 10.00

(f) Temporary Licensure Fee $ 50.00

(4) Total Application Fee must be paid at the time of application.

Authority: *T.C.A. §§4-3-1011, 4-5-202, 63-1-103, 63-1-106, 63-1-108, 63-1-112, 63-19-104; 63-19-105, and 63-19-113.* ***Administrative History:*** *Original rule filed November 27, 1990; effective January 11, 1991. Repeal and new rule filed August 5, 1993; effective October 18, 1993. Repeal and new rule filed July 7, 1995; effective September 20, 1995. Amendment filed October 14, 1998; effective December 28, 1998. Repeal and new rule filed March 31, 1999; effective July 29, 1999.*

0880-03-.07 APPLICATION REVIEW, APPROVAL AND DENIAL.

(1) An application packet shall be requested from the Committee's administrative office.

(2) Review of all applications to determine whether or not the application file is complete may be delegated to the Committee's administrator.

~~(3) A temporary authorization to practice, as described in T.C.A. §63-19-105(d), may be issued to an applicant pursuant to an initial determination made by a Committee member or the Committee consultant who has 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 Committee or 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.~~

(~~4~~3) If an application is incomplete when received by the Committee's Administrative Office, or the reviewing Committee member or the Committee consultant determine additional information is required from an applicant before an initial determination can be made, the Committee's administrative office shall notify the applicant of the information required.

(a) The applicant shall cause the requested information to be received by the Committee's administrative office on or before the ninetieth (90th) day after the initial letter notifying the applicant of the required information is sent.

(b) If requested information is not timely received, the application file may be considered abandoned and may be closed by the Committee's administrator. If that occurs, the applicant shall be notified that the Committee 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 Committee or the Committee consultant.

(~~5~~4) If a reviewing Committee member or the Committee consultant 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 Committee and the Board at

(Rule 0880-03-.07, continued)

their next meetings. If the Committee and the Board ratify 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 Committee's Administrative Office by certified mail, return receipt requested. Specific reasons for denial, limitation, condition or restriction will be stated, 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 adverse decision on an application was based upon subjective or discretionary criteria and only if the request is in writing and received on or before the thirtieth (30th) day after receipt of the notice by the applicant.

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 Committee'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 Committee within 30 days of the receipt of the notice of denial, limitation, condition or restriction from the Committee.

(~~6~~5) The initial determination procedures of this rule will not apply if the Committee reviews and makes final determination on any application during its meetings.

~~(7) If the Committee finds it has erred in the issuance of a license, the Committee 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 0880-03-.07(5)(b).~~

(6) If the Committee finds it has erred in the issuance of a license, the Committee 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 0880-03-.07(4)(b).

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(~~8~~7) Submission of any document or set of documents required by this rule or submission of verification of the authenticity, validity and accuracy of the content of any document or set of documents required by this rule directly from the FCVS to the Committee's Administrative Office shall be deemed to be submission of originals of those documents or sets of documents by the issuing institution(s).

Authority: *T.C.A. §§4-5-102(3), 4-5-202, 4-5-204, 4-5-301 et seq., 63-6-101, 63-19-104, 63-19-105, and 63-19-111.* ***Administrative History:*** *Original rule filed September 16, 1991; effective October 31,*

(Rule 0880-03-.07, continued)
1991. Repeal and new rule filed August 5, 1993; effective October 18, 1993. Repeal and new rule filed July 7, 1995; effective September 20, 1995. Amendment filed November 13, 1996; effective January 27, 1997. Amendment filed October 14, 1998; effective December 28, 1998. Repeal and new rule filed March 31, 1999; effective July 29, 1999. Amendment filed August 6, 2002; effective October 20, 2002. Amendment filed August 28, 2002; effective November 11, 2002.

0880-03-.08 EXAMINATIONS.

(1) Licensure Examination - With the exception of applicants qualified pursuant to Rule 0880-03-.05(2) all persons intending to apply for licensure as a P.A. in Tennessee must successfully complete an examination pursuant to this Rule. Such examination must be completed prior to application for permanent licensure. Evidence of successful completion must be submitted by the examining agency directly to the Committee Administrative Office as part of the application process contained in Rule 0880-03-.05.

(a) The Committee and Board adopt the N.C.C.P.A. examination or its successor examination as its licensure examination. Successful completion of examination is a prerequisite to licensure pursuant to Rule 0880-03-.04(1)(b).

(b) The Committee and Board adopt the N.C.C.P.A. determination as to the passing score on its examination.

(c) Application for and fees necessary to take the N.C.C.P.A. examination must be sent to the N.C.C.P.A. and not the Committee.

(2) Submission of any document or set of documents required by this rule or submission of verification of the authenticity, validity and accuracy of the content of any document or set of documents required by this rule directly from the FCVS to the Committee's Administrative Office shall be deemed to be submission of originals of those documents or sets of documents by the issuing institution(s).

Authority: *T.C.A. §§4-5-202, 4-5-204, 63-19-104, and 63-19-105.* ***Administrative History:*** *Original rule filed August 5, 1993; effective October 18, 1993. Repeal and new rule filed July 7, 1995; effective September 20, 1995. Repeal and new rule filed March 31, 1999; effective July 29, 1999. Amendment filed August 6, 2002; effective October 20, 2002.*

0880-03-.09 LICENSURE RENEWAL AND REINSTATEMENT OF AN EXPIRED LICENSE.

(1) All physician assistants must renew their licenses to be able to legally continue in practice. License renewal is governed by the following:

(a) 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" contained in rule 1200-10-01-.10.

(b) Methods of Renewal - Licensees may accomplish renewal by one of the following methods:

1. Internet Renewals - Individuals may apply for renewal via the Internet. The application to renew can be accessed at:

www.tennesseeanytime.org

(Rule 0880-03-.12, continued)

0880-03-.14 TEMPORARY LICENSE.

(1) A graduate of an accredited P.A. educational program who is awaiting an opportunity to take the licensure examination may practice as a P.A. upon issuance of a temporary license obtained pursuant to T.C.A. §63-19-105.

(2) Temporary licenses issued pursuant to T.C.A. §63-19-105(a)(2) are subject to the following restrictions:

(a) Initial issuance is valid for only the fifteen (15) month period immediately following graduation from an accredited P.A. educational program.

(b) If a person attempts but fails the first licensure examination and cannot take the examination again during the time remaining on the initially issued temporary license, that license may be extended for an additional one (1) year period from the date of expiration of the initial license upon proof of examination failure.

(c) Temporary licenses are valid only for those who are attempting to take the licensure examination and shall expire if the person fails to take every scheduled examination until successful completion.

(d) Temporary Licenses shall become invalid upon the holder obtaining permanent licensure from the Committee and Board or on the last day of the fifteenth (15th) month after graduation unless extended in which case the license shall become invalid on the last day of the twenty-seventh (27th) month after graduation. In any case, the temporary license expires upon failure to take a scheduled examination.

(e) Persons holding temporary licenses shall be subject to discipline up to and including revocation for the same causes and pursuant to the same procedures as persons holding permanent licenses.

~~(3) Temporary licenses issued pursuant to T.C.A. §63-19-105(b)(2) by reciprocity are subject to the following restrictions:~~

~~(a) Such individual shall have submitted an application for licensure with accompanying application fee.~~

~~(b) Proof shall be submitted to the Committee that the applicant is licensed, registered, or assistant in another jurisdiction.~~

~~(c) A temporary license issued pursuant to this provision is valid for a period of six (6) months and is not renewable.~~

~~(d) Persons holding temporary licenses shall be subject to discipline up to and including revocation for the same causes and pursuant to the same procedures as persons holding permanent licenses.~~

(~~4~~3) Submission of any document or set of documents required by this rule or submission of verification of the authenticity, validity and accuracy of the content of any document or set of documents required by this rule directly from the FCVS to the Committee's Administrative Office shall be deemed to be submission of originals of those documents or sets of documents by the issuing institution(s).

(Rule 0880-03-.14, continued)
Authority: *T.C.A. §§4-5-202, 4-5-204, 63-19-104, and 63-19-105.* ***Administrative History:*** *Original rule filed July 7, 1995; effective September 20, 1995. Repeal and new rule filed March 31, 1999; effective July 29, 1999. Amendment filed August 6, 2002; effective October 20, 2002.*

0880-03-.15 DISCIPLINARY GROUNDS, ACTIONS, AND CIVIL PENALTIES.

(1) Grounds and Authority For Disciplinary Actions - The Board and the Committee shall have the power to deny, limit, restrict or condition an application for a license to any applicant who applies for the same. The Board and Committee shall have the authority to suspend or revoke, reprimand or otherwise discipline any person holding a license to practice as a physician assistant. The grounds upon which the Board and Committee shall exercise such power includes, but are not limited to, the following:

(a) Unprofessional, dishonorable, or unethical conduct;

(b) Violation or attempted violation, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of the Physician Assistants Act or any lawful order of the Committee and Board issued pursuant thereto, or any criminal statute of the state of Tennessee;

(c) Making false statements or representations, being guilty of fraud or deceit in obtaining admission to practice, or being guilty of fraud or deceit in the practice as a physician assistant;

(d) Gross malpractice, or a pattern of continued or repeated malpractice, ignorance, negligence or incompetence in the course of practice as a physician assistant;

(e) Habitual intoxication or personal misuse of any drugs or the use of intoxicating liquors, narcotics, controlled substances, or other drugs or stimulants in such manner as to adversely affect the person's ability to practice as a physician assistant;

(f) Violation of the laws governing abortion;

(g) Willfully betraying a professional secret;

(h) The advertising of physician assistant business in which untrue or misleading statements are made, or causing the publication or circulation of fraudulent advertising relative to any disease, human ailment, or conditions;

(i) Willful violation of the rules and regulations promulgated by the Board and the Committee to regulate advertising by practitioners who are under the jurisdiction of such board;

(j) Conviction of a felony, conviction of any offense under state or federal drug laws, or conviction of any offense involving moral turpitude;

(k) Making or signing in one's professional capacity any certificate that is known to be false at the time one makes or signs such certificate;

(l) Dispensing, prescribing, or otherwise distributing any controlled substance or any other drug not in the course of professional practice, or not in good faith to relieve pain and suffering, or not to cure an ailment, physical infirmity or disease;

(Rule 0880-03-.15, continued)

(m) Dispensing, prescribing, or otherwise distributing any controlled substance to any person in violation of any law of the state or of the United States of America or any rule of the Board or Committee;

(n) Offering, undertaking, or agreeing to cure or treat a disease, injury, ailment or infirmity by a secret means, method, device or instrumentality;

(o) Giving or receiving, or aiding or abetting the giving or receiving of rebates, either directly or indirectly for referrals of business or patients;

(p) Engaging in the practice of a physician assistant under a false or assumed name, or the impersonation of another practitioner, or a like, similar or different name;

(q) Engaging in the practice of a physician assistant when mentally or physically unable to safely do so;

(r) Violation of the continuing education provisions of Rule 0880-03-.12;

(s) Violation of the scope of practice statutes T.C.A. §§63-19-106 through 63-19-108 and Rules 0880-03-.02 and 0880-03-.10.

(t) Violation of prescribing statutes T.C.A. §63-19-107(2), and rules 0880-03-.10 and 0880-03-.21 to include improper or abusive practices inconsistent with normal prescribing guidelines.

(u) Disciplinary action against a person licensed, certified, registered, or permitted to practice medicine by another state or territory of the United States for any acts or omissions which would constitute grounds for discipline of a person licensed in this state. A certified copy of the initial or final order or other equivalent document memorializing the disciplinary action from the disciplining state or territory shall constitute prima facie evidence of violation of this section and be sufficient grounds upon which to deny, restrict or condition licensure or renewal and/or discipline a person licensed in this state.

(v) Violation of the use of title statute, T.C.A. § 63-19-114.

(2) Upon a finding by the Board and Committee that a physician assistant has violated any provision of the Tennessee Physician Assistants Act (T.C.A. §§63-19-101 et seq.) or the rules promulgated pursuant thereto, the Board and Committee may take any of the following actions separately or in any combination which is deemed appropriate to the offense;

(a) Advisory Censure - This is a written action issued for minor or near infractions. It is informal and advisory in nature and does not constitute a formal disciplinary action.

(b) Formal Censure or Reprimand - This is a written action issued for one time and less severe violations. It is a formal disciplinary action.

(c) Probation - This is a formal disciplinary action which places a physician assistant on close scrutiny for a fixed period of time. This action may be combined with conditions which must be met before probation will be lifted and/or which restrict the individual's activities during the probationary period.

(d) License Suspension - This is a formal disciplinary action which suspends the right to practice for a fixed period of time. It contemplates the re-entry into practice under the license previously issued.

(Rule 0880-03-.15, continued)

(e) 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 Committee, in its discretion, may allow reinstatement of a revoked license upon conditions and after a period of time that it deems appropriate. However, 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 Board and Committee to be required of a disciplined license holder during any period of probation or suspension or as a pre-requisite to the lifting of probation or suspension or the reinstatement of a revoked license.~~

(f) Conditions - Any action deemed appropriate by the Board and Committee to be required of a disciplined licensee in any of the following circumstances:

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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.

(g) Civil penalty - A monetary disciplinary action assessed by the Committee and Board pursuant to paragraph (5) of this Rule.

(h) Suspension or revocation of prescribing privileges.

(i) Assessment of costs in disciplinary proceedings shall be as set forth in T.C.A. §§ 63-1-144 and 63-19-104.

(j) 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 Committee 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 Committee and 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

(Rule 0880-03-.15, continued)

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 Committee'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 Committee'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 Committee 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 Committee and 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 Committee and Board the petitioner may not submit any additional documentation or testimony other than that contained in the petition as originally submitted.

4. If the Committee and 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 Committee or 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 1200-10-01-.11.

(c) Form Petition

(Rule 0880-03-.15, continued)

Petition for Order of Compliance
Board of Medical Examiners
Committee on Physician Assistants

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 Committee'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 Committee and 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.

(Rule 0880-03-.15, continued)

(a) The Committee and 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 Committee'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 Committee 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 Committee and 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 Committee and 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 Committee and 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 Committee or 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 1200-10-01-.11.

(c) Form Petition

(Rule 0880-03-.15, continued)

Petition for Order Modification
Board of Medical Examiners
Committee on Physician Assistants

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. The Committee and Board may assess these civil penalties in lieu of the civil penalties authorized by T.C.A. §63-19-104(7).

(b) Schedule of Civil Penalties.

(Rule 0880-03-.15, continued)

1. A "Type A" Civil Penalty may be imposed whenever the Committee finds a person who is required to be licensed, certified, permitted, or authorized by the Committee, guilty of a willful and knowing violation of the Physician Assistant 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 physician assistant without a permit, license, certificate, or other authorization from the Committee is one of the violations of the Physician Assistants Act for which a "Type A" Civil Penalty is assessable.

2. A "Type B" Civil Penalty may be imposed whenever the Committee finds the person required to be licensed, certified, permitted, or authorized by the Committee is guilty of a violation of the Physician Assistants 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 Committee finds the person required to be licensed, certified, permitted, or authorized by the Committee is guilty of a violation of the Physician Assistants 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 nor 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 Committee during consideration of any Notice of Charges. In addition, the Committee 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 Committee may consider the following factors:

(i) Whether the amount imposed will be substantial economic deterrent to the violator;

(ii) The circumstances leading to the violation;

(Rule 0880-03-.15, continued)

(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 Title 4, Chapter 5, T.C.A.

Authority: *T.C.A. §§4-5-202, 4-5-204, 4-5-217, 4-5-223, 63-1-102, 63-1-122, 63-1-144, 63-6-101, 63-19-104, 63-19-111, and 63-19-114.* ***Administrative History:*** *Original rule filed July 7, 1995; effective September 20, 1995. Amendment filed November 13, 1996; effective January 27, 1997. Amendment filed August 13, 1998; effective October 27, 1998. Repeal and new rule filed March 31, 1999; effective July 29, 1999. Amendment filed July 31, 2000; effective October 14, 2000. Amendment filed August 28, 2002; effective November 11, 2002. Amendment filed September 8, 2004; effective November 22, 2004. Amendment filed June 23, 2006; effective September 6, 2006.*

0880-03-.16 LICENSE.

(1) Display of License - Every person licensed by the Committee in this state shall display his/her license in a conspicuous place in his/her office and, whenever required, exhibit such license to the Committee or its authorized representatives.

(2) 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 Committee'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 required fee pursuant to Rule 0880-03-.06.

Authority: *T.C.A. §§4-5-202, 63-1-106, 63-19-104, and 63-19-105.* ***Administrative History:*** *Original rule filed July 7, 1995; effective September 20, 1995. Repeal and new rule filed March 31, 1999; effective July 29, 1999.*

0880-03-.17 CHANGE OF NAME AND/OR ADDRESS.

(1) Change of Name - An individual registered with the Committee shall notify the Committee in writing within 30 days of a name change and will provide both the old and new names. A request for name change must also include a copy of the official document involved and reference the individual's profession, board, social security, and license numbers.

(2) Change of Address - Each person holding a license who has had a change of address or place of employment, shall file in writing with the board his/her current address, giving both old and new addresses. Such requests shall be received in the Committee's Administrative Office no later than 30 days after such change is effective and must reference the individual's name, profession, social security number, and license number.

Authority: *T.C.A. §§4-5-202, 63-1-108, and 63-19-104.* ***Administrative History:*** *Original rule filed July 7, 1995; effective September 20, 1995. Repeal and new rule filed March 31, 1999; effective July 29, 1999.*

0880-03-.18 FREE HEALTH CLINIC AND VOLUNTEER PRACTICE REQUIREMENTS.

(1) Free Health Clinic Practice Pursuant to T.C.A. § 63-1-201

(Rule 0880-10-.01, continued)
Authority: *T.C.A. §§4-5-202, 4-5-204, 63-1-107, 63-1-115, 63-6-216, 63-19-102, 63-19-103, 63-19-104, 63-19-201, 63-19-203, 63-19-204, 63-19-205, 63-19-210, and 68-1-701.* ***Administrative History:*** *Original Rule filed July 10, 1997; effective September 23, 1997. Amendment filed June 10, 1998; effective October 28, 1998. Amendment filed June 25, 1998; effective October 30, 1998. Amendment filed August 28, 2002; effective November 11, 2002.*

0880-10-.02 SCOPE OF PRACTICE.

(1) An orthopedic physician assistant who holds state licensure in accordance with T.C.A. §63-19-202 may provide selected medical/surgical services only within specialty of orthopedic medicine, as outlined in a written protocol according to T.C.A. §63-19-204, and when such services are within his skills. The services delegated to the orthopedic physician assistant must form a usual component of the supervising orthopedic physician's scope of practice. Services rendered by the orthopedic physician assistant must be provided under the supervision, direction, and ultimate responsibility of a licensed orthopedic physician accountable to the Board of Medical Examiners or the Board of Osteopathic Examination.

Authority: *T.C.A. §§4-5-202, 4-5-204, 63-19-104, 63-19-201, 63-19-202, 63-19-203, 63-19-204, 63-19-205, 63-19-206, 63-19-207, and 63-19-208.* ***Administrative History:*** *Original Rule filed July 10, 1997; effective September 23, 1997. Amendment filed June 10, 1998; effective October 28, 1998.*

0880-10-.03 NECESSITY OF LICENSURE.

(1) Prior to the engagement of the practice as an orthopedic physician assistant in Tennessee, a person must hold a current Tennessee license unless exempted from licensure pursuant to T.C.A. §63-19-208.

(2) It is unlawful for any person who is not licensed in the manner prescribed in T.C.A. §63-19-201 et seq. to represent himself as a licensed orthopedic physician assistant or to hold himself out to the public as being licensed by means of using a title on signs, mailboxes, address plates, stationery, announcements, telephone listings, calling cards, or other instruments of professional identification.

(3) Use of Titles - Any person who holds a valid license or temporary license from the Committee shall have the right to use the title "orthopedic physician assistant" or the abbreviations "OPA-C" or "OPA" and to practice as an orthopedic physician assistant, as defined in T.C.A. § 63-19-102. Any person licensed by the Committee to whom this rule applies must use one of the titles authorized by this rule in every "advertisement" [as that term is defined in rule 0880-10-.20 (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 orthopedic physician assistant to disciplinary action pursuant to Rule 0880-10-.15 (1) (a), (1) (c), (1) (h), (1) (p), and (1) (v).

(~~3~~4) The profession of orthopedic physician assistant is one of the healing arts and as such the practice of which is restricted to those persons licensed by the Committee. Persons engaging in the practice as an orthopedic physician assistant without being licensed are in violation of T.C.A. §§63-19-202 and 63-19-206.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-116, *63-1-145, 63-1-146, 63-6-101, 63-19-104, 63-19-201, 63-19-202, 63-19-206,* ~~*and*~~ *63-19-208 and 63-19-210.* ***Administrative History:*** *Original Rule filed July 10, 1997; effective September 23, 1997. Amendment filed June 10, 1998; effective October 28, 1998.*

0880-10-.04 QUALIFICATIONS FOR LICENSURE.

(1) Pursuant to T.C.A. §63-19-202, the Committee and Board shall certify no person as an orthopedic physician assistant unless:

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(Rule 0880-10-.12, continued)

format by either the A.M.A., N.B.C.O.P.A., or other associations approved by the Committee and Board.

(4) Violations

(a) Any orthopedic physician assistant who falsely attests to completion of the required hours of continuing education may be subject to disciplinary action pursuant to Rule 0880-10-.15.

(b) Any orthopedic physician assistant who fails to obtain the required continuing education hours may be subject to disciplinary action pursuant to Rule 0880-10-.15 and may not be allowed to renew licensure.

(c) Education hours obtained as a result of compliance with the terms of a Committee or Board order in any disciplinary action shall not be credited toward the continuing education hours required to be obtained in any renewal period.

Authority: *T.C.A. §§4-5-202, 4-5-204, 63-1-107, 63-19-104, and 63-19-201.* ***Administrative History:*** *Original Rule filed July 10, 1997; effective September 23, 1997. Amendment filed June 10, 1998; effective October 28, 1998. Amendment filed June 25, 1998; effective October 30, 1998. Amendment filed July 31, 2000; effective October 14, 2000.*

0880-10-.13 PROFESSIONAL ETHICS. The Committee on Physician Assistants may utilize as guidelines T.A.P.A.'s code of ethics. Violation of this Rule may subject the orthopedic physician assistant to disciplinary action pursuant to Rule 0880-10-.15.

Authority: *T.C.A. §§4-5-202, 4-5-204, 63-19-104, 63-19-201, 63-19-206, 63-19-207, and 63-19-210.* ***Administrative History:*** *Original Rule filed July 10, 1997; effective September 23, 1997. Amendment filed June 10, 1998; effective October 28, 1998.*

0880-10-.14 RESERVED.

0880-10-.15 DISCIPLINARY GROUNDS, ACTIONS, AND CIVIL PENALTIES.

(1) Grounds and Authority For Disciplinary Actions - The Board and the Committee shall have the power to deny, limit, restrict or condition an application for a license to any applicant who applies for the same. The Board and Committee shall have the authority to suspend or revoke, reprimand or otherwise discipline any person holding a license to practice as an orthopedic physician assistant. The grounds upon which the Board and Committee shall exercise such power includes, but are not limited to, the following:

(a) Unprofessional, dishonorable, or unethical conduct;

(b) Violation or attempted violation, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of the Orthopedic Physician Assistants Act or any lawful order of the Committee and Board issued pursuant thereto, or any criminal statute of the state of Tennessee;

(c) Making false statements or representations, being guilty of fraud or deceit in obtaining admission to practice, or being guilty of fraud or deceit in the practice as an orthopedic physician assistant;

(d) Gross malpractice, or a pattern of continued or repeated malpractice, ignorance, negligence or incompetence in the course of practice as an orthopedic physician assistant;

(Rule 0880-10-.15, continued)

(e) Habitual intoxication or personal misuse of any drugs or the use of intoxicating liquors, narcotics, controlled substances, or other drugs or stimulants in such manner as to adversely affect the person's ability to practice as an orthopedic physician assistant;

(f) Violation of the laws governing abortion;

(g) Willfully betraying a professional secret;

(h) The advertising of orthopedic physician assistant business in which untrue or misleading statements are made, or causing the publication or circulation of fraudulent advertising relative to any disease, human ailment, or conditions;

(i) Willful violation of the rules and regulations promulgated by the Board and the Committee to regulate advertising by practitioners who are under the jurisdiction of such board;

(j) Conviction of a felony, conviction of any offense under state or federal drug laws, or conviction of any offense involving moral turpitude;

(k) Making or signing in one's professional capacity any certificate that is known to be false at the time one makes or signs such certificate;

(l) Dispensing, prescribing, or otherwise distributing any controlled substance or any other drug not in the course of professional practice, or not in good faith to relieve pain and suffering, or not to cure an ailment, physical infirmity or disease;

(m) Dispensing, prescribing, or otherwise distributing any controlled substance to any person in violation of any law of the state or of the United States of America or any rule of the Board or Committee;

(n) Offering, undertaking, or agreeing to cure or treat a disease, injury, ailment or infirmity by a secret means, method, device or instrumentality;

(o) Giving or receiving, or aiding or abetting the giving or receiving of rebates, either directly or indirectly for referrals of business or patients;

(p) Engaging in the practice of an orthopedic physician assistant under a false or assumed name, or the impersonation of another practitioner, or a like, similar or different name;

(q) Engaging in the practice of an orthopedic physician assistant when mentally or physically unable to safely do so;

(r) Violation of the continuing education provisions of Rule 0880-10-.12; and

(s) Violation of the scope of practice statutes T.C.A. §§63-19-203 through 63-19-205 and Rules 0880-10-.02 and 0880-10-.10.

(t) Violation of prescribing statutes.

(u) Disciplinary action against a person licensed, certified, registered, or permitted to practice as an orthopedic physician assistant by another state or territory of the United States for any acts or omissions which would constitute grounds for discipline of a person licensed in this state. A certified copy of the initial or final order or other equivalent document memorializing the disciplinary action from the disciplining state or territory shall constitute prima facie evidence of

(Rule 0880-10-.15, continued)

violation of this section and be sufficient grounds upon which to deny, restrict or condition licensure or renewal and/or discipline a person licensed in this state.

(v) Violation of the correct title statute, T.C.A. § 63-19-210.

(2) Upon a finding by the Board and Committee that an orthopedic physician assistant has violated any provision of the Orthopedic Physician Assistants Act (T.C.A. §63-19-201 et seq.) or the rules promulgated pursuant thereto, the Board and Committee may take any of the following actions separately or in any combination which is deemed appropriate to the offense;

(a) Advisory Censure - This is a written action issued for minor or near infractions. It is informal and advisory in nature and does not constitute a formal disciplinary action.

(b) Formal Censure or Reprimand - This is a written action issued for one time and less severe violations. It is a formal disciplinary action.

(c) Probation - This is a formal disciplinary action which places an orthopedic physician assistant on close scrutiny for a fixed period of time. This action may be combined with conditions which must be met before probation will be lifted and/or which restrict the individual's activities during the probationary period.

(d) License Suspension - This is a formal disciplinary action which suspends the right to practice for a fixed period of time. It contemplates the re-entry into practice under the license previously issued.

(e) License Revocation - This is the most severe form of disciplinary action which removes a license holder from the practice of the profession and terminates the certification or licensure previously issued. The Committee, in its discretion, may allow reinstatement of a revoked license upon conditions and after a period of time that it deems appropriate. However, 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 Board and Committee to be required of a disciplined license holder during any period of probation or suspension or as a pre-requisite to the lifting of probation or suspension or the reinstatement of a revoked license.~~

(f) Conditions - Any action deemed appropriate by the Board and Committee 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.

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(g) Civil penalty – A monetary disciplinary action assessed by the Committee and Board pursuant to paragraph (5) of this rule.

(Rule 0880-10-.15, continued)

(h) Assessment of costs in disciplinary proceedings shall be as set forth in T.C.A. §§ 63-1-144 and 63-19-201.

(i) 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 Committee 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 and Committee 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 Committee'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 Committee'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 Committee 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 Committee and Board as an uncontested matter; or

(Rule 0880-10-.15, continued)

(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 Committee and Board the petitioner may not submit any additional documentation or testimony other than that contained in the petition as originally submitted.

4. If the Committee and 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 Committee or 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
Committee on Physician Assistants

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 Committee's consultant

(Rule 0880-10-.15, continued)

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 Committee and 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 Committee and 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 Committee'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 Committee 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 Committee and Board as an uncontested matter; or

(Rule 0880-10-.15, continued)

(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 Committee and 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 Committee and 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 Committee or 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
Committee on Physician Assistants

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

(Rule 0880-10-.15, continued)

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. The Committee and Board may assess these civil penalties in lieu of the civil penalties authorized by T.C.A. §63-19-201(b)(7).

(b) Schedule of Civil Penalties.

1. A "Type A" Civil Penalty may be imposed whenever the Committee finds a person who is required to be licensed, certified, permitted, or authorized by the Committee, guilty of a willful and knowing violation of the Orthopedic Physician Assistants 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 an orthopedic physician assistant without a permit, license, certificate, or other authorization from the Committee is one of the violations of the Orthopedic Physician Assistants Act for which a "Type A" Civil Penalty is assessable.

2. A "Type B" Civil Penalty may be imposed whenever the Committee finds the person required to be licensed, certified, permitted, or authorized by the Committee is guilty of a violation of the Orthopedic Physician Assistants 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 Committee finds the person required to be licensed, certified, permitted, or authorized by the Committee is guilty of a violation of the Orthopedic Physician Assistants 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 nor 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

(Rule 0880-10-.15, continued)

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 Committee during consideration of any Notice of Charges. In addition, the Committee 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 Committee may consider the following factors:

   (i) Whether the amount imposed will be 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 Title 4, Chapter 5, T.C.A.

Authority: *T.C.A. §§4-5-202, 4-5-204, 4-5-217, 4-5-223, 63-1-102, 63-1-122, 63-1-134, 63-1-144, 63-1-146, 63-6-101, 63-19-104, 63-19-111, 63-19-201, and 63-19-210.* ***Administrative History:*** *Original Rule filed July 10, 1997; effective September 23, 1997. Amendment filed June 10, 1998; effective October 28, 1998. Amendment filed June 25, 1998; effective October 30, 1998. Amendment filed July 31, 2000; effective October 14, 2000. Amendment filed August 28, 2002; effective November 11, 2002. Amendment filed September 8, 2004; effective November 22, 2004. Amendment filed June 23, 2006; effective September 6, 2006.*

0880-10-.16 LICENSE.

(1) Display of License -Every person licensed by the Committee in this state shall display his/her license in a conspicuous place in his/her office and, whenever required, exhibit such license to the Committee or its authorized representatives.

(2) 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 Committee'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 required fee pursuant to Rule 0880-10-.06.

Authority: *T.C.A. §§4-5-202, 4-5-204, 63-1-106, 63-19-104, and 63-19-201.* ***Administrative History:*** *Original Rule filed July 10, 1997; effective September 23, 1997. Amendment filed June 10, 1998; effective October 28, 1998.*

0880-10-.17 CHANGE OF ADDRESS AND/OR NAME.

(1) Change of Address - Each person holding a license who has had a change of address or place of employment, shall file in writing with the board his/her current address, giving both old and new addresses. Such requests shall be received in the Committee's Administrative Office no later than 30 days after such change is effective and must reference the individual's name, profession, social security number, and license number.