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 312 Rosa L. Parks, 8th Floor Snodgrass Tower
 Nashville, TN 37243
 Phone: 615.741.2650
 Fax: 615.741.5133
 Email: sos.information@state.tn.us

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Sequence Number: 10-12-09
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 File Date: 10/16/2009

Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission:	Board of Medical Examiners
Division:	
Contact Person:	Mona Nicole Jean-Baptiste
Address:	Office of General Counsel Department of Health 220 Athens Way, Suite 210 Plaza I, Metro Center Nashville, TN 37243
Phone:	615.741.1611
Email:	Mona.N.Jean-Baptiste@tn.gov

Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact:	ADA Coordinator
Address:	Division of Health Related Boards 227 French Landing, Suite 300 Heritage Place Building, Metro Center Nashville, TN 37243
Phone:	615.532.4397
Email:	

Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	Department of Health Conference Center Poplar Room, First Floor Heritage Place Building 227 French Landing		
Address 2:			
City:	Nashville, Tennessee		
Zip:	37243		
Hearing Date :	01/08/2010		
Hearing Time:	9:00am	<input checked="" type="checkbox"/> CST	<input type="checkbox"/> EST

Additional Hearing Information:

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Revision Type (check all that apply):

- Amendment
- New

____ Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed here.)

Chapter Number	Chapter Title
0880-03	General Rules Governing the Practice of a Physician Assistant
Rule Number	Rule Title
0880-03-.06	Fees
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-.06	Fees
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 Rules

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

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

Amendments

Rule 0880-03-.06 Fees, is amended by deleting the language of subparagraph (3) (b) in its entirety and replacing it with the following:

(b) Biennial Licensure Renewal Fee \$225.00

Authority: T.C.A. § 63-19-104.

Rule 0880-03-.15 Disciplinary Grounds, Actions, and Civil Penalties, is amended by deleting the language of subparagraph (1) (j) in its entirety and replacing it with the following:

(j) Conviction of a misdemeanor or felony;

Authority: T.C.A. § 63-19-104.

Rule 0880-03-.15 Disciplinary Grounds, Actions, and Civil Penalties, is further amended by deleting the language of subparagraphs (2), (3), (4) and (5) in their entirety and replacing them with the following:

(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) "Letter of warning" This is a written action. It is informal and advisory in nature and does not constitute a formal disciplinary action.
 - (b) "Formal reprimand" This is a written action. It is a formal disciplinary action.
 - (c) "Probation" This is a formal disciplinary action for a fixed period of time.
 - (d) "Licensure suspension" This is a formal disciplinary action which suspends an individual's right to practice for a fixed period of time. It contemplates the re-entry of the individual into the practice under the licensure previously issued.
 - (e) License Revocation- This is a formal disciplinary action which removes a licensee from the practice of the profession and terminates the license previously issued. In order to re-enter practice as a physician assistant a revoked licensee must apply for and meet all requirements of initial licensure. No application for initial licensure from a person whose license was revoked shall be considered prior to the expiration of at least one (1) year unless otherwise stated in the Committee's revocation order.
 - (f) Conditions - Any action deemed appropriate by the Committee to be required of a disciplined licensee in any of the following circumstances:
 1. During any period of probation or suspension;
 2. As a prerequisite to the lifting of probation or suspension; or
 3. As a stand-alone requirement(s) of any disciplinary action.
 - (g) Civil penalty - A monetary disciplinary action assessed by the Committee and Board pursuant to paragraph (4) of this Rule.
 - (h) Once ordered, probation, suspension, assessment of a civil penalty, or any other condition of any type of disciplinary action may not be lifted unless and until the licensee appears before the Committee after the period of initial probation, suspension, or other conditioning has run and all conditions placed on the probation, suspension, have been met, and after any civil penalties assessed have been paid.
- (3) Order Modifications – A licensee may petition the Committee to modify a previously issued disciplinary order if the licensee cannot fulfill the conditions of the imposed discipline. This procedure is only available after all reconsideration and appeal rights have been either exhausted or not timely pursued. This procedure cannot be used to modify any findings of fact, conclusions of law, or the reasons for the decision contained in the order.
- (a) The Committee will entertain petitions for modification of the disciplinary portion of previously issued orders upon strict compliance with the procedures set forth in subparagraph (b) only when the petitioner can prove that compliance with any one or more of the conditions or terms of the discipline previously ordered is impossible. For purposes of this rule the term "impossible" does not mean that compliance is inconvenient or impractical for personal, financial, scheduling or other reasons.

(b) Procedures

1. The petitioner shall submit a written and signed "Petition for Order Modification" to the Committee's Office that shall contain all of the following:
 - (i) A copy of the previously issued order; and
 - (ii) A statement of why the petitioner believes it is impossible to comply with the order as issued; and
 - (iii) A copy of all documents proving compliance is impossible. If proof of impossibility of compliance requires testimony of an individual or individuals, including that of the petitioner, the petitioner must submit the signed and notarized statements of every individual upon whom the petitioner intends to rely attesting to, under oath, the reasons why compliance is impossible. No documentation or testimony other than that submitted will be considered in making an initial determination on or a final order in response to the petition.
 2. The Committee authorizes administrative staff to make an initial determination on the petition and take one of the following actions:
 - (i) Certify impossibility of compliance and forward the petition to the Office of General Counsel for presentation to the Committee as an uncontested matter; or
 - (ii) Deny the petition, after consultation with the Office of General Counsel, if impossibility of compliance with the provisions of the previous order is not proven and notify the petitioner of what proof of impossibility of compliance was either not sufficient or not submitted.
 3. If the petition is granted, a new order shall be issued reflecting the modifications authorized by the Committee that it deemed appropriate and necessary in relation to the violations found in the previous order.
 4. If the petition is denied either initially by staff or after presentation to the Committee and the petitioner believes impossibility of compliance with the order has been sufficiently proven, the petitioner may request, in writing, to appear before the Committee not less than thirty (30) days before the next regularly scheduled meeting of the Committee.
- (4) Civil Penalties - The purpose of this rule is to set out a schedule designating the minimum and maximum civil penalties which may be assessed pursuant to T.C.A. § 63-1-134.
- (a) Schedule and Amount of Civil Penalties:
 1. A Type A civil penalty may be imposed whenever the Committee finds the person who is required to be licensed by the Committee

is guilty of a violation of T.C.A. § 63-19-101, et seq. or regulations promulgated pursuant thereto, to such an extent that there is, or is likely to be a substantial threat to the health, safety and welfare of an individual client or the public. For purposes of this section, a type A penalty shall include, but not be limited to, a person who is or was practicing medicine as a physician assistant without a license from the Committee. Type A civil penalties shall be assessed in the amount of not less than \$500 and not more than \$1,000.

2. A Type B civil penalty may be imposed whenever the Committee finds the person required to be licensed by the Committee is guilty of a violation of T.C.A. § 63-19-101, et seq. or regulations promulgated pursuant thereto in such manner as to impact directly on the care of clients or the public. Type B civil penalties may be assessed in the amount of not less than \$100 and not more than \$500.
3. A Type C civil penalty may be imposed whenever the Committee finds the person required to be licensed, permitted, or authorized by the Committee is guilty of a violation of T.C.A. § 63-19-101, et seq. or regulations promulgated pursuant thereto, which is neither directly detrimental to the clients or public, nor directly impact their care, but have only an indirect relationship to client care or the public. Type C civil penalties may be assessed in the amount of not less than \$50 and not more than \$100.

(b) Procedures for Assessing Civil Penalties:

1. During a contested case proceeding the Committee may assess civil penalties in a type and amount which was not recommended by the Office of General Counsel.
2. In assessing the civil penalties pursuant to these rules the Committee may consider the following factors:
 - (i) Whether the amount imposed will be a substantial economic deterrent to the respondent;
 - (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 respondent as a result of non-compliance; and
 - (v) The interest of the public.
3. All proceedings for the assessment of civil penalties shall be governed by the contested case provisions of T.C.A. Title 4, Chapter 5.

Authority: T.C.A. §§ 63-1-122 and 63-19-104.

Rule 0880-10-.06 Fees, is amended by deleting the language of subparagraph (3) (b) in its

entirety and replacing it with the following:

- (b) Biennial Licensure Renewal Fee \$225.00

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 - (g) Civil penalty - A monetary disciplinary action assessed by the Committee and Board pursuant to paragraph (4) of this Rule.

- (h) Once ordered, probation, suspension, assessment of a civil penalty, or any other condition of any type of disciplinary action may not be lifted unless and until the licensee appears before the Committee after the period of initial probation, suspension, or other conditioning has run and all conditions placed on the probation, suspension, have been met, and after any civil penalties assessed have been paid.
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- (a) The Committee will entertain petitions for modification of the disciplinary portion of previously issued orders upon strict compliance with the procedures set forth in subparagraph (b) only when the petitioner can prove that compliance with any one or more of the conditions or terms of the discipline previously ordered is impossible. For purposes of this rule the term "impossible" does not mean that compliance is inconvenient or impractical for personal, financial, scheduling or other reasons.
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2. A Type B civil penalty may be imposed whenever the Committee finds the person required to be licensed by the Committee is guilty of a violation of T.C.A. § 63-19-101, et seq. or regulations promulgated pursuant thereto in such manner as to impact directly on the care of clients or the public. Type B civil penalties may be assessed in the amount of not less than \$100 and not more than \$500.
3. A Type C civil penalty may be imposed whenever the Committee finds the person required to be licensed, permitted, or authorized by the Committee is guilty of a violation of T.C.A. § 63-19-101, et seq. or regulations promulgated pursuant thereto, which is neither directly detrimental to the clients or public, nor directly impact their care, but have only an indirect relationship to client care or the public. Type C civil penalties may be assessed in the amount of not less than \$50 and not more than \$100.

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Authority: T.C.A. §§ 63-1-122, 63-19-104 and 63-19-201.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: October 14, 2009

Signature: Mona N. Jean-Baptiste

Name of Officer: Mona Nicole Jean-Baptiste

Assistant General Counsel

Title of Officer: Tennessee Department of Health



Subscribed and sworn to before me on: 10/14/09

Notary Public Signature: Theodore P. Wilkins

My commission expires on: 11/7/2011

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Filed with the Department of State on: 10/16/09

Tre Hargett

Tre Hargett
Secretary of State

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