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 Phone: 615-741-2650
 Fax: 615-741-5133
 Email: register.information@tn.gov

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Sequence Number: 12-20-12
 Rule ID(s): 5355
 File Date: 12/20/12
 Effective Date: 3/20/13

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205

Agency/Board/Commission:	Board of Nursing
Division:	
Contact Person:	Mark S. Waters, Deputy General Counsel
Address:	220 Athens Way, Suite 210, Nashville, Tennessee
Zip:	37243
Phone:	(615) 741-1611
Email:	Mark.S.Waters@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
1000-04	Advanced Practice Nurses and Certificates of Fitness to Prescribe
Rule Number	Rule Title
1000-04-.05	Repealed

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Rule 1000-04-.05 Repealed is amended by deleting the catchline in its entirety and substituting instead the following catchline, and is further amended by adding the following language as introductory language and new paragraphs (1) and (2).

1000-04-.05 Renewal of Certificate and Demonstration of Competency

1000-04-.05 Renewal of Certificate and Demonstration of Competency. All advanced practice nurses who hold a Tennessee registered nurse license must biennially renew their Tennessee registered nurse license pursuant to Rule 1000-01-.03 and must demonstrate competency as a registered nurse pursuant to Rule 1000-01-.14. Additionally, to demonstrate competency to hold and/or renew an Advanced Practice Nurse Certificate, an advanced practice nurse shall:

- (1) have initially obtained or maintained, during the most recent biennial renewal period, certification from a nationally recognized certification body appropriate to the nurse's specialty area; and
- (2) if in possession of a Certificate of Fitness pursuant to Rule 1000-04-.04, have successfully completed a minimum one (1) contact hour course designed specifically to address controlled substance prescribing practices and offered through a continuing education provider approved by any certifying board of an advanced practice nurse, as the term advanced practice nurse is defined in T.C.A. § 63-7-126(a).

Authority: T.C.A. §§ 63-7-114, 63-7-123, 63-7-126, and 63-7-207.

* 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)
Cheryl Stegbauer,	X				
Donald Bell	X				
Terri Bowman	X				
Marilyn Dubree	X				
Kathleen Harkey	X				
Debbie Holliday	X				
Marian Stewart	X				
Betty Thompson	X				
Arthur Thompson				X	
Vacant					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Nursing on 08/22/2012, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 07/03/12

Rulemaking Hearing(s) Conducted on: (add more dates). 08/22/12

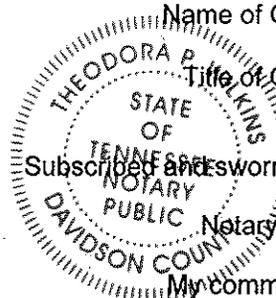
Date: 11-19-12

Signature: Mark S. Waters by ADA w/ permission

Name of Officer: Mark S. Waters

Deputy General Counsel

Title of Officer: Department of Health



Subscribed and sworn to before me on: 11/19/12

Notary Public Signature: Theodora P. Wilkins

My commission expires on: 11/3/15

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
12-13-12

Date

Department of State Use Only

Filed with the Department of State on: 12/20/12

Effective on: 3/20/13



Tre Hargett
Secretary of State

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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 Nursing Rulemaking

August 22, 2012

Leslie Higgins from Belmont University spoke in support of the rule. She questioned how the process for board approval of courses would be carried out and whether the course must be a different course every two years.

Sharon Adkins representing from the Tennessee Nurses Association spoke in support of the rule and believes registered nurses and advance practice nurses should be "up to speed" in prescribing practices and must be knowledgeable about their rules and regulations.

Clare Smith of Vanderbilt University spoke in support of the rule and further requested that the Board establish a mandatory standard content by rule for continuing education.

Elizabeth Lund, Board of Nursing Executive Director commented in reference to Ms. Higgins' question that there is a continuing competency attestation on the renewal forms which are randomly audited for compliance. She stated it would be difficult for board staff to monitor specific courses. The attestation is an "honor system" as there are over 5000 renewals each month and there is no way courses could be checked if submitted for review/approval. Ms. Lund further commented there could be a problem if the Board has to approve every course and suggested amending the rule language to be similar to the Medical Board rule whereby courses accepted by certain clinical organizations be acceptable and that this might address Ms. Smith's comment regarding a standard content for continuing education.

The Board commented there are common state level courses on prescriptive practice which address this requirement. After discussion among Board members regarding which courses would satisfy the continuing education requirement and how the verification would be accomplished without over burdening the board office, it was decided to change the draft language of 1000-04-.05(2) to delete the the words "board approved" and add "and offered through a continuing education provider approved by any certifying board of an advanced practice nurse, as defined in T.C.A. § 63-7-126(a)."

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)

REGULATORY FLEXIBILITY ANALYSIS

Tennessee Board of Nursing; Rule No. 1000-04

Pursuant to the Regulatory Flexibility Act of 2007, T.C.A. §§ 4-5-401, *et seq.*, the Department of Health submits the following regulatory flexibility analysis:

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

The proposed rules do not overlap, duplicate, or conflict with other federal, state, or local government rules.

(2) Clarity, conciseness, and lack of ambiguity in the rule or rules.

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

(3) The establishment of flexible compliance and/or reporting requirements for small businesses.

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

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

The compliance requirements throughout the proposed rules are as "user-friendly" as possible while still allowing the Division to achieve its mandated mission in licensing nurses.

(5) The consolidation or simplification of compliance or reporting requirements for small businesses.

Compliance requirements are not consolidated or simplified for small businesses in the proposed rules for the protection of the health, safety and welfare of Tennesseans.

(6) The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule.

When the health-related licensing boards' rules contain standards, there are always statements included which specify what constitutes compliance with such standards.

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

There are no unnecessary entry barriers or other effects in the proposed rules that would stifle entrepreneurial activity or curb innovation.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

1. **Name of Board, Committee or Council:** Board of Nursing
2. **Rulemaking hearing date:** August 22, 2012
3. **Types of small businesses that will be directly affected by the proposed rules:**
 - (a) Advanced practice nurses who practice as sole proprietors, or as members of a partnership or limited liability company, or as members of a professional corporation; and
 - (b) Medical practices that employ advanced practice nurses or who hire advanced practice nurses as independent contractors; and
 - (c) Continuing education course providers; and
 - (d) Independently owned pharmacies.
4. **Types of small businesses that will bear the cost of the proposed rules:**
 - (a) Short term
 - I. Advanced practice nurses who practice as sole proprietors, or as members of a partnership or limited liability company, or as members of a professional corporation; and
 - II. Medical practices that pay for the continuing education of the advanced practice nurses whom they employ; and
 - III. Independently owned pharmacies.
 - (b) Long term

The Board anticipates the proposed rule amendment will reduce, rather than increase, small business expenses for:

 - I. Advanced practice nurses who practice as sole proprietors, or as members of a partnership or limited liability company, or as members of a professional corporation; and
 - II. Medical practices that employ advanced practice nurses.
 - (c) Continuing education course providers will have routine course development and presentations costs but will also have routine revenue coming from course registration fees.
5. **Types of small businesses that will directly benefit from the proposed rules:**
 - (a) Short term

Continuing education course providers whose course registration revenues exceed their course development and presentation expenses.
 - (b) Long term
 - I. Advanced practice nurses and medical practices that employ advanced practice nurses will realize the benefits of improved patient care as a result of having obtained knowledge of current prescribing practices, including possible efficiency improvements, reduced insurance costs, a lower probability of licensure or peer review discipline and a reduction in malpractice awards, judgments and settlements; and

- II. Continuing education course providers whose course registration revenues exceed their course development and presentation expenses.

6. Description of how small business will be adversely impacted by the proposed rules:

Amendments regarding advanced practice nurse demonstrations of competence:

- (a) Advanced practice nurses and medical practices that pay for the continuing education of the advanced practice nurses whom they employ may have to pay higher registration fees to find a course that will meet the proposed rule's requirements.
- (b) Continuing education course providers whose course registration revenues are less than their course development and presentation expenses will realize a loss from the course.
- (c) Independently owned pharmacies may see a reduction in business if fewer prescriptions are filled as a result of improved prescribing practices.

7. Alternatives to the proposed rule that will accomplish the same objectives but are less burdensome, and why they are not being proposed:

It would be less burdensome to not promulgate these amendments, but the Board is concerned with Tennessee's history of excessive drug prescribing and drug consumption, and therefore does not believe there are less burdensome alternatives. Continuing education will not guarantee that a licensee learns or retains knowledge but the Board is not aware of any less burdensome alternative that holds similar promise and potential.

8. Comparison of the proposed rule with federal or state counterparts:

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

State: In general, the proposed rule amendment is similar to various continuing education category requirements for fifteen (15) of the health-related licensing boards, committees, and councils. More specifically, all of the other health-related licensing boards which regulate prescribing professions have adopted similar rule amendments.

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 amendment is not expected to have an 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 T.C.A. § 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;

The rule requires advanced practice nurses with a certificate of fitness to prescribe to obtain and maintain national certification appropriate to the nurse's specialty area and to biannually take one continuing education hour in the area of controlled substance prescribing.

- (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;

There is no known federal or state law or regulation mandating promulgation of the rule.

- (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;

The Tennessee Nursing Association's members who are Advanced practice nurses with certificates of fitness to prescribe are directly affected, and the organization commented in favor of the rule.

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

None known.

- (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;

This rule is expected to have minimal impact on state and local government.

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

Mark S. Waters, Deputy General Counsel, Tennessee Department of Health and Elizabeth Lund, Executive Director, Board of Nursing possess substantial knowledge and understanding of the rule.

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

Mark S. Waters, Deputy General Counsel, Tennessee Department of Health and Elizabeth Lund, Executive Director, Board of Nursing will explain the rule at a scheduled meeting 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

Mark S. Waters, Deputy General Counsel, Tennessee Department of Health, 220 Athens Way, Suite 210, Nashville, TN, (615) 741-1611, Mark.S.Waters@tn.gov; Elizabeth Lund, Executive Director, Board of Nursing, 227 French Landing Dr., Suite 300, Nashville, TN 37243, (615) 522-9839; Elizabeth.Lund@tn.gov

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

(Rule 1000-04-.04, continued)

- (a) A current, unencumbered license as a registered nurse under T.C.A. Title 63, Chapter 7;
 - (b) Preparation in specialized practitioner skills at the master's, post-master's, doctoral, or post-doctoral level, including, but not limited to, at least three (3) quarter hours of pharmacology instruction or its equivalent;
 - (c) A current national certification in the appropriate nursing specialty area; and
 - (d) Graduation from a program conferring a master's or doctoral degree in nursing.
- (3) Those applicants intending to prescribe, issue or administer controlled substances pursuant to T.C.A. § 63-7-123(b)(2) shall maintain their Drug Enforcement Administration Certificate to Prescribe Controlled Substances at their practice location to be inspected by the Board or its authorized representative.
- (4) A nurse who has been issued a certificate of fitness shall file a notice with the Board of Nursing containing:
- (a) The nurse's full name;
 - (b) a copy of the formulary describing the categories of legend drugs to be prescribed and/or issued by the nurse; and
 - (c) the name of the licensed physician having supervision, control and responsibility for prescriptive services rendered by the nurse.
- (5) Every nurse who has been issued a certificate of fitness shall be responsible for updating the information submitted pursuant to paragraph (4) within thirty (30) days of the change.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-7-123, and 63-7-207. **Administrative History:** Original rule filed March 11, 1993; effective April 25, 1993. Amendment filed February 21, 1996; effective May 6, 1996. Repeal and new rule filed May 28, 2004; effective August 11, 2004.

~~1000-04-.05 REPEALED.~~

1000-04-.05 Renewal of Certificate and Demonstration of Competency

1000-04-.05 Renewal of Certificate and Demonstration of Competency. All advanced practice nurses who hold a Tennessee registered nurse license must biennially renew their Tennessee registered nurse license pursuant to Rule 1000-01-.03 and must demonstrate competency as a registered nurse pursuant to Rule 1000-01-.14. Additionally, to demonstrate competency to hold and/or renew an Advanced Practice Nurse Certificate, an advanced practice nurse shall:

- (1) have initially obtained or maintained, during the most recent biennial renewal period, certification from a nationally recognized certification body appropriate to the nurse's specialty area; and
- (2) if in possession of a Certificate of Fitness pursuant to Rule 1000-04-.04, have successfully completed a minimum one (1) contact hour course designed specifically to address controlled substance prescribing practices and offered through a continuing education provider approved by any certifying board of an advanced practice nurse, as the term advanced practice nurse is defined in T.C.A. § 63-7-126(a).

(Rule 1000-04-.04, continued)

Authority: T.C.A. §§4-5-202, 4-5-204, 63-7-114, 63-7-123, 63-7-126, and 63-7-207. **Administrative History:** Original rule filed October 26, 1999; effective January 9, 2000. Repeal filed March 9, 2001; effective May 23, 2001. New rule filed May 28, 2004; effective August 11, 2004. Repeal filed December 16, 2005; effective March 1, 2006.

1000-04-.06 FEES.

- | (1) Type | Amount |
|--|----------|
| (a) Application for Advanced Practice Nurse Certificate (includes fee for Certificate of Fitness to Prescribe as provided in rule 1000-01-.12 [1] [i], if applicable). If a Certificate of Fitness to Prescribe has previously been obtained by the applicant (including payment of the applicable fee), this application fee shall be waived. | \$200.00 |
| (b) Advanced Practice Nurse Certificate Renewal (biennial) [requires current national specialty certification] | \$100.00 |
| (c) Advanced Practice Nurse Certificate Reinstatement | \$100.00 |
| (d) State Regulatory Fee (biennial) | \$ 10.00 |
- (2) Fees may be paid in the following manner:
- (a) All fees paid by money order, certified, personal, or corporate check must be submitted to the Board's Administrative Office and made payable to the Tennessee Board of Nursing.
 - (b) Fees may be paid by credit cards approved by the Division of Health Related Boards or other Division-approved electronic methods.

Authority: T.C.A. §§4-3-1011, 4-5-202, 4-5-204, 63-7-114, 63-7-123, 63-7-126, and 63-7-207. **Administrative History:** Original rule filed May 28, 2004; effective August 11, 2004. Amendment filed November 4, 2006; effective January 18, 2006. Amendment filed December 16, 2005; effective March 1, 2006.

1000-04-.07 PROCESSING OF APPLICATIONS. A nurse seeking to practice, pursuant to T.C.A. § 63-7-126 and this Chapter, as an advanced practice nurse with or without privileges to write and sign prescriptions and/or issue legend drugs, shall request an application from the Tennessee Board of Nursing or shall download an application from the Internet, and subsequently submit the application to the Board along with the documentation required by Rule .03 and the applicable fee(s) as required by Rule .06. After review, the Board shall notify the applicant, in writing, sent to the address furnished in the application, the following information, as applicable:

- (1) That the application is incomplete or more information is required.
- (2) That the application is denied (including the reasons for denial).
- (3) That the application is approved and a certificate of fitness with an identifying number has been forwarded to the Director of the Division of Health Related Boards to be filed and recorded.