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Rule ID(s): 4584
File Date: 12/23/2009
Effective Date: 03/23/2010

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:	
Contact Person:	Sara Whitehead Assistant General Counsel
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Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
0880-11	General Rules and Regulations Governing the Practice of Clinical Perfusionists
Rule Number	Rule Title
0880-11-.03	Use of Titles
0880-11-.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>)

Amendments

Chapter 0880-11

General Rules and Regulations Governing the Practice of Clinical Perfusionists

Rule 0880-11-.03 Use of Titles, is amended by deleting the language of the rule in its entirety and substituting instead the following language, so that as amended, the new language of the rule shall read:

0880-11-.03 Use of Titles. Any person who possesses a valid, current and active license issued by the Committee that has not been suspended or revoked has the right to use the title "Licensed Clinical Perfusionist" or "L.C.P." and to practice perfusion, as defined in T.C.A. § 63-28-102. 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 0880-11-.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 clinical perfusionist to disciplinary action pursuant to T.C.A. § 63-28-117 (3) (c).

Authority: T.C.A. §§ 63-1-145, 63-1-146, 63-6-101, 63-28-102, 63-28-110, 63-28-114, and 63-28-117.

Rule 0880-11-.15 Disciplinary Grounds, Actions, and Civil Penalties, is amended by deleting subparagraph (1)(a) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (1)(a) shall read:

- (a) Violation of any provision of T.C.A. § 63-28-117;

Authority T.C.A. §§ 63-6-101, 63-28-114, 63-28-117, and 63-28-118.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

The roll call vote by the Board of Medical Examiners' Committee for Clinical Perfusionists on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Gary Beckman	X				
William V. Young	X				
Phillip P. Brown, M.D.	X				
Gwen Bonner				X	
Paul Robinson				X	
Howard Briscoe	X				
Patricia M. Smith				X	

The roll call vote by the Board of Medical Examiners on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Subhi D. Ali, M.D.	X				
Neal S. Beckford, M.D.	X				
Barrett F. Rosen, M.D.	X				
George L. Eckles, Jr., M.D.	X				
Dennis A. Higdon, M.D.	X				
Gary Keith Lovelady, M.D.	X				
Mitchell L. Mutter, M.D.				X	
Charles W. White, Sr., M.D.	X				
Michael D. Zanolli, M.D.	X				
Mark A. Brown	X				
Irene E. Wells	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' Committee for Clinical Perfusionists on 02/05/08, and by the Board of Medical Examiners on 03/18/08., 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: 10/26/07

Rulemaking Hearing(s) Conducted on: (add more dates). 01/04/08

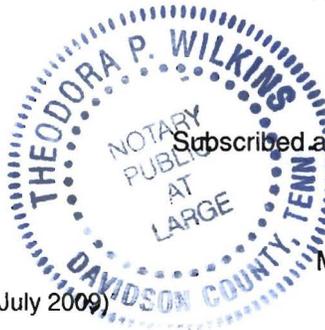
Date: 11/12/09

Signature: *Sara Whitehead*

Name of Officer: Sara Whitehead

Assistant General Counsel

Title of Officer: Department of Health



Subscribed and sworn to before me on: 11/12/09

Notary Public Signature: *Theodora P. Wilkins*

My commission expires on: 11/7/2011

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

RE Cooper, Jr.

Robert E. Cooper, Jr.
Attorney General and Reporter

12-21-09

Date

Department of State Use Only

Filed with the Department of State on: 12/23/09

Effective on: 3/23/10

Tre Hargett

Tre Hargett
Secretary of State

RECEIVED
2009 DEC 23 PM 3: 57
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.

(See attached)

PUBLIC HEARING COMMENTS
RULEMAKING HEARING
COMMITTEE FOR CLINICAL PERFUSIONISTS
BOARD OF MEDICAL EXAMINERS

NOVEMBER 13, 2009

The rulemaking hearing for the Committee for Clinical Perfusionists of the Tennessee Board of Medical Examiners was called to order at 2:30 p.m., central time on January 4, 2008 in the Department of Health Conference Center's Poplar Room on the first floor of the Heritage Place Building in MetroCenter, Nashville, Tennessee.

No members of the public attended the rulemaking hearing. No written or oral comments were received at the rulemaking hearing.

The hearing concluded at 2:50 p.m., central time.



Sara Whitehead, Esq.
Assistant General Counsel
Department of Health

11-12-09

Date

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)

Economic Impact Statement

The amendment to Rule 0880-11-.15 has no economic impact to small businesses.

(1) Type or types of small business subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rule:

- (a) Clinical perfusionists that advertise; and
- (b) Employers of clinical perfusionists that advertise the services of clinical perfusionists.

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

As of December 31, 2006, Tennessee had one hundred and nineteen (119) licensed clinical perfusionists who were eligible for licensure renewal.

(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. No new professional skills are required.

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

Clinical perfusionists and the employers of clinical perfusionists that advertise may have to revise advertisements which have been previously developed and/or currently running. Consumers will benefit from the increased "truth in advertising."

(5) Description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent, such alternative means might be less burdensome to small business:

The Committee does not believe there are less burdensome alternatives because the intent of T.C.A. §§ 63-1-145 and 63-1-146 (Public Chapter 467 of the Public Acts of 2005) requires the promulgation of this rule.

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

Federal The Committee is not aware of any federal counterparts. Clinical perfusionists are not licensed by the federal government.

State The proposed rule amendment regarding use of titles will be promulgated at all of the health related licensing boards, committees, and councils.

(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 Committee's licensees.

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;

0880-11-.03 Use of Titles—The current rule sets forth permissible titles as “Licensed Clinical Perfusionist” or L.C.P., but also limits the violation of the provision to unprofessional conduct. The new rule additionally requires one (1) of these titles to be used in every advertisement. The failure to publish a title in every advertisement constitutes an omission of material fact and subjects one to additional disciplinary action, beyond that of unprofessional conduct.

0880-11-.15 Disciplinary Grounds, Actions, and Civil Penalties—The current rule cites “Unprofessional conduct as set forth in T.C.A. § 63-28-117” as one (1) of the grounds and authority for disciplinary actions. The new rule revises this to read: “Violation of any provision of T.C.A. § 63-28-117,” expanding the grounds for discipline beyond unprofessional conduct.

- (B)** A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Authority for these amendments comes from state statutes regarding clinical perfusionists, T.C.A. §§ 63-28-101, et seq.

- (C)** Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Individuals most directly affected by these rules are any licensees who are facing disciplinary action and any licensees who advertise.

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

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

- (E)** An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

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

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

Rosemarie Otto, Executive Director, Board of Medical Examiners and Sara Whitehead, Assistant General Counsel, Tennessee Department of Health, 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;

Rosemarie Otto, Executive Director, Board of Medical Examiners and Sara Whitehead, Assistant General Counsel, Tennessee Department of Health, will explain the rule at a scheduled meeting of the committees.

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

Rosemarie Otto, Executive Director, Board of Medical Examiners, Suite 300, 227 French Landing Dr., Nashville, Tennessee 37243, 615-741-4540 and Sara Whitehead, Assistant General Counsel, Tennessee Department of Health, 220 Athens Way, Suite 210, Nashville, Tennessee 37243, 615-741-1611

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

None

~~**0880-11-.03 USE OF TITLES.** Any person who possesses a valid, unsuspended and unrevoked license issued by the Committee has the right to use the title "Licensed Clinical Perfusionist" or "L.C.P." and to practice perfusion, as defined in T.C.A. § 63-28-102. Violation of this rule or T.C.A. § 63-28-110 regarding use of titles shall constitute unprofessional conduct and subject the licensee to disciplinary action.~~

0880-11-.03 Use of Titles. Any person who possesses a valid, current and active license issued by the Committee that has not been suspended or revoked has the right to use the title "Licensed Clinical Perfusionist" or "L.C.P." and to practice perfusion, as defined in T.C.A. § 63-28-102. 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 0880-11-.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 clinical perfusionist to disciplinary action pursuant to T.C.A. § 6328-117 (3) (c).

Authority: T.C.A. §§ 63-1-145, 63-1-146, 63-6-101, 63-28-102, 63-28-110, 63-28-114, and 63-28-117.

T.C.A. §§ 4-5-202, 4-5-204, 63-1-146, 63-6-101, 63-28-102, 63-28-110, 63-28-114, and 63-28-117. Administrative History: Original rule filed March 16, 2007; effective May 30, 2007.

0880-11-.04 RESERVED.

0880-11-.05 LICENSURE PROCESS. To become licensed as a clinical perfusionist in Tennessee a person must comply with the following procedures and requirements:

- (1) Grandfathering - Any person who is currently actively practicing perfusion is eligible to receive a license as a clinical perfusionist upon compliance with all subparagraphs contained in paragraph (2) except subparagraphs (d) and (i), and upon further showing satisfactory proof of the existence, on January 1, 2000, of all of the following requirements:
 - (a) Four (4) years experience within the immediately preceding six (6) years (between January 1, 1994 and January 1, 2000) operating cardiopulmonary bypass systems during cardiac surgical cases in a licensed health care facility.
 - (b) That the experience obtained in that four (4) year period was obtained while the person's primary function in that health care facility was operation of the cardiopulmonary systems.
 - (c) Satisfactory proof of the requirements of subparagraphs (a) and (b) shall include:
 1. written job description(s) from employing facilities that cover the entire four (4) year period; and
 2. letters from each of the following officials at the licensed health care facilities at which the applicant was employed during the entire four (4) year period attesting to the fact that all requirements of subparagraphs (a) and (b) have been met:
 - (i) a cardiac surgeon(s)
 - (ii) the applicant's immediate supervisor(s)
 - (iii) the chief of medical staff
 - (d) All documents required to satisfy the requirements of subparagraphs (a), (b) and (c) must be submitted directly from the employing facility or signatory to the Committee's administrative office.
- (2) Licensure by examination - An applicant for licensure by examination shall do the following:

(Rule 0880-11-.14, continued)

- (1) A provisional license may be issued to an applicant who has applied for but has yet to take the licensure examination upon compliance with all provisions of rule 0880-11-.05 (2) except subparagraph (j), and submission of proof of having applied to take the examination.
- (2) Provisional licenses are valid for a period of one (1) year from the date of issuance but may be renewed in accordance with rule 0880-11-.09 upon receipt of a renewal form signed by both the applicant and the supervising clinical perfusionist.
- (3) A provisional license becomes invalid and must be surrendered upon either of the following:
 - (a) The one (1) year licensure period has expired and the licensee fails to renew or fails to obtain the supervising clinical perfusionists' signature on the renewal form; or
 - (b) The licensee fails any portion of the licensure examination.
- (4) Supervision of provisional licensees is governed by rule 0880-11-.10.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-6-101, 63-28-108, 63-28-114, 63-28-117, and 63-28-118.
Administrative History: Original rule filed April 26, 2002; effective July 10, 2002. Amendment filed April 5, 2006; effective June 19, 2006.

0880-11-.15 DISCIPLINARY GROUNDS, ACTIONS, AND CIVIL PENALTIES.

- (1) Grounds and Authority For Disciplinary Actions - The Committee and Board shall have the power to deny, limit, restrict or condition an application for a license to any applicant who applies for the same. The Committee and Board shall have the authority to suspend or revoke, place on probation, reprimand or otherwise discipline any person holding a license to practice as a clinical perfusionist. The grounds upon which the Committee and Board shall exercise such powers include, but are not limited to, the following:
 - ~~(a) Unprofessional conduct as set forth in T.C.A. § 63-28-117;~~
 - (a) Violation of any provision of T.C.A. § 63-28-117;
 - (b) 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 clinical perfusionist;
 - (c) The advertising of a clinical perfusionist's 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 condition;
 - (d) 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;
 - (e) Giving or receiving, or aiding or abetting the giving or receiving of rebates, either directly or indirectly, for referrals of business or patients;
 - (f) Engaging in the practice of clinical perfusion when mentally or physically unable to safely do so;
 - (g) Violation of the continuing education provisions of Rule 0880-11-.12;
 - (h) Violation of the scope of practice statute T.C.A. § 63-28-102;

(Rule 0880-11-.15, continued)

- (i) Disciplinary action against a person licensed, certified, registered, or permitted to practice as a clinical perfusionist 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.
- (2) Upon a finding by the Committee and Board that a licensee has violated any provision of the T.C.A. §§ 63-28-101, et seq., or the rules promulgated pursuant thereto, the Committee and Board may take any of the following actions separately or in any combination which is deemed appropriate to the offense;
 - (a) Warning Letter - 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) 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 clinical perfusionist on close scrutiny for a fixed period of time. This action may be combined with conditions that must be met before probation will be lifted and/or which restrict the individual's activities during the probationary period.
 - (d) License Suspension - This is a formal disciplinary action that suspends the right to practice for a fixed period of time. It contemplates the re-entry into practice under the license previously issued.
 - (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 and/or Board, in their discretion, may allow reinstatement of a revoked license upon conditions and after a period of time which they deem appropriate. No petition for reinstatement and no new application for licensure from a person whose license was revoked for cause shall be considered prior to the expiration of at least six (6) months from the effective date of the revocation order.
 - (f) Conditions - Any action deemed appropriate by the Committee and/or Board 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.
 - (g) Civil penalty - A monetary disciplinary action assessed by the Committee and Board pursuant to the paragraph (6) of this rule.
- (3) 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 (4) 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.
- (4) 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.

(Rule 0880-11-.15, continued)

- (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
 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.

(Rule 0880-11-.15, continued)

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 for Clinical Perfusionists

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

- (5) 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

(Rule 0880-11-.15, continued)

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
 - (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.

(Rule 0880-11-.15, continued)

- 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 for Clinical Perfusionists

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

(6) Civil Penalties

(Rule 0880-11-.15, continued)

- (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. § 631-134.
- (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 Clinical Perfusionists Licensure 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 clinical perfusionist without a permit, license, certificate, or other authorization from the Committee is one of the violations of the Clinical Perfusionists 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 Clinical Perfusionists Licensure 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 Clinical Perfusionists Licensure 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:

(Rule 0880-11-.15, continued)

- (i) Whether the amount imposed will be a substantial economic deterrent to the violator;
 - (ii) The circumstances leading to the violation;
 - (iii) The severity of the violation and the risk of harm to the public;
 - (iv) The economic benefits gained by the violator as a result of non-compliance; and
 - (v) The interest of the public.
4. All proceedings for the assessment of civil penalties shall be governed by the contested case provisions of Title 4, Chapter 5, T.C.A.

Authority: T.C.A. §§ 63-6-101, 63-28-114, 63-28-117, and 63-28-118 T.C.A. §§ 4-5-202, 4-5-204, 4-5-217, 4-5-223, 63-1-122, 63-1-134, 63-6-101, 63-6-214, 63-28-114, 63-28-117, and 63-28-118. **Administrative History:** Original rule filed April 26, 2002; effective July 10, 2002. Amendment filed September 24, 2004; effective December 8, 2004.

0880-11-.16 REPLACEMENT LICENSE. A license holder whose “artistically designed” license has been lost or destroyed may be issued a replacement document upon receipt of a written request in the Administrative Office. Such request shall be accompanied by an affidavit (signed and notarized) stating the facts concerning the loss or destruction of the original document and the fee required pursuant to Rule 088011-.06.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-106, 63-6-101, 63-28-114, and 63-28-118. **Administrative History:** Original rule filed April 26, 2002; effective July 10, 2002.

0880-11-.17 CHANGE OF NAME AND/OR ADDRESS.

- (1) Change of Name - Any licensee shall notify the Committee in writing within 30 days of a name change and will provide both the old and new names. A name change notification must also include a copy of the official document involved and reference the individual’s profession, committee/board, social security, and license number.
- (2) Change of Address - Each person holding a license who has had a change of address shall file in writing with the Administrative Office his/her current address providing both the old and new addresses. Such requests must be received in the 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, 4-5-204, 63-1-108, 63-6-101, 63-28-114, and 63-28-118. **Administrative History:** Original rule filed April 26, 2002; effective July 10, 2002.

0880-11-.18 COMPLAINTS AND INVESTIGATIONS.

- (1) The Committee finds that the Division’s Complaint and Investigations procedures fully comply with the requirements of T.C.A. §§ 63-28-115 and 116 and adopts those procedures as its own. Copies of those procedures may be obtained by a written request addressed to the Administrative Office.
- (2) The only circumstance in which the Committee would consider employing private investigators would be if a conflict of interest existed between the person being investigated and the Division’s investigative staff, and then only if all other resources of that nature within state government were