

**RULES
OF
BOARD OF MEDICAL EXAMINERS
COMMITTEE FOR CLINICAL PERFUSIONISTS**

**CHAPTER 0880-11
GENERAL RULES AND REGULATIONS GOVERNING
THE PRACTICE OF CLINICAL PERFUSIONISTS**

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0880-11-.01 DEFINITIONS. As used in these rules, the following terms and acronyms shall have the following meanings ascribed to them:

- (1) ABCP - American Board of Cardiovascular Perfusion or its successor organization.
- (2) ACPE - Accreditation Committee for Perfusion Education or its successor organization.
- (3) Administrative Office - The office of the administrator assigned to the Board and Committee located at 227 French Landing, Suite 300, Heritage Place, MetroCenter, Nashville, TN 37243.
- (4) AmSECT - American Society of Extra-Corporeal Technology.
- (5) Board - Tennessee Board of Medical Examiners.
- (6) C.A.H.E.A. - The Committee on Allied Health Education and Accreditation of the American Medical Association or its successor accrediting agency.
- (7) Committee - The Committee for Clinical Perfusionists.
- (8) Division - The Division of Health Related Boards, Tennessee Department of Health, from which the Committee receives administrative support.

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

0880-11-.02 SCOPE OF PRACTICE. The scope of practice of all clinical perfusionists is governed by T.C.A. § 63-28-102 (6).

Authority: T.C.A. §§4-5-202, 4-5-204, 63-6-101, 63-28-102, and 63-28-118. **Administrative History:** Original rule filed April 26, 2002; effective July 10, 2002.

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. §§ 4-5-202, 4-5-204, 63-1-145, 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. Amendment filed December 23, 2009; effective March 23, 2010.

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:
 - (a) Obtain an application packet.
 - (b) Respond truthfully and completely to every question or request for information contained in the application form and submit it, along with all documentation and fees

(Rule 0880-11-.05, continued)

required by the form and rules, to the Administrative Office. It is the intent of this rule that activities necessary to accomplish the filing of the required documentation be completed prior to filing an application and that all documentation be filed simultaneously.

- (c) Submit a clear, recognizable, recently taken bust photograph which shows the full head, face forward from at least the top of the shoulder up.
- (d) Request that a graduate transcript from a perfusion education program, the educational standards of which have been established by the ACPE and approved by CAHEA or its successor, be submitted directly from the educational institution to the Administrative Office. The transcript must show that the program has been successfully completed and carry the official seal of the institution.
- (e) Submit evidence of good moral character. Such evidence shall be two (2) recent (within the preceding 12 months) original letters from medical professionals, attesting to the applicant's personal character and professional ethics on the signator's letterhead.
- (f) Disclose the circumstances surrounding any of the following:
 - 1. Conviction of any criminal law violation of any country, state or municipality, except minor traffic violations.
 - 2. The denial of professional licensure/certification application by any other state or the discipline of licensure/certification in any state.
 - 3. Loss or restriction of professional licensure/certification.
 - 4. Any civil suit judgment or civil suit settlement in which the applicant was a party defendant including, without limitation, actions involving malpractice, breach of contract, antitrust activity or any other civil action remedy recognized under the country's or state's statutory common or case law.
 - 5. Failure of any professional licensure or certification examination.
- (g) Cause to be submitted to the Committee's administrative office directly from the vendor identified in the Committee's licensure application materials, the result of a criminal background check.
- (h) Cause to be submitted the equivalent of a Tennessee Certificate of Endorsement (verification of licensure/certification) from each licensing board of each state or country in which the applicant holds or has ever held a license/certificate to practice any profession that indicates the applicant holds or held an active license/certificate and whether it is in good standing presently or was at the time it became inactive. It is the applicant's responsibility to request this information be sent directly from each such licensing board to the Administrative Office.
- (i) Submit the fees required in Rule 0880-11-.06.
- (j) Cause to be submitted, directly from the examining agency to the Administrative Office, documentation of successful completion of the examination for licensure as governed by Rule 0880-11-.08.

(Rule 0880-11-.05, continued)

- (3) Licensure by Reciprocity. To become licensed in Tennessee as a clinical perfusionist based on licensure or certification in another state or certification from the ABCP, an applicant must
 - (a) Pursuant to licensure/certification in another state:
 1. Comply with all the requirements of paragraph (2) of this rule except subparagraphs (d) and (j); and
 2. Cause to be submitted the information necessary for the Committee to determine that the state of licensure/certification has licensure or certification requirements substantially equivalent to the requirements of the Tennessee "Clinical Perfusionist Licensure Act" (T.C.A. §§ 63-28-101, et seq.) and this chapter of rules; and
 3. Cause the certification issued pursuant to subparagraph (2) (h) to show that the licensure or certification in another state is current, active and is in good standing without any restriction or encumbrance.
 - (b) Pursuant to ABCP certification:
 1. Comply with all requirements of paragraph (2) of this rule except subparagraphs (d) and (j); and
 2. Have the ABCP submit directly to the Committee's administrative office satisfactory evidence of current ABCP certification as a certified clinical perfusionist.
- (4) Application review and licensure decisions shall be governed by Rule 0880-11-.07.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-101, 63-6-101, 63-28-103, 63-28-104, 63-28-105, 63-28-106, 63-28-109, 63-28-114, 63-28-117, 63-28-118, and 68-11-114. **Administrative History:** Original rule filed April 26, 2002; effective July 10, 2002. Amendment filed May 8, 2003; effective July 22, 2003. Amendment filed April 5, 2006; effective June 19, 2006.

0880-11-.06 FEES. All fees provided for in this rule are non-refundable.

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| (1) Initial licensure fee to be submitted at the time of application. | \$350.00 |
| (2) Biennial renewal fee to be submitted every two (2) years when licensure renewal is due. | \$350.00 |
| (3) Late renewal fee | \$100.00 |
| (4) Licensure reinstatement/restoration fee | \$ 50.00 |
| (5) Duplication of license fee | \$ 25.00 |
| (6) Biennial state regulatory fee to be submitted at the time of application | \$ 10.00 |
| (7) Fees may be paid in the following manner: | |

(Rule 0880-11-.06, continued)

- (a) All fees paid by money order, certified, personal, or corporate check must be submitted to the Committee's Administrative Office and made payable to the Committee for Clinical Perfusionists.
- (b) Fees may be paid by Division-approved credit cards or other Division-approved electronic methods.

Authority: T.C.A. §§4-3-1011, 4-5-202, 4-5-204, 63-1-107, 63-6-101, 63-28-107, 63-28-114, and 63-28-118. **Administrative History:** Original rule filed April 26, 2002; effective July 10, 2002. Amendment filed March 10, 2005; effective May 24, 2005.

0880-11-.07 APPLICATION REVIEW, APPROVAL, AND DENIAL.

- (1) Review of all applications to determine whether or not the application file is complete may be delegated to the Committee's administrator.
- (2) A temporary authorization to practice, as described in T.C.A. § 63-1-142 may be issued to an applicant pursuant to an initial determination made by a Committee and Board designee who have both 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.
- (3) If an application is incomplete when received by the Administrative Office, or the reviewing Committee and/or Board member or the Committee's/Board's designee determine additional information is required from an applicant before an initial determination can be made, the Board administrator shall notify the applicant of the information required. The applicant shall cause the requested information to be received in the Administrative Office on or before the sixtieth (60th) day after receipt of the notification.
 - (a) Such notifications shall be sent certified mail, return receipt requested, from the Administrative Office.
 - (b) If requested information is not timely received, the application file may be considered abandoned and may be closed by the administrator. If that occurs, the applicant shall be notified that the Committee and Board 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 and Board.
- (4) If a reviewing Committee and/or Board member or Committee and/or Board designee 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 their next appropriate meeting. If the Committee and Board ratify the initial denial, limitation, condition or restriction, the action shall become final and the following shall occur:

(Rule 0880-11-.07, continued)

- (a) A notification of the denial, limitation, condition or restriction shall be sent by the Administrative Office by certified mail, return receipt requested, that contains the specific reasons for denial, limitation, condition or restriction, 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 licensure denial, limitation, condition or restriction is based on subjective or discretionary criteria.
 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 Administrative Office within thirty (30) days of the receipt of the notice of denial, limitation, condition or restriction from the Committee and/or Board.
- (5) The initial determination procedures of this rule will not apply if the Committee reviews and makes a final determination on any application during its meetings.
- (6) If the Committee finds it has erred in the issuance of a license, it will give written notice by certified mail of its intent to revoke or cancel 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 or cancel the license, the applicant shall have the right to proceed according to paragraph (4) of this rule.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-6-101, 63-28-105, 63-28-114, and 63-28-118. **Administrative History:** Original rule filed April 26, 2002; effective July 10, 2002.

0880-11-.08 EXAMINATION.

- (1) Licensure Examinations - With the exception of applicants qualified pursuant to Rule 0880-11-.05 (1) and (3), all persons intending to apply for licensure must successfully complete the examination pursuant to this Rule as a prerequisite to licensure. Such examinations must be completed prior to application for licensure. Evidence of successful completion must be submitted by the examining agency directly to the Administrative Office as part of the application process contained in Rule 0880-11-.05.
- (2) Competency Examination
 - (a) The Committee adopts the ABCP examination and/or its successor examination as its licensure competency examination.
 - (b) The Committee adopts the ABCP's determination as to the passing score on its examination.

(Rule 0880-11-.08, continued)

- (c) Application for, proof of having successfully completed a perfusion education program, the educational standards of which have been established by the ACPE and approved by CAHEA or its successor, and fees necessary to take the ABCP examination must be sent to the ABCP and not the Committee.
- (3) Any applicant who does not successfully complete the competency examination on the second (2nd) attempt and every second (2nd) attempt thereafter must do the following prior to being authorized to take the examination again:
 - (a) Successfully complete a review course, as approved by the Committee; and
 - (b) Pay the examination fee required by the ABCP.
- (4) Education hours obtained as a result of compliance with subparagraph (3) (a) shall not be credited toward the continuing education hours required to be obtained in any renewal period pursuant to Rule 0880-11-.12 (1).

Authority: T.C.A. §§4-5-202, 4-5-204, 63-6-101, 63-28-105, 63-28-106, and 63-28-118. **Administrative History:** Original rule filed April 26, 2002; effective July 10, 2002.

0880-11-.09 LICENSURE RENEWAL. All licensed clinical perfusionists must renew their licenses to be able to legally continue in practice. License renewal is governed by the following:

- (1) 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" pursuant to rule 1200-10-01-.10.
- (2) Methods of Renewal - licensees may accomplish renewal by one of the following methods:
 - (a) Internet Renewals - Individuals may apply for renewal via the Internet. The application to renew can be accessed at:

www.state.tn.us/health/
 - (b) Paper Renewals - Licensees who have not renewed their authorization online via the Internet, will have a renewal application form mailed to them at the last address provided by them to the Committee. Failure to receive such notification does not relieve the individual of the responsibility of timely meeting all requirements for renewal. To be eligible for renewal a licensee must submit to the Division of Health Related Boards on or before the license's expiration date the following:
 - 1. A completed and signed renewal application form.
 - 2. The renewal and state regulatory fees as provided in Rule 0880-11-.06.
- (3) Any renewal application received after the expiration date but before the last day of the month following the expiration date must be accompanied by the Late Renewal Fee provided in Rule 0880-11-.06.
- (4) Any individual who fails to comply with the license renewal rules and/or notifications sent to them concerning failure to timely renew shall have their license processed pursuant to rule 1200-10-01-.10.
- (5) Renewal of an Expired License:

(Rule 0880-11-.09, continued)

- (a) Renewal of a license that has expired as a result of failure to timely renew in accordance with Rule 1200-10-01-.10 may be accomplished upon meeting the following conditions:
1. For persons whose licenses have expired for not more than two (2) years:
 - (i) Submission of a completed renewal application; and
 - (ii) Payment of late renewal fee; and
 - (iii) Submission of proof of having completed all required continuing education.
 2. Persons whose licenses have expired for two (2) years or more may not renew licensure but must apply for a new license pursuant to rule 0880-11-.05.
 3. For persons whose licenses have expired and who have moved to, been licensed in, and have practiced in another state for the (2) years immediately preceding application for licensure renewal:
 - (i) Submission of a completed renewal application; and
 - (ii) Payment of late renewal fee; and
 - (iii) Submission of proof that the licenses held in all other states are not subject to penalty or restriction; and
 - (iv) Submission of proof of having completed all required continuing education.
 4. If derogatory information or communication is received during the renewal process, if requested by the Committee and/or Board or their duly authorized representative(s), appear for an interview before the Committee and/or Board, a duly constituted panel of the Board, a Committee and/or Board member, a screening panel of the Board when the individual is under investigation or the Committee and/or Board Designee and/or be prepared to meet or accept other conditions or restrictions as the Board may deem necessary to protect the public.
- (6) Renewal issuance decisions pursuant to this rule may be made administratively, or upon review by the Committee and Board or their designees.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-107, 63-6-101, 63-28-107, and 63-28-118. **Administrative History:** Original rule filed April 26, 2002; effective July 10, 2002.

0880-11-.10 SUPERVISION. All persons practicing clinical perfusion pursuant to authorizations from the Committee and Board must be supervised according to the following:

- (1) Licensed Clinical Perfusionists - Must be performing services under the order and supervision of a physician licensed pursuant to either Chapter 6 or Chapter 9 of Title 63 of the Tennessee Code Annotated. Supervision may be provided through "perfusion protocols" as defined in T.C.A. § 63-28-102. Such protocols must be in writing, signed by the health care facility's authorized representative, and a physician, regularly updated, maintained at the health care facility, and produced upon request by the duly authorized agents of the Committee and/or Board.

(Rule 0880-11-.10, continued)

- (2) Provisional Licensees - Must be under the supervision of a licensed clinical perfusionist at all times during which they are performing perfusion. This supervision does not require the immediate physical presence of the supervising perfusionist but does require the following:
 - (a) Supervision may be provided through "perfusion protocols" as defined in T.C.A. § 63-28-102. Such protocols must be in writing, signed by the health care facility's authorized representative, a physician, and the supervising clinical perfusionist, regularly updated, maintained at the health care facility, and produced upon request by the duly authorized agents of the Committee and/or Board.
 - (b) Protocols shall be reviewed and updated biennially.
 - (c) The supervising perfusionist shall exercise close supervision and assume full control and responsibility for the services provided by the provisional licensee. That supervision, control and responsibility does not require the physical presence of the supervising perfusionist at all times where the services are being provided. However, it does require that the supervising perfusionist be capable of being physically present where the services are being provided within thirty (30) minutes.
 - (d) The supervising clinical perfusionist may not sign a provisional licensure renewal application request for a provisional licensee unless the provisional licensee has taken the certification examination identified in rule 0880-11-.08 at least once during the current provisional licensure period.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, 63-28-102, 63-28-108, and 63-28-118.
Administrative History: Original rule filed April 26, 2002; effective July 10, 2002.

0880-11-.11 RETIREMENT AND REACTIVATION OF LICENSE.

- (1) Licensees who wish to retain their licenses but not actively practice as a clinical perfusionist may avoid compliance with the licensure renewal process by obtaining, completing, and submitting, to the Administrative Office, an affidavit of retirement form along with any documentation required by the form.
- (2) Upon successful application for retirement of licensure with completion and receipt of all proper documentation to the Committee's and Board's satisfaction, the license shall be registered as retired. Any person who has a retired license may not practice as a clinical perfusionist in Tennessee.
- (3) Reactivation - Any licensee whose license has been retired may re-enter active practice by doing the following:
 - (a) Submit a written request for a Reactivation Application to the Administrative Office; and
 - (b) Complete and submit the Reactivation Application along with the licensure renewal fee as provided in Rule 0880-11-.06 to the Administrative Office. If reactivation was requested prior to the expiration of one (1) year from the date of retirement, the Committee may require payment of the licensure restoration fee and past due renewal fees as provided in Rule 0880-11-.06; and
 - (c) Submit any documentation which may be required by the form to the Administrative Office; and

(Rule 0880-11-.11, continued)

- (d) If requested, after review by the Committee and/or Board or a designated Committee and/or Board member, appear before either the Committee and/or Board, or a duly constituted panel of the Board, or another Committee or Board member, or the Committee and/or Board Designee for an interview regarding continued competence.
 - (e) In the event of licensure retirement or inactivity in excess of two (2) years or the receipt of derogatory information or communication during the reactivation process, the applicant should be prepared to meet or accept other conditions or restrictions as the Committee and/or Board may deem necessary to protect the public.
 - (f) If licensure retirement was in excess of five (5) years, the licensee may be required to successfully complete whatever educational and/or testing requirements the Committee and/or Board feels necessary to establish current levels of competency.
- (4) License reactivation applications shall be treated as licensure applications and review decisions shall be governed by Rule 0880-11-.07.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-111, 63-6-101, and 63-28-118. **Administrative History:** Original rule filed April 26, 2002; effective July 10, 2002.

0880-11-.12 CONTINUING EDUCATION. All persons licensed as a clinical perfusionist must comply with the following continuing education rules as a prerequisite to licensure renewal.

- (1) Continuing Education - Hours Required
 - (a) All licensed clinical perfusionists must complete fifteen (15) hours of continuing education in courses approved by the Committee and Board every calendar year (January 1-December 31).
 - (b) Three (3) hours of the fifteen (15) hour requirement must be ABCP Category I courses.
 - (c) Continuing education for new licensees - For new licensees, submitting proof of successful completion of all education and training requirements required for licensure in Tennessee, pursuant to Rule 0880-11-.05, shall be considered proof of sufficient preparatory education to constitute continuing education credit for the calendar year in which such education and training requirements were completed.
 - (d) The Committee and Board approve a course for only the number of hours contained in the course. The approved hours of any individual course will not be counted more than once in a calendar year toward the required hourly total regardless of the number of times the course is attended or completed by any individual.
 - (e) The Committee and/or Board may waive or otherwise modify the requirements of this rule in cases where there is retirement, or an illness, disability or other undue hardship that prevents a licensee from obtaining the requisite number of continuing education hours. Requests for waivers or modification must be sent in writing to the Administrative Office prior to the expiration of the renewal period in which the continuing education is due.
- (2) Continuing Education - Proof of Compliance
 - (a) The due date for completion of the required continuing education is December 31st of every calendar year.

(Rule 0880-11-.12, continued)

- (b) All clinical perfusionists must, on the license renewal form, enter a signature, electronic or otherwise, which indicates completion of the required continuing education hours and that such hours were obtained during the applicable calendar years.
 - (c) All clinical perfusionists must retain independent documentation of completion of all continuing education hours. This documentation must be retained for a period of four (4) years from the end of the renewal period in which the continuing education was acquired. This documentation must be produced for inspection and verification, if requested in writing by the Division during its verification process. Documentation verifying the licensed individual's completion of the continuing education program(s) may consist of any one or more of the following:
 - 1. Certificates from the continuing education program's sponsor, indicating the date, length in minutes awarded (continuing education units must be converted to clock hours), program title, licensed individual's name, license number and social security number; or
 - 2. An original letter on official stationery from the continuing education program's sponsor indicating date, length in minutes awarded (continuing education units must be converted to clock hours), program title, licensed individual's name, license number and social security number.
 - (d) If a person submits documentation for continuing education that is not clearly identifiable as appropriate continuing education, the Committee and/or Board will request a written description of the education and how it applies to the practice as a clinical perfusionist.
- (3) Acceptable continuing education - To be utilized for satisfaction of the continuing education requirements of this rule, the continuing education program must be approved in content, structure and format by either the ABCP, the AMA or the TMA or any other AMA recognized medical specialty certification organization. If the continuing education is not approved or sponsored by the ABCP, the content and structure must be as strict as the standards utilized by the ABCP in approving or sponsoring continuing education.
- (4) Violations
- (a) Any clinical perfusionist who falsely attests to completion of the required hours of continuing education may be subject to disciplinary action pursuant to Rule 0880-11-.15.
 - (b) Any clinical perfusionist who fails to obtain the required continuing education hours may be subject to disciplinary action pursuant to Rule 0880-11-.15 and may not be allowed to renew licensure.
 - (c) Education hours obtained as a result of compliance with the terms of Committee and/or Board Orders in any disciplinary action shall not be credited toward the continuing education hours required to be obtained in any calendar year.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, 63-28-107, 63-28-114, and 63-28-118.
Administrative History: Original rule filed April 26, 2002; effective July 10, 2002.

0880-11-.13 PROFESSIONAL ETHICS. All clinical perfusionists shall comply with the code of ethics adopted by the AmSECT except to the extent that they conflict with the laws of the state of Tennessee or the rules of the Committee and/or Board. If the AmSECT Code of Ethics conflicts with state law or rules,

(Rule 0880-11-.12, continued)

the state law or rules govern the matter. Violation of the Code of Ethics or state law or rules may subject a licensee to disciplinary action pursuant to Rule 0880-11-.15.

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

0880-11-.14 PROVISIONAL LICENSES.

- (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) 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;

(Rule 0880-11-.15, continued)

- (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;
 - (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

(Rule 0880-11-.15, continued)

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.
- (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

(Rule 0880-11-.15, continued)

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

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,

(Rule 0880-11-.15, continued)

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 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 0880-11-.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 1200-10-01-.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:

(Rule 0880-11-.15, continued)

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

(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.

(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.

(Rule 0880-11-.15, continued)

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 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. §§ 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. Amendment filed December 23, 2009; effective March 23, 2010.

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 0880-11-.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

(Rule 0880-11-.17, continued)

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 exhausted without effect. If that should ever occur, the process for employing a private investigator would be the competitive bid process used by the State of Tennessee in employing all outside vendors.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-6-101, 63-28-115, 63-28-116, and 63-28-118. **Administrative History:** Original rule filed April 26, 2002; effective July 10, 2002.

0880-11-19 COMMITTEE MEMBERS, OFFICERS, CONSULTANTS, RECORDS, DECLARATORY ORDERS, AND SCREENING PANELS.

- (1) The Committee shall annually elect from its members the following officers:
 - (a) Chair - who shall preside at all meetings of the Committee; and
 - (b) Vice Chair - who along with the Committee Administrator shall be responsible for correspondence from the Committee.
- (2) Records and Complaints
 - (a) Minutes of the Committee meetings and all records, documents, applications and correspondence will be maintained in the Administrative Office.
 - (b) All requests, applications, notices, other communications and correspondence shall be directed to the Administrative Office. Any requests or inquiries requiring a Committee decision or official Committee action except documents relating to disciplinary actions or hearing requests must be received fourteen (14) days prior to a scheduled meeting and will be retained in the Administrative Office and presented to the Committee at the Committee meeting. Such documents not timely received shall be set over to the next Committee meeting.

(Rule 0880-11-.19, continued)

- (c) All records of the Committee, except those made confidential by law, are open for inspection and examination, under the supervision of an employee of the Division at the Administrative Office during normal business hours.
 - (d) Copies of public records shall be provided to any person upon payment of a fee.
 - (e) All complaints should be directed to the Division's Investigations Section.
- (3) The Committee has the authority to select a Committee consultant who shall serve as a consultant to the Division and who is vested with the authority to do the following acts:
- (a) Review and make determinations on licensure, renewal and reactivation of licensure applications subject to the rules governing those respective applications and subject to the subsequent ratification by the Committee and Board.
 - (b) Decide whether and what type disciplinary actions should be instituted upon complaints received or investigations conducted by the Division.
 - (c) Decide whether and under what terms a complaint, case or disciplinary action might be settled. Any proposed settlement must be subsequently ratified by the Committee and Board.
 - (d) Undertake any other matter authorized by a majority vote of the Committee and/or Board.
- (4) The Committee authorizes the member who chaired the Committee for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-04-01-.18 regarding petitions for reconsiderations and stays in that case.
- (5) Requests for Verification of Licensure for Clinical Perfusionists desiring to practice in another state must be made in writing to the Administrative Office.
- (6) Declaratory Orders - The Committee adopts, as if fully set out herein, Rule 1200-10-01-.11, of the Division of Health Related Boards and as it may from time to time be amended, as its rule governing the declaratory order process. All declaratory order petitions involving statutes, rules or orders within the jurisdiction of the Committee shall be addressed by the Committee pursuant to that rule and not by the Division. Declaratory Order Petition forms can be obtained from the Committee's Administrative Office.
- (7) Screening Panels - The Committee adopts, as if fully set out herein, rule 1200-10-01-.13, of the Division of Health Related Boards and as it may from time to time be amended, as its rule governing the screening panel process.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-138, 63-6-101, 63-28-114, 63-28-117, and 63-28-118.
Administrative History: Original rule filed April 26, 2002; effective July 10, 2002. Amendment filed March 16, 2007; effective May 30, 2007.

0880-11-.20 ADVERTISING.

- (1) Policy Statement. The lack of sophistication on the part of many in the health care community concerning clinical perfusion, the importance of the interests affected by the choosing of clinical perfusionists and the foreseeable consequences of unrestricted advertising by clinical perfusionists which is recognized to pose special possibilities for deception, require that special care be taken by clinical perfusionists to avoid misleading the

(Rule 0880-11-.20, continued)

health care community. Clinical perfusionists must be mindful that the benefits of advertising depend upon its reliability and accuracy. Since advertising by clinical perfusionists is calculated and not spontaneous, reasonable regulation designed to foster compliance with appropriate standards serves the public interest without impeding the flow of useful, meaningful, and relevant information to the health care community.

(2) Definitions

- (a) Advertisement – Informational communication to the health care community in any manner designed to attract attention to the clinical perfusionists which are licensed to practice in Tennessee.
- (b) Licensee - Any entity holding a license as a clinical perfusionist in the State of Tennessee. Where applicable this shall include partnerships and/or corporations.
- (c) Material Fact - Any fact which a health care provider would need to know or rely upon in order to make an informed decision concerning the choice of clinical perfusionists to serve its particular needs.
- (d) Health Care Community – Shall mean hospitals, ambulatory surgical treatment centers, medical practices, individual physicians, and other health care providers with legal authority to utilize clinical perfusionists.

(3) Advertising Content. The following acts or omissions in the context of advertisement by any licensee shall constitute unprofessional conduct, and subject the licensee to disciplinary action pursuant to T.C.A. § 63-28-117(3).

- (a) Claims that the services performed, personnel employed, materials or office equipment used are professionally superior to that which is ordinarily performed, employed, or used, or that convey the message that one licensee is better than another when superiority of services, personnel, materials or equipment cannot be substantiated.
- (b) The misleading use of an unearned or non-health degree in any advertisement.
- (c) Promotion of professional services which the licensee knows or should know is beyond the licensee's ability to perform.
- (d) Techniques of communication which intimidate, exert undue pressure or undue influence over a prospective client.
- (e) Any appeals to an individual's anxiety in an excessive or unfair manner.
- (f) The use of any personal testimonial attesting to a quality of competency of a service or treatment offered by a licensee that is not reasonably verifiable.
- (g) Utilization of any statistical data or other information based on past performances for prediction of future services, which creates an unjustified expectation about results that the licensee can achieve.
- (h) The communication of personal identifiable facts, data, or information about a patient without first obtaining patient consent.
- (i) Any misrepresentation of a material fact.

(Rule 0880-11-.20, continued)

- (j) The knowing suppression, omission or concealment of any material fact or law without which the advertisement would be deceptive or misleading.
 - (k) Statements concerning the benefits or other attributes of medical procedures or products that involve significant risks without including:
 - 1. A realistic assessment of the safety and efficiency of those procedures or products; and
 - 2. The availability of alternatives; and
 - 3. Where necessary to avoid deception, descriptions or assessment of the benefits or other attributes of those alternatives.
 - (l) Any communication which creates an unjustified expectation concerning the potential results of any procedure.
 - (m) Failure to comply with the rules governing advertising records.
 - (n) Misrepresentation of a licensee's credentials, training, experience, or ability.
 - (o) Failure to include the corporation, partnership or individual licensee's name, address, and telephone number in any advertisement. Any corporation, partnership or association which advertises by use of a trade name or otherwise fails to list all clinical perfusion personnel practicing at a particular location shall:
 - 1. Upon request provide a list of all clinical perfusion personnel practicing at that location; and
 - 2. Maintain and conspicuously display at the licensee's office, a directory listing all clinical perfusion personnel practicing at that location.
 - (p) Failure to disclose the fact of giving compensation or anything of value to representatives of the press, radio, television or other communicative medium in anticipation of or in return for any advertisement (for example, newspaper article) unless the nature, format or medium of such advertisement make the fact of compensation apparent.
 - (q) After thirty (30) days of the licensee's departure, the use of the name of any clinical perfusion personnel formerly practicing at or associated with any advertised location or on office signs or buildings. This rule shall not apply in the case of a retired or deceased former associate who practiced in association with one or more of the present licensees if the status of the former associate is disclosed in any advertisement or sign.
 - (r) Stating or implying that a certain licensee provides all services when any such services are performed by another licensee.
- (4) Advertising Records and Responsibility
- (a) Each licensee who is a principal partner, or officer of a firm or entity identified in any advertisement, is jointly and severally responsible for the form and content of any advertisement. This provision shall also include any licensed professional employees acting as an agent of such firm or entity.

(Rule 0880-11-.20, continued)

- (b) Any and all advertisement are presumed to have been approved by the licensee named therein.
 - (c) A recording of every advertisement communicated by electronic media, and a copy of every advertisement communicated by print media, and a copy of any other form of advertisement shall be retained by the licensee for a period of two (2) years from the last date of broadcast or publication and be made available for review upon request by the Board or its designee.
 - (d) At the time any type of advertisement is placed, the licensee must possess and rely upon information which, when produced, would substantiate the truthfulness of any assertion, omission or representation of material fact set forth in the advertisement or public information.
- (5) Severability. It is hereby declared that the sections, clauses, sentences and parts of these rules are severable, are not matters of mutual essential inducement, and any of them shall be rescinded if these rules would otherwise be unconstitutional or ineffective. If any one or more sections, clauses, sentences or parts shall for any reason be questioned in court, and shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provision or provisions so held unconstitutional or invalid, and the in applicability or invalidity of any section, clause, sentence or part in any one or more instance shall not be taken to affect or prejudice in any way its applicability or validity in any other instance.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-6-101, 63-28-117, and 63-28-118. **Administrative History:** Original rule filed April 26, 2002; effective July 10, 2002. Amendment filed March 16, 2007; effective May 30, 2007.