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# Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

|                                 |  |
|---------------------------------|--|
| <b>Agency/Board/Commission:</b> | Board of Examiners in Psychology                 |
| <b>Division:</b>                |  |
| <b>Contact Person:</b>          | Jessica L. Turner, Associate Counsel             |
| <b>Address:</b>                 | 665 Mainstream Drive, Nashville, Tennessee 37243 |
| <b>Phone:</b>                   | (615) 741-1611                                   |
| <b>Email:</b>                   | Jessica.L.Turner@tn.gov                          |

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

|                     |   |
|---------------------|---|
| <b>ADA Contact:</b> | ADA Coordinator   |
| <b>Address:</b>     | 710 James Robertson Parkway<br>Andrew Johnson Building, 5 <sup>th</sup> Floor, Nashville, Tennessee 37243 |
| <b>Phone:</b>       | (615) 741-6350  |
| <b>Email:</b>       | Tina.M.Harris2@tn.gov   |

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

|               |  |
|---------------|--|
| Address 1:    | Metro Center   |
| Address 2:    | 665 Mainstream Drive, Iris Conference Room   |
| City:         | Nashville, Tennessee   |
| Zip:          | 37228  |
| Hearing Date: | 09/09/2021   |
| Hearing Time: | 9:00 A.M. <input checked="" type="checkbox"/> CST/CDT <input type="checkbox"/> EST/EDT |

**Additional Hearing Information:**

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**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

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

| Chapter Number | Chapter Title                 |
|----------------|-------------------------------|
| 1180-02        | Rules Governing Psychologists |
| Rule Number    | Rule Title                    |
| 1180-02-.27    | Telepsychology                |

Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <https://sos.tn.gov/products/division-publications/rulemaking-guidelines>.

Rule 1180-02-.27 Governing Psychologists is added as a new rule and shall read:

#### New Table of Contents

|                                 |  |
|---------------------------------|--|
| 1180-02-.01                     | Scope of Practice                                      |
| 1180-02-.02                     | Qualifications for Licensure                           |
| 1180-02-.03                     | Procedures for Licensure                               |
| 1180-02-.04                     | Examinations   |
| 1180-02-.05                     | Temporary License                                      |
| 1180-02-.06                     | Provisional License                                    |
| 1180-02-.07                     | Free Health Clinic and Volunteer Practice Requirements |
| 1180-02-.08 through 1180-02-.26 | Repealed   |
| 1180-02-.27                     | Telepsychology   |

#### Rule 1180-02-.27 Telepsychology

- (1) Telepsychology means the practice of psychology via electronic communications technology by persons licensed under T.C.A. § 63-11-203. Electronic communication technology is information exchanged typically using audio or visual technology that are part of a plan of care during a scheduled or agreed upon time.
- (2) Whenever feasible, use secure communications, such as encrypted text messages, via email or secure websites or secure real-time video.
- (3) In order to practice telepsychology in the state of Tennessee, one must hold a current, valid psychology license issued by the Tennessee Board of Examiners in Psychology. The scope of practice of a Psychologist is prescribed and limited by Tennessee Code Annotated, Title 63, Chapter 11 and the rules set forth in this chapter and chapter 1180-01.
- (4) Licensees cannot provide telepsychology to patients domiciled or physically located in any jurisdiction other than Tennessee. The practice of telepsychology subjects the licensee to the jurisdiction of the Board in all matters set forth in the Tennessee Psychology Practice Act and implementing rules and regulations, including all matters related to discipline.
- (5) Licensees should recognize that telepsychology is not appropriate for all psychological problems and patients, and decisions regarding the appropriate use of telepsychology are made on a case-by-case basis. Licensees practicing via telepsychology should be aware of potential risks incurred when practicing psychology through the use of electronic communications and take special care to conduct their professional practice in a manner that protects the welfare of the patient. Licensees practicing telepsychology shall:
  - (a) Conduct a risk-benefit analysis and document findings specific to:
    1. Whether the patient's presenting problems and apparent condition are consistent with the use of telepsychology to the patient's benefit; and

2. Whether the patient has sufficient knowledge and skills in the use of the technology involved in rendering the service or can use a personal aid or assistive device to benefit from the service.
- (b) Not provide telepsychology services to any person or persons when the outcome of the risk-benefit analysis is inconsistent with the delivery of telepsychology services, whether related to clinical or technological issues.
  - (c) Prior to providing telepsychology services, obtain the written informed consent of the patient which must include, but is not limited to:
    1. The limitations and innovative nature of using electronic communications in the provision of psychology services;
    2. The potential risks to confidentiality of information due to the use of electronic communication;
    3. The potential risks of sudden and unpredictable disruption of telepsychology services and how an alternative means of re-establishing electronic or other connection will be used under such circumstance;
    4. The time and manner in which the licensee will respond to electronic messages;
    5. The emergent circumstances when the licensee and patient will use alternative means of communication;
    6. The other parties who may have access to communications between the patient and the licensee;
    7. The specific methods for ensuring that a patient's electronic communications are directed only to the licensee or supervisee;
    8. The manner in which the licensee will store electronic communications exchanged with the patient.
  - (d) Upon initial and subsequent contacts with the patient, make reasonable efforts to verify the identity of the patient.
  - (e) Obtain alternative means of contacting the patient.
  - (f) Provide the patient with alternative means of contacting the licensee.
  - (g) Establish a written agreement relative to the patient's access to face-to-face emergency services in the patient's geographical area in instances such as, but not limited to, the patient experiencing a suicidal or homicidal crisis.
  - (h) Make reasonable efforts to protect and maintain the confidentiality of the data and information relating to their patients and inform them of the potentially increased risks, if any, of loss of confidentiality inherent in the use of electronic communications.
  - (i) Ensure that confidential communications stored electronically cannot be recovered and/or accessed by unauthorized persons when the licensee disposes of electronic equipment and data.

- (j) Document in the patient record that the licensee conducted a patient encounter via electronic communication and state the type or form of electronic communication used.
  - (k) Comply with all patient record requirements as defined in Rule 1180-01-.06.
- (6) In the context of a face-to-face professional relationship, the following are exempt from this rule:
- (a) Electronic communications used specific to appointment scheduling, billing, and/or the establishment of benefits and eligibility for services; and
  - (b) Telephone or other electronic communications made for the purpose of ensuring patient welfare in accordance with reasonable professional judgment.
- (7) Licensees providing supervision via telepsychology shall be aware of the potential risks incurred when providing supervision through the use of electronic communications and take special care to conduct their supervision in a manner that protects the welfare of the patients. Licensees providing supervision via electronic communications shall:
- (a) Consider and document findings specific to:
    1. Whether the patient's presenting problems and apparent condition are consistent with the use of telepsychology in the supervisory process to the patient's benefit; and
    2. Whether the supervisee has sufficient knowledge and skills in the use of the technology involved rendering the supervision.
  - (b) Not provide supervision via telepsychology services to any supervisee when the outcome of the analysis required in parts 5(a)1 and 5(a)2 of this rule is inconsistent with the delivery of supervision via telepsychology, whether related to issues involving a given case or issues involving the technological knowledge and skills of the supervisee.
  - (c) Prior to providing supervision via telepsychology services, the supervisor and supervisee shall enter into a written agreement which must include, but is not limited to:
    1. The potential risks of sudden unpredictable disruption of supervision that is dependent upon telepsychology services and a plan for an alternative means of re-establishing electronic or other connection under such circumstances;
    2. The time and manner by which the supervisor will respond to routine electronic messages from the supervisee;
    3. The emergent circumstances when the supervisor and supervisee will use alternative means of communication;
    4. The precautionary measures that the supervisor and supervisee will take to ensure that confidential communications stored electronically cannot be recovered and/or accessed by unauthorized persons when the licensee disposes of electronic equipment and data.
  - (d) Upon initial and subsequent contact with the supervisee, make reasonable efforts to verify the identity of the supervisee.
  - (e) Obtain alternative means of contacting the supervisee.
  - (f) Provide to the supervisee alternative means of contacting the supervisor.

Authority: T.C.A. §§ 63-11-104, 63-11-203 and 63-1-155.

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

Date: 06/08/2021

Signature: *Jessica L. Turner*

Name of Officer: Jessica L. Turner

Title of Officer: Associate Counsel, Department of Health

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Filed with the Department of State on: 6/8/2021

*Tre Hargett*  
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Secretary of State

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