

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: State Board of Education

DIVISION:

SUBJECT: Virtual Schools

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 49-16-102

EFFECTIVE DATES: August 29, 2012 through June 30, 2013

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT:

The 107th General Assembly created the "Virtual Public Schools Act." This act gives local education agencies the authority to establish virtual schools; and permits LEAs to contract for services with nonprofit or for-profit entities to manage and operate virtual schools.

The proposed rules clarify several issues relative to virtual schooling relative to establishment, enrollment, attendance, and transfer. The proposed rules also make clear that students with disabilities and limited English proficiency are not excluded from enrolling and participating in virtual schooling.

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.

Not Applicable

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

This will have no impact on local governments.

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For Department of State Use Only

Sequence Number: 03-16-12
 Rule ID(s): 5771
 File Date: 03/21/2012
 Effective Date: 08/29/2012

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §§ 4-5-202, 4-5-207 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Agency/Board/Commission:	State Board of Education
Division:	
Contact Person:	Dannelle F. Walker
Address:	9 th Floor, 710 James Robertson Parkway, Andrew Johnson Tower, Nashville, TN
Zip:	37243
Phone:	615-253-5707
Email:	Dannelle.Walker@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
0520-01-03	Minimum Requirements for the Approval of Public Schools
Rule Number	Rule Title
0520-01-03-.03	Administration of Schools, Requirement B

Chapter Number	Chapter Title
Rule Number	Rule Title

CHAPTER 0520-01-03
Minimum Requirements for the Approval of Public Schools
Amendment

Rule 0520-01-03-.03 (11)(f) by deleting the second sentence in the paragraph and substituting the following language:

If a request to transfer is submitted less than two weeks before the beginning of the receiving district's school year, and the student is currently enrolled in another district during the prior semester, the approval of both the sending and receiving districts must be obtained.

Rule 0520-01-03-.03 by inserting a new subsection (12) and renumbering the following subsections accordingly.

(12) Public Virtual Schools.

- (a) Public virtual schools must comply with all applicable Tennessee State Board of Education policies and rules and regulations.
- (b) Public virtual schools shall:
 - 1. be approved by the local board of education;
 - 2. use technology to deliver a significant portion of instruction to its students via the Internet in a virtual or remote setting;
 - 3. review and provide access to a sequential curriculum that meets or exceeds the curriculum standards adopted by the Tennessee State Board of Education;
 - 4. meet the equivalent of the 180 days of instruction and 6.5 hours per day per academic year pursuant to T.C.A. § 49-6-3004;
 - 5. monitor participation and progress to ensure students meet participation requirements and make progress toward successful completion of courses;
 - 6. administer all state tests required of public school students to students enrolled in a virtual school in a proctored environment consistent with state test administration guidelines;
 - 7. be evaluated annually and report the extent to which the school demonstrates increases in student achievement, along with academic, fiscal, and operational performance;
 - 8. ensure that students with special needs, including students with disabilities and limited English proficiency are not excluded from enrolling and participating, further, the public virtual school is responsible for providing the services in the student's Individualized Education Program (IEP);
 - 9. assign a highly qualified teacher to each student enrolled;
 - 10. ensure that all teachers employed to provide services to the students are endorsed in their grade or course and qualified to teach in Tennessee;
 - 11. ensure access to instructional materials, access to technology such as a computer and printer that may be necessary for participation in the program, and access to an Internet connection used for school work; and

12. meet class size standards established by T.C.A. § 49-1-104.

(c) Public virtual schools must comply with State Board Rule 0520-01-03-.03(11).

1. For a student who is currently enrolled or was enrolled the previous semester in a public school to transfer to a public virtual school after the open transfer time has lapsed:
 - a. the student must apply to and be approved for acceptance in the public virtual school; and
 - b. once acceptance has been determined, the public virtual school must obtain permission from the sending district before enrolling the student in the public virtual school. A public virtual school shall not be eligible for state education funds for students who are improperly enrolled.
2. Students not registered in a public school the previous semester but who were enrolled instead in a private school or a home school do not require approval from a sending district.

(d) Public virtual schools must comply with all compulsory attendance requirements including monitoring and reporting as required in TCA § 49-6-3007.

1. The district establishing the public virtual school is required to report truancy to the juvenile court having jurisdiction over that student.
2. On or before August 1 of each year the public virtual school shall notify all LEAs of the enrollment of students residing within the LEA's jurisdiction. LEAs shall be notified within two weeks when changes occur relative to students residing within the LEA's jurisdiction.
3. Once a non-resident student has been accepted and enrolled in a public virtual school, it shall be the responsibility of the LEA that has established the public virtual school to maintain enrollment of that student until such a time as the student is withdrawn by the parent or guardian. If the student is withdrawn by the parent or guardian, the public virtual school shall send transcripts and other student records to the receiving school in a timely manner.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Ayers	X				
Edwards	X				
Justice	X				
Pearre	X				
Roberts	X				
Rogers	X				
Rolston	X				
Sloyan	X				
Wright	X				
Student Member	X				

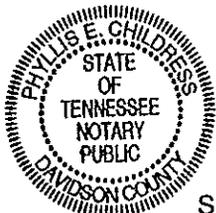
I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the TN State Board of Education on 1/27/12, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: February 6, 2012

Signature: *Gary Nixon*

Name of Officer: Dr. Gary L. Nixon

Title of Officer: Executive Director



MY COMMISSION EXPIRES:
January 9, 2016

Subscribed and sworn to before me on: 2/24/12

Notary Public Signature: *Phyllis E. Childress*

My commission expires on: _____

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

Robert E. Cooper, Jr.

Robert E. Cooper, Jr.
Attorney General and Reporter

3-7-12

Date

RULES
OF
THE STATE BOARD OF EDUCATION
CHAPTER 0520-01-03
MINIMUM REQUIREMENTS FOR THE APPROVAL
OF PUBLIC SCHOOLS

(11) Students Transferring From One School To Another.

- (a) Students may transfer among public schools or among Category I, II, or III private schools (see Chapter 0520-07-02), without loss of credit for completed work. The school which the student leaves must supply a properly certified transcript showing the student's record of attendance, achievement, and the units of credit earned.
- (b) Principals shall allow credit for work transferred from other schools only when substantiated by official transcripts. Students transferring from schools which are not approved by the Tennessee State Board of Education or by comparable agencies shall be allowed credit only when they have passed comprehensive written examinations approved, administered, and graded by the principal. Student scores from a recognized standardized test may substitute for the required comprehensive written examinations.
- (c) The examination administered to students in grades 1-8 shall cover only the last grade completed.
- (d) The examinations administered to students in grades 9-12 shall cover the individual subjects appearing on the official transcripts. The examination for subjects of more than one unit need cover only the last unit completed. A student transferring from one school to another may count for graduation one-half unit of credit in courses for which a minimum of one unit is required only if the course is not offered in the school to which he or she is transferring.
- (e) The principal is authorized to transmit transcripts of a student to any school to which the student transfers or applies for admission when the records are requested by the receiving school or institution. The parent or guardian of the student will be notified that the transcript is being sent.
- (f) ~~If a request to transfer is submitted less than two weeks before the beginning of the receiving district's school year, and the student is currently enrolled in another district during the prior semester, the approval of both the sending and receiving districts must be obtained. A student may transfer to a school system other than the one in which they live up to two weeks before the beginning of the school year with only the approval of the receiving board of education. If a transfer request is less than two weeks before the beginning of the school year, or is during the school year, the approval of both the sending and receiving local board of education must be obtained.~~
- (g) Local boards of education may arrange for the transfer of students residing within their systems to other school systems by establishing agreements with other local boards of education for the admission or transfer of students from one school system to another.
- (h) The receiving board of education may set a time before or during the school year after which it will not accept transfer students. The receiving board of education may charge the non-resident student tuition to attend.
- (i) If a local board of education otherwise permits non-resident students to transfer into its schools, it may not discriminate against any students solely on the grounds of their race, sex, national origin

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or disability, nor may it charge such students a tuition over and above the usual tuition for non-disabled persons.

Amend Rule 0520-01-03-.03 by inserting a new subsection (12) and renumbering the following subsections accordingly.

(12) Public Virtual SchoolsRecords and Reports.

- (a) Public virtual schools must comply with all applicable Tennessee State Board of Education policies and rules and regulations.
- (b) Public virtual schools shall:
 - 1. be approved by the local board of education;
 - 2. use technology to deliver a significant portion of instruction to its students via the Internet in a virtual or remote setting;
 - 3. review and provide access to a sequential curriculum that meets or exceeds the curriculum standards adopted by the Tennessee State Board of Education;
 - 4. meet the equivalent of the 180 days of instruction and 6.5 hours per day per academic year pursuant to T.C.A. § 49-6-3004;
 - 5. monitor participation and progress to ensure students meet participation requirements and make progress toward successful completion of courses;
 - 6. administer all state tests required of public school students to students enrolled in a virtual school in a proctored environment consistent with state test administration guidelines;
 - 7. be evaluated annually and report the extent to which the school demonstrates increases in student achievement, along with academic, fiscal, and operational performance;
 - 8. ensure that students with special needs, including students with disabilities and limited English proficiency are not excluded from enrolling and participating, further, the public virtual school is responsible for providing the services in the student's Individualized Education Program (IEP);
 - 9. assign a highly qualified teacher to each student enrolled;
 - 10. ensure that all teachers employed to provide services to the students are endorsed in their grade or course and qualified to teach in Tennessee;

11. ensure access to instructional materials, access to technology such as a computer and printer that may be necessary for participation in the program, and access to an Internet connection used for school work; and
12. meet class size standards established by T.C.A. § 49-1-104.

(c) Public virtual schools must comply with State Board Rule 0520-01-03-.03(11).

1. For a student who is currently enrolled or was enrolled the previous semester in a public school to transfer to a public virtual school after the open transfer time has lapsed:
 - a. the student must apply to and be approved for acceptance in the public virtual school; and
 - b. once acceptance has been determined, the public virtual school must obtain permission from the sending district before enrolling the student in the public virtual school. A public virtual school shall not be eligible for state education funds for students who are improperly enrolled.
2. Students not registered in a public school the previous semester but who were enrolled instead in a private school or a home school do not require approval from a sending district.

(d) Public virtual schools must comply with all compulsory attendance requirements including monitoring and reporting as required in TCA § 49-6-3007.

1. The district establishing the public virtual school is required to report truancy to the juvenile court having jurisdiction over that student.
2. On or before August 1 of each year the public virtual school shall notify all LEAs of the enrollment of students residing within the LEA's jurisdiction. LEAs shall be notified within two weeks when changes occur relative to students residing within the LEA's jurisdiction.
3. Once a non-resident student has been accepted and enrolled in a public virtual school, it shall be the responsibility of the LEA that has established the public virtual school to maintain enrollment of that student until such a time as the student is withdrawn by the parent or guardian. If the student is withdrawn by the parent or guardian, the public virtual school shall send transcripts and other student records to the receiving school in a timely manner.

G.O.C. STAFF RULE ABSTRACT

<u>DEPARTMENT:</u>	State Board of Education
<u>SUBJECT:</u>	Isolation or Restraint of Children with Disabilities Receiving Special Education Services
<u>STATUTORY AUTHORITY:</u>	Chapter 457 of Public Acts of 2011
<u>EFFECTIVE DATES:</u>	August 29, 2012 through June 30, 2013
<u>FISCAL IMPACT:</u>	Minimal
<u>STAFF RULE ABSTRACT:</u>	The proposed rules mandate a standard reporting format to be used by LEAs when reporting incidents of isolation or restraint of children with disabilities.

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.

Not Applicable

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

This will have no impact on local governments.

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Sequence Number: 03-17-12
Rule ID(s): 5172
File Date: 03/21/2012
Effective Date: 08/29/2012

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §§ 4-5-202, 4-5-207 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Agency/Board/Commission:	State Board of Education
Division:	
Contact Person:	Dannelle F. Walker
Address:	9 th Floor, 710 James Robertson Parkway, Andrew Johnson Tower, Nashville, TN
Zip:	37243
Phone:	615-253-5707
Email:	Dannelle.Walker@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
0520-01-09	Special Education Programs and Services
Rule Number	Rule Title
0520-01-09-.23	Isolation and Restraint for Students Receiving Special Education Services

Chapter Number	Chapter Title
Rule Number	Rule Title

CHAPTER 0520-01-09
Special Education Programs and Services
Amendment

Rule 0520-01-09-.23(1) Isolation and Restraint for Students Receiving Special Education Services is amended by deleting subsections (a) and (d) in their entirety and re-numbering the remaining subsections.

Rule 0520-01-09-.23(7) Isolation and Restraint for Students Receiving Special Education Services is amended by deleting the language "T.C.A. § 49-10-1304(b)" and substituting instead the language "T.C.A. § 49-10-1304".

Rule 0520-01-09-.23 Isolation and Restraint for Students Receiving Special Education Services is amended by adding the following new subsection:

(9) Reports.

School personnel who must isolate or restrain a student shall report the incident to the school principal or the principal's designee. The Department of Education shall develop a report form which shall be used by school personnel when reporting isolation or restraint to the school principal or the principal's designee.

(a) The report form must include the following information:

1. Student's name, age and disability;
2. Student's school and grade level;
3. Date, time and location of the isolation or restraint;
4. Length of time student was isolated or restrained;
5. Names, job titles and signatures of the personnel who administered the isolation or restraint;
6. Whether the personnel who administered the isolation or restraint were certified for completing a behavior intervention training program;
7. Names and job titles of other personnel who observed or witnessed the isolation or restraint;
8. Name of the principal or designee who was notified following the isolation or restraint and time of notification;
9. Description of the antecedents that immediately preceded the use of isolation or restraint and the specific behavior being addressed;
10. A certification that any space used for isolation is at least forty (40) square feet;
11. A certification that school personnel are in continuous direct visual contact at all times with a student who is isolated;

12. How the isolation or restraint ended, including the student's demeanor at the cessation of the isolation or restraint;
13. Physical injury or death to the student, school personnel or both;
14. Medical care provided to the student, school personnel or both;
15. Description of property damage, if relevant; and
16. Date, time and method of parent notification.

(b) A copy of the report form must be provided to the local education agency's director of special education who shall determine whether an Individualized Education Program (IEP) Team meeting must be convened pursuant to T.C.A. § 49-10-1304.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Ayers	X				
Edwards	X				
Justice	X				
Pearre	X				
Roberts	X				
Rogers	X				
Rolston	X				
Sloyan	X				
Wright	X				
Student Member	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the TN State Board of Education on 1/27/12, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: February 6, 2012

Signature: Gary Nixon

Name of Officer: Dr. Gary L. Nixon

Title of Officer: Executive Director



Subscribed and sworn to before me on: 2/24/12

Notary Public Signature: Phyllis E. Childress

My commission expires on: _____

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

Robert E. Cooper, Jr.
 Attorney General and Reporter

3-9-12

Date

CHAPTER 0520-01-09
Special Education Programs and Services
0520-01-09-.23 ISOLATION AND RESTRAINT FOR STUDENTS RECEIVING SPECIAL EDUCATION
SERVICES.
Amendment

(1) Definitions

~~(a) "Emergency situation" means that a child's behavior places the child or others at risk of violence or injury if no intervention occurs.~~

~~(b)(a) "Extended isolation" means isolation which lasts longer than one (1) minute per year of the student's age or isolation which lasts longer than the time provided in the child's individualized education program (IEP).~~

~~(e)(b) "Extended restraint" means a physical holding restraint lasting longer than five (5) minutes or physical holding restraint which lasts longer than the time provided in the child's IEP.~~

~~(d) "Isolation room" means a space designed to isolate a student that is unlocked, cannot be locked from the inside, without structural barriers to exit, free of any condition that could be a danger to the student, well ventilated, sufficiently lighted, and where school personnel are in direct visual contact with the student at all times. Such spaces must comply with all applicable state and local fire codes.~~

~~(e)(c) "Noxious substance" means a substance released in proximity to the student's face or sensitive area of the body for the purpose of limiting a student's freedom of movement or action, including but not limited to Mace and other defense sprays.~~

(2) Local education agencies are authorized to develop and implement training programs that include:

(a) Use of positive behavioral interventions and supports;

(b) Nonviolent crisis prevention and de-escalation;

(c) Safe administration of isolation and restraint; and

(d) Documentation and reporting requirements.

(3) Local education agencies are authorized to determine an appropriate level of training commensurate with the job descriptions and responsibilities of school personnel.

(4) Local education agencies shall develop policies and procedures governing:

(a) Personnel authorized to use isolation and restraint;

(b) Training requirements; and

(c) Incident reporting procedures.

(5) Only the principal, or the principal's designee, may authorize the use of isolation or restraint.

(6) When the use of restraint or isolation is proposed at an IEP meeting, parents/guardians shall be advised of the provisions of T.C.A. § 49-10-1301, et seq., this rule and the IDEA procedural safeguards.

(7) An IEP meeting convened pursuant to T.C.A. § 49-10-1304(b) may be conducted on at least twenty-four (24) hours notice to the parents.

(8) State agencies providing educational services within a residential therapeutic setting to children in their legal and physical custody shall develop and adhere to isolation and restraint policies in such educational settings which conform to the TDMHDD (Tennessee Department of Mental Health and Developmental Disabilities) state standards as applicable and at least one of the following national standards: ACA (American Correctional Association), COA (Council on Accreditation), CMS (Centers for Medicare & Medicaid Services), JCAHO (Joint Commission for Accreditation of Healthcare Organizations), CARF (Commission on Accreditation of Rehabilitation Facilities), as they apply in the educational environment. Development of, and adherence to, such policies shall be overseen by a licensed qualified physician or licensed doctoral level psychologist.

(9) Reports.

School personnel who must isolate or restrain a student shall report the incident to the school principal or the principal's designee. The Department of Education shall develop a report form which shall be used by school personnel when reporting isolation or restraint to the school principal or the principal's designee.

(a) The report form must include the following information:

1. Student's name, age and disability;
2. Student's school and grade level;
3. Date, time and location of the isolation or restraint;
4. Length of time student was isolated or restrained;
5. Names, job titles and signatures of the personnel who administered the isolation or restraint;
6. Whether the personnel who administered the isolation or restraint were certified for completing a behavior intervention training program;
7. Names and job titles of other personnel who observed or witnessed the isolation or restraint;
8. Name of the principal or designee who was notified following the isolation or restraint and time of notification;
9. Description of the antecedents that immediately preceded the use of isolation or restraint and the specific behavior being addressed;
10. A certification that any space used for isolation is at least forty (40) square feet;

11. A certification that school personnel are in continuous direct visual contact at all times with a student who is isolated;
 12. How the isolation or restraint ended, including the student's demeanor at the cessation of the isolation or restraint;
 13. Physical injury or death to the student, school personnel or both;
 14. Medical care provided to the student, school personnel or both;
 15. Description of property damage, if relevant; and
 16. Date, time and method of parent notification.
- (b) A copy of the report form must be provided to the local education agency's director of special education who shall determine whether an IEP Team meeting must be convened pursuant to T.C.A. § 49-10-1304.

Authority: T.C.A. §§ 49-10-1306.

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: State Board of Education

SUBJECT: Charter Schools

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 49-13-112

EFFECTIVE DATES: August 29, 2012 through June 30, 2013

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT:

New paragraph three (3) of Rule 0520-14-01-.03 regarding local funding quotes directly from Public Chapter 507 of 2011:

"Each LEA shall include as part of its budget submitted pursuant to Tennessee Code Annotated, § 49-2-203, the per pupil amount of local money it will pass through to charter schools during the upcoming school year. Allocations to the charter schools during that year shall be based on that figure. The LEA shall distribute the portion of local funds it expects to receive in no fewer than nine (9) equal installments to the charter schools in the same manner as state funds are distributed. If the amount of local funds received increases or decreases from the budgeted figure, the LEA may adjust payments to the charter schools in February or June. Before adjusting payments to the charter schools, the LEA shall receive approval from the commissioner."

The priorities and sample enrollment chart from Rule 0520-14-01-.04 were deleted in accordance with the removal of enrollment limitations in Public Chapter 466 of 2011. This rule changes the date when projected enrollments will be used to determine funding for new charter schools or charter schools adding a new grade from May 1 to March 1.

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.

Not Applicable

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

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Sequence Number: 03-15-12
 Rule ID(s): 5170
 File Date: 03/21/2012
 Effective Date: 08/29/2012

Proposed Rule(s) Filing Form

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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
0520-14-01	Charter Schools
Rule Number	Rule Title
0520-14-01-.03	Allocation of State and Local Funds

Chapter Number	Chapter Title
0520-14-01	Charter Schools
Rule Number	Rule Title
0520-14-01-.04	Enrollment

CHAPTER 0520-14-01
Charter Schools
Amendment

Rule 0520-14-01-.03 Allocation of State and Local Funds is amended by deleting the present language in its entirety and replacing it with the following:

Rule 0520-14-01-.03 Allocation of State and Local Funds

- (1) State and local funds to charter schools shall be allocated pursuant to T.C.A. § 49-13-112. State and local fund allocations are determined for each LEA on the basis of prior year average daily membership (ADM).
 - (a) Allocations shall be based on one hundred percent (100%) of state and local funds received by the LEA, including current funds allocated for capital outlay purposes (excluding the proceeds of debt obligations and associated debt service).
 - (b) Student enrollments used in allocations shall be for the same period used in allocating state funds to the LEA under the basic education program.
 - (c) Allocations to the charter school may not be reduced by the LEA for administrative, indirect or any other category of cost or charge except as specifically provided in a charter agreement. Any educational or operational services the authorizer provides for a fee may also exist in a separate contractual agreement between the charter school and the authorizer. However, approval of a separate services contract may not be a condition of approval of the charter agreement.
 - (d) If students attended a non-chartered public school in the prior year, and attend a public charter school in the same LEA in the current year, those students are being funded through the BEP formula, and funds for those students must be passed through to the public charter school in an amount equal to the per student state and local funds received by the LEA.
 - (e) If students are new to the LEA and enroll first in a public charter school, their enrollment would not be reflected in the BEP formula used to determine the initial distributions to the LEA. But their enrollment would be reflected in the growth funds distributed in February and June. Thus, as the LEA receives increased funding in subsequent distributions to reflect the increased ADM, the LEA must allocate the funds for those students to the public charter schools they attend. LEAs can determine the amount to allocate by determining pro-rata shares of growth money based on the current district-wide ADM, and then divide the growth money by that figure to determine the amount to allocate to the public charter schools for each student.
 - (f) If an LEA does not generate increased funding due to growth, the public charter school would receive no additional funding in the current year for the students new to the LEA.
 - (g) New charter schools or charter schools adding a new grade are funded based on anticipated enrollment in the charter agreement. Those figures are then subsequently adjusted to reflect the actual number of students enrolled. Initial payments will be based on enrollment projections for the next school year as of March 1.
- (2) All ten (10) payments distributed by the State Department of Education are based on prior year weighted average daily membership (ADM) figure. However, twice a year, once in February and once in June, funds are adjusted based on actual enrollment in the current year. If payments to an LEA from the Department of Education are increased or reduced based on actual enrollment, and a charter school's actual enrollment is higher or lower than its prior year enrollment, or than its anticipated enrollment in the charter agreement, the payments to the charter schools shall be

adjusted by determining pro-rata shares of adjusted distributions based on the current year's ADM for the LEA.

- (3) Local funds. Each LEA shall include as part of its budget submitted pursuant to T.C.A. § 49-2-203, the per pupil amount of local money it will pass through to charter schools during the upcoming school year. Allocations to the charter schools during that year shall be based on that figure. The LEA shall distribute the portion of local funds it expects to receive in no fewer than nine (9) equal installments to the charter schools in the same manner as state funds are distributed. If the amount of local funds received increases or decreases from the budgeted figure, the LEA may adjust payments to the charter schools in February or June. Before adjusting payments to the charter schools, the LEA shall receive approval from the commissioner. The per pupil amount of local money budgeted for charter schools is not budgeted in a separate line item in the budget; but rather is part of the entire amount of budgeted local revenue.
- (4) Pursuant to T.C.A. § 49-13-124, the chartering authority may endorse the submission of the qualified zone academy bond application to the local taxing authority. The chartering authority may endorse such a bond application submitted by the charter school governing body, or the chartering authority may include the charter school's project as part of the chartering authority's bond application.
- (5) School Nutrition Programs. If charter schools provide school nutrition programs, they may provide their own programs in compliance with United States Department of Agriculture regulations and State law or they may contract with the LEA for the provision of school nutrition programs.
- (6) Transportation. Charter schools that provide transportation in accordance with the provisions of T.C.A. § 49-6-2100 *et seq.*, other than through an agreement with the LEA, shall receive the State and local funds generated through the BEP for such transportation.

Authority: T.C.A. §§ 49-13-112, 49-13-126.

Rule 0520-14-01-.04 Enrollment is amended by deleting the present language in its entirety and replacing it with the following:

Rule 0520-14-01-.04 Enrollment

- (1) Enrollment of eligible students, as defined in T.C.A. § 49-13-106, shall comply with T.C.A. § 49-13-113.
- (2) Students currently enrolled in a specific charter school do not need to re-apply if they remain in that specific charter school. Students moving from one charter school to another- even if both schools share a sponsor or governing body- are subject to the priority and preferences outlined in T.C.A. § 49-13-113.
- (3) Charter schools shall apply the enrollment preferences in T.C.A. § 49-13-113(b) and (c).
 - (a) Charter schools shall conduct an initial student application period of at least thirty (30) days. During this period, all eligible students may apply.
 - (b) If, at the end of the initial student application period, the number of eligible students seeking to be enrolled exceeds the school's capacity or the capacity of a program, class, grade level or building, then the enrollment of eligible students shall be determined on the basis of a lottery. Any such lottery shall be conducted within seven (7) calendar days of the close of the initial student application period. Charter schools must either have an independent accounting firm or law firm certify that each lottery conducted complied with the statutory requirements or, prior to the lottery, have their lottery process approved by the department of education.

- (c) If, at the end of the initial student application period, the number of eligible students seeking to be enrolled does not exceed the school's capacity or the capacity of a program, class, grade level or building, then the enrollment of eligible students may proceed on a first come, first served basis.

Authority: T.C.A. §§ 49-13-113, 49-13-126.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Ayers	X				
Edwards	X				
Justice	X				
Pearre	X				
Roberts	X				
Rogers	X				
Rolston	X				
Sloyan	X				
Wright	X				
Student Member	X				

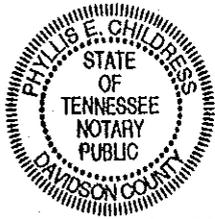
I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the TN State Board of Education on 1/27/12, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: February 6, 2012

Signature: *Gary Nixon*

Name of Officer: Dr. Gary L. Nixon

Title of Officer: Executive Director



MY COMMISSION EXPIRES:
January 9, 2016

Subscribed and sworn to before me on: 2/24/12

Notary Public Signature: *Phyllis E. Childress*

My commission expires on: _____

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

Robert E. Cooper, Jr.

Robert E. Cooper, Jr.
Attorney General and Reporter

3-9-12

Date

CHAPTER 0520-14-01
CHARTER SCHOOLS
0520-14-01-.03 ALLOCATION OF STATE AND LOCAL FUNDS.
Amendments

- (1) State and local funds to charter schools shall be allocated pursuant to T.C.A. § 49-13-112. State and local fund allocations are determined for each LEA on the basis of prior year average daily membership (ADM).
- (a) Allocations shall be based on one hundred percent (100%) of state and local funds received by the LEA, including current funds allocated for capital outlay purposes (excluding the proceeds of debt obligations and associated debt service).
- (b) Student enrollments used in allocations shall be for the same period used in allocating state funds to the LEA under the basic education program.
- (c) Allocations to the charter school may not be reduced by the LEA for administrative, indirect or any other category of cost or charge except as specifically provided in a charter agreement. Any educational or operational services the authorizer provides for a fee may also exist in a separate contractual agreement between the charter school and the authorizer. However, approval of a separate services contract may not be a condition of approval of the charter agreement.
- (d) If students attended a non-chartered public school in the prior year, and attend a public charter school in the same LEA in the current year, those students are being funded through the BEP formula, and funds for those students must be passed through to the public charter school in an amount equal to the per student state and local funds received by the LEA.
- (e) If students are new to the LEA and enroll first in a public charter school, their enrollment would not be reflected in the BEP formula used to determine the initial distributions to the LEA. But their enrollment would be reflected in the growth funds distributed in February and June. Thus, as the LEA receives increased funding in subsequent distributions to reflect the increased ADM, the LEA must allocate the funds for those students to the public charter schools they attend. LEAs can determine the amount to allocate by determining pro-rata shares of growth money based on the current district-wide ADM, and then divide the growth money by that figure to determine the amount to allocate to the public charter schools for each student.
- (f) If an LEA does not generate increased funding due to growth, the public charter school would receive no additional funding in the current year for the students new to the LEA.

- (g) New charter schools or charter schools adding a new grade are funded based on anticipated enrollment in the charter agreement. Those figures are then subsequently adjusted to reflect the actual number of students enrolled. Initial payments will be based on enrollment projections for the next school year as of March 1.
- (2) All ten (10) payments distributed by the State Department of Education are based on prior year weighted average daily membership (ADM) figure. However, twice a year, once in February and once in June, funds are adjusted based on actual enrollment in the current year. If payments to an LEA from the Department of Education are increased or reduced based on actual enrollment, and a charter school's actual enrollment is higher or lower than its prior year enrollment, or than its anticipated enrollment in the charter agreement, the payments to the charter schools shall be adjusted by determining pro-rata shares of adjusted distributions based on the current year's ADM for the LEA.
- (3) Local funds. Each LEA shall include as part of its budget submitted pursuant to T.C.A. § 49-2-203, the per pupil amount of local money it will pass through to charter schools during the upcoming school year. Allocations to the charter schools during that year shall be based on that figure. The LEA shall distribute the portion of local funds it expects to receive in no fewer than nine (9) equal installments to the charter schools in the same manner as state funds are distributed. If the amount of local funds received increases or decreases from the budgeted figure, the LEA may adjust payments to the charter schools in February or June. Before adjusting payments to the charter schools, the LEA shall receive approval from the commissioner. The per pupil amount of local money budgeted for charter schools is not budgeted in a separate line item in the budget; but rather is part of the entire amount of budgeted local revenue.
- (4) Pursuant to T.C.A. § 49-13-124, the chartering authority may endorse the submission of the qualified zone academy bond application to the local taxing authority. The chartering authority may endorse such a bond application submitted by the charter school governing body, or the chartering authority may include the charter school's project as part of the chartering authority's bond application.
- (5) School Nutrition Programs. If charter schools provide school nutrition programs, they may provide their own programs in compliance with United States Department of Agriculture regulations and State law or they may contract with the LEA for the provision of school nutrition programs.
- (1) (6) Transportation. Charter schools that provide transportation in accordance with the provisions of T.C.A. § 49-6-2100 et seq., other than through an agreement with the LEA, shall receive the State and local funds generated through the BEP for such transportation. State and local funds to charter schools shall be allocated pursuant to T.C.A. § 49-13-112.

- (a) ~~Allocations shall be based on one hundred percent (100%) of state and local funds received by the LEA, including current funds allocated for capital outlay purposes (excluding the proceeds of debt obligations and associated debt service);~~
 - (b) ~~Student enrollments used in allocations shall be for the same period used in allocating state funds to the LEA under the basic education program; and~~
 - (c) ~~Allocations to the charter school may not be reduced by the LEA for administrative, indirect or any other category of cost or charge except as specifically provided in a charter agreement. Any educational or operational services the authorizer provides for a fee may also exist in a separate contractual agreement between the charter school and the authorizer. However, approval of a separate services contract may not be a condition of approval of the charter agreement.~~
 - (d) ~~Allocations must be delivered to the school at the time of receipt by the LEA.~~
- (2) ~~Allocations may be prepaid pursuant to agreement between the LEA and the charter school.~~
- (3) ~~State and local fund allocations are determined for each LEA on the basis of prior year average daily membership (ADM). All ten (10) payments distributed by the State Department of Education are based on that figure. However, twice a year, once in February and once in June, funds are adjusted based on actual enrollment in the current year. The following specific criteria apply to allocations from the Department of Education:~~
- (a) ~~If payments to an LEA from the Department of Education are increased or reduced based on actual enrollment, and a charter school's actual enrollment is higher or lower than its prior year enrollment, or than its anticipated enrollment in the charter agreement, the payments to the charter schools shall be adjusted by determining prorata shares of adjusted distributions based on the current year's ADM for the LEA.~~
 - (b) ~~If students attended a non-chartered public school in the prior year, and attend a public charter school in the same LEA in the current year, those students are being funded through the BEP formula, and funds for those students must be passed through to the public charter school in an amount equal to the per student state and local funds received by the LEA.~~
 - (c) ~~If students are new to the LEA and enroll first in a public charter school, their enrollment would not be reflected in the BEP formula used to determine the initial distributions to the LEA. But their enrollment would be reflected in the growth funds distributed in February and June. Thus, as the LEA receives increased funding in subsequent distributions to reflect the increased ADM, the LEA must allocate the funds for those students to the public charter schools they attend. LEAs can determine the amount to allocate by determining pro-rata shares of growth money based on the current district-wide ADM, and then divide the growth money by that figure to determine the amount to allocate to the public charter schools for each student.~~
 - (d) ~~If an LEA does not generate increased funding due to growth, the public charter school would receive no additional funding in the current year for the students new to the LEA.~~
 - (e) ~~New charter schools or charter schools adding a new grade are funded based on anticipated enrollment in the charter agreement. Those figures are then subsequently adjusted to reflect the actual number of students enrolled.~~
- (4) ~~Pursuant to T.C.A. § 49-13-124, the chartering authority may endorse the submission of the qualified zone academy bond application to the local taxing authority. The chartering authority may endorse such a bond application submitted by the charter school governing body, or the chartering authority may include the charter school's project as part of the chartering authority's bond application.~~

(5)(1) ~~School Nutrition Programs. If charter schools provide school nutrition programs, they may provide their own programs in compliance with United States Department of Agriculture regulations and State law or they may contract with the LEA for the provision of school nutrition programs.~~

Authority: T.C.A. §§ 49-13-112 and 49-13-126.

**CHAPTER 0520-14-01
CHARTER SCHOOLS
0520-14-01-.04 ENROLLEMNT.
Amendments**

0520-14-01-.04 Enrollment

- (1) Enrollment of eligible students, as defined in T.C.A. § 49-13-106, shall comply with T.C.A. § 49-13-113.
- (2) Students currently enrolled in a specific charter school do not need to re-apply if they remain in that specific charter school. Students moving from one charter school to another- even if both schools share a sponsor or governing body- are subject to the priority and preferences outlined in T.C.A. § 49-13-113.
- (3) Charter schools shall apply the enrollment preferences in T.C.A. § 49-13-113(b) and (c).
 - (a) Charter schools shall conduct an initial student application period of at least thirty (30) days. During this period, all eligible students may apply.
 - (b) If, at the end of the initial student application period, the number of eligible students seeking to be enrolled exceeds the school's capacity or the capacity of a program, class, grade level or building, then the enrollment of eligible students shall be determined on the basis of a lottery. Any such lottery shall be conducted within seven (7) calendar days of the close of the initial student application period. Charter schools must either have an independent accounting firm or law firm certify that each lottery conducted complied with the statutory requirements or, prior to the lottery, have their lottery process approved by the department of education.
- ~~(1)-(c) If, at the end of the initial student application period, the number of eligible students seeking to be enrolled does not exceed the school's capacity or the capacity of a program, class, grade level or building, then the enrollment of eligible students may proceed on a first come, first served basis. Enrollment of eligible students, as defined in T.C.A. § 49-13-106, shall comply with T.C.A. § 49-13-113.~~
- ~~(2) Students currently enrolled in a specific charter school do not need to re-apply if they remain in that specific charter school. Students moving from one charter school to another, however—even if both schools share a sponsor or governing body—are subject to the priority and preferences outlined in T.C.A. § 49-13-113.~~
- ~~(3) Charter schools operating in local education agencies (LEAs) in which students are not eligible to enroll in charter schools pursuant to T.C.A. § 49-13-106(a)(1)(E) shall apply the enrollment preferences in T.C.A. § 49-13-113(b) and (c) only.~~

(4) Charter schools operating in LEAs in which students are eligible to enroll in charter schools pursuant to T.C.A. § 49-13-106(a)(1)(E) shall apply the enrollment priorities in T.C.A. § 49-13-113(d), as well as the enrollment preferences in T.C.A. § 49-13-113(b) and (c).

(a) Charter schools in these LEAs shall conduct an initial student application period of at least thirty (30) days. During this period, all eligible students may apply.

(b) If, at the end of the initial student application period, the number of eligible students seeking to be enrolled exceeds the school's capacity or the capacity of a program, class, grade level or building, then the enrollment of eligible students shall be determined on the basis of a lottery. Any such lottery shall be conducted within seven (7) calendar days of the close of the initial student application period.

1. If the number of students meeting the requirements of T.C.A. § 49-13-106(a)(1)(A) exceeds the capacity of the school or the capacity of a program, class, grade level or building, then the enrollment of eligible students shall be determined by a lottery among those students only.

2. If the number of students meeting the requirements of T.C.A. § 49-13-106(a)(1)(A) does not exceed the capacity of the school or the capacity of a program, class, grade level or building, but the number of students meeting the requirements of T.C.A. § 49-13-106(a)(1)(A)-(D) does, then the enrollment of eligible students in the slots remaining after all students meeting the requirements of T.C.A. § 49-13-106(a)(1)(A) have been enrolled shall be determined by a lottery among the students meeting the requirements of T.C.A. § 49-13-106(a)(1)(B)-(D).

3. If the number of students meeting the requirements of T.C.A. § 49-13-106(a)(1)(A)-(D) does not exceed the capacity of the school or the capacity of a program, class, grade level or building, but the number of students meeting the requirements of T.C.A. § 49-13-106(a)(1)(A)-(E) does, then the enrollment of eligible students in the slots remaining after all students meeting the requirements of T.C.A. § 49-13-106(a)(1)(A)-(D) have been enrolled shall be determined by a lottery among the students meeting the requirements of T.C.A. § 49-13-106(a)(1)(E).

(c) If, at the end of the initial student application period, the number of eligible students seeking to be enrolled does not exceed the school's capacity or the capacity of a program, class, grade level or building, then the enrollment of eligible students may proceed on a first come, first served basis.

(d) If applicable, the preferences in T.C.A. § 49-13-113(b) and (c) shall be used in enrollment of students in charter schools operating in LEAs in which students are eligible to enroll in charter schools pursuant to T.C.A. § 49-13-106(a)(1)(E). Prioritizing enrollment according to the following chart shall satisfy the Department of Education review and approval process pursuant to T.C.A. § 49-13-113(d)(3).

	Siblings and children (fewer than 25 and 10%)* (49-13-113(e))	Previously enrolled in a charter (49-13-106(a)(1)(A))	Assigned to a school missing AYP, or (49-13-106(a)(1)(B)) Failing to test proficient on the TCAP/Gateway (49-13-106(a)(1)(C-D))	Eligible for free and reduced meals (49-13-106(a)(1)(E))
Enrolled in a school that converts to a charter (49-13-113(b)(2)(A)(i))	4	5	9	13
Attending a	2	6	10	14

public school in the LEA <small>(49-13-113)(b)(2)(A)(v)</small>				
Attending a non-public school in the LEA area <small>(49-13-113)(b)(2)(A)(vi)</small>	3	7	11	15
Residing outside the LEA <small>(49-13-113)(b)(2)(A)(vii)</small>	4	8	12	16

* Per TCA § 49-13-113 (c), a charter school may give initial preference to the siblings of a pupil already enrolled and to children of teachers, sponsors, and board members. This preference is limited to ten percent (10%) of enrollment or twenty five (25) students, whichever is less.

Authority: T.C.A. §§ 49-13-113 and 49-13-126.

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Education

DIVISION: Charter Schools

SUBJECT: Achievement School District

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 49-13-126

EFFECTIVE DATES: August 29, 2012 through June 30, 2013

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: This rule provides for an application process for charter school sponsors applying to operate a school in the Achievement School District.

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)

Impact on Local Governments

Pursuant to T.C.A. §§4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

This rule shall have no impact on local governments.

**Department of State
Division of Publications**

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Nashville, TN 37243
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For Department of State Use Only

Sequence Number: 03-25-12
Rule ID(s): 5781
File Date: 03/28/2012
Effective Date: 08/29/2012

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §§4-5-202, 4-5-207 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Agency/Board/Commission:	State Department of Education
Division:	Charter Schools
Contact Person:	Rich Haglund
Address:	710 James Robertson Pkwy, 5 th Floor
Zip:	37243
Phone:	615-741-8486
Email:	rich.haglund@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
0520-14-03	Achievement School District
Rule Number	Rule Title
0520-14-03-.01	Authorization of Charter Schools

Chapter 0520-14-03
Achievement School District
New Rule

Title 0520-14 is amended by inserting a new chapter 0520-14-03 Achievement School District and by inserting the following as a new, appropriately numbered rule:

Rule 0520-14-03-.01 Authorization of Charter Schools

- (1) Charter schools may be authorized by the achievement school district through an application process established by the achievement school district (ASD).
 - (a) The application shall be reviewed according to procedures established by the superintendent of the ASD.
 - (b) By signing and submitting an application, the sponsor requests a waiver of all education statutes and rules of the state board or department of education, except those listed in T.C.A. § 49-13-105 or included by reference (such as statutes and rules related to licensing of charter school teachers) in Title 49, Chapter 13 (the Tennessee Public Charter Schools Act). The approval of a charter school by the superintendent shall include the approval of these waivers by the commissioner of education, and such automatic waivers shall be reflected in the contract between the charter school and the ASD.
 - (c) Decisions of the superintendent to grant or deny ASD charter applications are final and not subject to appeal.

Authority: T.C.A. §§ 49-13-112, 49-13-126.

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Labor and Workforce Development

DIVISION: Workers' Compensation

SUBJECT: Medical Fee Schedule; Drug Free Workplace

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 50-6-204

EFFECTIVE DATES: June 10, 2012 through June 30, 2013

FISCAL IMPACT: The agency has provided the following information:

State and local governments have the option to accept the provisions of the workers' compensation laws pursuant to Tennessee Code Annotated, § 50-6-106(6), but are not required to do so. For those governmental agencies that do adhere to the medical fee schedule and Drug Free Workplace Program, their workers' compensation premiums should decrease, though It is difficult at this time to ascertain by exactly how much.

STAFF RULE ABSTRACT:

The medical fee schedule for workers' compensation has been in place since 2005. These amendments make several changes, some substantive and some minor.

A substantive change is reducing the maximum professional fees, which are based upon a percentage above Medicare rates. Changes to Medicare's reimbursement formula have caused a steep increase in these rates that was not previously anticipated. The rule amendment would return the rates to more moderate levels, which will alleviate the burden on Tennessee employers.

Other substantive changes include: capping pathology fees at 200% of applicable Medicare; linking repackaged and compounded drugs to the average wholesale price of the original national drug code number; capping ground ambulance rates at 150% of applicable Medicare; allowing chiropractors to charge for an office visit on the same day as the initial treatment; and, removing the requirement that physical therapy must go through utilization review after six visits.

In addition, the amendments update the Drug Free Workplace drug-testing panel to the new U.S. Department of Transportation panel.

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.

1) Comment: The Department should consider revising the in-patient per diem and stop-loss amounts. Alternatively, the in-patient fees should be based on Medicare. Under either system, the in-patient rules should adhere to the Medicare bundling guidelines. Otherwise, hospital costs could experience a significant increase. Due to the complexities involved, this may be an issue that the Medical Care & Cost Containment Committee should study and then make a recommendation.

Response: Currently, the data on hospital reimbursements is insufficient to fully analyze this amendment. That data should be available in the next year. As such, the Department agrees that this is a change that should await more concrete data to analyze the impact and we will exclude it from the current amendments.

2) Comment: The wording in the in-patient bundling amendment should be changed from "are not controlling" to "do not apply" for clarity purposes.

Response: In light of the response to Comment #1, this comment is moot.

3) Comment: Maximum ambulance fees should remain as they currently are, rather than being based on Medicare, since Medicare covers different types of patients and emergencies than workers' compensation insurance.

Response: While the Department recognizes that Medicare covers a different type of patient than workers' compensation, we have used a Medicare-based fee schedule for most aspects of medical costs since the fee schedule was first implemented in 2005. The original reimbursement formula for ambulances was the lesser of submitted charges or the average price in the geographical locality. The database for the latter is now obsolete, so ambulance services have been able to receive up to their submitted charges, which can be significant amounts. In looking for ways to control those costs, the fairest and most accessible option appears to be setting a reimbursement amount as a percentage of Medicare. Going forward, we will continue to consider moving the medical fee schedule rates for all services away from a Medicare-based system as other commenters have also suggested.

4) Comment: Many commenters recommended that generic equivalent average price ("GEAP") should not be incorporated into the pharmacy fee schedule because it is inaccessible and only covers a small percentage of drugs.

Response: Due to the inaccessibility and lack of information in the GEAP database, the Department agrees with the commenters and will remove references to GEAP in the final rule.

5) Comment: There is support for addressing repackaged and/or compounded drugs, but the proposed wording should be clarified so that the responsibilities of the parties are clearer.

Response: The Department agrees that the language in the final rule should be revised to better convey the intent. While we received several suggestions on how the language should be revised, we will take the aspects of those suggestions that best convey the intent and reformulate the language.

6) Comment: There is concern that restricting the payments for repackaged and compounded drugs to average wholesale price ("AWP") will discourage physicians from dispensing, especially when dispensing physicians have a 100% fill rate, whereas pharmacy prescriptions have a 70-80% fill rate. This change could also lead to access to care problems if it is no longer financially viable for physicians to dispense drugs.

Response: Currently, the pharmacy fee schedule uses AWP as a basis for drug prices, but repackaged and compounded drugs are not adequately addressed by the current language. As such, the amendment is to fill a

gap and ensure that drug prices are based on AWP whenever possible. In no way does the rule amendment prohibit physician-dispensing or the practice of repackaging or compounding drugs.

7) Comment: There is opposition to the decrease in maximum professional fees from physicians, as well as chiropractors and physical therapists. Some providers have advised that the 11% cut in the maximum allowable amount may cause them to discontinue treating workers' compensation patients.

Response: Amendments to the medical fee schedule in 2009 designated a conversion factor of 38.0870 in the formula for maximum professional fees because of anticipated cuts to Medicare. In the last two years, the Medicare cuts have not materialized and, as a result, the medical fee schedule's maximum professional fees have increased by 20% since August 2009, which included an 8.8% increase at the beginning of 2011, according to the National Council on Compensation Insurance ("NCCI"). As such, the maximum professional fees have become significantly higher than was anticipated when the 2009 amendments took effect. The current amendment would update the designated conversion factor to current Medicare, which is 33.9764.

While we would be disappointed to see any physician decline to see workers' compensation patients because of this amendment and do recognize that such cases can provide more administrative hassles, the amended reimbursement formula would still allow for percentages significantly higher than Medicare (i.e., 275% for orthopaedic and neurosurgery, 200% for general surgery, 160% for office visits). In addition, the final amendment will insulate the providers from further decreases to Medicare's conversion factor.

8) Comment: The NCCI pricing method used in the law-only filing as a basis for the reduction in professional fees is flawed because it does not account for prices actually paid and it uses outdated Medicare studies.

Response: The pricing method used in NCCI's filing is based on trending. While actual prices paid are not used in the filing, the method accounts for increases and decreases by assuming that a certain percentage change in the medical fee schedule will correlate to a very similar change in actual prices paid. As for the Medicare study, that is only utilized with projected reductions in costs, whereas the commenters take issue with the projected increases in the filing. Accordingly, that study had no impact on the commenters' areas of interest.

9) Comment: A recent Workers Compensation Research Institute ("WCRI") study showed that Tennessee was the only one of 25 study states to have medical costs below its 2002 level. As such, there should be no reduction in maximum professional fees.

Response: The WCRI study did show that Tennessee's medical costs are lower than in 2002. The medical fee schedule did not go into effect, however, until 2005. As such, the data showing that costs are very close, albeit still lower, than the 2002 levels is actually disconcerting for the purposes of the medical fee schedule. In addition, the study only used data up to June 2010, whereas the largest increase from the previous conversion factor designation on maximum professional fees occurred in January 2011. Accordingly, that study has not yet accounted for the most recent increase in medical costs.

10) Comment: Going to a two-tiered surgical reimbursement system based on CPT codes will cause some codes that have traditionally been paid at the higher level to be paid at the lower level, which would significantly increase medical costs.

Response: Tennessee is the only state that uses a two-tiered surgical reimbursement system based on the board-certification/eligibility status of the physician, which has caused issues with improper reimbursements. Due to the concerns about increased costs, however, the Department will revise the proposed language to maintain the orthopaedic and neurosurgeon distinction, but with additional language aimed at alleviating the issues with improper reimbursements.

11) Comment: There is a concern among several commenters that the administrative hassles involved in workers' compensation will result in a decrease in the number of providers willing to see those patients.

Response: While many of the areas that concern the commenters are outside of the scope of these rule amendments, one change that should help ease this burden is the clarifying language mentioned in the response to Comment 10.

12) Comment: The multiple procedures reduction will reduce reimbursement for providers, especially physical therapists who perform several modalities in one session.

Response: The multiple procedures reduction has been in the medical fee schedule since its implementation in 2005. The present amendment merely clarifies which procedures are primary, i.e., to be paid in full, and which are secondary, i.e., to be paid at half. Accordingly, the amendment is only to clarify an ambiguous area and should not have a significant impact.

13) Comment: There is concern that the prohibition on line-by-line comparisons will increase costs and impede bill reviewers from applying contracted discounts.

Response: The Department has always interpreted the Medical Fee Schedule "lesser of" comparison to apply to entire bills, rather than a line-by-line comparison of each item in the bill. As such, the amendment is merely to clarify the rule. Nothing in the amendment should prevent contracting or negotiating for discounts below the maximum rates.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

Local governments have the option to accept the provisions of the workers' compensation laws pursuant to T.C.A. § 50-6-106(6), but are not required to do so. For those local governments that do accept the provisions of the workers' compensation laws, the impact of the rule amendments will be a decrease in their workers' compensation insurance premiums.

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.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

1. The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule: The amended rules will affect small employers that fall under the Tennessee Workers' Compensation Laws, which would be employers with at least five employees, or in the construction industry, at least one employee. The rule amendments should result in premium decreases for such employers.

2. The 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: Employers' insurance carriers or third party administrators will be responsible for complying with changes to the medical fee schedule, so no administrative impact would be expected for small businesses. Drug testing companies will be responsible for complying with the updated drug testing, but the update merely mirrors the U.S. Department of Transportation's drug panel, which is widely utilized, so any administrative costs should be minimal.

3. A statement of the probable effect on impacted small businesses and consumers: Employers will pay lower workers' compensation premiums, which is a benefit that can then be passed on to employees and consumers.

4. A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business: There are no less burdensome methods to achieve the purposes and objectives of the amended rule.

5. Comparison of the proposed rule with any federal or state counterparts: The medical fee schedule rates are based on a percentage above Medicare rates. The Drug Free Workplace Program's drug panel is based on the U.S. Department of Transportation's rules (49 C.F.R. 40.87).

6. 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 would be detrimental to small businesses that fall under the Tennessee Workers' Compensation Laws to be exempt from the medical fee schedule since it contains costs.

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For Department of State Use Only

Sequence Number: 03-69-12
 Rule ID(s): 5765-5768
 File Date: 03/12/2012
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Rulemaking Hearing Rule(s) Filing Form

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

Agency/Board/Commission:	Department of Labor and Workforce Development
Division:	Workers' Compensation
Contact Person:	Landon Lackey
Address:	220 French Landing Drive Nashville, Tennessee
Zip:	37243
Phone:	615-532-0370
Email:	landon.lackey@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
0800-02-12	Drug Free Workplace Programs
Rule Number	Rule Title
0800-02-12-.03	Definitions
0800-02-12-.07	Testing

Chapter Number	Chapter Title
0800-02-17	Medical Cost Containment Program
Rule Number	Rule Title
0800-02-17-.06	Procedures for Which Codes Are Not Listed
0800-02-17-.09	Independent Medical Examination to Evaluate Medical Aspects of Case
0800-02-17-.10	Payment
0800-02-17-.12	Recovery of Payment
0800-02-17-.20	Utilization Review
0800-02-17-.21	Process for Resolving Differences Between Carriers and Providers Regarding Bills
0800-02-17-.24	Provider and Facility Fees for Copies of Medical Records

Chapter Number	Chapter Title
0800-02-18	Medical Fee Schedule
Rule Number	Rule Title
0800-02-18-.02	General Information and Instructions for Use
0800-02-18-.04	Surgery Guidelines
0800-02-18-.07	Ambulatory Surgical Centers and Outpatient Hospital Care (Including Emergency Room Facility Charges)

0800-02-18-.08	Chiropractic Services Guidelines
0800-02-18-.09	Physical and Occupational Therapy Guidelines
0800-02-18-.10	Durable Medical Equipment and Implant Guidelines
0800-02-18-.12	Pharmacy Schedule Guidelines
0800-02-18-.13	Ambulance Services Guidelines

Chapter Number	Chapter Title
0800-02-19	In-patient Hospital Fee Schedule
Rule Number	Rule Title
0800-02-19-.03	Special Ground Rules – Inpatient Hospital Services

(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>)

Chapter 0800-02-12
Drug Free Workplace Programs

Amendments

Rule 0800-02-12-.03 Definitions, subsection (17)(a) is amended by deleting the current language and replacing it with the following:

- (17) (a) "Prohibited Levels" for a drug or a drug's metabolites means cut-off levels on screened specimens which are equal to or exceed the following and shall be considered to be presumptively positive;

1. Cut-off levels on initially screened specimens:

Amphetamines	500 ng/mL
Marijuana (cannabinoids)	50 ng/mL
Cocaine (benzoyllecgonine)	150 ng/mL
Opiates (codeine, morphine, heroin)	2,000 ng/mL
PCP (phencyclidine)	25 ng/mL
6-Acetylmorphine (heroin)	10 ng/mL
MDMA (ecstasy)	500 ng/mL

2. Cut-off levels on confirmation specimens:

Amphetamines	250 ng/mL
Marijuana (cannabinoids)	15 ng/mL
Cocaine (benzoyllecgonine)	100 ng/mL
Opiates (codeine, morphine, heroin)	2,000 ng/mL
PCP (phencyclidine)	25 ng/mL
6-Acetylmorphine (heroin)	10 ng/mL
MDMA (ecstasy)	250 ng/mL

Authority: T.C.A. §§50-9-103, 50-9-106, 50-9-109, and 50-9-111.

Rule 0800-02-12-.07 Testing, section (1) is amended by adding two new subsections, which shall read:

- (g) 6-Acetylmorphine (heroin)
(h) MDMA (ecstasy)

Authority: T.C.A. §§50-9-101(a) and (b), 50-9-104, 50-9-106(a)(1), 50-9-107(a) and (c), 50-9-110, and 50-9-111.

Chapter 0800-02-17
Medical Cost Containment Program

Amendments

0800-02-17-.06 Procedures for Which Codes Are Not Listed, section (1) is amended by adding the phrase "or revenue code, as applicable" at the end of the first sentence, so that it reads as follows:

- (1) If a procedure is performed which is not listed in the Medicare Resource Based Relative Value Scale ("RBRVS"), the health care provider must use an appropriate CPT procedure code or revenue code, as applicable. The provider must submit an explanation, such as copies of operative reports, consultation reports, progress notes, office notes or other applicable documentation, or description of equipment or supply (when that is the bill).

Authority: T.C.A. §§ 50-6-204, 50-6-205 and 50-6-233 (Repl. 2005).

0800-02-17-.09 Independent Medical Examination to Evaluate Medical Aspects of Case, section (2) is amended by adding the following sentence at the end:

Physicians may only require pre-payment of \$500.00 for an IME; provided, that following the completion of the IME and report, the physician may bill for other amounts appropriately due and the payer may recover any amounts that were overpaid.

Authority: T.C.A. §§ 50-6-204, 50-6-205 and 50-6-233 (Repl. 2005).

0800-02-17-.09 Independent Medical Examination to Evaluate Medical Aspects of Case is amended by adding the following as a new section (4):

- (4) Physicians who perform consultant services and/or records review in order to determine whether to accept a new patient shall not bill for an IME. Rather, such physicians shall bill using CPT codes 99358 and 99359. The reimbursement shall be \$200.00 for the first hour of review and \$100.00 for each additional hour; provided, that each quarter hour shall be pro-rated.

Authority: T.C.A. §§ 50-6-204, 50-6-205 and 50-6-233 (Repl. 2005).

0800-02-17-.10 Payment, section (4) is amended by adding the following sentence at the end:

If the Division does not designate a specific form, then the proper form shall be according to Medicare guidelines.

Authority: T.C.A. §§ 50-6-204, 50-6-205 and 50-6-233 (Repl. 2005).

0800-02-17-.10 Payment, section (12) is amended by deleting the current language and replacing it with the following:

- (12) Payments to providers for initial examinations and treatment authorized by the carrier or employer shall be paid by that carrier or employer and shall not later be subject to reimbursement by the employee, even if the injury or condition for which the employee was sent to the provider is later determined non-compensable under the Act.

Authority: T.C.A. §§ 50-6-204, 50-6-205 and 50-6-233 (Repl. 2005).

0800-02-17-.12 Recovery of Payment, section (1) is amended by adding the following sentence at the end:

If the timeframes in these Rules are not met, then the Medical Care and Cost Containment Committee will decline to review the dispute, but such failure shall not provide an independent basis for denying payment or recovery of payment.

Authority: T.C.A. §§ 50-6-204, 50-6-205, 50-6-226 and 50-6-233 (Repl. 2005).

0800-02-17-.20 Utilization Review, subsection (1)(a) is amended by changing "Tenn. Code Ann. § 50-6-102(18)" to "Tenn. Code Ann. § 50-6-102(17)."

Authority: T.C.A. §§ 50-6-102, 50-6-122, 50-6-124, 50-6-204, 50-6-205 and 50-6-233 (Repl. 2005).

0800-02-17-.21 Process for Resolving Differences Between Carriers and Providers Regarding Bills, subsection (4)(b) is amended by deleting the first sentence and replacing it with the following:

- (b) Valid requests for Administrative Review must be accompanied by a form prescribed by the Division, must be legible, and must contain copies of the following:

Authority: T.C.A. §§ 50-6-126, 50-6-204, 50-6-205, 50-6-226 and 50-6-233 (Repl. 2005).

0800-02-17-.21 Process for Resolving Differences Between Carriers and Providers Regarding Bills, section (4) is amended by adding the following as a new subsection (d):

- (d) If the request for review does not contain proper documentation, then the MCCCC will decline to review the dispute. Likewise, if the timeframes in this Rule are not met, then the MCCCC will decline to review the dispute, but such failure shall not provide an independent basis for denying payment or recovery of payment.

Authority: T.C.A. §§ 50-6-126, 50-6-204, 50-6-205, 50-6-226 and 50-6-233 (Repl. 2005).

0800-02-17-.24 Provider and Facility Fees for Copies of Medical Records, section (1) is amended by adding the following sentence at the end:

The cost set forth in this subsection shall also apply to paper records transmitted on a disc or by other electronic means based upon the number of pages reproduced on the disc or other media.

Authority: T.C.A. §§ 50-6-204, 50-6-205 and 50-6-233 (Repl. 2005).

0800-02-17-.24 Provider and Facility Fees for Copies of Medical Records, section (2) is amended by deleting the current language and replacing it with the following:

- (2) Health care providers and facilities must furnish an injured employee or the employee's attorney and carriers/self-insureds or their legal representatives copies of records and reports as set forth in Tenn. Code Ann. § 50-6-204, as amended.

Authority: T.C.A. §§ 50-6-204, 50-6-205 and 50-6-233 (Repl. 2005).

Chapter 0800-02-18
Medical Fee Schedule

Amendments

0800-02-18-.02 General Information and Instructions for Use, subsection (2)(b) is amended by adding the following as a new subsection:

- 6. The "lesser of" comparison among (1) the provider's usual charge, (2) the maximum allowable amount pursuant to these Rules, or (3) any other contracted amount, should be determined based on the entire bill or amount due for a particular service, rather than on a line-by-line basis.

Authority: T.C.A. §§ 50-6-204, 50-6-205 and 50-6-233 (Repl. 2005).

0800-02-18-.02 General Information and Instructions for Use, section (4) is amended by deleting the section in its entirety and replacing it with the following:

- (4) Practitioner fees shall be based on the conversion factor of 33.9764, which shall be used in conjunction with the most current Medicare RVUs. The Division may designate another baseline conversion factor at any time through the rulemaking process. The Tennessee-specific conversion factors listed below should be applied to the service category in order to calculate the appropriate amount.

Service Category	TN Conversion Factor
Anesthesiology.....	\$75.00 per unit
Orthopaedic and Neurosurgery* .....	.275%
General Surgery.....	.200%
Radiology.....	.200%
Pathology.....	.200%

Physical/Occupational Therapy.....	130%
Chiropractic.....	130%
General Medicine (including evaluation & management).....	160%
Emergency Care.....	200%
Dentistry.....	100%

* Orthopaedic and neurosurgeons may use the modifier "ON" on the HCFA 1500 form when submitting surgical charges. If the modifier or another indicator is not placed on the form, then the Tennessee Department of Health's database may be consulted in order to determine the provider's specialty.

Authority: T.C.A. §§ 50-6-204, 50-6-205 and 50-6-233 (Repl. 2005).

0800-02-18-.04 Surgery Guidelines, section (1) is amended by deleting the current language and replacing it with the following:

- (1) Multiple Procedures: Maximum reimbursement shall be based on 100% of the appropriate Medical Fee Schedule amount for the major procedure plus 50% of the lesser or secondary procedure(s). The major procedure shall be determined to be the procedure with the highest Medicare reimbursement.

Authority: T.C.A. §§ 50-6-204, 50-6-205 and 50-6-233 (Repl. 2005).

0800-02-18-.07 Ambulatory Surgical Centers and Outpatient Hospital Care (Including Emergency Room Facility Charges), subsection (1)(c) is amended by deleting the current language and replacing it with the following:

- (c) Under the Medical Fee Schedule Rules, the OPSS reimbursement system shall be used for reimbursement for all outpatient services, wherever they are performed, in a free-standing ASC or hospital setting. The most current, effective Medicare APC rates shall be used as the basis for facility fees charged for outpatient services and shall be reimbursed at a maximum of 150% of current value for such services. Depending on the services provided, ASCs and hospitals may be paid for more than one APC for an encounter. When multiple surgical procedures are performed during the same surgical session, maximum reimbursement shall be based on 100% of the appropriate Medical Fee Schedule amount for the major procedure plus 50% of the lesser or secondary procedure(s); provided, that the major procedure shall be determined to be the procedure with the highest Medicare reimbursement. Only separate and distinct surgical procedures shall be billed. Medicare guidelines shall be consulted and used in determining separate and distinct surgical procedures.

Authority: T.C.A. §§ 50-6-204, 50-6-205 and 50-6-233 (Repl. 2005).

0800-02-18-.07 Ambulatory Surgical Centers and Outpatient Hospital Care (Including Emergency Room Facility Charges), subsection (1)(h)(2) is amended by deleting the current language and replacing it with the following:

- 2. Laboratory Services (including pathology)

Authority: T.C.A. §§ 50-6-204, 50-6-205 and 50-6-233 (Repl. 2005).

0800-02-18-.07 Ambulatory Surgical Centers and Outpatient Hospital Care (Including Emergency Room Facility Charges), subsection (k) is amended by deleting the current language and replacing with the following:

- (k) There may be emergency cases or other occasions in which the patient was scheduled for outpatient surgery and it becomes necessary to admit the patient. All hospitals with ambulatory patients who stay longer than 23 hours past ambulatory surgery and are formally admitted to the hospital as an inpatient will be paid according to the In-patient Hospital Fee Schedule Rules,

0800-02-19. All ASCs shall be paid pursuant to this Rule 0800-02-18-.07 regardless of the patient's length of stay.

Authority: T.C.A. §§ 50-6-204, 50-6-205 and 50-6-233 (Repl. 2005).

0800-02-18-.08 Chiropractic Services Guidelines, section (2) is amended by deleting the current language in its entirety and substituting instead the following:

- (2) For chiropractic services, an office visit may only be billed on the same day as a manipulation when it is the patient's initial visit with that provider.

Authority: T.C.A. §§ 50-6-204, 50-6-205 and 50-6-233 (Repl. 2005).

Rule 0800-02-18-.09 Physical and Occupational Therapy Guidelines, section (5) is amended by deleting the current language in its entirety and replacing it with the following:

- (5) Whenever physical therapy and/or occupational therapy services exceed twelve (12) visits, such treatment shall be reviewed pursuant to the carrier's utilization review program in accordance with the procedures set forth in Chapter 0800-02-06 of the Division's Utilization Review rules before further physical therapy and/or occupational therapy services may be certified for payment by the carrier. Such certification shall be completed within the timeframes set forth in Chapter 0800-02-06 to assure no interruption in delivery of needed services. Failure by a provider to properly certify such services as prescribed herein shall result in the forfeiture of any payment for uncertified services. Failure by an employer or utilization review agent to conduct utilization review in accordance with this Chapter 0800-02-18 and Chapter 0800-02-06 shall result in no more than twelve (12) additional visits being deemed certified. The initial utilization review of physical therapy and/or occupational therapy services shall, if necessary and appropriate, certify an appropriate number of visits. If necessary, further subsequent utilization review shall be conducted to certify additional physical therapy and/or occupational therapy services as is appropriate; provided, that further certifications are not required to be in increments of twelve (12) visits.

Authority: T.C.A. §§ 50-6-204, 50-6-205 and 50-6-233 (Repl. 2005).

Rule 0800-02-18-.10 Durable Medical Equipment and Implant Guidelines, section (1) is amended by adding the phrase "or, for hospital reimbursements, a UB 04 form." at the end of the last sentence, so that it reads as follows:

- (1) Reimbursement for durable medical equipment and implants for which billed charges are \$100.00 or less shall be limited to eighty (80%) of billed charges. Durable medical equipment and implants for which billed charges exceed \$100.00 shall be reimbursed at a maximum amount of the supplier or manufacturer's invoice amount, plus the lesser of 15% of invoice or \$1,000.00, and coded using the HCPCS codes. These calculations are per item and are not cumulative. Charges for durable medical equipment and implants are in addition to, and shall be billed separately from, all facility and professional service fees. Codes to be used are found in the HCPCS. Charges should be submitted on a HCFA 1500 form or, for hospital reimbursements, a UB 04 form.

Authority: T.C.A. §§ 50-6-204, 50-6-205 and 50-6-233 (Repl. 2005).

Rule 0800-02-18-.12 Pharmacy Schedule Guidelines, subsection (1)(c) is amended by deleting the phrase "subsection (5) of this section" and replacing it instead with "the following subsections."

Authority: T.C.A. §§ 50-6-204, 50-6-205 and 50-6-233 (Repl. 2005).

Rule 0800-02-18-.12 Pharmacy Schedule Guidelines, subsection (1)(e)(2)(v) is amended by deleting the reference to "Rule 0800-2-11-.10" and replacing it with "Rule 0800-02-17-.10."

Authority: T.C.A. §§ 50-6-204, 50-6-205 and 50-6-233 (Repl. 2005).

Rule 0800-02-18-.12 Pharmacy Schedule Guidelines, subsection (1)(f)(2) is amended by deleting the reference to "(4)(b)" and replacing it with "(e)(2)."

Authority: T.C.A. §§ 50-6-204, 50-6-205 and 50-6-233 (Repl. 2005).

Rule 0800-02-18-.12 Pharmacy Schedule Guidelines, section (1) is amended by adding a new subsection (h) at the end, which should read as follows:

(h) Repackaged or Compounded Products

All pharmaceutical bills submitted for repackaged or compounded products must include the NDC Number of the original manufacturer registered with the U.S. Food & Drug Administration or its authorized distributor's stock package used in the repackaging or compounding process. The reimbursement allowed shall be based on the current published manufacturer's AWP of the product or ingredient, calculated on a per unit basis, as of the date of dispensing. A repackaged or compounded NDC Number shall not be used and shall not be considered the original manufacturer's NDC Number. If the original manufacturer's NDC Number is not provided on the bill, then the reimbursement shall be based on the AWP of the lowest priced therapeutically equivalent drug, calculated on a per unit basis. The filling fees otherwise provided in these Rules shall be payable when applicable.

Authority: T.C.A. §§ 50-6-204, 50-6-205 and 50-6-233 (Repl. 2005).

0800-02-18-.13 Ambulance Services Guidelines, section (4) is amended by deleting the current language in its entirety and replacing it with the following:

- (4) Reimbursement shall be based upon the lesser of the submitted charge or 150% of the current Medicare rate. To the extent permitted by federal law, the rates determined in the preceding sentence shall also apply to air ambulance services.

Authority: T.C.A. §§ 50-6-204, 50-6-205 and 50-6-233 (Repl. 2005).

Chapter 0800-02-19
In-patient Hospital Fee Schedule

Amendments

0800-02-19-.03 Special Ground Rules – Inpatient Hospital Services, subsection (2)(e) is amended by deleting the current language and replacing it with the following:

- (e) The items listed in subsection (d)(4) shall be reimbursed according to the Medical Cost Containment Program Rules (Chapter 0800-02-17) and Medical Fee Schedule Rules (Chapter 0800-02-18) payment limits. Refer to the maximum rates set forth in Rule 0800-02-18-.02(4) for practitioner fees. Items not listed in the Rules shall be reimbursed at the usual and customary rate as defined in Rule 0800-02-17-.03(80), unless otherwise indicated herein.

Authority: T.C.A. §§ 50-6-125, 50-6-128, 50-6-204 and 50-6-205 (Repl. 2005).

0800-02-19-.03 Special Ground Rules – Inpatient Hospital Services, subsection (4)(d) is amended by deleting the current language and replacing it with the following:

- (d) Example: DRG 222: Knee Procedures W/O CC

Hospital Peer Group: 1 – Surgical admission
Maximum rate per day: \$1,800 for first 7 days; 1,500 for 2 additional days
Number Billed Days: 9
Total Billed Charges
(after subtracting amounts for implants, radiology, etc.):\$53,650.00

Maximum allowable payment for Normal DRG stay..... \$15,600.00

Total difference, charges over and above maximum payments \$38,050.00

(if this amount is \$15,000 or less, then stop-loss is not applicable)

Difference over and above \$15,000 Stop-loss is..... \$23,050.00
Payable under Stop-loss (80% of \$23,050.00).....\$18,440.00

Amounts due hospital for implants, radiology, etc.....\$3,525.00

Maximum fee schedule amount: 15,600.00 + 18,440.00 + 3,525.00 = \$37,565.00

Proper reimbursement would be the lesser of billed charges, maximum fee schedule amount, or other contracted or negotiated rate

Authority: T.C.A. §§ 50-6-125, 50-6-128, 50-6-204 and 50-6-205 (Repl. 2005).

CHAPTER 0800-2-12

DRUG FREE WORKPLACE PROGRAMS

0800-2-12-.03 DEFINITIONS.

(17) (a) "Prohibited Levels" for a drug or a drug's metabolites means cut-off levels on screened specimens which are equal to or exceed the following and shall be considered to be presumptively positive;

1. Cut-off levels on initially screened specimens:

Amphetamines	.....	10500 ng/mL
Marijuana (cannabinoids)	.....	50 ng/mL
Cocaine (benzoyllecgonine)	.....	30150 ng/mL
Opiates (codeine, morphine, heroin)	.....	2,000 ng/mL
PCP (phencyclidine)	.....	25 ng/mL
<u>6-Acetylmorphine (heroin)</u>	.....	<u>10 ng/mL</u>
<u>MDMA (ecstasy)</u>	.....	<u>500 ng/mL</u>

2. Cut-off levels on confirmation specimens:

Amphetamines	.....	50250 ng/mL
Marijuana (cannabinoids)	.....	15 ng/mL
Cocaine (benzoyllecgonine)	.....	15100 ng/mL
Opiates (codeine, morphine, heroin)	.....	2,000 ng/mL
PCP (phencyclidine)	.....	25 ng/mL
<u>6-Acetylmorphine (heroin)</u>	.....	<u>10 ng/mL</u>
<u>MDMA (ecstasy)</u>	.....	<u>250 ng/mL</u>

0800-2-12-.07 TESTING.

(1) A covered employer shall be required to test employees and job applicants for the following drugs:

- (a) Alcohol-Not required for job applicant testing.
- (b) Amphetamines
- (c) Cannabinoids, (THC)
- (d) Cocaine
- (e) Opiates
- (f) Phencyclidine
- (g) 6-Acetylmorphine (heroin)
- (h) MDMA (ecstasy)

Chapter 0800-02-17
Medical Cost Containment Program

0800-02-17-.06 PROCEDURES FOR WHICH CODES ARE NOT LISTED.

(1) If a procedure is performed which is not listed in the Medicare Resource Based Relative Value Scale ("RBRVS"), the health care provider must use an appropriate CPT procedure code or revenue code, as applicable. The provider must submit an explanation, such as copies of operative reports, consultation reports, progress notes, office notes or other applicable documentation, or description of equipment or supply (when that is the bill).

0800-02-17-.09 INDEPENDENT MEDICAL EXAMINATION TO EVALUATE MEDICAL ASPECTS OF CASE.

- (2) An independent medical examination, performed to evaluate the medical aspects of a case (other than one conducted under the Division's MIRR Program), shall be billed using the appropriate independent medical examination procedure, and shall include the practitioner's time only. Time spent shall include face-to-face time with the patient, time spent reviewing records, reports and studies, and time spent preparing reports. The office visit bill is included with the code and shall not be billed separately. The total amount for an IME under this Rule shall not exceed \$500.00 per hour, and shall be pro-rated per quarter hour, i.e. two and one half hours may not exceed \$1,250.00. Physicians may only require pre-payment of \$500.00 for an IME; provided, that following the completion of the IME and report, the physician may bill for other amounts appropriately due and the payer may recover any amounts that were overpaid.
- (4) Physicians who perform consultant services and/or records review in order to determine whether to accept a new patient shall not bill for an IME. Rather, such physicians shall bill using CPT codes 99358 and 99359. The reimbursement shall be \$200.00 for the first hour of review and \$100.00 for each additional hour; provided, that each quarter hour shall be pro-rated.

0800-02-17-.10 PAYMENT.

- (4) Billing for provider services shall be submitted on forms approved by the Division, UB-92 and CMS-1500, or their official replacement forms. If the Division does not designate a specific form, then the proper form shall be according to Medicare guidelines.
- (12) Payments to providers for initial examinations and treatment authorized by the carrier or ~~self-insured~~ employer shall be paid by that carrier or ~~self-insured~~ employer and shall not later be subject to reimbursement by the employee ~~or~~, even if the injury or condition for which the employee was sent to the provider is later determined non-compensable under the Act.

0800-02-17-.12 RECOVERY OF PAYMENT.

- (1) Nothing in these Rules shall preclude the recovery of payment already made for services and bills which may later be found to have been medically paid at an amount which exceeds the maximum allowable payment. Likewise, nothing in these Rules shall preclude any provider from receiving additional payment for services or supplies if it is properly due that provider and does not exceed the amount allowed by these Rules. If the timeframes in these Rules are not met, then the Medical Care and Cost Containment Committee will decline to review the dispute, but such failure shall not provide an independent basis for denying payment or recovery of payment.

0800-02-17-.20 UTILIZATION REVIEW.

- (1) Scope of this part:
- (a) Requirements contained in this Rule pertain to Utilization Review activity as defined by Tenn. Code Ann. § 50-6-102(178) (Repl. 2005) with respect to services by a provider for health care or health related services furnished as a result of a compensable injury, illness or occupational disease arising out of and in the course of employment. The Division's Utilization Rules, Chapter 0800-02-6, provide detailed specifics regarding Utilization Review and must be consulted

as they are incorporated in this Rule as if set forth fully herein. Notwithstanding any other provision in this Chapter which may be to the contrary, this Rule is intended to merely supplement Chapter 800-2-6 on Utilization Review and does not in any way displace the Utilization Review Rules, Chapter 0800-02-6.

0800-02-17-.21 PROCESS FOR RESOLVING DIFFERENCES BETWEEN CARRIERS AND PROVIDERS REGARDING BILLS.

- (4) Disputes
 - (b) Valid requests for Administrative Review ~~do not require a particular form but must be accompanied by a form prescribed by the Division.~~ must be legible and contain copies of the following:
 - (d) If the request for review does not contain proper documentation, then the MCCCC will decline to review the dispute. Likewise, if the timeframes in this Rule are not met, then the MCCCC will decline to review the dispute, but such failure shall not provide an independent basis for denying payment or recovery of payment.

0800-02-17-.24 PROVIDER AND FACILITY FEES FOR COPIES OF MEDICAL RECORDS.

- (1) Health care providers and facilities are entitled to recover an amount in accordance with Tenn. Code Ann. § 50-6-204 to cover the cost of copying documents requested by the carrier, self-insured employer, employee, attorneys, etc. Documentation which is submitted by the provider and/or facility, but was not specifically requested by the carrier, shall not be allowed a copy charge. The cost set forth in this subsection shall also apply to paper records transmitted on a disc or by other electronic means based upon the number of pages reproduced on the disc or other media.
- (2) Health care providers and facilities must furnish an injured employee or the employee's attorney and carriers/self-insureds or their legal representatives copies of records and reports upon request. The maximum charge allowed shall be the same as that set out as set forth in Tenn. Code Ann. § 50-6-204, as amended.

Chapter 0800-02-18 Medical Fee Schedule

0800-02-18-.02 GENERAL INFORMATION AND INSTRUCTIONS FOR USE.

- (b) Reimbursement to all providers shall be the lesser of the following:
 - 6. The "lesser of" comparison among (1) the provider's usual charge, (2) the maximum allowable amount pursuant to these Rules, or (3) any other contracted amount, should be determined based on the entire bill or amount due for a particular service, rather than on a line-by-line basis.
- (4) ~~(a) Monetary Conversion Factors are based on the CMS' unit amount in effect on March 4, 2008. These Factors are subject to change based upon any change in the Medicare unit amount. If the Medicare Conversion Factor falls below the unit amount in effect on March 4, 2008, the Department will adjust the Tennessee Medical Fee Schedule Conversion Factors listed on the Division's website to maintain the equivalent maximum allowable reimbursement which would have been allowed had the Medicare Conversion Factor remained at the amount in effect on March 4, 2008. In no event shall reimbursement amounts under this Chapter be less than the amounts applicable~~

on March 4, 2008.

(b) The appropriate conversion factor must be determined by the type of CPT code for the procedure performed in all cases except those involving orthopedic and neurosurgery. Board-eligible and certified neurosurgeons and orthopedic surgeons shall use the separate neurosurgery and orthopedic surgery conversion factors listed on the Division's website for all surgery CPT codes.

Practitioner fees shall be based on the conversion factor of 33.9764, which shall be used in conjunction with the most current Medicare RVUs. The Division may designate another baseline conversion factor at any time through the rulemaking process. The Tennessee-specific conversion factors listed below should be applied to the service category in order to calculate the appropriate amount.

<u>Service Category</u>	<u>TN Conversion Factor</u>
<u>Anesthesiology.....</u>	<u>\$75.00 per unit</u>
<u>Orthopaedic and Neurosurgery*</u>	<u>.275%</u>
<u>General Surgery.....</u>	<u>.200%</u>
<u>Radiology.....</u>	<u>.200%</u>
<u>Pathology.....</u>	<u>.200%</u>
<u>Physical/Occupational Therapy.....</u>	<u>.130%</u>
<u>Chiropractic.....</u>	<u>.130%</u>
<u>General Medicine (including evaluation & management).....</u>	<u>.160%</u>
<u>Emergency Care.....</u>	<u>.200%</u>
<u>Dentistry.....</u>	<u>.100%</u>

* Orthopaedic and neurosurgeons may use the modifier "ON" on the HCFA 1500 form when submitting surgical charges. If the modifier or another indicator is not placed on the form, then the Tennessee Department of Health's database may be consulted in order to determine the provider's specialty.

0800-02-18-.04 SURGERY GUIDELINES.

- (1) Multiple Procedures: Maximum Reimbursement shall be based on 100% of the physician's usual charge of the appropriate Medical Fee Schedule amount for the major procedure (not to exceed 100% of the TDWC Medical Fee Schedule amount allowable) plus 50% of the physician's usual charge for the lesser or secondary procedure (s) (not to exceed 50% of the TDWC Medical Fee Schedule allowable). The major procedure shall be determined to be the procedure with the highest Medicare reimbursement.

0800-02-18-.07 AMBULATORY SURGICAL CENTERS AND OUTPATIENT HOSPITAL CARE (INCLUDING EMERGENCY ROOM FACILITY CHARGES).

- (1) (c) Under the Medical Fee Schedule Rules, the OPSS reimbursement system shall be used for reimbursement for all outpatient services, wherever they are performed, in a free-

standing ASC or hospital setting. The most current, effective Medicare APC rates shall be used as the basis for facility fees charged for outpatient services and shall be reimbursed at a maximum of 150% of current value for such services. Depending on the services provided, ASCs and hospitals may be paid for more than one APC for an encounter. When multiple surgical procedures are performed during the same surgical session, the maximum reimbursement shall be made at 100% of the appropriate rate Medical Fee Schedule amount for the highest charge surgical procedure and 50% of the appropriate rate for all additional surgical procedures; provided, that the major procedure shall be determined to be the procedure with the highest Medicare reimbursement. Only separate and distinct surgical procedures shall be billed. Medicare guidelines shall be consulted and used in determining separate and distinct surgical procedures.

- (h) 2. Laboratory services (including pathology, ~~which is reimbursed at the usual and customary amount regardless of where performed~~)
- (k) There may be occasions in which the patient was scheduled for outpatient surgery and it becomes necessary to admit the patient. All hospitals with ambulatory patients who are admitted to the hospital and stay longer than 23 hours past ambulatory surgery and are formally admitted to the hospital as an inpatient will be paid according to the In-patient Hospital Fee Schedule Rules, 0800-2-19. All ASCs shall be paid pursuant to this Rule 0800-02-18-.07 regardless of the patient's length of stay.

0800-02-18-.08 CHIROPRACTIC SERVICES GUIDELINES.

- (2) For chiropractic services, an office visit shall not may only be billed on the same day as a manipulation is billed when it is the patient's initial visit with that provider.

0800-02-18-.09 PHYSICAL AND OCCUPATIONAL THERAPY GUIDELINES.

- (5) Whenever physical therapy and/or occupational therapy services exceed six (6) visits, or in cases which are post-operative, twelve (12) visits, such treatment shall be reviewed pursuant to the carrier's utilization review program in accordance with the procedures set forth in Chapter 0800-02-06 of the Division's Utilization Review rules before further physical therapy and/or occupational therapy services may be certified for payment by the carrier. Such certification shall be completed within the timeframes set forth in Chapter 0800-02-06 to assure no interruption in delivery of needed services. Failure by a provider to properly certify such services as prescribed herein shall result in the forfeiture of any payment for uncertified services. Failure by an employer or utilization review agent to conduct utilization review in accordance with this Chapter 0800-02-18 and Chapter 0800-02-06 shall result in no more than twelve (12) additional visits being deemed certified. The initial utilization review of physical therapy and/or occupational therapy services shall, if necessary and appropriate, certify an appropriate number of visits. If necessary, further subsequent utilization review shall be conducted to certify additional physical therapy and/or occupational therapy services as is appropriate; provided, that further certifications are not required to be in increments of twelve (12) visits.

0800-02-18-.10 DURABLE MEDICAL EQUIPMENT AND IMPLANT GUIDELINES.

- (1) Reimbursement for durable medical equipment and implants for which billed charges are \$100.00 or less shall be limited to eighty (80%) of billed charges. Durable medical equipment and implants for which billed charges exceed \$100.00 shall be reimbursed at a maximum amount of the supplier or manufacturer's invoice amount, plus the lesser of 15% of invoice or \$1,000.00, and coded using the HCPCS codes. These calculations are per item and are not cumulative. Charges for durable medical equipment and implants are in addition to, and shall be billed separately from, all facility and professional service

fees. Codes to be used are found in the HCPCS. Charges should be submitted on a HCFA 1500 form or, for hospital reimbursements, a UB 04 form.

0800-02-18-.12 PHARMACY SCHEDULE GUIDELINES.

- (1) The Pharmacy Fee Guideline maximum allowable amount for prescribed drugs (medicines by pharmacists and dispensing practitioners) under the Tennessee workers' compensation laws is the lesser of:

(c) The fees established by the formula for brand-name and generic pharmaceuticals as described in subsection (5) of this section the following subsections.

(e) Reimbursement

2. (v) If allowable payment for prescriptive drugs is not paid by employers or carriers for prescriptions provided to employees who have suffered a compensable work-related injury under the Workers' Compensation Law within thirty-one (31) days from the date of receipt by the employer or insurer of the bill for prescriptive drugs provided to such an employee, interest at the rate of 2.08% /month of the payment allowed pursuant to these rules may be charged by a hospital, pharmacy, or provider of such service as set forth in Rule 0800-2-174-.10 of the Medical Cost Containment Program Rules.

(f) "Patent" or "Proprietary Preparations"

2. Generic substitution as discussed in (4)(b)-(e)(2) above applies also to "over-the-counter" preparations.

(h) Repackaged or Compounded Products

All pharmaceutical bills submitted for repackaged or compounded products must include the NDC Number of the original manufacturer registered with the U.S. Food & Drug Administration or its authorized distributor's stock package used in the repackaging or compounding process. The reimbursement allowed shall be based on the current published manufacturer's AWP of the product or ingredient, calculated on a per unit basis, as of the date of dispensing. A repackaged or compounded NDC Number shall not be used and shall not be considered the original manufacturer's NDC Number. If the original manufacturer's NDC Number is not provided on the bill, then the reimbursement shall be based on the AWP of the lowest priced therapeutically equivalent drug, calculated on a per unit basis. The filling fees otherwise provided in these Rules shall be payable when applicable.

0800-02-18-.13 AMBULANCE SERVICES GUIDELINES.

- (4) Reimbursement shall be based upon the lesser of the submitted charge or 150% of the current Medicare rate. To the extent permitted by federal law, the rates determined in the preceding sentence shall also apply to air ambulance services, the average reimbursement rate for ambulances within the geographic locality. These charges shall not exceed the average charges in that locality for comparable services under comparable circumstances and commensurate with the services actually performed. Ambulance services shall be paid on a two (2) part basis, the first level being the level of care, the second being a mileage allowance. The services rendered are independent of the type of call received.

0800-02-19-.03 SPECIAL GROUND RULES – INPATIENT HOSPITAL SERVICES.

(2) General Information

(e) The items listed in subsection (d)(4) shall be reimbursed according to the Medical Cost Containment Program Rules (Chapter 0800-02-17) and Medical Fee Schedule Rules (Chapter 0800-02-18) payment limits. Refer to the maximum rates set forth in Rule 0800-02-18-.02(4) for practitioner fees. Items not listed in the Rules shall be reimbursed at the usual and customary rate as defined in Rule 0800-02-17-.03(80), unless otherwise indicated herein.

(4) Stop-Loss Method

(d) Example: DRG 222: Knee Procedures W/O CC

Hospital Peer Group: 1 – Surgical admission

Maximum rate per day: \$1,800 for first 7 days; 1,500 for 2 additional days

Number Billed Days: 9

Total Billed Charges: \$37,600.00

(after subtracting amounts for implants, radiology, etc.):\$53,650.00

Maximum allowable payment for-Normal DRG stay \$15,600.00

Versus: billed charges \$37,600.00

Amount Payable Before Stop-Loss,

Lower-of Charge-vs. Maximum Allowable\$15,600.00

Total difference, charges over and above maximum

payments..... \$22,000.0038,050.00

(if this amount is \$15,000 or less, then stop-loss is not applicable)

Difference over and above \$15,000 Stop-loss

is..... \$7,000.0023,050.00

Payable under Stop-loss (80% of

7,0023,050.00).....\$5,600.0018,440.00

Amounts due hospital for implants, radiology, etc.....\$3,525.00

Total payment

due hospital: \$21,200.00 (15,600+5,600)

Maximum fee schedule amount:15,600.00 + 18,440.00 + 3,525.00 =

\$37,565.00

Proper reimbursement would be the lesser of billed charges, maximum fee schedule amount, or other contracted or negotiated rate

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Labor and Workforce Development

DIVISION: Occupational Safety and Health

SUBJECT: Occupational Safety and Health Standards for General Industry, Construction, and Agriculture

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 50-3-201

EFFECTIVE DATES: September 28, 2012 through June 30, 2013

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: Rule 0800-01-01-.06, Rule 0800-01-06-.02, Rule 0800-01-07-.01, and Rule 0800-01-07-.02 are amended to adopt and reference the latest occupational and health standards and exceptions, if any, in the applicable parts of Title 29, Code of Federal Regulations, when published in the Federal Register. Since the last amendments to the rules, there have been no substantive changes to the occupational safety and health standards.

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.

An economic impact statement regarding the amendments in this rule proposal is not required under the provisions of the Regulatory Flexibility Act of 2007. As stated in Section 6 of Public Chapter 464, "This part shall not apply to rules that are adopted on an emergency or public necessity basis under Title 4, Chapter 5, Part 2, that are federally mandated, or that substantially codify existing state or federal law." Under the statutory authority of 29 U.S.C. § 667, Tennessee has an approved state plan that provides for the development and enforcement of occupational safety and health standards. In accordance with the Tennessee Occupational Safety and Health State Plan, when a federal occupational safety and health standard is promulgated under 29 U.S.C. § 655 Tennessee generally adopts the federal standard relating to the same issue. The plan specifies that the state of Tennessee will adopt the federal standards or an equivalent state requirement within six (6) months of the standard's promulgation by federal OSHA. In addition, T.C.A. §50-3-201 authorizes the Commissioner of Labor and Workforce Development to adopt either state or federal occupational safety and health standards.

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For Department of State Use Only

Sequence Number: 08-21-12
 Rule ID(s): 5197-5199
 File Date: 04/25/2012
 Effective Date: 08/28/2012

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §§ 4-5-202, 4-5-207 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Agency/Board/Commission:	Department of Labor and Workforce Development
Division:	Division of Occupational Safety and Health
Contact Person:	Larry Hunt
Address:	220 French Landing Drive
Zip:	37243-1002
Phone:	(615) 741-7036
Email:	Larry.Hunt@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
0800-01-01	Occupational Safety and Health Standards for General Industry
Rule Number	Rule Title
0800-01-01-.06	Adoption and Citation of Federal Standards

Chapter Number	Chapter Title
0800-01-06	Occupational Safety and Health Standards for Construction
Rule Number	Rule Title
0800-01-06-.02	Adoption and Citation of Federal Standards

Chapter Number	Chapter Title
0800-01-07	Occupational Safety and Health Standards for Agriculture
Rule Number	Rule Title
0800-01-07-.01	Adoption and Citation of Federal Standards
0800-01-07-.02	Exceptions to Adoption of Federal Standards

04-21-12

Proposed Amendments with Changes Red-Lined

Chapter 0800-01-01

Rule 0800-01-01-.06 Amended

Paragraph (2) of Rule 0800-01-01-.06 Adoption and Citation of Federal Standards is amended by changing the date from "January 1, 2012" to "July 1, 2012".

Existing Rule:

- (2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1910, as of ~~January 1, 2012~~ except as provided in Rule 0800-01-01-.07 of this chapter.

Proposed Amended Rule:

- (2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1910, as of July 1, 2012 except as provided in Rule 0800-01-.07 of this chapter.

Authority: T.C.A. §§ 4-3-1411 and 50-3-201.

Chapter 0800-01-06

Rule 0800-01-006-.02 Amended

Paragraph (2) of Rule 0800-01-06-.02 Adoption and Citation of Federal Standards is amended by changing the date from "January 1, 2012" to "July 1, 2012".

Existing Rule:

- (2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1926, as of ~~January 1, 2012~~ except as provided in Rule 0800-01-06-.03 of this chapter.

Proposed Amended Rule:

- (2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1926, as of July 1, 2012 except as provided in Rule 0800-01-06-.03 of this chapter.

Authority: T.C.A. §§ 4-3-1411, 50-3-103 and 50-3-201.

Chapter 0800-01-07

Rule 0800-01-07-.01 Amended

Paragraph (2) of Rule 0800-01-07-.01 Adoption and Citation of Federal Standards is amended by changing the date from "January 1, 2012" to "July 1, 2012".

Existing Rule:

- (2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1928, as of ~~January 1, 2012~~ except as provided in Rule 0800-01-07-.02 of this chapter.

Proposed Amended Rule:

- (2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1928, as of July 1, 2012 except as provided in Rule 0800-01-07-.02 of this chapter.

Authority: T.C.A. §§4-3-1411 and 50-3-201.

Rule 0800-01-07-.02 Amended

Paragraph (1) of Rule 0800-01-07-.02 Exceptions to Adoption of Federal Standards in 29 CFR Part 1928 is amended by changing the date from "January 1, 2012" to "July 1, 2012".

Existing Rule:

- (1) As of ~~January 1, 2012~~, there are no exceptions.

Proposed Amended Rule:

- (1) As of July 1, 2012, there are no exceptions.

Authority: T.C.A. §§4-3-1411 and 50-3-201.

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Wildlife Resources Agency

DIVISION: Wildlife

SUBJECT: Wildlife Management Areas; Waterfowl Quota Hunt Drawings

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 70-1-206

EFFECTIVE DATES: July 3, 2012, through June 30, 2013

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: This rule updates the lists of wildlife management areas, as previously designated by proclamation, that require small game, waterfowl, and/or big game permits.

This rule also changes the process for waterfowl quota hunt drawings. This rule allows parties to have equal representation in the drawing as individuals.

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.

RULE: 1660-01-08

New	_____
Amendment	_____X_____
Repeal	_____

There were no public comments to the above-described rule.

Attached hereto are the responses to public comments.

Impact on Local Governments

Pursuant to T.C.A. §§4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

Will passage of this rule have a projected financial impact on local governments?

The Commission is not aware of any projected financial impacts on local governments.

Please describe the increase in expenditures or decrease in revenues:

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. §4-5-203(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

(1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rule;

The Commission does not anticipate significant impact to small businesses in Tennessee. The rule establishes new permit requirements for select WMAs and a new drawing procedure for waterfowl blind quota drawings.

(2) The 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 Commission anticipates no record keeping associated with this rule.

(3) A statement of the probable effect on impacted small businesses and consumers;

The Commission anticipates no probable effect to small businesses.

(4) A 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 Commission is unaware of alternatives to the proposed rule and does not believe the rule as proposed would be burdensome to small businesses.

(5) A comparison of the proposed rule with any federal or state counterparts; and

The Commission is unaware of federal or state counterparts to this rule.

(6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

The Commission anticipates no probable effect to small businesses and exemptions to this rule would likely not be beneficial.

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Sequence Number: _____
Rule ID(s): _____
File Date: _____
Effective Date: _____

Rulemaking Hearing Rule(s) Filing Form

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

Agency/Board/Commission:	Tennessee Wildlife Resources Agency
Division:	Wildlife
Contact Person:	Lisa Crawford
Address:	PO Box 40747, Nashville, TN
Zip:	37204
Phone:	615-781-6606
Email:	Lisa.Crawford@tn.gov

Revision Type (check all that apply):

- Amendment
- New
- Repeal

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

Chapter Number	Chapter Title
1660-01-08	Rules and Regulations of Hunts
Rule Number	Rule Title
1660-01-08-.03	Permit Requirements – Wildlife Management Areas, Refuges and Other Agency Controlled Lands
1660-01-08-.05	Permit Applications and Drawings

Chapter 1660-01-08
Rules and Regulations of Hunts

Amendments

Rule 1660-01-08-.03 Permit Requirements - Wildlife Management Areas, Refuges and Other Agency Controlled Lands, is amended by deleting the rule in its entirety and replacing it with the following:

- (1) Permits (On Wildlife Management Areas and Refuges Where Permits Are Required).
 - (a) Before any person may hunt on a wildlife management area or refuge he must possess a valid and appropriate area hunt permit as specified in Items (2) and (3) below, except when exempt from doing so under the provisions of Item (1)(b) below. Such permits are not transferable.
 - (b) Hunt applicants or participants must be seventeen (17) years of age or over for hunting turkey, deer, bear and wild hog, except that youths, ages 6-16, may apply and participate if they are accompanied on the hunt by an adult, twenty-one (21) years of age or older. Youths under sixteen (16) years of age are exempt from purchasing an area hunt permit on all wildlife management areas and refuges when hunting any species except big

game, but they must be accompanied on the hunt by an adult who possesses a valid hunt permit.

- (c) A management area hunt permit is automatically voided when the permittee's bag limit is filled.

(2) Reelfoot Preservation Permit.

- (a) Before any person shall hunt, trap fish or participate in boating upon the waters or lands of Reelfoot Wildlife Management Area, including the washout and tailwaters downstream as marked, Black Bayou Refuge, and that portion of the Reelfoot National Wildlife Refuge in Tennessee, a Reelfoot Preservation Permit shall be carried on the person of said users when participating in the above mentioned activities for inspection by duly authorized officers.

- (b) Exemptions - Persons exempt from the Reelfoot Preservation Permit requirement are those under sixteen (16) years of age, residents sixty-five (65) years of age or older, and holders of the adult Sportsman License or Lifetime Sportsman License.

- (3) Before any person, except those under 16 years of age hunting small game and waterfowl, may hunt on a wildlife management area or refuge, he must possess a permit as outlined below.

- (a) A WMA Small Game permit is required on the following wildlife management areas and refuges:

AEDC	Cypress Pond	Natchez Trace
Alpine Mountain	Eagle Creek	New Hope
Arnold Hollow	Eagle Lake Refuge	Nolichucky
Bark Camp Barrens	Ernest Rice Sr.	Normandy
Barkley (<u>Units I & II</u>)	Foothills	North Chickamauga Creek
Bean Switch Refuge	Forks of the River	North Cumberland
Bear Hollow Mountain	Haley-Jaqueth	Oak Ridge
Beaver Dam Creek	Harmon Creek	Obion River
Big Sandy (including Gin Creek)	Haynes Bottom	Old Hickory (<u>Units I, II, & III</u>)
<u>Black Bayou Refuge</u>	Henderson Island Refuge	Old Hickory Lock 5 Refuge
Bogota	Hick Hill	Owl Hollow Mill
Bridgestone/Firestone Centennial Wilderness	Hickory Flat	Pea Ridge
	Hiwassee Refuge	Percy Priest (<u>Units I & II</u>)
Browntown	<u>Holly Fork</u>	Perryville
Buffalo Springs	Hop-In Refuge	Prentice Cooper
Camden (<u>Units I & II</u>)	Jackson Swamp	Rankin
Catoosa	Jarrell Switch Refuge	Shelton Ferry
Cedar Hill Swamp	John Tully	Tellico Lake
Charlotte Ann Finnell Neal	Kingston Refuge	Tie Camp
Cheatham	Kyker Bottoms Refuge	Tigrett
Cheatham Lake	Kyles Ford	The Boils
Chickamauga (<u>Gandies Creek, Johnson Bottoms, Rogers Creek, Yellow Creek Units</u>)	Laurel Hill	Three Rivers
	Lick Creek	Watts Bar (<u>Long Island Unit</u>)
	Lick Creek Bottoms	West Sandy
Chuck Swan	Maness Swamp Refuge	White Lake Refuge
<u>Gold Creek</u>	Maple Springs	White Oak
Cordell Hull	Meeman-Shelby Forest	Williamsport
Cordell Hull Refuge	Mingo Swamp	Wolf River
Cove Creek	Moss Island	Woods Reservoir Refuge
C. M. Gooch	MTSU	Yanahli
Cummings Cove		Yuchi Refuge <u>at Smith Bend</u>
<u>Dry Creek</u>	<u>Flintville Hatchery</u>	<u>Horns Bluff Refuge</u>
<u>Keyes-Harrison</u>	<u>Luper Mountain</u>	<u>Mount Roosevelt</u>
<u>Paint Rock Refuge</u>	<u>Skinner Mountain</u>	<u>South Fork Refuge</u>

<u>Thorny Cypress</u>	<u>Tumbleweed</u>	
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A WMA small game permit is required for individuals participating in dog training. A field trial permit is required on Percy Priest WMA and ~~the~~ Tellico Lake WMA – McGhee-Carson Unit.

(b) A WMA Small Game and Waterfowl permit is required for hunting waterfowl on the following wildlife management areas and refuges:

AEDC	<u>Cummings Cove</u>	Nolichucky
Barkley (<u>Units I & II</u>)	Ernest Rice Sr.	North Chickamauga Creek
Big Sandy (including Gin Creek)	Harmon Creek	Oak Ridge
Bogota	Haynes Bottom	Obion River
C.M. Gooch	Hiwassee Refuge	Old Hickory (<u>Units I, II, & III</u>)
Camden (<u>Units I & II</u>)	<u>Holly Fork</u>	Percy Priest (<u>Units I & II</u>)
Cedar Hill Swamp	Jackson Swamp	Shelton Ferry
Charlotte Ann Finnell Neal	Jarrell Switch Refuge	The Boils
Cheatham Lake	Moss Island	Three Rivers
Chickamauga (<u>Candies Creek, Johnson Bottoms, Rogers Creek, Yellow Creek Units</u>)	Lick Creek	Tigrett
	Lick Creek Bottoms	Watts Bar (<u>Long Island Unit</u>)
<u>Cold Creek</u>	Meeman-Shelby Forest	West Sandy
Cordell Hull	Mingo Swamp	White Oak
Cordell Hull Refuge	Moss Island	Yanahli
<u>Horns Bluff Refuge</u>	New Hope	Yuchi Refuge <u>at Smith Bend</u>
<u>South Fork Refuge</u>	<u>John Tully</u>	<u>Paint Rock Refuge</u>
<u>Wolf River</u>	<u>Thorny Cypress</u>	<u>Tumbleweed</u>

(c) A WMA big game permit is required for hunting deer, bear, ~~boar, feral hogs,~~ and turkey on the following wildlife management areas and refuges:

AEDC	Eagle Creek	New Hope
Alpine Mountain	Eagle Lake Refuge	Nolichucky
Arnold Hollow	Ernest Rice Sr.	Normandy
Bark Camp Barrens	Fall Creek Falls State Park	North Chickamauga Creek
Barkley (<u>Units I & II</u>)	Foothills	North Cumberland
Bear Hollow Mountain	Forks of the River	Oak Ridge
Bean Switch Refuge	Gallatin Steam Plant	Obion River
Beaver Dam Creek	Harmon Creek	Old Hickory (<u>Units I, II, & III</u>)
Big Sandy (including Gin Creek)	Haynes Bottom	Old Hickory Lock 5 Refuge
Bogota	Henderson Island Refuge	Owl Hollow Mill
Bridgestone/Firestone	Hick Hill	Pea Ridge
Centennial Wilderness	Hickory Flat	Percy Priest (<u>Units I & II</u>)
Browntown	Hiwassee Refuge	Perryville
Buffalo Springs	<u>Holly Fork</u>	Prentice Cooper
C. M. Gooch	Hop-In Refuge	President's Island
Camden (<u>Units I & II</u>)	Jackson Swamp	Rankin
Catoosa	Jarrell Switch Refuge	Shelton Ferry
Cedar Hill Swamp	John Tully	Tellico Lake
Charlotte Ann Finnell Neal	Kingston Refuge	The Boils
Cheatham	Kyles Ford	Three Rivers
Cheatham Lake	Laurel Hill	Tie Camp WMA
Cherokee	Lick Creek	Tigrett
Chickamauga (<u>Candies Creek, Johnson Bottoms, Rogers Creek, Yellow Creek Units</u>)	Lick Creek Bottoms	Watts Bar (<u>Long Island Unit</u>)
	Maness Swamp Refuge	West Sandy
	Maple Springs	White Lake Refuge
Chuck Swan	Meeman-Shelby Forest	White Oak
<u>Cold Creek</u>	Mingo Swamp	Williamsport
Cordell Hull	Moss Island	Wolf River

Cordell Hull Refuge	MTSU	Woods Reservoir Refuge
Cove Creek	Natchez Trace	Yanahli
Cummings Cove	Nathan B. Forrest State	Yuchi Refuge at Smith Bend
Cypress Pond	Historical Area	
<u>Dry Creek</u>	<u>Edgar Evins State Park</u>	<u>Enterprise South Park</u>
<u>Flintville Hatchery</u>	<u>Haley-Jaqueth</u>	<u>Horns Bluff Refuge</u>
<u>Keyes-Harrison</u>	<u>Luper Mountain</u>	<u>Mount Roosevelt</u>
<u>Paint Rock Refuge</u>	<u>Skinner Mountain</u>	<u>South Fork Refuge</u>
<u>Thorny Cypress</u>	<u>Tumbleweed</u>	

- (d) A WMA Small Game or WMA Small Game and Waterfowl permit is required to trap on all areas that require a small game hunting permit.

Authority: T.C.A. §§70-1-206, 70-2-201, 70-4-107 and 70-5-101

Authority: T.C.A. §§70-1-206 and 70-4-107. Administrative History: Original rule certified May 8, 1974. Amendment filed July 18, 1974; effective August 18, 1974. Amendment filed December 23, 1974; effective January 23, 1975. Amendment filed June 25, 1975; effective July 25, 1975. Amendment filed October 8, 1975; effective November 7, 1975. Amendment filed July 19, 1976; effective August 18, 1976. Amendment filed October 22, 1976; effective November 22, 1976. Amendment filed June 8, 1977; effective July 8, 1977. Amendment filed March 2, 1978; effective April 1, 1978. Amendment filed June 9, 1978; effective July 10, 1978. Amendment filed May 17, 1979; effective July 2, 1979. Amendment filed August 2, 1982; effective August 31, 1982. Amendment filed January 24, 1984; effective February 23, 1984. Amendment filed June 27, 1985; effective July 27, 1985. Amendment filed June 9, 1986; effective July 9, 1986. Amendment filed July 25, 1986; effective September 8, 1986. Amendment filed July 8, 1987; effective August 22, 1987. Amendment filed April 20, 1988; effective June 4, 1988. Amendment filed October 26, 1988; effective December 10, 1988. Amendment filed June 8, 1989; effective July 23, 1989. Amendment filed May 11, 1990; effective June 25, 1990. Amendment filed November 6, 1991; effective December 21, 1991. Amendment filed December 14, 1992; effective January 19, 1993. Amendment filed September 26, 1996; effective December 10, 1996. Amendments filed August 16, 1999; effective October 30, 1999. Amendment filed July 1, 2000; effective September 23, 2000. Amendment filed July 19, 2001; effective October 2, 2001. Amendment filed April 23, 2003; effective July 7, 2003. Amendment filed July 29, 2004; effective October 12, 2004. Amendment filed July 12, 2005; effective September 25, 2005. Amendment filed October 25, 2005; effective January 8, 2006. Amendment filed June 22, 2006; effective September 5, 2006. Amendment filed September 29, 2006; effective December 13, 2006. Amendment filed June 25, 2008; effective September 8, 2008.

Amendment

Rule 1660-01-08-.05 Permit Applications and Drawings, is amended by deleting section (1) (a) in its entirety and inserting a new paragraphs (1) (a) to read as follows:

(1) Quota Big Game Hunt Drawings

- (a) Each individual desiring to participate in a managed quota deer, bear, ~~or turkey-or wild bear~~-hunt, must apply only at locations and during periods as designated by the Tennessee Wildlife Resources Agency, except as indicated in items (i), (j), and (k) below.

Rule 1660-01-08-.05 Permit Applications and Drawings, is further amended by deleting sections (2) and (3) in their entirety and inserting new sections (2) and (3) to read as follows:

(2) Waterfowl blind drawing and allocation procedure on wildlife management areas.

- (a) Permanent blind sites will be allocated by hand-held drawings for the wildlife management areas: Barkley-Units I ~~and II~~, Big Sandy (including Gin Creek Unit), Camden-Units I and II, Cheatham Lake, ~~Cordell Hull~~, Gooch-Unit A, Harmon's Creek, Haynes Bottom, Old Hickory-Units I and II, Reelfoot (except as provided in Rule 1660-1-2-.02), Tigrett, West Sandy, and Woods Reservoir of A.E.D.C.

- (b) Each individual desiring to participate in the waterfowl blind drawing must complete an application supplied by the Tennessee Wildlife Resources Agency. Each individual wishing to compete in the drawing must appear in person at the designated location. Applications must be submitted between the hours of 7 a.m. and 10 a.m. (local time) on the first Saturday in August.
- (c) No individual may apply for more than one area. One application is permitted per person. Each applicant must be at least sixteen (16) years of age to compete in the drawing or sign-on.
- (d) Individuals must produce the following licenses and permits in order to compete in the drawing:

All areas (except Reelfoot) - Annual Hunting and Fishing License, and an Annual Small Game and Waterfowl Permit, or Sportsman License, or any Lifetime Sportsman License.

Reelfoot - ~~Annual Hunting and Fishing License~~, Annual Reelfoot Preservation Permit, ~~Annual Waterfowl License~~ or Sportsman License, or any Lifetime Sportsman License.

- (e) Applications will be drawn in order to establish priorities for of blind sites. All participants wishing to sign-on with a successful applicant must do so when he makes his/her choice of blind sites. An individual's application for blind selection is immediately voided when he/her signs-on with another applicant. All Individuals wishing to sign-on must possess the necessary licenses and permits indicated in subparagraph (d). Individuals desiring to sign-on must be present.
- (f) Permits for blinds will be issued at the time of the drawing. ~~For cancelled or unbuilt blinds, permits will be issued as selected in subparagraph (e). Canceled or unbuilt blinds will be designated as temporary blind sites and available on a first come-first served basis. All decoy and other hunt associated items must be removed at the end of each day.~~
- (g) No person shall buy, sell, barter, loan or transfer under any theory of law, or offer to buy, sell, barter, loan or transfer under any theory of law, a waterfowl draw blind site permit or the privilege of signing on a waterfowl draw blind site permit issued pursuant to this rule. Any person violating this rule and regulation is subject to have his/her permit and/or hunting privileges revoked in addition to other penalties as prescribed by law.

(3) Waterfowl quota hunt computer drawing and allocation procedures

- (a) Each individual or party desiring to participate in a quota waterfowl hunt must make application at times specified and as per instructions supplied by the Tennessee Wildlife Resources Agency.
- (b) Applicants may apply only once per year. If more than one application is received per hunter, that individual's applications will be rejected.
- (c) Only applicants sixteen (16) years of age or older on or before the day of the hunt may apply; however, at least one adult, of at least twenty-one years of age, must accompany any youth under sixteen (16) years of age in the hunt party. Youths 6-15 years of age may apply for youth only waterfowl hunts. If successful the youth party must be accompanied by at least one non-hunting adult. Party may not exceed five (5) youths.
- (d) All information requested at the time of application must be completed; failure to provide all information will result in the application being rejected.
- (e) ~~The successful applicant~~ Any successful applicant or successful party member may bring ~~three (3) four (4)~~ additional hunters of his choice to the hunt. However, the number of hunters in a party may not exceed four (4) five (5) hunters at any time during the hunt, one of which must be the a successful applicant.

- (f) Successful applicants must return a "notice of intention" to TWRA two weeks prior to ~~the hunt date~~ a deadline established by TWRA. A confirmation number will be issued to the applicant.
- (g) Successful applicants that fail to return the notice of intention to TWRA two weeks prior to the ~~hunt date~~ TWRA established deadline will forfeit their reservation. Any vacant hunt units will be filled by a hand-held drawing at a time and location specified and as per instructions supplied by the Tennessee Wildlife Resources Agency.
- (h) Each application must be accompanied by a non-refundable handling fee for each applicant, except Sportsman License holders, Lifetime Sportsman License holders and persons possessing an Annual Senior Citizen Permit (type 167).
- (i) Successful applicants and the additional hunters in the party must also possess appropriate licenses and permits in order to participate in the hunts.
- (j) Priority drawings and procedures for qualifying with priority status will be established as indicated by TWRA.
- (k) A computer drawing will be held to determine successful applicants.

Authority: T.C.A. §§ 70-1-206, 70-2-219, 70-4-107.

Authority: T.C.A. §§70-1-206 and 70-4-107. Administrative History: Original rule filed July 19, 1976; effective August 18, 1976. Amendment filed June 8, 1977; effective July 8, 1977. Amendment filed June 9, 1978; effective July 10, 1978. Amendment filed May 17, 1979; effective July 2, 1979. Amendment filed August 28, 1979; effective October 12, 1979. Amendment filed May 19, 1980; effective July 3, 1980. Amendment filed February 6, 1981; effective March 23, 1981. Amendment filed August 12, 1982; effective August 31, 1982. Amendment filed June 27, 1984; effective July 27, 1984. Amendment filed June 27, 1985; effective July 27, 1985. Amendment filed June 9, 1986; effective July 9, 1986. Amendment filed April 22, 1988; effective June 6, 1988. Amendment filed September 1, 1988; effective October 16, 1988. Amendment filed June 8, 1989; effective July 23, 1989. Amendment filed May 11, 1990; effective June 25, 1990. Amendment filed June 11, 1992; effective July 26, 1992. Amendment filed February 12, 1996; effective April 27, 1996. Amendment filed July 26, 1996; effective October 7, 1996. Amendment filed September 26, 1996; effective December 10, 1996. Amendment filed March 4, 1998; effective May 18, 1998. Amendment filed May 20, 1998; effective August 3, 1998. Amendments filed September 17, 1998; effective December 1, 1998. Amendment filed July 13, 1999; effective September 26, 1999. Amendment filed May 19, 2000; effective August 2, 2000. Amendment filed October 2, 2000; effective December 16, 2000. Amendment filed December 1, 2000; effective February 14, 2001. Amendment filed July 19, 2001; effective October 2, 2001. Amendment filed April 23, 2003; effective July 7, 2003. Amendments filed July 12, 2005; effective September 25, 2005. Amendments filed October 25, 2005; effective January 8, 2006. Amendment filed June 20, 2006; effective September 3, 2006. Amendment filed September 29, 2006; effective December 13, 2006. Amendment filed June 26, 2007; effective September 9, 2007. Amendment filed May 5, 2008; withdrawn June 5, 2008. Amendment filed June 11, 2008; effective August 25, 2008. Amendments filed January 5, 2009; effective March 21, 2009. Amendment filed April 1, 2009; effective June 15, 2009. Amendment filed June 16, 2010; effective September 14, 2010. Amendments filed November 17, 2010; effective February 15, 2011.

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

Board Member	Aye	No	Abstain	Absent
William L. Brown	✓			
Jim Bledsoe	✓			
William Cannon	✓			
Jeffrey H. Griggs	✓			
Julius Johnson				✓
Robert Martineau				✓
Jeff McMillan	✓			
Mitchell S. Parks	✓			
Julie Schuster	✓			
Todd A. Shelton				✓
Trey Teague	✓			
Eric Wright	✓			
Danya Welch				✓

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Wildlife Resources Commission on 01/13/2012 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. §4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 11/21/2011

Rulemaking Hearing(s) Conducted on: (add more dates). 01/13/2012

Date: 1-18-12

Signature: Ed Carter

Name of Officer: Ed Carter

Title of Officer: Executive Director



Subscribed and sworn to before me on: 1-18-12

Notary Public Signature: Lisa Crawford

My commission expires on: 05-15-2015

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

Robert E. Cooper, Jr.
 Attorney General and Reporter
3-29-12

Date

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Wildlife Resources Agency

DIVISION: Boating and Law Enforcement

SUBJECT: Inland Navigation Rules

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 70-1-206

EFFECTIVE DATES: July 3, 2012 through June 30, 2013

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: This rule corrects the cite for the federal Inland Navigation rules. These rules were recently transferred from the United States Code to the Code of Federal Regulations.

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.

RULE: 1660--02-03-.07

Rules and Regulations Governing Classification of Vessels and Equipment and Lights Required

New _____
Amendment X
Repeal _____

There were no public comments to the above-described rule.

Attached hereto are the responses to public comments.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

These rules have no projected financial impact on local governments.

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. § 4-5-203(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

(1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rule;

The commission does not anticipate significant impact to small businesses in Tennessee. The rule establishes Navigation Rules that Tennessee boaters must follow.

(2) The 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 Commission anticipates no record keeping associated with this rule.

(3) A statement of the probable effect on impacted small businesses and consumers;

The commission anticipates no probable effect to small businesses.

(4) A 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 Commission is unaware of alternatives to the proposed rule and does not believe the rule as proposed would be burdensome to small businesses.

(5) A comparison of the proposed rule with any federal or state counterparts; and

The Commission is adopting federal Inland Navigation Rules for operation of vessels on Tennessee waters.

(6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

The Commission anticipates no probable effect to small businesses and exemptions to this rule would likely not be beneficial.

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For Department of State Use Only

Sequence Number: _____
Rule ID(s): _____
File Date: _____
Effective Date: _____

Rulemaking Hearing Rule(s) Filing Form

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

Agency/Board/Commission: Tennessee Wildlife Resources Agency
Division: Boating and Law Enforcement
Contact Person: Lisa Crawford
Address: PO Box 40747, Nashville, TN
Zip: 37204
Phone: 615-781-6606
Email: Lisa.Crawford@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
1660-02-03	Rules and Regulations Governing Classification of Vessels and Equipment and Lights Required
Rule Number	Rule Title
1660-02-03-.07	Navigation Rules – Adoption of Federal Code and Regulations

Rules and Regulations
of the
Tennessee Wildlife Resources Agency

Chapter 1660-02-03
Rules and Regulations Governing Classification of Vessels and Equipment and Lights Required

Amended Rule

Rule 1660-02-03-.07, Navigation Rules – Adoption of Federal Code and Regulations, is amended by deleting paragraph (1) in its entirety and inserting a new paragraph (1), to read as follows:

- (1) ~~The State of Tennessee hereby adopts, and incorporates by reference, The Inland Navigation Rules Act of 1980, as amended hereinafter, which appears in 33 CFR Parts 83–90. All vessels operating on or using the waters of Tennessee shall be governed by and follow these rules.~~

(1) The State of Tennessee hereby adopts, and incorporates by reference, The Inland Navigation Rules Act of 1980 which appears in 33 CFR Parts 83 - 90. All vessels operating on or using the waters of Tennessee shall be governed by and follow these rules.

Authority: T.C.A. §§69-9-209 and 70-1-206. Administrative History: Original rule certified May 8, 1974. Amendment filed May 27, 1983; effective June 27, 1983. Amendment filed April 16, 1993; effective May 31, 1993. Amendment filed February 28, 1996; effective May 13, 1996. Amendment filed April 10, 2007; effective June 24, 2007.

The roll-call vote by the Tennessee Wildlife Resources Commission on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent
William L. Brown				
Jim Bledsoe				
Harold Cannon				
Jeffrey H. Griggs				
Julius Johnson				
Bob Martineau Jr.				
Jeff McMillin				
Mitchell S. Parks				
Julie Schuster				
Todd A. Shelton				
Trey Teague				
Eric Wright				
Danya Welch				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Wildlife Resources Commission on 03/16/2012 (mm/dd/yyyy), 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: 01/20/2012

Rulemaking Hearing(s) Conducted on: (add more dates). 03/16/2012

Date: _____

Signature: _____

Name of Officer: Ed Carter

Title of Officer: Executive Director

Subscribed and sworn to before me on: _____

Notary Public Signature: _____

My commission expires on: _____

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Human Services

DIVISION: Family Assistance

SUBJECT: Financial Eligibility Standards for Supplemental Nutrition Assistance Program; Resource Eligibility Standards for Families First

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 71-1-105

EFFECTIVE DATES: July 26, 2012 through June 30, 2013

FISCAL IMPACT: The Department estimates that the fiscal impact of this rule to the State will not be significant. The Department reports that the changes required to ACCENT, the eligibility determination system for SNAP, are minimal, consisting primarily of a change in table values and the addition of language to the SNAP approval notice.

STAFF RULE ABSTRACT:

Currently, households applying for the Supplemental Nutrition Assistance Program (SNAP) with liquid resources in excess of \$2,000 (\$3,250 for households with an elderly or disabled member) are not eligible for SNAP benefits. The rule change eliminates the resource limit for all households (with or without an elderly/disabled member) with incomes below 200% of the federal poverty level.

The rule also updates the name of the Title IV-A program to include the current name of the program (Families First) in addition to the prior name (AFDC), and makes the resource level in the rule for that program consistent with the amount (\$2,000) approved by the federal government in the Department's welfare reform waiver in 1996 and which has been in effect since and which is also permitted by federal law.

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.

Date(s), Time(s) and Place(s) of Public Hearing(s): December 29, 2011, 1:30 p.m. Central Time, Department of Human Services, 2nd Floor Conference Room 2, Citizens Plaza Building, 400 Deaderick Street, Nashville, Tennessee 37243.

A public hearing was held on the date, time and place noted above by the Department of Human Services to receive comments regarding amendments to the above-referenced rules.

Following are comments received either orally or in writing at the public hearing(s) concerning the above rules or which were received within the time permitted for submission of comments following the hearing, together with the responses of the Department of Human Services. Similar or identical responses have been grouped together for purpose of response:

Community Food Advocates provided comments in writing in support of the proposed rule change as follows:

Comment One:

The majority of states have already made changes to eliminate the resource limit for most SNAP applicants.

Response:

The Department does not dispute the fact that the majority of states have either eliminated or modified their SNAP resource limits.

Comment Two:

Allowing households to retain their savings and receive SNAP benefits promotes long-term self sufficiency

Response:

The Department is in general agreement that families faced with a sudden loss of ongoing income should not be required to exhaust most of their savings before becoming eligible for assistance. By providing assistance to these families in the form of SNAP benefits, those savings can be utilized in ways that will allow for longer-term stability, such as making mortgage payments.

Comment Three:

The elimination of the paperwork and time required to determine resource eligibility will reduce the workload burden on DHS eligibility staff.

Response:

The Department concurs that the verification of resources is burdensome and time consuming. It is anticipated that SNAP applications will be processed more timely and accurately with this requirement removed.

Comment Four:

The change will not allow households with higher incomes to be eligible for SNAP.

Response:

DHS concurs that in relative terms this rule change will not increase the caseload significantly, primarily because the existing income limits will remain as they are today.

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.

The United States Department of Agriculture establishes standards of eligibility for participation by households in the Food Stamp Program pursuant to 7 U.S.C. § 2014. For purposes of Acts 2007, Chapter 464, the Regulatory Flexibility Act, the Department of Human Services certifies that these rulemaking hearing rules substantially codify existing federal law, such that, pursuant to Section 6 of the Regulatory Flexibility Act, the Regulatory Flexibility Act's provisions do not apply to these rules. In addition, these rulemaking hearing rules do not appear to affect small businesses as defined in the Act because these rules are related to the determination of eligibility and provision of benefits to individuals and households who file an application for them. These rules do not regulate or attempt to regulate businesses.

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Sequence Number: 04-24-12
 Rule ID(s): 5201
 File Date: 04/27/2012
 Effective Date: 07/26/2012

Rulemaking Hearing Rule(s) Filing Form

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

Agency/Board/Commission:	Tennessee Department of Human Services
Division:	Family Assistance Division
Contact Person:	Bill Russell
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Zip:	37243-1403
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Email:	Bill.Russell@tn.gov

Revision Type (check all that apply):

- Amendment
- New
- Repeal

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

Chapter Number	Chapter Title
1240-01-04	Financial Eligibility Requirements
Rule Number	Rule Title
1240-01-04-.02	Resource Eligibility Standards - Food Stamps/AFDC

Chapter Number	Chapter Title
Rule Number	Rule Title

Chapter 1240-01-04
Financial Eligibility Requirements

Amendments

Rule 1240-01-04-.02, Resource Eligibility Standards-Food Stamps/AFDC, is amended by deleting the rule in its entirety and by substituting instead the following, so that, as amended, the rule shall read as follows:

1240-01-04-.02 Resource Eligibility Standards - Food Stamps (SNAP)/Families First (AFDC).

- (1) Food Stamps/Supplemental Nutritional Assistance Program Households (SNAP) Only.
 - (a) No resource eligibility test shall be required for households at or below two hundred percent (200%) of the federal poverty level.
 - (b) Households with income above two hundred percent (200%) of the federal poverty level, containing a member who is sixty (60) years of age or older or a disabled person, shall have a resource eligibility limit of three thousand two hundred fifty dollars (\$3,250.00).
- (2) Families First/AFDC Only.
 - (a) Non-exempt resources of a Families First/AFDC aid group, liquid and non-liquid, may not exceed two thousand dollars (\$2,000.00). Resources in excess of this limit result in ineligibility. A person receiving SSI benefits cannot be included in the Families First/AFDC aid group. The SSI recipient's income and resources, including the SSI payment, are disregarded in determining eligibility for the other Families First/AFDC family members.
 - (b) Reserved for future use.

Authority: T.C.A. § 4-5-202; 71-1-105(12); 71-3-157(f); 7 C.F.R. 273.2(j)(2)(i)(B) and (C) and Section 401(a)(1), Social Security Act 42 U.S.C. 601(a)(1).

“REDLINE VERSION-RULE 1240-01-04-.02 DATED FEBRUARY 14, 2012”

**RULES
OF
TENNESSEE DEPARTMENT OF HUMAN SERVICES
FAMILY ASSISTANCE DIVISION**

**CHAPTER 1240-01-04
FINANCIAL ELIGIBILITY REQUIREMENTS**

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1240-01-04-.02 RESOURCE ELIGIBILITY STANDARDS - FOOD STAMPS/AFDC. Eligibility shall exist if the value of nonexempt resource, both liquid and non-liquid assets, for the HH/AG do not exceed:

- (1) Food Stamps/Supplemental Nutritional Assistance Program Households (SNAP) Only.
 - ~~(a) — \$3,000 for all Food Stamps households with at least one member who is age 60 or older.~~
 - ~~(b) — \$2,000 for all other Food Stamp households.~~
 - ~~(a) No resource eligibility test shall be required for households at or below two hundred percent (200%) of the federal poverty level.~~
 - ~~(b) Households with income above two hundred percent (200%) of the federal poverty level, containing a member who is sixty (60) years of age or older or a disabled person, shall have a resource eligibility limit of three thousand two hundred fifty dollars (\$3,250.00).~~
- (2) Families First/AFDC Only
 - (a) Non-exempt resources of an Families First/AFDC aid group, liquid and non-liquid, may not exceed \$1,000 two thousand dollars (\$2,000.00). Resources in excess of this limit result in ineligibility. A person receiving SSI benefits cannot be included in the Families First/AFDC aid group. The SSI recipient's income and resources, including the SSI payment, are disregarded in determining eligibility for the other Families First/AFDC family members.
 - (b) Reserved for future use.

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Board of Respiratory Care

SUBJECT: Polysomnographic Services Provided by Respiratory Therapists

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 63-31-107

EFFECTIVE DATES: July 25, 2012 through June 30, 2013

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT:

Rule 1330-01-.24 (1) outlines the three methods by which certified and registered respiratory therapists may become endorsed by the Board of Respiratory Care to provide polysomnographic services pursuant to Tennessee Code Annotated, §63-31-107(a)(5).

The primary method requires credentialing as a registered polysomnographic technologist by the board of polysomnographic technologists.

The second method requires the respiratory therapist be credentialed as a sleep disorder specialist by the national board of respiratory care.

The third mechanism requires that an individual certified as a respiratory therapist provide proof of completion of a minimum of five hundred four (504) hours in a sleep lab or an individual registered as a respiratory therapist has obtained a minimum of two hundred fifty-two (252) hours in a sleep lab or center and submit a board approved Sleep Center or Lab Competency Checklist documenting the required hours and competency relative to polysomnography.

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.

Kelly A. Carden, M.D., St. Thomas Physician Services, commented that of the nine (9) states that license polysomnography Tennessee is the only state that allows respiratory care therapists to practice as polysomnographic technologists without the training and allow this "third pathway". All other jurisdictions allow respiratory care therapists to practice polysomnography to the extent that their current training and duties *overlap with* polysomnographic duties rather than fully functioning as polysomnographic technologists.

The Board declined to respond to this comment as it was outside the scope of the rule being considered at the rulemaking hearing.

J. Brevard Haynes, St. Thomas Physician Services, expressed concern that these respiratory care therapists were not getting the requisite number of hours to meet the rule's requirement at accredited sleep centers under the supervision of doctors certified in sleep medicine.

The Board declined to respond to this comment as it was outside the scope of the rule being considered at the rulemaking hearing.

Walter Holland, Tennessee Sleep Society, the hours are in line with the national certification exam which is an appropriate subjective measure of competency. The hours in these sleep labs do not, however, objectively measure a respiratory therapist's competency to perform sleep studies.

The Board declined to respond to this comment as it was outside the scope of the rule being considered at the rulemaking hearing.

Paul Anderson, St. Thomas Health Services, supports bringing respiratory care therapists into the field of sleep medicine. Further, Mr. Anderson believes that the hours are acceptable. Respiratory Therapists can be watched under the tutelage of supervising physicians and can be provided a basis to launch and the citizens of Tennessee can continue to be cared for. Mr. Anderson also indicated a concern that these competency hours would be obtained in unaccredited sleep labs.

As the portions of this comment that required response went outside the scope of the rule being considered the Board declined to respond.

Colleen Schahbacker, Cookeville Regional Medical Center, opposes the increase in the hours to prove competency. Ms. Schahbacker believes that respiratory therapists will have difficulty finding sites to acquire the required hours. She also believes that respiratory therapists are more than capable of providing sleep services as they are passing the Board of Registered Polysomnographic Technologists Exam at a higher rate than persons trained as polysomnographic technologists.

The Board declined to respond to this comment.

R. David Johnson, Tennessee Society for Respiratory Care, believes that this rule is a reasonable compromise that is the result of hours of negotiation. Mr. Johnson recognizes that sleep topics are not covered in respiratory care curriculum which is why this is a reasonable measure that the Tennessee Society for Respiratory Care supports.

The Board thanked Mr. Johnson for his comment.

Burke L. Mays, Mays & Associates, wrote a letter expressing concern about the 252 hour requirement that respiratory therapists must obtain in sleep centers in order to prove competence. He believes that this requirement is difficult to meet in rural settings operates under the premise that the sleep centers must be accredited. Mr. Mays claims that these requirements are an undue burden on the respiratory therapists, their

families and the rural centers for which they work.

The Board declined to answer this comment as it was outside the scope of the rule being considered at the rulemaking hearing.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

These rules will not have an effect on local governments.

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.

Addendum

Regulatory Flexibility Analysis

Pursuant to the regulatory Flexibility Act of 2007, 2007 Pub. Acts, c. 464, § 4, eff. June 21, 2007, the Department of Health submits the following regulatory flexibility analysis:

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

The proposed rule does not overlap, duplicate, or conflict with other federal, state, and local governmental rules.

- (2) Clarity, conciseness, and lack of ambiguity in the rule:

The proposed rule exhibits clarity, conciseness, and lack of ambiguity in the rule.

- (3) The establishment of flexible compliance and reporting requirements for small businesses:

The proposed rule does not create an ongoing reporting requirement and allows for flexible mechanisms for initial compliance.

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

There are no reporting requirements contained in the proposed rule.

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

There are no reporting requirements contained in the proposed rule.

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

The proposed rule does not establish design or operational standards.

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

The proposed rule creates no entry barriers or other effects that would stifle entrepreneurial activity, curb innovation, or increase cost.

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Sequence Number: 04-22-12
 Rule ID(s): 5200
 File Date: 04/26/2012
 Effective Date: 07/25/2012

Rulemaking Hearing Rule(s) Filing Form

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

Agency/Board/Commission:	Board of Respiratory Care
Division:	
Contact Person:	Mona N. Jean-Baptiste, Assistant General Counsel
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Zip:	37243
Phone:	(615) 741-1611
Email:	Mona.N.Jean-Baptiste@tn.gov

Revision Type (check all that apply):

- Amendment
- New
- Repeal

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

Chapter Number	Chapter Title
1330-01	General Rules and Regulations Governing Respiratory Care Practitioners
Rule Number	Rule Title
1330-01-.24	Endorsement of Respiratory Therapists to Provide Polysomnographic Services

**1330-01-.24 ENDORSEMENT OF RESPIRATORY THERAPISTS TO PROVIDE
POLYSOMNOGRAPHIC SERVICES.**

- (1) In order for a licensee of this Board to practice polysomnography without obtaining licensure from the Polysomnographic Professional Standards Committee, the licensee must obtain an endorsement from this Board. In order to obtain an endorsement, a licensee shall provide this Board with the following:
- (a) A completed and signed polysomnographic services endorsement form, as approved by this Board; and
 - (b) Proof of possessing a valid, active, and unrestricted license as a Registered Respiratory Therapist or Certified Respiratory Therapist, issued by this Board; and
 - (c) One of the following:
 - 1. Certification by the National Board of Registered Polysomnographic Technologists as a registered polysomnographic technologist; or
 - 2. Certification by the National Board of Respiratory Care as a sleep disorder specialist; or
 - ~~3. Proof of completion of the Sleep Center or Sleep Lab Competency Checklist, as approved by this Board, signed by both the director of the sleep lab and medical director from a current employing facility, verifying a minimum of one hundred (100) hours in a sleep lab or sleep center, and outlining competency relative to the following topics, which include, but are not limited to:~~
 - 3. Proof of completion of the Sleep Center or Sleep Lab Competency Checklist, as approved by this Board, signed by both the director of the sleep lab and the medical director from a current employing facility, verifying that an individual certified as a respiratory therapist has obtained a minimum of five hundred and four (504) hours in a sleep center or sleep laboratory or that an individual registered as a respiratory therapist has obtained a minimum of two hundred and fifty-two (252) hours in a sleep lab or sleep center, and outlining competency relative to the following topics, which include, but are not limited to:
 - (i) Patient safety, rapport, preparation, education and confidentiality;
 - (ii) Setup, function, calibration, operation and maintenance of all relative equipment;
 - (iii) Monitoring, recording, and analysis of physiologic data as defined under T.C.A. § 63-31-101(9)(a)(i);
 - (iv) Appropriate corrective and emergency procedures as appropriate, according to lab/center policies; and
 - (v) Implementation of the applicable treatment procedures according to lab/center policy and procedure.

Authority: T.C.A. §§ 63-31-107 and 63-27-104. **Administrative History:** Emergency rule filed June 30, 2010; effective through December 27, 2010. Original rule filed September 24, 2010; effective December 23, 2010.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Teresa Dudley Hatcher	X				
Roger M. Major	X				
Candace Partee	X				
Ray Davis	X				
Delmar Mack, Ed.D	X				
Brian T. Cook	X				
Gene Gantt	X				
Jeffery McCartney, M.D.				X	

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Respiratory Care on 11/10/2011, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 08/02/2011

Rulemaking Hearing(s) Conducted on: (add more dates). 11/10/2011

Date: 21 December 2011

Signature: Mona N. Jean-Baptiste

Name of Officer: Mona Nicole Jean-Baptiste
Assistant General Counsel

Title of Officer: Department of Health

Subscribed and sworn to before me on: 12/21/11

Notary Public Signature: Theodora P. Wilkins

My commission expires on: 11/3/15



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

RE Cooper Jr
Robert E. Cooper, Jr.
Attorney General and Reporter
4-22-12
Date

Department of State Use Only

Filed with the Department of State on: 4/26/2012

Effective on: 7/25/2012

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Massage Licensure Board

SUBJECT: Licensure of Massage Therapists and Establishments;
Massage Therapy Educational Programs

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 63-18-111

EFFECTIVE DATES: July 8, 2012 through June 30, 2013

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT:

Rule 0870-01.01: Provides definitions for terms used throughout rules.

Description of Amendments: Definitions of "Application," "Board Administrative Office," "Client," "Establishment," revised to by removing extraneous words or information. Definitions of "Closed Files," "He/she Him/her," "HRB," and "Outcall" deleted as no longer necessary. Definitions for "MBLEx" and "FSMTB" added. Definition of "Sexual Activity" moved here from its prior location in Rule 0870-01-.02(4)(a).

Rule 0870-01-.02: Rules concerning massage establishment practice standards and inspections.

Description of amendments:

.02(1): Revised to clarify that establishment owners may be disciplined for violations of the subsections that follow.

.02(2)(a)1.: Reworded for clarity.

.02(2)(a)2.: Smoke detector requirements expanded and made more specific to clarify what is considered adequate.

.02(2)(a)3.: Reworded slightly for clarity.

.02(2)(a)4.: Reworded slightly for clarity.

.02(2)(a)4.(i): Flush toilet requirement moved from its prior location at .02(2)(a)4.

.02(2)(a)4.(ii): Sink requirements reworded by combining prior rules .02(2)(a)4.(ii) and (iii) relating to cleaning materials and drying devices required.

.02(2)(a)4.(iii): Reworded slightly for clarity.

.02(2)(a)4.(iv): Deleted as unnecessary.

.02(2)(a)6.: Reworded slightly for clarity.

.02(2)(b)1.: Reworded slightly for clarity.

.02(2)(b)2.: Added requirement that establishments maintain massage licensure certificates for licensees practicing at that location.

.02(2)(b)3.: Previously designated as .02(2)(b)2; reworded slightly for clarity.

.02(2)(b)4.: Previously designated as .02(2)(b)3.

.02(2)(b)5.: Previously designated as .02(2)(b)4; reworded slightly for clarity.
.02(2)(c)1.: Reworded for clarity and to remove extraneous requirements.
.02(2)(c)2.: Reworded slightly for clarity.
.02(2)(d): Deleted as unnecessary; necessary portions of these rules now appear elsewhere.
.02(3): Rules pertaining to inspection of establishments; previously numbered as .02(5). Also reworded slightly for clarity and modified to explicitly permit unannounced inspections.
.02(3)(a): Reworded slightly for clarity.
.02(3)(b): Reworded slightly for clarity.
.02(3)(c): Added a new rule stating that an inspection score of 84 or below results in a "failure" of the inspection.
.02(3)(d): Previously numbered as .02(3)(c), otherwise unchanged.
.02(3)(d)4.: Reworded slightly for clarity.
.02(3)(d)5.: New rule stating that failure to pass reinspection will result in a complaint being opened.
.02(3)(e): Reworded slightly for clarity.
.02(3)(e)4.: Reworded slightly for clarity.
.02(3)(e)5.: New rule stating that failure to pass reinspection for failure to allow or appear at reinspection will result in a complaint being opened.

Rule 0870-01-.03: States basic standards concerning the necessity of licensure and use of abbreviations indicating licensure.

Description of amendments:

.03(1): Reworded by combining the prior sections .03(1), (2) and (4).
.03(2): Previously numbered as .03(3); corrected to reflect the renumbering of Rule 0870-01-.19; otherwise unchanged.

Rule 0870-01.04: Rules governing the licensure process for individuals.

Description of amendments:

.04(1): Reworded for clarity.
.04(1)(d): Revised to require that non-citizen applicants submit proof of their right to live and work in the United States.
.04(1)(e): Old rule .04(1)(e), which required applicants to submit a passport photograph, deleted as unnecessary. New rule .04(1)(e) and its subsections are substantively the same as old rule .04(1)(f)1. and its subsections with minor rewording for clarity.
.04(1)(f): Clarified/simplified version of old rule .04(1)(f)2. and 3.
.04(1)(g): Revised to add requirement that references list their licensing credentials.
.04(1)(h): Reworded slightly for clarity.
.04(1)(h)1.: Reworded slightly for clarity.
.04(1)(h)4.: Revised to limit disclosure requirement to actions involving only malpractice, negligence, or fraud.
.04(1)(m)1.: Revised to require applicants for reciprocity only to submit a transcript that shows the applicant has taken the statutorily mandated number of hours and passed the examination indicated by the Board. Other requirements in the old rule eliminated as unnecessary.
.04(1)(m)2.: Revised and simplified to refer to the relevant Tennessee Code section that was previously largely repeated in the old rule.
.04(1)(m)3.: New rule added to require that reciprocity applicants must show proof of instruction in ethics and Tennessee massage statutes and regulations, and that such hours may not be self-directed.
.04(2): Combines prior rules .04(1)(n), (o) and (p). Reworded slightly for clarity.
.04(3): Renumbered old rule .04(2).

Rule 0870-01-.05: Rules governing the licensure process for establishments.

Description of amendments:

- .05(1): The rule previously numbered as .05(1) was deleted, and the rule previously numbered .05(2) was renumbered as .05(1).
- .05(2): Previously numbered as .05(3); reworded slightly for clarity.
- .05(3): Previously numbered as .05(4); revised to add that applicants who are not citizens must submit proof of their right to live and work in the United States.
- .05(4): Previously numbered as .05(6).
- .05(5): Adds a new requirement that applicants who are not licensed massage therapists must submit proof of having completed at least two hours of education in Tennessee law relating to massage therapy.
- .05(6): Previously numbered as .05(7).
- .05(7): Revised to pertain only to the applicant.
- .05(7)(a): Reworded slightly to clarify.
- .05(7)(d): Revised to limit disclosure requirement to actions involving only malpractice or fraud.
- .05(8): Previously numbered as .05(9).
- .05(9): Previously numbered as .05(10).
- .05(10): Previously numbered as .05(11), reworded slightly to clarify.
- .05(11): Previously numbered as .05(12).
- .05(12): Previously numbered as .05(13).
- .05(13): Substantively identical to the rule previously numbered as .05(14), reworded to clarify.
- .05(14): Previously numbered as .05(15) .
- .05(15): Previously numbered as .05(16).

Rule 0870-01.07: Rules governing the process by which applicants are reviewed, approved, and denied.

Description of amendments:

- .07(1): Revised for clarity and to remove previously specified timeframe for application initial determination to take place.
- .07(2): Revised to refer to the authorization granted pursuant to an initial determination as a "temporary authorization" instead of a "license."
- .07(3): Previous .07(3)(a) requiring notifications to be sent by certified mail deleted. .07(3) amended to conform with the fact that the Board will not be able to determine when notice is "received" because certified mail will not be used; changed time-to-reply to 65 days instead of 60 as a result. New .07(3)(a) is substantively identical to section previously numbered .07(3)(b), but reworded for clarity. '
- .07(4): New section added to state that applications must be complete at least fifteen days prior to a board meeting in order for the Board to be reviewed at that meeting.
- .07(5): Previously numbered as .07(4); revised to reflect that applicants will only be notified if the Board denies an application. The section previously numbered as .07(5) has been deleted as unnecessary.
- .07(5)(a): Previously numbered as .07(4)(a). Revised for clarity.
- .07(5)(b): Previously numbered as .07(4)(b), renumbered but unchanged.
- .07(5)(b)1: Previously numbered as .07(4)(b)1., and edited to require that a request for a contest case hearing must be made within 30 days of an applicant receiving notification of the denial.
- .07(5)(b)2.: Previously numbered as .07(4)(b)2.
- .07(6)(a): Revised to eliminate typographical errors.
- .07(8): This section and its subsections have been deleted as duplicative and unnecessary.

Rule 0870-01-.08: This rule states the examination requirements for licensure.

Description of amendments:

.08(1): Revised to eliminate unnecessary reference to establishment licensure process and to reflect revision to section .04(1)(m).

.08(2): This section and its subsections have been revised to state that until January 1, 2012 the Board will accept four specific exams, but leaves the Board leeway to approve another examination in the future.

.08(3): This newly-added section states that as of January 2, 2012, the Board will accept only one particular examination given by the Federation of State Massage Therapy Boards.

Rule 0870-01-.09(1) and (2): These portions of the rules pertaining to licensure renewal govern how renewal applications are to be submitted and how an expired license can be reinstated.

Description of amendments:

.09(1)(a): Revised for clarity.

.09(1)(b)(1): Revised to specify that establishments may not renew their licenses by the internet, and to remove the web address given in the prior rules as unnecessary.

.09(1)(d): Revised to state that licenses that are not renewed within 60 days of expiration are administratively revoked, and to direct licensees to reinstatement procedures. The prior rule referenced a section of the rules that has been repealed.

.09(2): Revised to correct a typographical error and to clarify that reinstatement of an expired license is at the discretion of the Board.

.09(2)(a): Revised to reflect that a statement stating why the licensee failed to renew is required and that appearing before the Board is no longer an option.

.09(2)(b); Revised for clarity.

Rule 0870-01-.11: Pertains to retirement, reinstatement, inactivation and reactivation of licensure.

Description of amendments:

All portions of this rule other than (2)(c) are unchanged.

.11 (2)(c): Revised for clarity.

Rule 0870-01-.12: Pertains to continuing education requirements for licensees.

Description of amendments:

.12(1): Rewritten entirely. The new version of this paragraph clearly states that all licensees must complete 25 hours of continuing education every two years, and states that the two-year cycles run from January 1 of each odd-numbered year through December 31 of the following even-numbered year.

.12(1)(a): Specifies that all courses must be approved by the Board and that one course cannot be taken twice in the same two-year cycle. The course approval requirement was present elsewhere in the old rules.

.12(1)(b): Requires at least 2 of the 25 hours to pertain to Tennessee statutes and rules concerning massage therapists and establishments. This requirement was in the old rules at .12(2)(e). The Subparagraphs of the prior rule .12(2)(e) were deleted as unnecessary.

.12(1)(c): Requires at least 2 of the 25 hours to pertain to practice management, ethics, or substance abuse. This requirement was in the old rules at .12(2)(f).

.12(1)(d): States that at most 8 of the 25 hours may be taken by a variety of multi-media (i.e., not in-person) formats. This is a new limitation.

.12(2): Reworded version of previous rule .12(1)(d); changed and renumbered for clarity, substantively unchanged.

.12(3)(a): The rule previously numbered as .12(3)(a) was deleted as unnecessary. The new

.12(3)(a) was present in the rules previously as .12(3)(b).

.12(3)(b): Revised for clarity and to specify what constitutes "acceptable documentation" verifying continuing education courses that have been completed.

- .12(4)(a): Revised to state that approval for all courses will expire December 31, 2012, and that subsequent to that date all courses must be approved pursuant to other portions of the rules in each continuing education cycle. Course approval was previously perennial.
- .12(4)(b)1.: Revised to reflect renumbering of rule it refers to.
- .12(4)(b)1.(ii): Revised for clarity.
- .12(4)(b)1.(iii): Revised for clarity.
- .12(4)(b)1.(iv): Deleted as unnecessary.
- .12(4)(b)5.: Revised to allow courses by institutions accredited by the Tennessee Higher Education Commission or the Tennessee Board of Regents, in addition to those accredited by the U.S. Department of Education.
- .12(4)(b)8.: Added the Federation of State Massage Therapy Boards to the list of pre-approved continuing education providers.
- .12(4)(c)1.: Revised version of the rule previously numbered as .12(4)(c)7. Revision allows providers to submit the ISBN number and title of materials in lieu of sending in actual materials.
- .12(4)(c)2.: Revised/expanded version of the rule previously numbered as .12(4)(c)3. and 4. Revised to make explicit the requirement that instructors be licensed massage therapists or demonstrate training and experience that qualifies them to teach the subject matter indicated.
- .12(4)(c)3.: Revised version of the rules previously numbered as .12(4)(c)1. and 2., reworded for clarity.
- .12(4)(c)4.: Expanded version of the rule previously numbered as .12(4)(c)8., requiring certain materials to demonstrate how attendance will be verified.
- .12(4)(c)5.: Revised version of rule previously numbered as .12(4)(c)5., adds statement that 50 clock minutes of instruction constitutes an hour.
- .12(4)(c)6.: New rule stating that the Board may deny a request if it believes a sponsor is using copyrighted materials without appropriate permission. Note that the rule previously numbered as 12(4)(c)6. has been deleted as unnecessary.
- .12(4)(c)7.: New rule specifying that the Board may request additional information from the sponsor.
- .12(4)(c)8.: New rule specifying that the Board may deny a request if the information specified in the rules is not provided.
- .12(4)(d)7.: Revised to require "contact information" instead of merely a telephone number.
- .12(4)(e)2.: Revised to remove list of types of "multi-media courses" to simplify. Acceptable multi-media courses are spelled out elsewhere in rules .
- .12(4)(f): Revised to specify that sponsors must maintain records of the materials in subparagraph (c); the old rule required only a subset of those materials, and to require record retention for 4 years instead of 5. Combines old rule subsections (f), (g) and (h) .
- .12(4)(g): Previously numbered as .12(i).
- .12(5)(a): Revised for clarity.
- .12(5)(b): Revised to specify that a continuing education waiver request must be submitted prior to the end of the licensure cycle in which the continuing education is due.
- .12(5)(d): Revised to allow both the consultant and designee to provisionally grant or deny waiver requests, as opposed to only the consultant.
- .12(6)(a): Adds requirement that only 8 of the 20 hours may be completed in a multi-media format.
- .12(6)(d): Deleted as unnecessary.
- .12(7)(a): Revised to combine the rules previously numbered as .12(7)(a) and (b).
- .12(7)(b): Renumbered; previously numbered as .12(7)(c).

Rule 0870-01-.13: Pertains to disciplinary actions and civil penalties.

Description of amendments:

- .13(1): Revised for clarity.

.13(1)(a): New rule.

.13(1)(b): Revised version of the rule previously numbered as .13(1)(a).

.13(1)(c): Revised version of the rule previously numbered as .13(1)(b), removes reference to this as appropriate for "less severe violations."

.13(1)(d): Revised version of the rule previously numbered as .13(1)(c); unnecessary portions removed.

.13(1)(e): Revised version of the rule previously numbered as .13(1)(d).

.13(1)(1): Revised version of the rule previously numbered as .13(1)(e), reworded for clarity.

.13(1)(g): Revised version of the rule previously numbered as .13(1)(f). Adds subsections (1), (2), and (3), which were in the old rule .13(1)(f), but reworded for clarity.

.13(1)(h): Revised version of the rule previously numbered as .13(1)(g).

.13(1)(i): Revised version of the rule previously numbered as .13(1)(h); eliminates "petition" requirement in prior rule.

.13(2): This rule and its subsections was previously numbered as .13(3) and its subsections. The Rule previously numbered as .13(2) has been deleted in its entirety.

.13(2)(b)1.: Reworded to reflect elimination of mandatory form previously in subsection .13(2)(c).

.13(2)(b)2.: Revised such that only the administrative staff, not the consultant, are authorized to make the "initial determination."

.13(2)(b)3.: Previously numbered as .13(2)(b)(4). The section previously numbered as .13(2)(b)3. has been deleted as unnecessary.

.13(2)(b)4.: New rule giving a petitioner the right to appear before the Board if his or her petition has been denied.

.13(3): This rule and its subsections was previously numbered as .13(4) and its subsections. The wording of .13(3) was previously contained in .13(4)(a).;

.13(3)(a): This subsection combines the subsections previously numbered as .13(4)(b) and .13(4)(c).

.13(3)(a)1.: In addition to the combination noted above, reworded for clarity and revised to remove requirement of a "willful and knowing" violation, and to remove requirement that the threat to health, safety and welfare be "imminent." Also revised to exclude operating a massage establishment without a license from the examples of activities qualifying for Type A penalties.

.13(3)(a)2.: In addition to the combination noted above, reworded for clarity.

.13(3)(a)3.: In addition to the combination noted above, reworded for clarity.

.13(3)(b): This subsection was previously numbered as .13(4)(d).

.13(3)(b)1.: The section previously numbered as .13(4)(d)(1) is deleted as unnecessary. This section was previously numbered .13(4)(d)(2), but has been reworded for clarity.

.13(3)(b)2.: This section was previously numbered as .13(4)(d)3.

.13(3)(b)4.: This section was previously numbered as .13(4)(d)4.

The rule previously numbered as .13(5) has been deleted as unnecessary.

0870-01-.14: Rule pertaining to display of licenses, obtaining a replacement license, and obtaining verification of licenses.

Description of amendments:

Subparagraph (2) of this rule has been revised to clarify what license may be replaced, to remove the requirement to submit a passport-style photograph, and for clarity. The remainder of rule .14 has not been changed.

0870-01-.15: Rules pertaining to how a licensee must notify the board of a change in his or her name or practice address.

Description of amendments:

.15(1): Revised for clarity; also eliminates requirement to include the licensee's social security number. Adds requirement that the notification be received no more than 30 days after it took effect.

.15(2): Revised for clarity; also eliminates requirement to include licensee's social security number. Adds requirement that a licensee must inform the board if he or she has no current practice address.

.15(3): Revised for clarity. Also clarified that replacement license fee is due if the establishment changes its name, and a reinspection fee will be due if an establishment changes its address.

0870-01-.16: Rule pertaining to certain internal operations of the Board.

Description of amendments:

.16(2)(c): The rule previously numbered as .16(2)(c) has been deleted as unnecessary. The text of the new rule .16(2)(c) was previously numbered as .16(2)(d).

.16(3): Revised for clarity.

.16(3)(a): Revised to clarify that initial determinations made by a consultant or designee are subject to Board ratification .

.16(3)(b): Revised to simplify the description of what tasks a consultant or designee may take as "Consultant to the Division."

.16(4): Revised to simplify; new rule simply refers to the Declaratory Order statute.

0870-01-.17: Contains rules governing advertising of massage therapy services.

Description of amendments:

.17(1): Revised for clarity.

.17(2): Revised by deleting the definition of "Licensee" previously numbered as .17(2)(b) as unnecessary, renumbering remaining rules, and deleting the word "ordinary" from the newly numbered .17(2)(b).

.17(3)(a): Revised by moving the text of previously numbered Subparagraph .17(3)(a)(1) into (3)(a).

.17(3)(b): Revised slightly for clarity.

.17(3)(c): Revised by moving the text of previously numbered subparagraph .17(3)(c)(1) into (3)(c).

.17(4)(d): Revised by substituting the word "client" for "clientele."

.17(4)(r): Revised for clarity.

.17(6): Rule has been deleted as unnecessary.

0870-01-.18: Rule setting forth statutory requirements stemming from the Health Care Consumer Right-to-Know Act of 1998.

Description of amendments:

.18(1): Revised to clarify.

.18(3): New paragraph added to specify that any actions falling under subsections .18(1) or (2) must be reported to the Board within 30 days of when they occur.

0870-01-.19: Sets forth certain Professional Ethical Standards that licensees may be disciplined for violating.

Description of amendments:

.19(1): Revised to clarify that both individuals and establishments will be held to these standards.

.19(1)(k): Revised to extend prohibition to "arranging for" sexual conduct/activity/behavior.

.19(1)(1): Rule prohibiting certain treatments was previously numbered as .02(4)(e).

Subsections edited to remove the words "therapeutic" as unnecessary, and broaden prohibition from "vaginal massage" to include any treatments to genitals.

.19(1)(m): Rule previously numbered as .19(1)(1).
.19(1)(n): Rule previously numbered as .19(1)(m).
.19(1)(0): Rule previously numbered as .19(1)(n). Rule previously numbered as .19(1)(o) has been deleted.
.19(1)(p): Rule previously numbered as .19(1)(q). Rule previously numbered as .19(1)(p) has been deleted.
.19(1)(q): Rule previously numbered as .19(1)(r).
.19(1)(r): New rule; previously numbered as Rule .02(3)(b); revised to add specificity concerning draping requirements.
.19(1)(v): Subsections reworded slightly for clarity.
.19(1)(w): Revised to remove exception that applied if the licensee had obtained a signed notarized statement indicating the establishment had a license when in fact it did not.
.19(1)(x): New rule added making it a violation of the rules to fail to launder or sanitize materials, equipment and supplies.

Rule 0870-02-.01: Provides definitions of terms used in chapter 2 of the Board rules.

Description of amendments:

.01 (6): Definition for NCBTMB added.
.01 (7): Definition for FSMTB added.
.Q1 (8): Definition for MBLEx added.

Rule 0870-02-.02: Sets forth massage therapy educational program curriculum requirements and the procedure for program approval.

Description of amendments:

.02(1): Revised for clarity and to specify that massage therapy educational program approval is not transferable.
.02(2)(a): Revised for clarity.
.02(2)(a)7.: Adds specificity to requirement to submit program catalog.
.02(3)(a): Instructor to student ratio revised from 1:10 to 1:14.
.02(3)(c): Revised by changing reference from "NCBTMB" examination to the "approved examination."
.02(3)(d): Revised version of the rule previously numbered as .02(3)(p); now specifies that programs must ensure at least a 2-hour presentation from the Board's impaired professional assistance program. The rule previously numbered as .02(3)(d) has been deleted.
.02(3)(e): Revised for clarity and to specify that programs must retain written proof of compliance with this requirement.
.02(3)(h): Previously numbered as .02(3)(i). The old rule numbered as .02(3)(h) has been renumbered as .02(3)(o).
.02(3)(i): Previously numbered as .02(3)(j) and revised for clarity.
.02(3)(j): This rule and its subparagraphs were previously numbered as .02(3)(k) and its subparagraphs.
.02(3)(j)4.: Revised to state that transcripts shall include contact hours for each subject.
.02(3)08.: Revised for clarity.
.02(3)(k): Previously numbered as .02(3)(1) and revised slightly for clarity.
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.02(3)(1): Previously numbered as .02(3)(m) and revised slightly for clarity.
.02(3)(m): Previously numbered as .02(3)(o).
.02(3)(n): Previously numbered as .02(3)(q). The section previously numbered as .02(3)(n) has been deleted.
.02(3)(o): Previously numbered as .02(3)(h).
Rule .02(4) has been deleted as unnecessary.

Rule 0870-02-.03: Rule concerning withdrawal of program approval.

Description of amendments:

Revised to specify that the required graduation rate is measured over 12-month periods.

Rule 0870-02-.05: Rule setting forth minimum standards for directors, instructors and classrooms.

Description of amendments:

.05(1)(d): Adds second sentence, stating that an instructor may only teach principles and concepts from the profession that he or she is licensed in.

Rule 0870-02-.06: Rule setting forth program policies and procedures.

Description of amendments:

.06(1): The entire rule has been restructured for clarity and to remove unnecessary requirements that are largely duplicative of THEC requirements. The policies are now required to be in written form and distributed to all students.

.06(2): New rule requiring that programs are required to have at least 1 person qualified in basic life support present during all classroom and clinical hours. Previously, all instructors were required to be certified in basic life support.

.06(5): The rule previously numbered as .06(5) has been deleted as unnecessary.

Rule 0870-02-.07: Rule stating that board-approved massage therapy education programs are required to submit an annual report, and setting forth the requirements of that report.

Description of amendments: The catch-line (text appearing before numbered subparagraphs) has been revised to specify that the annual report is due by December 31 of each calendar year. The requirements for the annual report have not changed.

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. §4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

PUBLIC HEARING COMMENTS

TENNESSEE MASSAGE LICENSURE BOARD

OCTOBER 26, 2009 AND FEBRUARY 23, 2010

The rulemaking hearing for the Tennessee Massage Licensure Board was held on October 26, 2009 in the Department of Health Conference Center's Poplar Room on the First Floor of the Heritage Place Building in MetroCenter, Nashville, Tennessee. The rulemaking hearing was not concluded at the end of the meeting and was carried over to February 23, 2010, when it was concluded.

Several members of the public attended and had verbal questions and statements. Written comments as well as verbal comments were received from Karen Craig, representing the Massage Institute of Memphis.

1. Maj-Lis Nash had several requests for revisions as listed below:

- a. That the requirement for a passport photo in the licensure application be added back in. The Office of General Counsel responded that within six (6) months of receipt, the applications are imaged, and the photos are virtually unrecognizable in the imaged documents, therefore, this requirement was deleted;
- b. That the words "as delineated in 0870-01-.04(1)(f) be deleted in Rule 0870-01-.04(m)(1);
- c. That Rule 0870-01-.12(4)(c)6 be deleted as it is confusing;
- d. That the words "in writing" be added to Rule 0870-02-.02(3)(e);
- e. To delete the word "business" and change to "clinic and classroom" in Rule 0870-02-.06(2);
- f. To change "on or before June 30" to "by December 31" in Rule 0870-02-.07.

2. Karen Craig represented the Massage Institute of Memphis and submitted written comments and stated that she found several typographical and numbering errors. The Office of General Counsel responded that the typographical and numbering errors would be corrected per her written comments. Her verbal questions and comments were as follows:

- a. That the last word in Rule 0870-01-.02(3)(d)4 should be "reinspection" instead of "inspection";
- b. That the word "for" be inserted in Rule 0870-01-.02(e)5 in reference to appearing "for" a reinspection;
- c. That the word "Bodyworks" be inserted in Rule 0870-01-.01(14);
- d. That in Rule 0870-01-.08(3), the NCBTMB should be left in as a competency examination. there was much discussion among the Board members regarding this suggestion and it was stated that many states were only going to accept the MBLEx after 2011. The Board did not approve this suggestion;
- e. That in Rule 0870-01-.04 a subparagraph be added requiring a student to sign an acknowledgement of provisions regarding criminal convictions and becoming licensed;
- f. That Rule 0870-01-.12(2) is confusing and questioned which date is used. The director replied that date of issue of the license is the date used for required continued education;
- g. Must providers of continuing education be approved by the Board or just courses as stated in Rule 0870-01-.12(4)? Yes, providers must be approved as well as courses.
- h. Whether in Rule 0870-01-.12(4)(b)6, continuing education courses taken as formal educational courses can be given more than fifteen (15) hours of CEU credit for a three (3) hour course. The board responded this could not be changed.
- i. That the minutes of instruction in Rule 0870-01-.12(4)(c)5 to equal an hour of CEU credit be changed to fifty (50) minutes rather than sixty (60);

- j. Whether a licensee needs approval for all out of state CEU classes or only those which did not have prior board approval. The Board answered only those not previously approved would need approval.
 - k. That in Rule 0870-01-.16(3)(b) the word "patient" be changed to "client". OGC responded that T.C.A. 63-1-117 uses the term "patient" and that language must be used in the rule.
 - l. That in Rule 0870-01-.19(1) two (2) of the original responsibilities were deleted and could they be put back in. The Board replied these requirements were covered in the new subparagraph (c) and were no longer needed.
3. Dianne Smithson appeared and requested that in Rule 0870-01-.12(1)(b) a sentence should be added stating "This two (2) hour course must be approved by the Board." She further requested clarification of the words "and attendance" in Rule 0870-01-.02(3)(d) questioning what must be documented by the program.
4. Sarah Lahti appeared and stated she was opposed to the new rule only accepting the EMBLEx as the licensing examination after June, 2011.
5. Mindy Oldham appeared and questioned the following:
- a. The 100 cubic feet designation in Rule 0870-01-.02(2)2;
 - b. Whether unannounced inspections in Rule 0870-01-.02(3) would interrupt client hours. The Board stated that unannounced inspections were not common and were used in problem cases.
 - c. Whether the implementation date for the EMBLEx could be changed from 2011 to 2013 in Rule 0870-01-.08(3). The Board responded this was discussed earlier, and it was decided to keep the date as 2011.
 - d. What is the "biennial alternative interval" in Rule 0870-01-.09(1)(a)?
 - e. Whether the words "from the preceding cycle" could be added to Rule 0870-01-.02(3)(a).
6. Steve Summers appeared and questioned whether establishment owners should be required to take the law class as required for therapists.
7. Lori Schrader questioned how long is a person considered a "client" in terms of Rule 0870-01-.19(1); whether a husband-wife would be considered clients; whether a person who received a massage when a therapist was performing volunteer work would be considered a client. OGC responded if questions of this nature were raised in a disciplinary matter, each matter would be treated on an individual basis.
8. Debbie Hicks, President of MTA, appeared and requested the Board revisit Rule 0870-01-.02(2)(a)2 and the 100 cubic feet measurement. OGC suggested 1000 square feet be used in the rule. She further questioned whether the term "reciprocity" be changed to "portability" in Rule 0870-01-.04(1)(m). OGC stated the statute uses the term "reciprocity," thus this is the term which should be used in the rule.
9. Written comments were received from Chattanooga State Technical Community College requesting the ratio of 14 students to 1 instructor in Rule 0870-02-.02(3)(a) be changed to 20 student to 1 instructor. The Board did not approve this change in the rule amendment.

With the exceptions noted above, at the conclusion of the public comments the Board voted unanimously to approve the suggestions and incorporate these into the permanent rules.

Impact on Local Governments

Pursuant to T.C.A. 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

These amendments to the rules are not expected to have any impact on local governments.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

1. **Name of Board, Committee or Council:** Tennessee Massage Licensure Board
2. **Rulemaking hearing date:** October 26, 2009 and February 23, 2010
3. **Types of small businesses that will be directly affected by the proposed rules:** The types of small businesses directly affected by the proposed rules are massage establishments, licensed massage therapists and massage schools.
4. **Types of small businesses that will bear the cost of the proposed rules:** Should there be any cost of the proposed rules, massage establishments, massage therapists and massage schools will bear the cost..
5. **Types of small businesses that will directly benefit from the proposed rules:** Massage establishments, massage therapists, and massage schools will benefit from the proposed rules.
6. **Description of how small business will be adversely impacted by the proposed rules:** There should be no adverse impact to small business due to the proposed rules.
7. **Alternatives to the proposed rule that will accomplish the same objectives but are less burdensome, and why they are not being proposed:** There are no less burdensome alternatives to the proposed rules.

Comparison of the proposed rule with federal or state counterparts:

Federal - None

State – None

Regulatory Flexibility Addendum

Pursuant to T.C.A. § 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

(If applicable, insert Regulatory Flexibility Addendum here)

Regulatory Flexibility Analysis

- (1) The proposed rules do not overlap, duplicate, or conflict with other federal, state, or local government rules.
- (2) The proposed rules exhibit clarity, conciseness, and lack of ambiguity.
- (3) The proposed rules are not written with special consideration for the flexible compliance and/or reporting requirements because the licensing boards have, as their primary mission, the protection of the health, safety and welfare of Tennesseans. However, the proposed rules are written with a goal of avoiding unduly onerous regulations.
- (4) The compliance requirements throughout the proposed rules are as “user-friendly” as possible while still allowing the Division to achieve its mandated mission the protection of the health, safety and welfare of the citizens of Tennessee. There is sufficient notice between the rulemaking hearing and the final promulgation of rules to allow services and providers to come into compliance with the proposed rules.
- (5) Compliance requirements are not consolidated or simplified for small businesses in the proposed rules for the protection of the health, safety and welfare of Tennesseans.
- (6) The standards required in the proposed rules are very basic and do not necessitate the establishment of performance standards for small businesses. When the health-related licensing boards' rules contain standards, there are always statements included which specify what constitutes compliance with such standards.
- (7) There are no unnecessary entry barriers or other effects in the proposed rules that would stifle entrepreneurial activity or curb innovation. All of the health-related licensing boards' rules contain initial licensure requirements and requirements to maintain licensure, but these are necessary for the protection of the health, safety and welfare of Tennesseans.

**RULES
OF
TENNESSEE MESSAGE LICENSURE BOARD**

**CHAPTER 0870-01
GENERAL RULES GOVERNING LICENSED MESSAGE THERAPISTS AND ESTABLISHMENTS**

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~~0870-01-.01 — DEFINITIONS. As used in these rules, the following terms and acronyms shall have the following meaning ascribed to them:~~

- ~~(1) — Applicant — Any individual seeking licensure who has submitted an official application and paid the application fee.~~
- ~~(2) — Application — As used in this rule, "application" means the application form approved by the Board and shall also include, when applicable, the following: Current signed, passport type photograph, official transcript from educational institution(s), verification of successful completion of the N.C.B.T.M.B.'s National Certification Examination or any other Board-approved examination, two (2) original letters of professional recommendation, and certification/licensure from other state boards.~~
- ~~(3) — Board — The Tennessee Massage Licensure Board.~~
- ~~(4) — Board Administrative Office — The office of the administrator assigned to the Board located at 227 French Landing, Suite 300, Heritage Place, MetroCenter, Nashville, TN 37243.~~
- ~~(5) — Board's Consultant — Any person who has received a delegation of authority from the Board to perform Board functions subject to review and ratification by the Board where provided by these rules.~~
- ~~(6) — Client — Means any person with whom the massage therapist has an agreement to provide massage therapy.~~
- ~~(7) — Closed Files — An administrative action which renders an incomplete or denied file inactive.~~
- ~~(8) — Department — Tennessee Department of Health.~~
- ~~(9) — Division — The Division of Health Related Boards, Tennessee Department of Health, from which the Board receives administrative support.~~
- ~~(10) — Establishment — Any location, or portion thereof, which advertises and/or provides to the public massage therapy services on the premises for compensation. Any licensed health care facility or any health care professional's office wherein massage therapy services are~~

(Rule 0870-01-.01, continued)

~~not advertised or provided except on an occasional outcall basis is not an establishment for purposes of this rule. Any location within a licensed health care facility or any health care professional's office which is dedicated to and maintained for the use of a massage therapist who performs occasional massage therapy services to the patients of the facility is a massage establishment for purposes of licensure under these rules and the portions of the facility or office wherein massage therapy services are provided must be in compliance with the standards established in rule 0870-01-.02. The term "occasional" as used in this rule means not more than twice in a one (1) week period.~~

- ~~(11) He/she Him/her - When "he" appears in the text of these rules, the word represents both the feminine and masculine genders.~~
- ~~(12) HRB - When the acronym HRB appears in the text of these rules, HRB represents the Division of Health Related Boards.~~
- ~~(13) Licensee - Any person holding a license to practice massage therapy or as a massage establishment in the State of Tennessee. Where applicable this shall include partnerships and/or corporation.~~
- ~~(14) Massage/bodywork/somatic - The manipulation of the soft tissues of the body with the intention of positively affecting the health and well being of the client.~~
- ~~(15) N.C.B.T.M.B. - The National Certification Board for Therapeutic Massage and Bodywork.~~
- ~~(16) National Certification Examination - The examination required for national certification from the N.C.B.T.M.B.~~
- ~~(17) Outcall - The provision of massage services outside of an "establishment" as defined by this rule and in a location at which there is neither the regular provision of nor the advertising of such services. For purposes of this definition, the term "regular" means more than twice in a one (1) week period.~~
- ~~(18) Person - Any individual, firm, corporation, partnership, organization, or body politic.~~
- ~~(19) Physician - Any physician licensed pursuant to T.C.A. Title 63, Chapters 6 or 9.~~

0870-01-.01 Definitions. As used in these rules, the following terms and acronyms shall have the following meaning ascribed to them:

- (1) Applicant - Any individual seeking licensure who has submitted an official application and paid the application fee.
- (2) Application - The application form approved by the Board and the required attachments.
- (3) Board - The Tennessee Massage Licensure Board.
- (4) Board Administrative Office - The office of the administrator assigned to the Board.
- (5) Board's Consultant - Any person who has received a delegation of authority from the Board to perform Board functions subject to review and ratification by the Board where provided by these rules.
- (6) Client - Any person with whom the massage therapist has an agreement to provide massage therapy.

(Rule 0870-01-.01, continued)

- (7) Continuing Education – Those pre-planned/formalized activities with written learning objectives that are directed at developing and enhancing an individual's massage therapy knowledge base or relevant skills.
- (8) Department - Tennessee Department of Health.
- (9) Division - The Division of Health Related Boards, Tennessee Department of Health, from which the Board receives administrative support.
- (10) Establishment – A business or institution that is a fixed and permanent location or a mobile vehicle facility that is open and accessible to the general public for compensated massage services.
- (11) FSMTB – The Federation of State Massage Therapy Boards.
- (12) Licensee - Any person holding a license to practice massage therapy or to operate a massage establishment in the State of Tennessee. Where applicable this shall include partnerships and/or corporations.
- (13) Massage/bodywork/somatic – The manipulation of the soft tissues of the body with the intention of positively affecting the health and well-being of the client.
- (14) MBLEx – The Massage and Bodyworks Licensing Examination established by the FSMTB.
- (15) NCBTMB - The National Certification Board for Therapeutic Massage and Bodywork.
- (16) National Certification Examination - The examination required for national certification from the NCBTMB.
- (17) Person - Any individual, firm, corporation, partnership, organization, or body politic.
- (18) Physician - Any physician licensed pursuant to T.C.A. Title 63, Chapter 6 or 9.
- (19) Sexual Activity – "Sexual activity" means any direct or indirect physical contact or communication by any person or between persons which is intended to erotically stimulate either person or both or which is likely to cause such stimulation and includes but is not limited to, sexual intercourse, fellatio, cunnilingus, masturbation or anal intercourse. "Sexual activity" can involve the use of any device or object or conversation and is not dependent on whether penetration, orgasm or ejaculation occurred. As used in these rules, "masturbation" means the manipulation of any body tissue with the intent to cause sexual arousal.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-18-102, 63-18-104, 63-18-105 and 63-18-108, and 63-18-111.
Administrative History: Original rule filed November 13, 1996; effective January 27, 1997. Amendment filed November 26, 1996; effective February 9, 1997. Amendment filed November 12, 1999; effective January 26, 2000. Amendment filed July 31, 2000; effective October 14, 2000. Amendment filed July 25, 2002; effective October 8, 2002. Amendment filed April 17, 2003; effective July 1, 2003. Amendment filed March 24, 2006; effective June 7, 2006. Amendment filed June 16, 2006; effective August 30, 2006.

~~0870-01-.02 PRACTICE STANDARDS AND INSPECTION OF ESTABLISHMENTS.~~

- ~~(1) Policy Statement – The scope of the practice of massage therapy in Tennessee is broadly defined and includes many aspects which if not particularly regulated could lead to serious~~

(Rule 0870-01-.02, continued)

~~ramifications for the consuming public. This rule is to designate specific areas in the practice for regulation, the violation of which may result in disciplinary action or denial of licensure pursuant to T.C.A. § 63-18-108.~~

~~(2) Standards for Massage Establishments, Personnel, Equipment, Linens, and Supplies~~

~~(a) Massage Establishments Standards — The holder of a massage establishment license must comply with all of the following:~~

- ~~1. Contain adequate waiting area for clients.~~
- ~~2. Maintain properly installed smoke detector and fire extinguisher.~~
- ~~3. Massage therapy may be conducted only in rooms which are adequately lighted and ventilated, and so constructed that they can be kept clean. Floors, walls, ceilings and windows must remain free of dust, and other unclean substances.~~
- ~~4. Rest Rooms. Every establishment shall contain rest room facilities; including at least one water flushed toilet, equipped with toilet tissue, from which the waste water shall be discharged into a sewage system acceptable to the Department of Environment. Establishments located in buildings housing multiple businesses under one roof such as arcades, shopping malls, terminals, hotels, etc., may substitute centralized toilet facilities. Such central facilities shall be within three hundred (300) feet of the massage establishment.~~
 - ~~(i) Hand cleansing capabilities for the therapists must be located within 20 feet of the treatment area, each establishment shall have at least one sink with hot and cold running water within 300 feet of the treatment area; and~~
 - ~~(ii) Shall be equipped with soap dispenser with soap or other hand cleaning materials, clean towels or other hand drying device such as a wall-mounted electric blow dryer, and waste receptacle.~~
 - ~~(iii) Such facilities and all of the foregoing fixtures and components shall be kept clean, in good repair, well-lighted, adequately ventilated, and free of pests.~~
 - ~~(iv) Maintain toilet facilities in a common area of the establishment.~~
- ~~5. Reasonable effort for sanitation shall be maintained for temporary locations such as athletic events or public service fund raisers in temporary venues.~~
- ~~6. Provide for safe and unobstructed human passage in the public areas of the premises; provide for removal of garbage and refuse; and provide for safe storage or removal of flammable and hazardous materials.~~

~~(b) Personnel~~

- ~~1. All persons who perform massage therapy in a massage establishment must be licensed by the Board pursuant to rule 0870-01-.04.~~
- ~~2. A license issued to an individual who owns a massage establishment is not transferable and is subject to revocation or other disciplinary actions upon failure of any inspection or for refusal to allow inspection by the Board's authorized representatives.~~

(Rule 0870-01-.02, continued)

- ~~3. Notwithstanding the above, a licensed massage establishment may change locations, pursuant to rule 0870-01-.15 (3).~~
- ~~4. The person to whom the establishment license is issued shall be responsible for maintaining all parts thereof in a sanitary condition at all times, and for otherwise insuring that such establishment is operated in compliance with this Chapter. However, this rule shall not relieve any individual therapist of responsibility for the sanitary conditions of the space or equipment used in their practice.~~

~~(c) Equipment~~

- ~~1. Maintain all equipment and supplies used to perform massage services on the premises in a safe and sanitary condition, including the regular application of cleansers and bactericidal agents to the massage table. "Regular application," where used herein, means a thorough cleansing of the massage table at least one time a day or whenever oils or other substances visibly accumulate on the massage table surface.~~
- ~~2. If equipped with a whirlpool bath, sauna, steam cabinet and/or steam room, maintain adequate and clean shower facilities on the premises.~~

~~(d) Linens and Supplies~~

- ~~1. Each client shall receive a separate, clean covering for use on the message table, i.e. sheets or towels.~~
- ~~2. Launder or sanitize, before reuse, all materials, equipment and supplies utilized for each client.~~

~~(3) Draping~~

- ~~(a) Each massage establishment shall maintain a sufficient supply of clean drapes, for the purpose of draping each client while the client is being massaged. As used herein "drapes" means towels, gowns, or sheets.~~
- ~~(b) Before proceeding with a massage to the client, each massage therapist shall have explained to the client expected draping techniques and provide the client a clean drape large enough for the purpose of draping the buttocks and genitalia and in the case of a female client the breasts.~~

~~(4) Sexual Activity and Other Therapeutic Treatments Prohibited~~

- ~~(a) As used in this rule, "sexual activity" means any direct or indirect physical contact or communication by any person or between persons which is intended to erotically stimulate either person or both or which is likely to cause such stimulation and include sexual intercourse, fellatio, cunnilingus, masturbation, or anal intercourse. For purposes of this rule part, masturbation means the manipulation of any body tissue with the intent to cause sexual arousal. As used, herein, sexual activity can involve the use of any device or object or conversation and is not dependent on whether penetration, orgasm, or ejaculation has occurred.~~
- ~~(b) Sexual activity by any person or persons in any massage establishment is absolutely prohibited.~~

(Rule 0870-01-.02, continued)

- ~~(c) No massage establishment owner shall engage in or permit any person or persons to engage in sexual activity in such owner's massage establishment or use such establishment to make arrangements to engage in sexual activity in any other place.~~
- ~~(d) No licensed massage therapist shall use the therapist-client relationship to engage in sexual activity with any client or to make arrangements to engage in sexual activity with any client.~~
- ~~(e) Prohibited therapeutic treatments not within the scope of practice of massage therapists include:
 - ~~1. therapeutic treatments to the anus and anal canal, including, but not limited to colonic irrigations and enemas; and~~
 - ~~2. therapeutic cross-gender breast massage; and~~
 - ~~3. therapeutic vaginal massage.~~~~
- ~~(f) Engaging in any of the activities or treatments described in this paragraph shall subject the licensee to disciplinary action, as provided in rule 0870-01-.13.~~
- ~~(5) Inspection of Establishments Licensed massage therapy establishments and applicants are subject to periodic inspections by the Board or its authorized representative(s) during business hours. When scheduling inspections, the inspector shall attempt to accommodate the client appointment schedule of the establishment.
 - ~~(a) The purpose of inspection of establishments is to verify compliance with the practice standards of this rule as provided in paragraphs (2), (3), and (4), and the display of license requirements as provided in paragraph (1) of Rule 0870-01-.14.~~
 - ~~(b) The establishment license may be subject to disciplinary action, pursuant to Rule 0870-01-.13, when the inspection reveals that the establishment does not meet the standards and requirements set by this rule or when the inspection reveals that the license of any employee has been suspended or revoked.~~
 - ~~(c) Reinspection When an establishment does not pass inspection, the establishment shall submit an application for reinspection.
 - ~~1. The inspector shall provide the establishment with an application for reinspection.~~
 - ~~2. The application shall be submitted to the Board's administrative office within thirty (30) days after the failed inspection.~~
 - ~~3. The reinspection fee shall be submitted with the application, pursuant to Rule 0870-01-.06.~~
 - ~~4. The Board's Unit Director shall cause to have the reinspection scheduled.~~~~
 - ~~(d) Failure to Allow or Appear for Inspection An establishment whose owner or operator fails to allow an inspection to be scheduled shall be deemed to have failed the inspection. An establishment whose owner or operator does not appear for his/her scheduled inspection shall be deemed to have failed the inspection unless the Board's administrative office or the Board's authorized representative is notified at least twenty-four (24) hours prior to the scheduled appointment time for inspection. In either circumstance, a subsequent scheduled inspection shall be considered as a~~~~

(Rule 0870-01-.02, continued)

~~reinspection. When a reinspection is necessitated as a result of either circumstance, the following shall occur:~~

- ~~1. The Board's administrative office shall provide the establishment with an application for reinspection.~~
- ~~2. The establishment's owner or operator shall submit the reinspection application to the Board's administrative office within ten (10) days after the establishment received the application.~~
- ~~3. The reinspection fee shall be submitted with the application, pursuant to Rule 0870-01-.06.~~
- ~~4. The Board's Unit Director shall cause to have the reinspection scheduled.~~

0870-01-.02 Practice Standards and Inspection of Establishments.

(1) It is the responsibility of establishment owners to ensure compliance with all provisions of this rule and any violation of any portion of this rule may result in disciplinary action or denial of licensure pursuant to T.C.A. § 63-18-108.

(2) Standards for Massage Establishments, Personnel, and Equipment

(a) Massage Establishments Standards

1. Establishment owners shall ensure and maintain an adequate waiting area for clients.
2. Establishment owners shall maintain properly installed smoke detectors and fire extinguishers in compliance with local fire codes. If there are no local fire codes, there shall be a minimum of one smoke detector and one fire extinguisher per one thousand (1000) square feet of treatment area. If local fire codes require fire inspections, establishment owners shall maintain written documentation of all fire inspections for a period of four (4) years.
3. Massage therapy may be conducted only in rooms which are adequately lighted and ventilated, and so constructed that they can be kept clean. Establishment owners shall ensure that floors, walls, ceilings and windows are kept clean, in good repair and free of pests.
4. Rest Rooms. Every establishment shall contain rest room facilities for use by clients and employees. Establishments located in buildings housing multiple businesses under one roof such as arcades, shopping malls, terminals, hotels, etc., may substitute centralized toilet facilities. Such centralized facilities shall be within three hundred (300) feet of the massage establishment.
 - (i) Rest room facilities shall include at least one water-flushed toilet, equipped with toilet tissue, from which the waste water shall be discharged into a sewage system acceptable to the Department of Environment and Conservation.
 - (ii) Rest room facilities shall include at least one sink with hot and cold running water and shall be equipped with a soap dispenser

(Rule 0870-01-.02, continued)

with soap or other hand cleaning materials, clean towels or other hand-drying device such as a wall-mounted electric blow dryer, and waste receptacle. Hand cleansing capabilities for the therapists must be located within twenty (20) feet of the treatment area.

(iii) Rest room facilities and all of the foregoing fixtures and components shall be kept clean, in good repair and free of pests.

5. Reasonable effort for sanitation shall be maintained for temporary locations such as athletic events or public service fund raisers in temporary venues.

6. Establishment owners shall provide for safe and unobstructed human passage in the public areas of the premises, provide for removal of garbage and refuse, and provide for safe storage or removal of flammable and hazardous materials.

(b) Personnel

1. Establishment owners are responsible for ensuring that all persons who perform massage therapy in a massage establishment maintain current licensure by the Board pursuant to rule 0870-01-.04.

2. Establishment owners shall maintain in a centralized location a current copy of the certificate of renewal for each licensed massage therapist providing services at the establishment. A copy of any such certificate shall be made available upon request of any client or any representative of the Board.

3. Establishment licenses are not transferable and are subject to revocation or other disciplinary actions upon failure of any inspection or for refusal to allow inspection by the Board's authorized representatives.

4. Notwithstanding the above, a licensed massage establishment may change locations, pursuant to rule 0870-01-.15 (3).

5. Establishment owners shall be responsible for maintaining all parts thereof in a sanitary condition at all times, and for otherwise ensuring that such establishment is operated in compliance with this Chapter. However, this rule shall not relieve any individual therapist of responsibility for the sanitary conditions of the space or equipment used in their practice.

(c) Equipment

1. Establishment owners shall ensure that all equipment and supplies used to perform massage services on the premises are maintained in a safe and sanitary condition.

2. If the establishment is equipped with a whirlpool bath, sauna, steam cabinet and/or steam room, establishment owners shall maintain adequate and clean shower facilities on the premises.

(Rule 0870-01-.02, continued)

(3) Inspection of Establishments - Licensed massage therapy establishments are subject to initial inspections and periodic subsequent inspections by the Board or its authorized representative(s) during normal and customary business hours. Inspections may be announced or unannounced.

(a) The purpose of inspection of establishments is to verify compliance with the establishment standards of this rule and to verify that the establishment and all licensed massage therapists providing services have their licenses conspicuously displayed on the premises as required by 0870-01-.14.

(b) The establishment license may be subject to disciplinary action, pursuant to Rule 0870-01-.13, if the inspection reveals that the establishment does not meet the standards and requirements set by this rule or if the inspection reveals that the license of any massage therapist providing services at the establishment is not current or has been suspended or revoked.

(c) A massage establishment which receives an inspection score of eighty-five (85) or higher achieves a passing score on the inspection. A massage establishment which receives an inspection score of eighty-four (84) or below does not pass the inspection.

(d) Reinspection - When an establishment does not pass inspection, the establishment shall submit an application for reinspection.

1. The inspector shall provide the establishment with an application for reinspection.

2. The application shall be submitted to the Board's administrative office within thirty (30) days after the failed inspection.

3. The reinspection fee shall be submitted with the application, pursuant to Rule 0870-01-.06.

4. Upon timely submission of the application and fee, the Board's Director, Manager or designee shall schedule the reinspection.

5. Failure to pass a reinspection shall result in a formal complaint with the Division's investigations unit.

(e) Failure to Allow or Appear for Inspection - An establishment whose owner or operator fails to allow an inspection shall be deemed to have failed the inspection. An establishment whose owner or operator does not appear for his/her scheduled inspection shall be deemed to have failed the inspection unless the Board's administrative office or the Board's authorized representative is notified at least twenty-four (24) hours prior to the scheduled appointment time for inspection. In the event of either a failure to appear without notice or a failure to allow inspection, a subsequent scheduled inspection shall be considered a reinspection. When a reinspection is necessitated as a result of either circumstance, the following shall occur:

1. The Board's administrative office shall provide the establishment with an application for reinspection.

(Rule 0870-01-.02, continued)

2. The establishment's owner or operator shall submit the reinspection application to the Board's administrative office within ten (10) days after the establishment received the application.
3. The reinspection fee shall be submitted with the application, pursuant to Rule 0870-01-.06.
4. Upon timely submission of the application and fee, the Board's Director, Manager or designee shall schedule the reinspection.
5. Failure to pass a reinspection or failure to allow or appear at reinspection shall result in a formal complaint with the Division's investigations unit.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-18-104, 63-18-105, 63-18-106, 63-18-108, and 63-18-111.

Administrative History: Original rule filed November 13, 1996; effective January 27, 1997. Amendment filed November 26, 1996; effective February 9, 1997. Amendment filed August 10, 1999; effective October 24, 1999. Amendment filed July 31, 2000; effective October 14, 2000. Amendment filed November 27, 2000; effective February 10, 2001. Amendment filed October 4, 2004; effective December 18, 2004. Amendment filed December 29, 2004; effective March 14, 2005. Amendments filed March 24, 2006; effective June 7, 2006. Amendment filed June 16, 2006; effective August 30, 2006.

~~0870-01-.03 NECESSITY OF LICENSURE.~~

- ~~(1) It is unlawful for any person who is not licensed in the manner prescribed in Title 63 Chapter 18 of the Tennessee Code Annotated to present himself or his establishment as a licensed massage therapist or a licensed massage therapy establishment or to hold himself or his establishment out to the public as being licensed by using a title on signs, mailboxes, address plates, stationery, announcements, telephone listings, calling cards, or other instruments of professional identification.~~
- ~~(2) Massage therapy is one of the healing arts and as such the practice is restricted to those persons issued a credential by this Board. Persons engaging in the practice of massage therapy without being licensed or expressly exempted by the laws are in violation of T.C.A. §§ 63-1-123 and 63-18-104.~~
- ~~(3) Use of Titles - Any person who possesses a valid, current and active license issued by the Board that has not been suspended or revoked has the right to use the titles "Massage Therapist (M.T.)" or "Licensed Massage Therapist (L.M.T.)" and to practice as a massage therapist, as defined in T.C.A. § 63-18-102. Any person licensed by the Board to whom this rule applies must use one of the titles authorized by this rule in every advertisement he or she publishes. Failure to do so will constitute an omission of a material fact which makes the advertisement misleading and deceptive and subjects the massage therapist to disciplinary action pursuant to T.C.A. §§ 63-18-104(c) and 63-18-108(5), and rule 0870-01-.19 (1) (q).~~
- ~~(4) Students may not hold themselves out as licensed massage therapists until such time as they are licensed.~~

0870-01-.03 Necessity of Licensure

- (1) Massage therapy is one of the healing arts and, as such, the practice is restricted to those persons issued a credential by this Board. Persons engaging in the practice of massage therapy without being licensed or expressly exempted by the laws are in violation of T.C.A. §§ 63-1-123 and 63-18-104. It is unlawful for any person who is not licensed in the manner prescribed in Title 63, Chapter 18 of the Tennessee Code Annotated to present himself or his establishment as a licensed massage therapist or a

(Rule 0870-01-.03, continued)

licensed massage establishment or to hold himself or his establishment out to the public as being licensed by using a title on signs, mailboxes, address plates, stationery, announcements, telephone listings, calling cards, or other instruments of professional identification. Students may not hold themselves out as licensed massage therapists until such time as they are licensed.

- (2) Use of Titles - Any person who possesses a valid, current and active license issued by the Board that has not been suspended or revoked has the right to use the titles "Massage Therapist (M.T.)" or "Licensed Massage Therapist (L.M.T.)" and to practice as a massage therapist, as defined in T.C.A. § 63-18-102. Any person licensed by the Board to whom this rule applies must use one of the titles authorized by this rule in every advertisement he or she publishes. Failure to do so will constitute an omission of a material fact which makes the advertisement misleading and deceptive and subjects the massage therapist to disciplinary action pursuant to T.C.A. §§ 63-18-104(b) and 63-18-108(5), and rule 0870-01-.19(1)(p).

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-123, 63-1-145, 63-1-146, 63-18-102, 63-18-104, 63-18-105, 63-18-108, and 63-18-111. **Administrative History:** Original rule filed November 13, 1996; effective January 27, 1997. Amendment filed March 24, 2006; effective June 7, 2006. Amendment filed June 16, 2006; effective August 30, 2006. Amendment filed April 30, 2008; effective July 14, 2008.

0870-01-.04 — LICENSURE PROCESS.

- ~~(1) — Massage Therapist. To practice massage therapy in Tennessee a person must possess a lawfully issued license from the Board. The process for obtaining a license is as follows:~~
- ~~(a) — An application packet shall be requested from the Board's Administrative Office.~~
 - ~~(b) — An applicant shall respond truthfully and completely to every question or request for information contained in the application form. The applicant shall submit the application along with all required documentation and fees to the Board 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 as close to simultaneously as possible.~~
 - ~~(c) — Applications will be accepted throughout the year. Supporting documentation required by the application or these rules must be timely received in the Board Administrative Office as provided in rule 0870-01-.07 (3) or the file will be closed.~~
 - ~~(d) — An applicant shall submit a certified copy of his birth certificate or its equivalent which indicates that the applicant is, at the time of application, at least eighteen (18) years of age.~~
 - ~~(e) — An applicant shall attach to his application a "passport" type photograph taken within the preceding twelve (12) months. The photo must be affixed to the proper page of the application.~~
 - ~~(f) — It is the applicant's responsibility to do the following in a timely manner:
 - ~~1. — Request that a transcript from one (1) or more post secondary academic institution(s) approved by the Tennessee Higher Education Commission or its equivalent in another state(s), or approved by the Tennessee Board of Regents, be submitted directly from the institution(s) to the Board Administrative Office.~~~~

(Rule 0870-01-.04, continued)

~~The transcript must show that the applicant has successfully completed a massage, bodywork, and/or somatic therapy curriculum(s) consisting of no less than five hundred (500) classroom hours and carry the official seal of the institution(s).~~

- ~~(i) Two hundred (200) classroom hours of the five hundred (500) classroom hour requirement shall consist of sciences including, but not limited to, anatomy, physiology Western and/or Eastern, kinesiology, pathology, HIV/AIDS, and blood-borne pathogens, and hygiene (including standard precautions). Other sciences related to the human body may be included with Board approval.~~
 - ~~(ii) Two hundred (200) classroom hours of the five hundred classroom (500) hour requirement shall consist of basic massage theory and practice including, but not limited to, history, benefits, indications, contraindications, demonstration and supervised practice, client assessment/evaluation, soft tissue manipulations including: gliding, kneading, friction, compression, vibration, percussion, stretching, joint movements, draping, positioning, turning, feedback, charting/documentation, proper body mechanics, and self-care.~~
 - ~~(iii) Eighty-five (85) classroom hours of the five hundred (500) classroom hour requirement shall consist of related subjects including, but not limited to, business standards of practice, communication skills, CPR/First Aid, the Americans with Disabilities Act, referral methods, specialized populations, and specialized and adjunct therapies/modalities (including hydrotherapy).~~
 - ~~(iv) Ten (10) classroom hours of the five hundred (500) classroom hour requirement shall consist of ethics instruction.~~
 - ~~(v) Five (5) classroom hours of the five hundred (500) classroom hour requirement shall consist of instruction regarding Tennessee massage statutes and regulations; and~~
- ~~2. Request that verification of having successfully completed the National Certification Examination, as provided in Rule 0870-01-.08, be submitted directly from the N.C.B.T.M.B. or its successor organization to the Board Administrative Office; or~~
 - ~~3. Request that verification of having successfully completed a Board-approved examination, as provided in Rule 0870-01-.08, be submitted directly from such exam's testing agency to the Board Administrative Office.~~
- ~~(g) An applicant shall have submitted evidence of good moral character. Such evidence shall consist of two (2) recent (within the preceding 12 months) original letters from health care professionals, attesting to the applicant's personal character and professional ethics.~~
 - ~~(h) An applicant shall disclose the circumstances surrounding any of the following:~~
 - ~~1. Conviction of any criminal offense of any country, state or municipality except minor traffic offenses, conviction for any sexual related offense, and conviction for prostitution or sexual misconduct offenses. A conviction for prostitution or sexual misconduct offenses shall disqualify an applicant from receiving a license.~~

(Rule 0870-01-.04, continued)

~~A conviction for a felony under the laws of Tennessee may disqualify an applicant from receiving a license.~~

- ~~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 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.~~
- ~~(i) An applicant shall cause to be submitted to the Board's Administrative Office directly from the vendor identified in the Board's licensure application materials, the result of a criminal background check.~~
- ~~(j) If an applicant holds or has ever held a license/certificate to practice any profession in any other state, the applicant shall cause to be submitted the equivalent of a Tennessee Certificate of Endorsement (verification of licensure/certification) from each such licensing board which indicates the applicant holds or held an active license/certificate and whether it is presently in good standing or was in good standing at the time it became inactive.~~
- ~~(k) An applicant shall submit the application fee and state regulatory fee as provided in rule 0870-01-.06.~~
- ~~(l) When necessary, all required documents shall be translated into English and such translation and original documents certified as to authenticity by the issuing source. Both versions must be submitted.~~
- ~~(m) Reciprocity Licensure~~
- ~~1. Applicants who are licensed or have been licensed in another state as a massage therapist must submit along with their applications copies of the statutes and rules governing the licensure/certification qualifications and process from all states in which they currently or previously have held licensure/certification. The Board will determine in its sole discretion whether the licensure/certification standards of any other state are as stringent as those of Tennessee for purposes of granting licensure under this rule. Unless an applicant makes use of the provisions in part 2. of this subparagraph, no applicant shall be approved for licensure without successfully completing the five (5) classroom hours of instruction regarding Tennessee massage statutes and regulations as required in subpart (1) (f) 1. (v).~~
 - ~~2. Applicants can avoid the requirements of part (1) (f) 1. by having N.C.B.T.M.B. submit directly to the Board Administrative Office proof of their certification for the five (5) year period immediately preceding application for licensure and by submitting documentation satisfactory to the Board that they have engaged in the practice of massage therapy in another state for the five (5) year period immediately preceding application for licensure, and who either:~~

(Rule 0870-01-.04, continued)

- ~~(i) — have successfully completed the examination requirements of rule 0870-01-.08 and have met the education requirements set forth in part (1) (f) 1. but are unable, because the educational institution either was not state-approved or is no longer in existence, to have a transcript be submitted directly from the institution(s) to the Board Administrative Office; or~~
- ~~(ii) — have graduated from a qualified massage school or course prior to October 1, 1995 and have caused a transcript documenting the graduation to be submitted directly from the institution(s) to the Board Administrative Office.~~
- ~~(n) — All applications shall be sworn to and signed by the applicant and notarized.~~
- ~~(o) — All documents submitted for licensure purposes become the property of the State of Tennessee and will not be returned.~~
- ~~(p) — The application form is not acceptable if any portion has been executed and dated prior to one (1) year before receipt by the Board Administrative Office. As used in this rule, "application" means the application form approved by the Board and all required documents.~~
- ~~(2) — Application review and all licensure decisions shall be governed by rule 0870-01-.07.~~

0870-01-.04 Licensure Process

- (1) To practice massage therapy in Tennessee a person must possess a lawfully issued license from the Board. The process for obtaining a license is as follows:
 - (a) An application packet shall be requested from the Board's Administrative Office.
 - (b) An applicant shall respond truthfully and completely to every question or request for information contained in the application form. The applicant shall submit the application along with all required documentation and fees to the Board 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 as close to simultaneously as possible.
 - (c) Applications will be accepted throughout the year. Supporting documentation required by these rules must be timely received in the Board Administrative Office as provided in rule 0870-01-.07(3) or the file will be closed.
 - (d) An applicant shall submit a copy of his/her birth certificate or its equivalent which indicates that the applicant is, at the time of application, at least eighteen (18) years of age. Applicants who are not citizens of the United States or whose birth certificates reflect that they were not born in the United States shall submit proof of their immigration status demonstrating their right to live and work in the United States.
 - (e) Applicants shall request that a transcript from one (1) or more post secondary academic institution(s) approved by the Tennessee Higher Education Commission or its equivalent in another state(s), or approved by the Tennessee Board of Regents and approved by the Tennessee Massage Licensure Board, be submitted directly from the institution(s) to the Board Administrative Office. The transcript must carry the official seal of the institution(s) and must show that the applicant has successfully completed a massage, bodywork, and/or somatic

(Rule 0870-01-.04, continued)

therapy curriculum(s) consisting of no less than five hundred (500) classroom hours, specifically delineated as follows:

1. Two hundred (200) classroom hours of the five hundred (500) classroom hour requirement shall consist of sciences including, but not limited to, anatomy, physiology-Western and/or/Eastern, kinesiology, pathology, HIV/AIDS and blood-borne pathogens, and hygiene (including standard precautions). Other sciences related to the human body may be included with Board approval.
 2. Two hundred (200) classroom hours of the five hundred classroom (500) hour requirement shall consist of basic massage theory and practice including, but not limited to, history, benefits, indications, contraindications, demonstration and supervised practice, client assessment/evaluation, soft tissue manipulations including: gliding, kneading, friction, compression, vibration, percussion, stretching, joint movements, draping, positioning, turning, feedback, charting/documentation, proper body mechanics, and self-care.
 3. Eighty-five (85) classroom hours of the five hundred (500) classroom hour requirement shall consist of related subjects including, but not limited to, business standards of practice, communication skills, CPR/First Aid, the Americans with Disabilities Act, referral methods, specialized populations, and specialized and adjunct therapies/modalities (including hydrotherapy).
 4. Ten (10) classroom hours of the five hundred (500) classroom hour requirement shall consist of ethics instruction.
 5. Five (5) classroom hours of the five hundred (500) classroom hour requirement shall consist of instruction regarding Tennessee massage statutes and regulations.
- (f) Applicants shall request that verification of having successfully completed an examination, as provided in Rule 0870-01-.08, be submitted directly from the examining agency or its successor organization to the Board Administrative Office.
- (g) Applicants shall submit evidence of good moral character. Such evidence shall consist of two (2) recent (within the preceding 12 months) original signed and dated letters from health care professionals that include the professional's licensing credentials and attest to the applicant's personal character and professional ethics.
- (h) Applicants shall disclose the circumstances surrounding any of the following:
1. Conviction of any criminal offense (except minor traffic offenses) of any country, state or municipality, including without limitation, conviction for prostitution or any sexual misconduct offense. A conviction for prostitution or sexual misconduct offenses shall disqualify an applicant from receiving a license. A conviction for a felony under the laws of Tennessee may disqualify an applicant from receiving a license.
 2. The denial of professional licensure/certification by any other state or the discipline of licensure/certification in any state.

(Rule 0870-01-.04, continued)

3. Loss or restriction of licensure/certification.
 4. Any civil suit judgment or civil suit settlement in which the applicant was a party defendant in any actions involving malpractice, negligence and/or fraud.
 5. Failure of any professional licensure or certification examination.
- (i) Applicants shall cause to be submitted to the Board Administrative Office directly from the vendor identified in the Board's licensure application materials, the result of a criminal background check.
 - (j) If an applicant holds or has ever held a license/certificate to practice any profession in any other state, the applicant shall cause to be submitted the equivalent of a Tennessee Certificate of Endorsement (verification of licensure/certification) from each such licensing board which indicates the applicant holds or held an active license/certificate and whether it is presently in good standing or was in good standing at the time it became inactive.
 - (k) An applicant shall submit the application fee and state regulatory fee as provided in rule 0870-01-.06.
 - (l) When necessary, all required documents shall be translated into English and such translation and original documents certified as to authenticity by the issuing source. Both versions must be submitted.
 - (m) Reciprocity Licensure
 1. Applicants who are licensed or have been licensed in another state and are seeking reciprocity licensure in Tennessee must request that a transcript from one (1) or more post-secondary academic institution(s) approved by the equivalent educational accrediting agency in the other state be submitted directly from the institution(s) to the Board Administrative Office. The transcript(s) must show that the applicant has successfully completed a massage, bodywork, and/or somatic therapy curriculum consisting of no less than five hundred (500) classroom hours and must carry the official seal of the institution(s). Applicants must also request that verification of having successfully completed the examination provided in 0870-01-.08 or the exam offered by the NCBTMB or its successor organization be submitted directly to the Board Administrative Office.
 2. Applicants for reciprocity licensure can avoid the educational requirements of rule 0870-01-.04(1)(e)1-3 if they qualify under the terms of Tennessee Code Annotated § 63-18-116. Such qualifying applicants must request that proof from the NCBTMB of their certification for the five (5) year period immediately preceding application for licensure be submitted directly to the Board Administrative Office and must submit documentation satisfactory to the Board that they have engaged in the practice of massage therapy in another state for the five (5) year period immediately preceding application for licensure.
 3. All applicants for reciprocity licensure must submit proof of having successfully completed five (5) classroom hours of instruction regarding

(Rule 0870-01-.04, continued)

Tennessee massage statutes and regulations and ten (10) classroom hours of ethics instruction, as required in rule 0870-01-.04(1)(e)4. and 5. These hours shall not be self directed.

(2) All applications shall be sworn to and signed by the applicant and notarized. All applications and documents submitted for licensure purposes become the property of the State of Tennessee and will not be returned. Neither the application form nor any required document will be accepted if any portion has been executed and dated prior to one (1) year before receipt by the Board Administrative Office.

(3) Application review and all licensure decisions shall be governed by Rule 0870-01-.07.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-104, 63-18-104, 63-18-105, 63-18-108, 63-18-111, 63-18-112, and 63-18-116. **Administrative History:** Original rule filed March 25, 1996; effective June 8, 1996. Repeal and new rule filed November 13, 1996; effective January 27, 1997. Amendment filed August 21, 1998; effective November 4, 1998. Amendment filed August 10, 1999; effective October 24, 1999. Amendment filed November 12, 1999; effective January 26, 2000. Amendment filed July 31, 2000; effective October 14, 2000. Amendment filed July 25, 2002; effective October 8, 2002. Amendment filed September 17, 2002; effective December 1, 2002. Amendment filed April 17, 2003; effective July 1, 2003. Amendment filed June 15, 2004; effective August 29, 2004. Amendment filed October 4, 2004; effective December 18, 2004. Amendments filed March 24, 2006; effective June 7, 2006. Amendment filed June 16, 2006; effective August 30, 2006. Amendment filed May 10, 2007; effective July 24, 2007.

~~**0870-01-.05 ESTABLISHMENT LICENSURE PROCESS.** Any massage therapy establishment, unless exempted by any provision of T.C.A. §63-18-110, must be licensed by the Board. The process for obtaining a license is as follows:~~

- ~~(1) An application packet shall be requested from the Board's Administrative Office.~~
- ~~(2) An applicant shall respond truthfully and completely to every question or request for information contained in the application form. The applicant shall submit the application along with all required documentation and fees to the Board 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 as close to simultaneously as possible.~~
- ~~(3) "Applicant," for purposes of this rule shall mean the person under whose name the massage establishment shall be licensed. The applicant need not be licensed as a massage therapist. However, all persons employed to or who are providing massage therapy on the premises must be licensed by complying with the provisions of rule 0870-01-.04, or no establishment license can be issued or a previously issued license shall be processed for revocation.~~
- ~~(4) Except for applicants who are corporations doing business in Tennessee, every applicant shall submit a certified copy or a notarized photocopy of his/her birth certificate or its equivalent which indicates that the applicant is at least eighteen (18) years of age at the time of application.~~
- ~~(5) The applicant shall disclose the names, addresses and telephone numbers of all persons who have any ownership interest in or who receive any disbursement of the income, other than employment salary, from the massage establishment.
 - ~~(a) The applicant shall attach to the application copies of the current licenses of all massage therapists performing massage therapy at that establishment.~~~~

(Rule 0870-01-.05, continued)

- ~~(b) — The requirements of paragraph (5) and subparagraph (a) are continuing ones and must be updated within thirty (30) days of any change.~~
- ~~(6) — Except for applicants who are corporations doing business in Tennessee, every applicant shall have submitted, to the Board Administrative Office, evidence of good moral character. Such evidence shall consist of two (2) recent (within the preceding 12 months) original letters, attesting to the applicant's personal character and professional ethics.~~
- ~~(7) — Applicants who are corporations doing business in Tennessee shall submit a certified copy or a notarized photocopy of their corporate charter and shall submit a statement identifying the corporation's registered agent for service of process.~~
- ~~(8) — An applicant shall disclose the circumstances surrounding any of the following concerning himself and all individuals identified by the information provided pursuant to paragraph (5) of this rule:~~
- ~~(a) — Conviction of any criminal offense of any country, state or municipality except minor traffic offenses, conviction for any sexual related offense, and conviction for prostitution or sexual misconduct offenses. A conviction for prostitution or sexual misconduct offenses shall disqualify an applicant from receiving a license. A conviction for a felony under the laws of Tennessee may disqualify an applicant from receiving a license.~~
- ~~(b) — The denial of professional licensure/certification application by any other state or the discipline of licensure/ certification in any state.~~
- ~~(c) — Loss or restriction of licensure/certification.~~
- ~~(d) — 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.~~
- ~~(9) — An applicant shall cause to be submitted to the Board's Administrative Office directly from the vendor identified in the Board's licensure application materials, the result of a criminal background check.~~
- ~~(10) — An applicant shall submit the establishment application fee and state regulatory fee as provided in rule 0870-01-.06.~~
- ~~(11) — When necessary, all required documents shall be translated into English and such translation and original documents certified as to authenticity by the issuing source. Both versions must be submitted.~~
- ~~(12) — All applications shall be sworn to and signed by the applicant and notarized.~~
- ~~(13) — All documents submitted for licensure purposes become the property of the State of Tennessee and will not be returned.~~
- ~~(14) — The application form is not acceptable if any portion has been executed and dated prior to one (1) year before receipt by the Board Administrative Office.~~
- ~~(15) — An establishment license may be denied, conditioned, restricted and/or disciplined for the same causes and pursuant to the same procedures as a massage therapist's license.~~
- ~~(16) — Application review and licensure decisions shall be governed by rule 0870-01-.07.~~

(Rule 0870-01-.05, continued)

0870-01-.05 Establishment Licensure Process. Any massage therapy establishment, unless exempted by any provision of T.C.A. § 63-18-110, must be licensed by the Board. The process for obtaining a license is as follows:

- (1) An applicant shall respond truthfully and completely to every question or request for information contained in the application form. The applicant shall submit the application along with all required documentation and fees to the Board 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 as close to simultaneously as possible.
- (2) "Applicant," for purposes of this rule shall mean the person under whose name the massage establishment shall be licensed. The applicant need not be licensed as a massage therapist. However, all persons who provide massage therapy on the premises must be licensed pursuant to rule 0870-01-.04. Failure to comply with this provision may result in the denial or revocation of the establishment license.
- (3) Except for applicants who are corporations doing business in Tennessee, every applicant shall submit a copy of his/her birth certificate or its equivalent which indicates that the applicant is at least eighteen (18) years of age at the time of application. Applicants who are not citizens of the United States or whose birth certificates reflect that they were not born in the United States shall submit proof of their immigration status demonstrating their right to live and work in the United States.
- (4) Except for applicants who are corporations doing business in Tennessee, every applicant shall submit to the Board Administrative Office, evidence of good moral character. Such evidence shall consist of two (2) recent (within the preceding 12 months) original signed and dated letters, attesting to the applicant's personal character and professional ethics.
- (5) Applicants who are not licensed as massage therapists in Tennessee shall submit proof that they have completed at least two (2) hours of education in Tennessee Law relating to massage therapy. These courses must be approved by the Board.
- (6) Applicants who are corporations doing business in Tennessee shall submit a copy of their corporate charter and shall submit a statement identifying the corporation's registered agent for service of process.
- (7) An applicant shall disclose the circumstances surrounding any of the following concerning himself:
 - (a) Conviction of any criminal offense (except minor traffic offenses) of any country, state or municipality, including without limitation conviction for prostitution or any sexual misconduct offense. A conviction for prostitution or sexual misconduct offenses shall disqualify an applicant from receiving a license. A conviction for a felony under the laws of Tennessee may disqualify an applicant from receiving a license.
 - (b) The denial of professional licensure/certification by any other state or the discipline of licensure/ certification in any state.
 - (c) Loss or restriction of licensure/certification.

(Rule 0870-01-.05, continued)

- (d) Any civil suit judgment or civil suit settlement in which the applicant was a party defendant for any actions involving malpractice, negligence, and/or fraud.
- (8) An applicant shall cause to be submitted to the Board Administrative Office directly from the vendor identified in the Board's licensure application materials, the result of a criminal background check.
- (9) An applicant shall submit the establishment application fee and state regulatory fee as provided in rule 0870-01-.06.
- (10) When necessary, all required documents shall be translated into English and such translation and original documents certified as to authenticity by the issuing source. Both versions must be submitted to the Board's administrator.
- (11) All applications shall be sworn to and signed by the applicant and notarized.
- (12) All documents submitted for licensure purposes become the property of the State of Tennessee and will not be returned.
- (13) The application form and all required documents must be dated no more than one (1) year before receipt by the Board Administrative Office.
- (14) An establishment license may be denied, conditioned, restricted and/or disciplined for the same causes and pursuant to the same procedures as a massage therapist's license.
- (15) Application review and licensure decisions shall be governed by rule 0870-01-.07.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-18-104, 63-18-105, 63-18-108, and 63-18-111.
Administrative History: Original rule filed November 26, 1996; effective February 9, 1997. Amendment filed November 12, 1999; effective January 26, 2000. Amendment filed July 25, 2002; effective October 8, 2002. Amendment filed June 15, 2004; effective August 29, 2004. Amendment filed December 29, 2004; effective March 14, 2005. Amendments filed March 24, 2006; effective June 7, 2006. Amendment filed June 16, 2006; effective August 30, 2006. Amendment filed February 2, 2007; effective April 18, 2007.

0870-01-.06 FEES.

- (1) The fees authorized to be established by the Board and necessary to the operation of the Board are established as follows:

 - (a) Individual Application Fee - A non-refundable fee to be paid by all applicants for a massage therapist's license including those seeking licensure by reciprocity. This fee includes an initial licensure fee and the state regulatory fee. In cases where an applicant is denied licensure or the application file closes due to abandonment, only the initial licensure fee will be refundable upon request. The state regulatory fee is not refundable.
 - (b) Establishment Application Fee - A non-refundable fee to be paid by all applicants who wish to license a massage establishment. This fee includes an initial licensure fee and the state regulatory fee. In cases where an applicant is denied licensure or the application file closes due to abandonment, only the initial licensure fee will be refundable upon request. The state regulatory fee is not refundable.

(Rule 0870-01-.06, continued)

- (c) Biennial Licensure Renewal Fee - A non-refundable fee to be paid prior to the issuance of the renewal certificate. This fee must be received on or before the expiration date of the license.
- (d) Initial License Fee - A fee to be paid at the time of application for initial licensure.
- (e) Late Renewal Fee - A non-refundable fee to be paid when a licensee fails to renew on or before the license's expiration date. This is an additional fee which must be submitted with the biennial licensure renewal fee and state regulatory fee.
- (f) Replacement License Fee - A non-refundable fee to be paid when an individual requests a replacement for a lost or destroyed "artistically designed" wall license or renewal certificate, or when a licensed massage establishment requests a change of name and/or address, pursuant to rule 0870-01-.15 (3).
- (g) State Regulatory Fee - A non-refundable fee to be paid by all individuals at the time of application and with all renewal applications.
- (h) A reinspection fee is a nonrefundable fee to be paid by an establishment when an establishment does not pass inspection, fails to schedule an inspection, does not appear for a scheduled inspection, or moves to a new location requiring an inspection of the new establishment.
- (i) A continuing education course approval fee is a nonrefundable fee to be paid by a continuing education course provider upon the submission of a continuing education curriculum to be approved by the Board each continuing education cycle.

(2) Fee Schedule:	Amount
(a) Individual application fees shall include the following:	
1. Application fee.....	\$85.00
2. Initial licensure fee.....	\$185.00
3. State regulatory fee.....	\$10.00
Total application fees due upon submission of an application.....	\$280.00
(b) Establishment application fees shall include the following:	
1. Application fee.....	\$95.00
2. Initial licensure fee.....	\$120.00
3. State regulatory fee.....	\$10.00
Total application fees due upon submission of an application.....	\$225.00
(c) Individual biennial licensure renewal fee.....	\$185.00
(d) Establishment biennial licensure renewal fee.....	\$135.00
(e) Late Renewal Fee.....	\$100.00

(Rule 0870-01-.06, continued)

- (f) Replacement License Fee.....\$25.00
- (g) State Regulatory (biennial).....\$10.00
- (h) Reinspection fee
 - 1. due to a failed inspection or for a failure to allow or to appear for inspection.....\$110.00
 - 2. due to a change of address because of moving to a new location.....\$135.00
- (i) Continuing education course approval fee.....\$100.00
(per course)

(3) Fees may be paid in the following manner:

- (a) All fees paid by money order, certified, personal, or corporate check must be submitted to the Board's Administrative Office and made payable to the Tennessee Massage Licensure Board.
- (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, 63-1-103, 63-1-104, 63-1-107, 63-1-108, 63-1-112, 63-18-104, 63-18-105, 63-18-106, 63-18-105, and 63-18-111. **Administrative History:** Original rule filed March 25, 1996; effective June 8, 1996. Repeal and new rule filed November 13, 1996; effective January 27, 1997. Amendment filed August 10, 1999; effective October 24, 1999. Amendment filed July 31, 2000; effective October 14, 2000. Amendment filed November 14, 2000; effective January 29, 2001. Amendment filed July 25, 2002; effective October 8, 2002. Amendment filed September 17, 2002; effective December 1, 2002. Amendment filed December 29, 2004; effective March 14, 2005. Amendment filed March 24, 2006; effective June 7, 2006. Amendment filed June 16, 2006; effective August 30, 2006. Amendment filed April 9, 2009, effective June 23, 2009. Amendments filed April 9, 2009; effective June 23, 2009.

~~0870-01-.07 APPLICATION REVIEW, APPROVAL, AND DENIAL.~~

- ~~(1) Completed applications received in the Board Administrative Office by the fifth (5th) day of any month shall be submitted to a member of the Board, the Board's consultant or designee for review. An initial determination as to acceptance or denial of the application shall be made prior to the end of the month in which the application is received. Each member of the Board and the Board's consultant or designee is vested with the authority to make these initial determinations.~~
- ~~(2) A license may be issued pursuant to the initial determination made by the Board member or the Board's consultant or designee reviewing the application. However, such determination shall not become fully effective until such time as the full Board ratifies it.~~
- ~~(3) If an application is incomplete when received by the Board Administrative Office or the reviewing Board member or the Board's consultant or designee determines additional information is required from an applicant before an initial determination can be made, the Board Administrative Office shall notify the applicant of the information required. The applicant shall cause the requested information to be received by the Board Administrative office on or before the sixtieth (60th) day after receipt of the notification.~~

(Rule 0870-01-.07, continued)

- ~~(a) — Such notifications shall be sent certified mail return receipt requested from the Board Administrative Office.~~
 - ~~(b) — If the requested information is not timely received, the application shall be closed and the applicant notified. No further Board action shall take place until a new application is received pursuant to the rules governing the licensure process, including another payment of all fees.~~
 - ~~(4) — If a completed application is initially denied by the reviewing Board member or the Board's Consultant or designee, the applicant shall be informed of that initial decision and that final determination shall be made by the Board at its next meeting. If the Board ratifies the initial denial, the action shall become final and the following shall occur:
 - ~~(a) — A notification of the denial shall be sent by the Board Administrative Office by certified mail return receipt requested. Specific reasons for denial will be stated, such as incomplete information, unofficial records, examination failure, or matters judged insufficient for certification, and such notification shall contain all the specific statutory or rule authorities for the denial.~~
 - ~~(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 Procedure Act (T.C.A. §§ 4-5-101, et seq.) to contest the denial and the procedure necessary to accomplish that action:
 - ~~1. — An applicant has a right to a contested case hearing only if the licensure denial was based on subjective or discretionary criteria.~~
 - ~~2. — An applicant may be granted a contested case hearing if licensure denial is based on an objective, clearly defined criteria only if after review and attempted resolution by the Board's Administrative staff, the licensure application cannot be approved and the reasons for continued denial present a genuine issue of fact and/or law which is appropriate for appeal.~~~~~~
- ~~(5) — The initial determination procedures of this rule will not apply if the full Board reviews and makes final determination on the application during its meetings.~~
- ~~(6) — Any applicant who has successfully complied with all requirements of the rules governing the licensure process shall be entitled to its issuance with the following exceptions:
 - ~~(a) — Applicants who by virtue to any criteria in the area of mental, physical, moral or educational capabilities, as contained in the application and review process which indicates a potential risk to the public health, safety and welfare may be required to present themselves to the Board or selected member(s) of the Board for an interview before final approval may be granted.~~
 - ~~(b) — The issuance of the license applied for may be withheld, restricted or conditioned for violation of the provisions of T.C.A. § 63-18-108 and any rules promulgated pursuant thereto or failure to fully comply with all application requirements.~~~~
- ~~(7) — If the Board finds it has erred in the issuance of any type of license, the Board will give written notice by certified mail of its intent to revoke 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 the license, the applicant shall have the right to proceed according to rule 0870-01-.07(4)(b).~~

(Rule 0870-01-.07, continued)

~~(8) — Abandonment of Application~~

- ~~(a) — The Board's Administrator is authorized to deem an application closed by abandonment, or require updated documentation, if the application has not been completed by the applicant within the times required by rules of the Board.~~
- ~~(b) — An application submitted subsequent to the determination of abandonment of a prior application shall be treated as a new application.~~
- ~~(c) — Applications that are deemed abandoned will require the applicant to submit a new application, new application fee, and all new supporting documents.~~

0870-01-.07 Application Review, Approval, and Denial.

- (1) Completed applications received in the Board Administrative Office may be reviewed by any member of the Board, the Board's consultant, or designee for initial determination. An initial determination as to acceptance or denial of the application shall be made prior to the end of the month in which the application is received. Each member of the Board and the Board's consultant or designee is vested with the authority to make these initial determinations.
- (2) A temporary authorization may be issued pursuant to the initial approval determination made by the Board member or the Board's consultant or designee reviewing the application. However, such determination shall not become fully effective until such time as the full Board ratifies it.
- (3) If an application is incomplete when received by the Board Administrative Office, or the reviewing Board member or the Board's consultant or designee determines additional information is required from an applicant before an initial determination can be made, the Board Administrative Office shall notify the applicant of the information required. The applicant shall cause the requested information to be received by the Board Administrative office on or before the sixty-fifth (65th) day after the date of notification.
 - (a) If the information is not received in a timely manner, then no further action shall take place until a new application is received pursuant to the rules governing the licensure process.
- (4) In order for an application to be scheduled for review by the Board at a board meeting, all required documentation must be completed and submitted to the Board's Administrative Office at least fifteen (15) days prior to the board meeting.
- (5) If a completed application is denied by the Board, the applicant shall be informed of that decision and the following shall occur:
 - (a) A notification of the denial shall be sent to the applicant by the Board Administrative Office by certified mail return receipt requested which shall contain the reasons for the denial and the specific statutory or rule authorities for the denial.
 - (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. §§ 4-5-101, et seq.) to contest the denial and the procedures necessary to accomplish that action.

(Rule 0870-01-.07, continued)

1. An applicant has a right to a contested case hearing only if the licensure denial was based on subjective or discretionary criteria and only if the request for a contested case hearing is made in writing within thirty (30) days of the receipt of the denial notification.
 2. An applicant may be granted a contested case hearing if licensure denial is based on an objective, clearly defined criteria only if after review and attempted resolution by the Board's Administrative staff, the licensure application cannot be approved and the reasons for continued denial present a genuine issue of fact and/or law which is appropriate for appeal.
- (6) Any applicant who has successfully complied with all requirements of the rules governing the licensure process shall be entitled to its issuance with the following exceptions:
- (a) Applicants who by virtue of any criteria in the area of mental, physical, moral or educational capabilities, as contained in the application and review process, which indicates a potential risk to the public health, safety and welfare may be required to present themselves to the Board or selected member(s) of the Board for an interview before final approval may be granted.
 - (b) The issuance of the license applied for may be withheld, restricted or conditioned for violation of the provisions of T.C.A. § 63-18-108 and any rules promulgated pursuant thereto or failure to fully comply with all application requirements.
- (7) If the Board finds it has erred in the issuance of any type of license, the Board will give written notice by certified mail of its intent to revoke 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 the license, the applicant shall have the right to proceed according to rule 0870-01-.07(5)(b).

Authority: T.C.A. §§4-5-102(3), 4-5-202, 4-5-204, 63-1-142, 63-18-104, 63-18-105, 63-18-108, 63-18-109, 63-18-111, and 63-18-112. **Administrative History:** Original rule filed November 13, 1996, effective January 27, 1997. Amendment filed June 15, 2004; effective August 29, 2004. Amendment filed March 24, 2006; effective June 7, 2006. Amendment filed June 16, 2006; effective August 30, 2006. Amendment filed May 10, 2007; effective July 24, 2007.

~~0870-01-.08 EXAMINATION.~~

- ~~(1) With the exception of applicants qualifying pursuant to Rule 0870-01-.04 (1) (m) 2. (ii) or Rule 0870-01-.05, all persons intending to apply for licensure must successfully complete one (1) of the competency examinations adopted by the Board 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 Board Administrative Office as part of the application process contained in Rule 0870-01-.04.~~
- ~~(2) Competency Examination – The Board accepts successful completion, as determined by the examining agency, of any one (1) of the following examinations:~~
 - ~~(a) The N.C.B.T.M.B.'s and/or its successor organization's National Certification Examination. – Application for, proof of having successfully completed a massage, bodywork, and/or somatic therapy curriculum(s) as provided in subparagraph 0870-01-.04 (1) (f), and fees necessary to take the National Certification Examination must be sent to the N.C.B.T.M.B. and not to the Board.~~

(Rule 0870-01-.07, continued)

~~(b) Any other Board-approved examination – Application for, proof of having successfully completed a massage, bodywork, and/or somatic therapy curriculum(s) as provided in subparagraph 0870-01-.04 (1) (f), and fees necessary to take a Board-approved examination must be sent to such exam's testing agency and not to the Board.~~

0870-01-.08 Examination.

- (1) With the exception of applicants qualifying for reciprocity licensure pursuant to Rule 0870-01-.04(1)(m), all persons intending to apply for licensure must successfully complete one (1) of the competency examinations adopted by the Board 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 directly by the examining agency to the Board Administrative Office as part of the application process contained in Rule 0870-01-.04.
- (2) Competency Examination – Through January 1, 2012, the Board will accept successful completion, as determined by the examining agency, of any one (1) of the following examinations:
 - (a) The NCBTMB's and/or its successor organization's National Certification Examination for Therapeutic Massage (NCETM); or
 - (b) The NCBTMB's and/or its successor organization's National Certification for Therapeutic Massage and Bodywork (NCETMB); or
 - (c) The NCBTMB's and/or its successor organization's National Examination for State Licensing (NESL); or
 - (d) The FSMTB's Massage and Bodywork Licensing Examination (MBLEx); or
 - (e) Any other Board-approved examination.
- (3) Effective January 2, 2012, the exclusive competency examination accepted by the Board shall be the FSMTB's and/or its successor organization's Massage and Bodywork Licensing Examination (MBLEx).

Authority: T.C.A. §§4-5-202, 4-5-204, 63-18-104, 63-18-105, 63-18-111, 63-18-112, and 63-18-116.
Administrative History: Original rule filed April 17, 2003; effective July 1, 2003. Amendment filed March 24, 2006; effective June 7, 2006. Amendment filed June 16, 2006; effective August 30, 2006. Amendment filed May 10, 2007; effective July 24, 2007.

0870-01-.09 LICENSURE RENEWAL. All licensed massage therapists and massage establishments must biennially renew their licenses to be able to legally continue in practice. Licensure renewal is governed by the following:

~~(1) Renewal application~~

~~(a) The due date for certification renewal is the last day of the month in which a licensee's birthday falls pursuant to the Division's "biennial renewal system" as contained on the expiration date on the renewal certificate.~~

~~(b) Methods of Renewal~~

~~1. Internet Renewals – Individuals may apply for renewal and pay the necessary fees via the Internet. The application to renew can be accessed at:~~

www.tennesseeanytime.org

- ~~2. Paper Renewals - For individuals who have not renewed their license online via the Internet, a renewal application form will be mailed to each individual licensed by the Board to the last address provided to the Board. Failure to receive such notification does not relieve the licensee from the responsibility of meeting all requirements for renewal.~~
- ~~(c) To be eligible for renewal a licensee must submit to the Division, on or before the expiration date, all of the following:~~
- ~~1. A completed and signed renewal application form; and~~
 - ~~2. The renewal and state regulatory fees as provided in rule 0870-01-.06.~~
- ~~(d) Licensees who fail to comply with the renewal rules or notification received by them concerning failure to timely renew shall have their licenses processed pursuant to rule 1200-10-1-.10.~~
- ~~(e) Anyone submitting a signed renewal form or letter which is found to be untrue is subject to disciplinary action pursuant to T.C.A. § 63-18-108.~~
- ~~(2) Reinstatement of an Expired License - Reinstatement of a license that has expired may be accomplished upon meeting the following conditions:~~
- ~~(a) At the discretion of the Board, either appear before it or submit a notarized statement setting forth the cause for failure to renew; and~~
 - ~~(b) Payment of all past due renewal and the late renewal fees; and~~
 - ~~(c) Submission of proof of compliance with continuing education requirements of rule 0870-01-.12.~~
- (3) Renewal issuance decisions pursuant to this rule may be made administratively, or upon review by the Board or the Board's consultant.
- (4) No application for renewal of an establishment license or reinstatement of an expired establishment license shall be considered unless the establishment has passed its most recent inspection.

(1) Renewal application

(a) The due date for license renewal is set by the Division's biennial alternative interval renewal system. The due date is contained on the renewal document as the expiration date.

(b) Methods of Renewal

1. Internet Renewals - Individuals may apply for renewal and pay the necessary fees via the Internet. The internet renewal method is not available to establishments.

2. Paper Renewals - For individuals who have not renewed their license online via the Internet, a renewal application form will be mailed to each individual licensed by the Board to the last address provided to the

Board. Failure to receive such notification does not relieve the licensee from the responsibility of meeting all requirements for renewal.

- (c) To be eligible for renewal a licensee must submit to the Division, on or before the expiration date, all of the following:
 - 1. A completed and signed renewal application form; and
 - 2. The renewal and state regulatory fees as provided in rule 0870-01-.06.
- (d) Licenses which are not renewed within sixty (60) days of the expiration of the license shall be administratively revoked, without further notice or opportunity for hearing as provided in T.C.A. § 63-1-107(c). Reinstatement may be sought pursuant to paragraph (2) of this rule.
- (e) Anyone submitting a signed renewal form or letter which is found to be untrue is subject to disciplinary action pursuant to T.C.A. § 63-18-108.
- (2) Reinstatement of an Expired License - Reinstatement of a license that has expired may be allowed, at the discretion of the Board, upon meeting the following conditions:
 - (a) Submission of a statement setting forth the cause for failure to renew; and
 - (b) Payment of the late renewal fee and all past due renewal fees that accrued while the license was in an expired/ administratively revoked status; and
 - (c) Submission of proof of compliance with the continuing education requirements of rule 0870-01-.12.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-107, 63-18-104, 63-18-106, and 63-18-111. **Administrative History:** Original rule filed November 13, 1996; effective January 27, 1997. Amendment filed July 31, 2000; effective October 14, 2000. Amendment filed July 25, 2002; effective October 8, 2002. Amendment filed March 24, 2006; effective June 7, 2006. Amendment filed June 16, 2006; effective August 30, 2006.

0870-01-.10 REPEALED.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-18-104, and 63-18-111. **Administrative History:** Original rule filed November 13, 1996; effective January 27, 1997. Amendment filed March 24, 2006; effective June 7, 2006. Repeal filed June 16, 2006; effective August 30, 2006.

0870-01-.11 RETIREMENT, REINSTATEMENT, INACTIVATION, AND REACTIVATION OF LICENSURE.

- (1) Licensees who wish to retain their licenses but not actively practice may avoid compliance with the licensure renewal process and continuing education requirements by doing the following:
 - (a) Obtain from, complete and submit to the Board Administrative Office an affidavit of retirement form.
 - (b) Submit any documentation which may be required by the form to the Board Administrative Office.
- (2) Any licensee whose individual license has been retired may reenter active practice by doing the following:

(Rule 0870-01-.11, continued)

- (a) Submit a reinstatement application to the Board Administrative Office; and
 - (b) Pay the licensure renewal fee and state regulatory fee as provided in rule 0870-01-.06.
 - ~~(c) If requested, after review by the Board a designated Board member or the Board consultant, appear before the Board, a Board member or the Board consultant for an interview regarding continued competence in the event of licensure retirement in excess of two (2) years.~~
 - (c) In the event of licensure retirement or inactivation in excess of two (2) years, appear before the Board for an interview regarding continued competence if requested.
 - (d) Comply with the continuing education provisions of rule 0870-01-.12 applicable to reactivation of retired licenses.
- (3) Establishments that wish to retain their licenses but not operate as an establishment may avoid compliance with the licensure renewal process requirements by doing the following:
- (a) Obtain from, complete and submit to the Board Administrative Office a request for establishment inactivation form.
 - (b) Submit any documentation which may be required by the form to the Board Administrative Office.
- (4) Any establishment whose license has been placed in inactive status may activate such license by doing the following:
- (a) Submit a reactivation application to the Board Administrative Office; and
 - (b) Pay the establishment biennial licensure renewal fee and state regulatory fee as provided in rule 0870-01-.06, and
 - (c) No application for reactivation of an establishment license shall be considered unless the establishment has passed its most recent inspection.
- (5) Application review and decisions required by this rule shall be governed by rule 0870-01-.07.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-111, 63-18-104, 63-18-106, and 63-18-111. **Administrative History:** Original rule filed November 13, 1996; effective January 27, 1997. Amendment filed July 31, 2000; effective October 14, 2000. Amendment filed October 4, 2004; effective December 18, 2004. Amendment filed March 24, 2006; effective June 7, 2006. Amendment filed June 16, 2006; effective August 30, 2006.

~~0870-01-.12 CONTINUING EDUCATION.~~

- ~~(1) Massage Therapy Continuing Education is considered to be those preplanned/formalized activities with written learning objectives that are directed at developing and enhancing an individual's massage therapy knowledge base, or relevant skills. Except for courses offered to meet the requirements of subparagraph (2) (e), these activities may be presented in any format authorized by subparagraph (4) (d) and part (4) (b) 5. oriented toward enhancement of massage therapy and for the purpose of accomplishing specific written objectives.~~
- ~~(2) Continuing Education – Hours Required~~

(Rule 0870-01-.12, continued)

~~(a) Courses to be offered for credit toward the required continuing education hours must, unless otherwise provided, receive approval from the Board.~~

~~(b) Two (2) year cycles:~~

- ~~1. January 1, 2003 to December 31, 2004~~
- ~~2. January 1, 2005 to December 31, 2006~~
- ~~3. January 1, 2007 to December 31, 2008~~
- ~~4. January 1, 2009 to December 31, 2010~~
- ~~5. January 1, 2011 to December 31, 2012~~
- ~~6. January 1, 2013 to December 31, 2014~~
- ~~7. January 1, 2015 to December 31, 2016~~

~~(c) Every person who receives a license as a massage therapist after January 1, 2003 will have his or her required continuing education hours pro-rated, pursuant to the chart in subparagraph (2) (d), over the remaining months of the continuing education cycle in which the person became licensed. Every fraction of an hour resulting from any such pro-rating shall be rounded up to the next whole hour and to a minimum of four (4) hours. Any such person shall have to obtain one (1) and one/twenty fourth (1/24) hours for every month remaining in the continuing education cycle in which he or she became licensed but those hours won't be due until the final December 31st of the cycle. [For example a person who becomes licensed in June of the first year of a continuing education cycle (January 1st of one year through December 31st of the following year) will be prorated over the 18 months left on the continuing education cycle from July through December of the following year requiring the person to obtain 18 and 3/4 hours of continuing education (rounded up to 19 hours) which are due on December 31st of the following year.] Every person who is required, pursuant to the pro-rated system, to obtain only four (4) hours of continuing education must obtain those hours in the subject areas required by subparagraphs (2) (e) and (2) (f).~~

~~(d) New Licensee Pro-Ration Chart — Persons who become licensed will have their required continuing education hours pro-rated over the remaining months of the two (2) year cycle in which they become licensed according to the following chart:~~

First Year of the Cycle		Second Year of the Cycle	
Month Licensed	Hours Required	Month Licensed	Hours Required
January	25	January	13
February	24	February	12
March	23	March	11
April	22	April	10
May	21	May	9
June	20	June	8
July	19	July	7
August	18	August	6
September	17	September	5
October	16	October	4

(Rule 0870-01-.12, continued)

November	15	November	4
December	14	December	4

~~(e) Two (2) hours of the twenty-five (25) hour requirement shall pertain to federal and Tennessee statutes and rules concerning massage therapists and establishments. Providers must comply with all the following before the course can be presented:~~

- ~~1. The provider must submit the course materials for review and approval pursuant to subparagraph (4) (c) of this rule; and~~
- ~~2. The course, including multi-media courses, must be presented in a lecture format with successful completion of a written post-experience examination to evaluate material retention; and~~
- ~~3. The provider must submit documentation sufficient to show that the information to be disseminated in the course is accurate and current and is in compliance with paragraph (1) and subparagraph (4) (c) of this rule.~~

~~(f) Two (2) hours of the twenty-five (25) hour requirement shall pertain to the management of practicing massage therapy, or to professional ethics, or to substance abuse.~~

~~(g) The Board approves courses for only the number of hours contained in the course. The approved hours of any individual course will not be counted more than once toward the required two (2) year hourly total regardless of the number of times the course is attended or completed by any individual licensee.~~

~~(3) Continuing Education – Proof of Compliance~~

~~(a) The due date for attendance and completion of the required continuing education hours is December 31st.~~

~~(b) Each massage therapist must, on the biennial licensure renewal form, attest to timely attendance and completion of the required continuing education hours.~~

~~(c) Each Massage therapist must retain independent documentation of attendance and completion of all continuing education courses. This documentation must be retained for a period of four (4) years. This documentation must be produced for inspection and verification, if requested in writing by the Board during its verification process.~~

~~(4) Continuing Education – Course Approval~~

~~(a) Courses to be offered for credit toward the required continuing education hours must, unless otherwise provided, receive approval from the Board.~~

~~(b) The following sponsors or courses need not receive prior approval and shall constitute Board approved continuing education courses:~~

- ~~1. Associations, corporations, or organizations authorized as a provider by the National Certification Board for Therapeutic Massage and Bodywork (N.C.B.T.M.B.) or the National Commission for Certifying Agencies (N.C.C.A.). Provided however, any provider approved by any organization identified in this part who intends to include in their course the hours necessary to meet the requirements of subparagraph (2) (e) of this rule must also comply with all of the following before those hours can be presented:~~

(Rule 0870-01-.12, continued)

- ~~(i) The provider must submit the course materials for those hours for review and approval pursuant to subparagraph (4) (c) of this rule; and~~
 - ~~(ii) Those hours, including multi-media courses, must be presented in a lecture format with successful completion of a written post experience examination to evaluate material retention; and~~
 - ~~(iii) The provider must submit documentation sufficient to show that the information to be disseminated in those hours is accurate and current and is in compliance with paragraphs (1) and subparagraph (4) (c) of this rule.~~
 - ~~(iv) The provider shall submit the continuing education course approval fee established in rule 0870-01-.06(2)(i).~~
- ~~2. American Heart Association course in CPR.~~
 - ~~3. American Massage Therapy Association.~~
 - ~~4. American Red Cross courses in HIV, CPR, or Standard First Aid.~~
 - ~~5. Colleges or universities accredited by the United States Department of Education as described in paragraph (1).~~
 - ~~6. Formal educational courses relating directly to the theory or clinical application of massage therapy sponsored by an accredited college/university or institutions approved by the Tennessee Higher Education Commission, Board of Regents or its equivalent in another state(s). If such course is taken for or assigned quarter or semester credit hours, three (3) semester hours or equivalent quarter hours shall be equivalent to fifteen (15) continuing education hours. No credits will be counted for courses failed.~~
 - ~~7. Tennessee Massage Therapy Association.~~
- ~~(c) If a sponsor is unable to obtain or chooses not to obtain approval pursuant to subparagraph (4) (b) of this rule, the sponsor may request Board approval by submitting the following information to the Board Administration Office at least forty-five (45) days prior to the proposed or scheduled date of the course:~~
- ~~1. The written learning objectives of the course.~~
 - ~~2. A course description or outline.~~
 - ~~3. Names of all lecturers.~~
 - ~~4. Brief resume of all lecturers including experience or training in the subject matter being taught.~~
 - ~~5. Number of hours of educational credit requested.~~
 - ~~6. Proposed or scheduled date of course.~~
 - ~~7. Copies of materials to be utilized in the course.~~
 - ~~8. How verification of attendance is to be documented.~~

(Rule 0870-01-.12, continued)

~~(d) Individual licensees may receive continuing education credit for courses presented out of state with the Board's subsequent approval, if the course is presented during the continuing education cycle in which the licensee is requesting credit be applied, upon submitting the following to the Board Administrative Office:~~

- ~~1. The written learning objectives of the course.~~
- ~~2. A course description or outline.~~
- ~~3. Names of all lecturers.~~
- ~~4. Number of hours of educational credit requested.~~
- ~~5. Date of course.~~
- ~~6. Copies of materials to be utilized in the course, upon a Board request.~~
- ~~7. The course provider's telephone number.~~
- ~~8. The course provider's pre-printed brochure, agenda or other materials which describe and/or advertise the course.~~

~~(e) Continuing Education courses may be presented in any of the following formats:~~

- ~~1. Lecture.~~
- ~~2. Multi-media courses with successful completion of a written post experience examination to evaluate material retention. Multi-media courses include, but are not limited to, audio, audiovisual, closed circuit television, and the Internet.~~
- ~~3. Correspondence with successful completion of a written post experience examination to evaluate material retention.~~
- ~~4. Any combination of the above.~~

~~(f) Record keeping. The sponsor of each continuing education program shall keep detailed records of the following:~~

- ~~1. The date and location of the program presentation;~~
- ~~2. The names of each instructor or discussion leader;~~
- ~~3. A list of the certificate, license and permit holders attending each program presentation; and~~
- ~~4. A written outline of the program presentation.~~

~~(g) Each sponsor of a continuing education course must provide a certificate to each participant. Records maintained by the program sponsor for the purpose of verifying attendance and compliance of the continuing education obligation must have at least the following information: Licensee's name, license number, total number of continuing education clock hours awarded, name of sponsor, program title, and date(s).~~

~~(h) The records required by subparagraph (f) of this rule shall be retained for a period of five (5) years following the date of each program presentation.~~

(Rule 0870-01-.12, continued)

- ~~(i) Approval of any continuing education program may be withdrawn by the board if the sponsor of such program fails to comply with the provisions of this chapter.~~

~~(5) Waiver of Continuing Education~~

- ~~(a) The Board may grant a waiver of the need to attend and complete the required hours of continuing education if it can be shown to the Board that the failure to comply was not attributable to or was beyond the physical capabilities of the person seeking the waiver.~~

- ~~(b) Waivers will be considered only on an individual basis and may be requested by submitting the following items to the Board Administrative Office:~~

- ~~1. A written request for a waiver which specifies what requirement is sought to be waived and written and signed explanation of the reasons for the request.~~
- ~~2. Any documentation which supports the reason for the waiver requested or which is subsequently requested by the Board.~~

- ~~(c) A waiver approved by the Board is effective for only the renewal period for which the waiver is sought unless otherwise specified in writing by the Board.~~

- ~~(d) The Board Consultant is authorized to grant or deny requests for waivers subject to subsequent Board ratification.~~

~~(6) Continuing Education for Reactivation or Reinstatement of Retired, Expired, or Revoked License.~~

- ~~(a) Any massage therapist who applies for reactivation or reinstatement of a license which has been retired, or has expired, or has been revoked for failure to complete continuing education requirements for over two (2) years must submit along with the reactivation or reinstatement request, proof which indicates the attendance and completion of twenty (20) hours of Board approved massage therapy related continuing education. The continuing education must have been earned in the twelve (12) months preceding application for reactivation or reinstatement.~~

- ~~(b) The continuing education hours obtained as a prerequisite for licensure reactivation or reinstatement may not be counted toward the continuing education hours required to be obtained before the end of the renewal period of reactivation or reinstatement.~~

- ~~(c) The Board may grant a waiver of the continuing education requirements for reactivation or reinstatement of a retired, expired, or revoked license as provided in paragraph (5) of this rule.~~

- ~~(d) The Board is authorized to grant or deny requests for waivers.~~

~~(7) Violations~~

- ~~(a) Any massage therapist who falsely attests to attendance and completion of the required hours of continuing education may be subject to disciplinary action pursuant to T.C.A. § 63-18-108.~~

- ~~(b) Any massage therapist who fails to obtain the required continuing education hours may be subject to disciplinary action pursuant to T.C.A. § 63-18-108.~~

(Rule 0870-01-.12, continued)

~~(c) Education hours obtained as a result of compliance with the terms of any disciplinary action shall not be counted toward the continuing education hours required to be obtained in any renewal period.~~

0870-01-.12 Continuing Education.

(1) All licensees must complete twenty five (25) hours of continuing education every two (2) calendar years, as a prerequisite to licensure renewal. The first two year cycle for continuing education ran from January 1, 2003 to December 31, 2004 and shall continue on two year cycles thereafter.

(a) Continuing education credit shall only be awarded for those courses which are approved by the Board pursuant to paragraph (4) of this Rule. The Board approves courses for only the number of hours contained in the course. The approved hours of any individual course will not be counted more than once toward the twenty-five (25) hour requirement of any two-year cycle, regardless of the number of times the course is attended or completed by any licensee.

(b) Two (2) of the twenty-five (25) hours requirement shall pertain to Tennessee statutes and rules concerning massage therapists and establishments. The two (2) hour courses must be approved by the Board.

(c) Two (2) of the twenty-five (25) hours requirement shall pertain to the management of practicing massage therapy, professional ethics or substance abuse.

(d) Eight (8) of the twenty-five (25) hours requirement may be completed in any of the following multi-media formats:

1. The internet;
2. Closed circuit television;
3. Satellite broadcasts;
4. Correspondence courses;
5. Videotapes;
6. CD-ROM;
7. DVD;
8. Teleconferencing;
9. Videoconferencing; or
10. Distance Learning.

(2) Initial licensees shall have their required continuing education hours pro-rated over the remaining months of the two (2) year cycle in which they become licensed according to the following chart.

First Year of the Cycle Second Year of the Cycle

(Rule 0870-01-.12, continued)

<u>Month Licensed</u>	<u>Hours Required</u>	<u>Month Licensed</u>	<u>Hours Required</u>
January	25	January	13
February	24	February	12
March	23	March	11
April	22	April	10
May	21	May	9
June	20	June	8
July	19	July	7
August	18	August	6
September	17	September	5
October	16	October	4
November	15	November	4
December	14	December	4

(3) Continuing Education - Proof of Compliance

- (a) Each massage therapist must, on the biennial licensure renewal form, attest to timely attendance and completion of the required continuing education hours during the preceding cycle.
- (b) Each Massage therapist must retain independent documentation of attendance and completion of all continuing education courses. This documentation must be retained for a period of four (4) years from the end of the cycle in which the continuing education was acquired. This documentation must be produced for inspection and verification, if requested in writing by the Board during its verification process. Acceptable documentation verifying the licensee's completion of the continuing education program(s) may consist of either a certificate or an original letter on official stationery from the program's sponsor, indicating the program title, date and length in hours, along with the licensee's name and license number.

(4) Continuing Education - Course Approval

- (a) Providers of courses to be offered for credit toward the required continuing education hours must, unless otherwise provided, receive approval from the Board. Approval once granted, regardless of whether approval is pursuant to subparagraph (b) or (c) of this paragraph, is effective only during the continuing education cycle (as identified in paragraph (2)) during which approval was granted. Grant of approval of any course prior to January 31, 2012 will expire December 31, 2012. After that all courses/hours provided for credit toward meeting the requirements of this rule must be approved either pursuant to part (b)1. or subparagraph (c) of this paragraph in every continuing education cycle they are offered.
- (b) The following sponsors or courses need not receive prior approval and shall constitute Board approved continuing education courses:
 - 1. Associations, corporations, or organizations authorized as a provider by the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) or the National Commission for Certifying Agencies (N.C.C.A.). Provided however, any provider approved by any organization identified in this part who intends to include in their course the hours necessary to meet the requirements of subparagraph 0870-01-

(Rule 0870-01-.12, continued)

.12(1)(b) of this rule must nevertheless comply with all of the following before those hours can be presented:

- (i) The provider must submit the course materials for those hours for review and approval pursuant to subparagraph (4) (c) of this rule; and
- (ii) The course may be presented in a live lecture format or a multi-media format with successful completion of a post-examination; and
- (iii) The provider must submit documentation sufficient to show that the information to be disseminated in those hours is accurate and current.

2. American Heart Association course in CPR.

3. American Massage Therapy Association.

4. American Red Cross courses in HIV, CPR, or Standard First Aid.

5. Colleges, universities or massage schools accredited by the United States Department of Education, the Tennessee Higher Education Commission or the Tennessee Board of Regents.

6. Formal educational courses relating directly to the theory or clinical application of massage therapy sponsored by an accredited college/university or institution approved by the Tennessee Higher Education Commission, Board of Regents or its equivalent in another state(s). If such course is taken for or assigned quarter or semester credit hours, three (3) semester hours or equivalent quarter hours shall be equivalent to fifteen (15) continuing education hours. No credits will be counted for courses failed.

7. Tennessee Massage Therapy Association.

8. FSMTB

(c) If a sponsor is unable to obtain or chooses not to obtain approval pursuant to subparagraph (4) (b) of this rule, the sponsor may request Board approval by submitting the following information to the Board Administrative Office at least forty-five (45) days prior to the proposed or scheduled date of the course:

1. Copies of any and all materials to be utilized in the course. Sponsors may submit the ISBN number and title of materials with ISBN numbers in lieu of sending the actual materials.

2. Resume or Vita for all instructors that details their experience or training in the subject matter they will teach. Instructors must be licensed massage therapists or demonstrate experience and training that qualifies them to provide continuing education.

3. Written learning objectives as well as a detailed outline of the course.

(Rule 0870-01-.12, continued)

4. A copy of any student course evaluations, class roster forms, check in sheets and certificates of completion that will be provided at the course.
 5. Number of hours of educational credit requested. An hour equals fifty (50) clock minutes of instruction.
 6. The Board may deny a request to sponsor continuing education if it is determined the sponsor will utilize copyrighted materials without appropriate permission.
 7. The Board reserves the right to request additional information if the information provided by the sponsor is deemed inadequate or incomplete.
 8. The Board may deny a request to sponsor continuing education if any of the above information is not provided.
- (d) Individual licensees may receive continuing education credit for courses presented out of state with the Board's subsequent approval, if the course is presented during the continuing education cycle in which the licensee is requesting credit be applied, upon submitting the following to the Board Administrative Office:
1. The written learning objectives of the course.
 2. A course description or outline.
 3. Names of all lecturers.
 4. Number of hours of educational credit requested.
 5. Date of course.
 6. Copies of materials to be utilized in the course, upon a Board request.
 7. The course provider's contact information.
 8. The course provider's pre-printed brochure, agenda or other materials which describe and/or advertise the course.
- (e) Continuing Education courses may be presented in any of the following formats:
1. Lecture.
 2. Multi-media courses - with successful completion of a written post experience examination to evaluate material retention.
 3. Correspondence - with successful completion of a written post experience examination to evaluate material retention.
 4. Any combination of the above.
- (f) The sponsor of each continuing education program shall keep detailed records of the materials required in subparagraph (c) of this rule and a copy of the

(Rule 0870-01-.12, continued)

attendance record for not less than four (4) years from the date the course was approved.

(g) Approval of any continuing education program may be withdrawn or denied by the Board if the sponsor of such program fails to comply with the provisions of this rule.

(5) Waiver of Continuing Education

(a) The Board may grant a waiver of the need to attend and complete the required hours of continuing education where illness, disability or other undue hardship beyond the control of the licensee prevents a licensee from complying.

(b) Waivers will be considered only on an individual basis and may be requested by submitting the following items to the Board Administrative Office prior to the end of the licensure cycle in which the continuing education is due:

1. A written request for a waiver which specifies what requirement is sought to be waived and the reasons for the request.

2. Any documentation which supports the reason for the waiver requested or which is subsequently requested by the Board.

(c) A waiver approved by the Board is effective for only the renewal period for which the waiver is sought unless otherwise specified in writing by the Board.

(d) The Board Consultant and the designee are authorized to grant or deny requests for waivers subject to subsequent Board ratification.

(6) Continuing Education for Reactivation or Reinstatement of Retired, Expired, or Revoked License.

(a) Any massage therapist who applies for reactivation or reinstatement of a license which has been retired or has expired for over two (2) years, or any individual who applies for a new license after his or her prior license was revoked for failure to complete continuing education requirements, must submit along with the reactivation, reinstatement, or new license application, proof which indicates the attendance and completion of twenty (20) hours of Board approved massage therapy related continuing education. The continuing education must have been earned in the twelve (12) months preceding the application for reactivation, reinstatement, or new license. Eight (8) hours of the twenty (20) hour continuing education requirement may be completed in a multi-media format.

(b) The continuing education hours required by the provisions of subparagraph (6)(a) of this rule may not be counted toward the continuing education hours required to be obtained before the end of the renewal period of the reactivated, reinstated or new license.

(c) The Board may grant a waiver of the continuing education requirements set out in subparagraph (6)(a) of this rule, as provided in paragraph (5) of this rule.

(7) Violations

(a) Any massage therapist who fails to obtain the required continuing education hours or who falsely attests to attendance and/or completion of the required

(Rule 0870-01-.12, continued)

hours of continuing education may be subject to disciplinary action pursuant to T.C.A. § 63-18-108.

- (b) Education hours obtained as a result of compliance with the terms of any disciplinary action shall not be counted toward the continuing education hours required to be obtained in any renewal period.

Authority: T.C.A. §§ 4-5-202, 4-5-204, and 63-18-111. **Administrative History:** Original rule filed November 13, 1996; effective January 27, 1997. Amendment filed August 21, 1998; effective November 4, 1998. Amendment filed November 12, 1999; effective January 26, 2000. Amendment filed July 31, 2000; effective October 14, 2000. Amendment filed July 25, 2002; effective October 8, 2002. Amendment filed May 20, 2003; effective August 3, 2003. Amendment filed December 16, 2005; effective March 1, 2006. Amendments filed March 24, 2006; effective June 7, 2006. Amendment filed June 16, 2006; effective August 30, 2006. Withdraw of rule 0870-01-.12(4)(b)1 filed and effective August 15, 2006. Amendment filed February 2, 2007; effective April 18, 2007. Amendment filed May 10, 2007; effective July 24, 2007. Amendment filed April 30, 2008; effective July 14, 2008. Amendment filed April 9, 2009. effective June 23, 2009.

~~0870-01-.13 DISCIPLINARY GROUNDS, ACTIONS, AND CIVIL PENALTIES.~~

- (1) ~~Upon a finding by the Board that a licensee or registrant has violated any provision of the Tennessee Massage Therapist Practice (T.C.A. §§ 63-18-101, et seq.) or the rules promulgated pursuant thereto, the Board may impose any of the following actions separately or in any combination which is deemed appropriate to the offense:~~
- (a) ~~Private Censure — 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) ~~Public Censure or 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 licensee or registrant on close scrutiny for a fixed period of time. This action may be combined with conditions which must be met before probation will be lifted and/or which restrict activities during the probationary period.~~
 - (d) ~~Suspension — This is a formal disciplinary action which suspends a licensee's right to practice for a fixed period of time. It contemplates the reentry into practice under the license or registration previously issued.~~
 - (e) ~~Revocation for Cause. This is the most severe form of disciplinary action which removes an individual from the practice of the profession and terminates the license previously issued. The Board, in its discretion, may allow reinstatement of a revoked license upon conditions and after a period of time it deems appropriate. No petition for reinstatement and no new application for licensure from a person whose license was revoked shall be considered prior to the expiration of at least one year unless otherwise stated in the Board's revocation order.~~
 - (f) ~~Conditions — Any action deemed appropriate by the Board to be required of a disciplined licensee during any period of probation or suspension or as a prerequisite to the lifting of probation or suspension or the reinstatement of a revoked license.~~
 - (g) ~~Civil penalty — A monetary disciplinary action assessed by the Board pursuant to paragraph (4) of this rule.~~

Form

(Rule 0870-01-.13, continued)

~~(h) — 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 (2) of this rule, and appears before the Board 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.~~

~~(2) — 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 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 Board'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 Board'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 Board 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 Board as an uncontested matter; or~~

(Rule 0870-01-.13, continued)

~~(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 Board the petitioner may not submit any additional documentation or testimony other than that contained in the petition as originally submitted.~~

~~4. — If the 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 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.~~

~~(e) — Form Petition~~

~~Petition for Order of Compliance
Tennessee Massage Licensure Board~~

~~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 Board's consultant and administrative staff, in their discretion, may require such signed statements to be notarized. No documentation or testimony other~~

(Rule 0870-01-.13, continued)

~~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

~~(3) 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 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 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 Board'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 Board 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 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~~

(Rule 0870-01-.13, continued)

~~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 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 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 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
Tennessee Massage Licensure Board~~

~~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.~~

(Rule 0870-01-.13, continued)

Respectfully submitted this the ___ day of _____, 20___.

Petitioner's Signature

~~(4) 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 Board finds a person who is required to be licensed, certified, permitted, or registered by the Board, guilty of a willfully and knowing violation of the Massage Therapy Practice 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 clientele or the public. For purposes of this section, willfully and knowingly practicing massage therapy or operating a massage establishment without a license, from the Board is one of the violations of the Massage Therapy Practice Act for which a Type A Civil Penalty is assessable.~~

~~2. A Type B Civil Penalty may be imposed whenever the Board finds the person required to be licensed, certified, permitted, or registered by the Board is guilty of a violation of the Massage Therapy Practice Act or regulations promulgated pursuant thereto in such manner as to impact directly on the care of clients or the public.~~

~~3. A Type C Civil Penalty may be imposed whenever the Board finds the person required to be licensed, certified, permitted, or registered by the Board is guilty of a violation of the Massage Therapy Practice 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 clientele 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 and not 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.~~

(Rule 0870-01-.13, continued)

- ~~2. Civil Penalties may also be initiated and assessed by the Board during consideration of any Notice of Charges. In addition, the Board 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 Board 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 provision of Title 4, Chapter 5, T.C.A.~~
- ~~(5) All contested case hearings before the Board shall be conducted pursuant to the Uniform Rules of Procedures for Contested Case Hearings Before State Administrative Agencies, Rules Chapter 1360-4 of The Official Compilation of Rules and Regulations of the State of Tennessee.~~

0870-01-.13 Disciplinary Actions and Civil Penalties

- (1) Actions - Upon a finding by the Board that any provision of the Tennessee Massage Therapist Practice Act or the rules promulgated pursuant thereto has been violated, the Board may impose any of the following actions separately or in any combination deemed appropriate to the offense.
 - (a) Denial of an application for licensure.
 - (b) "Letter of warning." This is a written action. It is informal and advisory in nature and does not constitute a formal disciplinary action.
 - (c) "Formal reprimand." This is a written action. It is a formal disciplinary action.
 - (d) "Probation." This is a formal disciplinary action for a fixed period of time.
 - (e) "Licensure suspension." This is a formal disciplinary action which suspends a licensee's right to practice for a fixed period of time. It contemplates the re-entry of the licensee into the practice under the license previously issued.
 - (f) "Licensure revocation." This is a formal disciplinary action which removes a licensee from the practice of the profession and terminates the license previously issued. No new application for licensure from a person whose license was revoked shall be considered prior to the expiration of at least one (1) year unless otherwise stated in the Board's revocation order.

(Rule 0870-01-.13, continued)

- (g) Conditions - Any action deemed appropriate by the Board to be required of a disciplined licensee in any of the following circumstances:
1. During any period of probation, suspension;
 2. As a prerequisite to the lifting of probation or suspension; or
 3. As a stand-alone requirement or requirements in any disciplinary action.
- (h) Civil penalty - A monetary disciplinary action assessed by the Board pursuant to paragraph three (3) of this rule.
- (i) Once ordered, probation, suspension, assessment of a civil penalty, or any other condition(s) of any type of disciplinary action may not be lifted unless and until the licensee appears before the Board after the period of initial probation, suspension, or other conditioning has run and all conditions placed on the probation, suspension, have been met, and after any civil penalties assessed have been paid.
- (2) Order Modifications – A licensee can petition the Board to modify a previously issued disciplinary order if the licensee cannot fulfill the conditions of the imposed discipline. This procedure is only available after all reconsideration and appeal rights have been either exhausted or not timely pursued. This procedure cannot be used to modify any findings of fact, conclusions of law, or the reasons for the decision contained in the order.
- (a) The 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 to the Board's Office that shall contain all of the following:
 - (i) A copy of the previously issued order; and
 - (ii) A statement of why the petitioner believes it is impossible to comply with the order as issued; and
 - (iii) A copy of all documents 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 Board authorizes administrative staff to make an initial determination on the petition and take one of the following actions:

(Rule 0870-01-.13, continued)

1. During a contested case proceeding the Board may assess civil penalties in a type and amount which was not recommended by the Office of General Counsel.
2. In assessing civil penalties pursuant to these rules the Board 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.
3. All proceedings for the assessment of civil penalties shall be governed by the contested case provisions of T.C.A. Title 4, Chapter 5.

Authority: T.C.A. §§4-5-202, 4-5-204, 4-5-217, 4-5-223, 63-18-106, 63-18-108, 63-18-109, and 63-18-111. **Administrative History:** Original rule filed November 13, 1996; effective January 27, 1997. Amendment filed July 31, 2000; effective October 14, 2000. Amendment filed July 25, 2002; effective October 8, 2002. Amendment filed August 2, 2004; effective October 16, 2004. Amendment filed March 24, 2006; effective June 7, 2006.

0870-01-.14 LICENSE.

- (1) Display of License - Every person who has received a license from the Board in this state shall display that license in a conspicuous place in his/her office/establishment and produce the license when required by the Board or its authorized representatives.
- ~~(2) Replacement License - A licensee whose "artistically designed" license has been lost or destroyed may be issued a replacement license upon receipt of a written request in the Board Administrative Office. Such request shall be accompanied by a notarized passport type photograph and an affidavit (signed and notarized) stating the facts concerning the loss or destruction of the original license and the required fee pursuant to rule 0870-01-.06.~~
- (2) Replacement License - A licensee whose initial or renewal license has been lost or destroyed may be issued a replacement license upon receipt of a signed, written request in the Board Administrative Office. The licensee shall include in such request the facts concerning the loss or destruction of the original license and include the required fee pursuant to Rule 0870-01-.06.
- (3) Requests for Certificates of Fitness for licensees or registrants desiring to practice in another state must be made in writing to the Board Administrative Office.
- (4) Requests for verification of license must be made in writing to the Board Administrative Office.

(Rule 0870-01-.14, continued)

Authority: T.C.A. §§4-5-202, 4-5-204, ~~63-1-106, 63-1-108, 63-1-109, 63-6-106~~, 63-18-104, and 63-18-111. **Administrative History:** Original rule filed November 13, 1996; effective January 27, 1997. Amendment filed March 24, 2006; effective June 7, 2006.

~~0870-01-.15 CHANGE OF NAME AND/OR ADDRESS.~~

- ~~(1) Change of Name — A licensee shall notify the Board in writing within 30 days of a name change and will provide both the old and new names. A request for name change must also include a copy of the official document involved and reference the individual's or establishment's, profession, social security, and license numbers.~~
- ~~(2) Change of Address — Each licensee who has had a change of address or place of employment, shall file in writing with the board his/her current address, giving both old and new addresses. Such requests shall be received in the Board Administrative Office no later than 30 days after such change is effective and must reference the individual's or the establishment's name, social security number, and certification number.~~
- ~~(3) Change of Establishment Name and/or Address — A licensed massage establishment shall notify the Board in writing each time the establishment's name and/or address changes no later than thirty (30) days after such change is effective. Such notification shall include the establishment's license number, old and new names, old and new addresses, and the replacement license fee, pursuant to rule 0870-01-.06 (1) (f) and 0870-01-.06 (2) (f).~~

Rule 0870-01-.15 Licensee Address and Name

The contact information required in this Rule is necessary for and shall be used for, among other things, obtaining service of process in the event of a disciplinary action.

- (1) Change of Name - Each licensee whose name has changed shall notify the Board in writing of the name change and will provide both the old and new names. A notification of name change must also include a copy of the official document demonstrating the name change and must reference the licensee's license number. Such notification must be received in the Board's Administrative Office no more than thirty (30) days after such name change became effective.
- (2) Change of Address - Each licensee who has had a change of practice address and/or mailing address shall notify the Board in writing of his/her current practice and mailing addresses, giving both old and new addresses. Such notification shall be received in the Board's Administrative Office no more than 30 days after such change is effective and must reference the individual's or the establishment's name and license number. If the licensee has no current practice address, he/ she shall so inform the Board.
- (3) Change of Establishment Name and/or Address - A licensed massage establishment shall notify the Board in writing each time the establishment's name and/or physical address changes no more than thirty (30) days after such change is effective. Such notification shall include the establishment's license number, old and new names, and old and new addresses. If the establishment has changed its name, it must pay the replacement license fee, pursuant to rules 0870-01-.06(1)(f) and 0870-01-.06(2)(f). A re-inspection fee is required when an establishment changes its physical address.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-106, 63-1-108, and 63-18-111. **Administrative History:** Original rule filed November 13, 1996; effective January 27, 1997. Amendment filed August 10, 1999; effective October 24, 1999. Amendment filed July 25, 2002; effective October 8, 2002. Amendment filed March 24, 2006; effective June 7, 2006.

(Rule 0870-01-.15, continued)

~~0870-01-.16 OFFICERS, CONSULTANTS, RECORDS, DECLARATORY ORDERS, AND
SCREENING PANELS.~~

- ~~(1) The Board shall annually elect from its members the following officers:~~
- ~~(a) Chairperson who shall, unless absent, preside at the Board meetings.~~
 - ~~(b) Secretary-Treasurer who along with the Board Administrator shall be responsible for correspondence from the Board. The secretary shall preside at all meetings at which the chairperson is absent.~~
- ~~(2) Minutes of the Board meetings and all records, documents, applications, and correspondence will be maintained in the Board Administrative Office.~~
- ~~(a) All requests, applications, notices, complaints, other communications and correspondence shall be directed to the Board Administrative Office. Any requests or inquiries requiring a Board decision or official Board action except documents relating to disciplinary actions, declaratory orders or hearing requests must be received fourteen (14) days prior to a scheduled Board meeting and will be retained in the Administrative Office and presented to the Board at the Board meeting. Such documents not timely received shall be set over to the next Board meeting.~~
 - ~~(b) All records of the Board, except those made confidential by law, are open for inspection and examination, under the supervision of an employee of the Division at the Board Administrative Office during normal business hours.~~
 - ~~(c) Copies of public records shall be provided to any person upon payment of a copying fee.~~
 - ~~(d) All complaints against licensees or establishments should be directed to the Division's Investigations Section and not to the Board or any of its members.~~
- ~~(3) The Board authorizes its consultant, who may be a Board member or a Board designated licensed massage therapist either serving voluntarily or employed pursuant to contract with the Division, to act, and who is vested with the authority of the Board to do the following acts on behalf of the Board:~~
- ~~(a) Review and make initial determinations on licensure, renewal, and reactivation of licensure applications subject to the rules governing those respective applications. A Board designee may also perform these services.~~
 - ~~(b) Serve as Consultant to the Division to decide the following:~~
 - ~~1. Whether and what type disciplinary actions should be instituted upon complaints received or investigations conducted by the Division.~~
 - ~~2. Whether and under what terms a complaint, case or disciplinary action might be settled. Any matter proposed for settlement must be subsequently ratified by the full Board before it will become effective.~~
 - ~~3. Any other matter authorized by these rules or a majority vote of the Board.~~
- ~~(4) Declaratory Orders The Board adopts, as if fully set out herein, rule 1200-10-1.11, of the Division of Health Related Boards and as it may from time to time be amended, as its rule~~

(Rule 0870-01-.16, continued)

~~governing the declaratory order process. All declaratory order petitions involving statutes, rules or orders within the jurisdiction of the Board shall be addressed by the Board pursuant to that rule and not by the Division. Declaratory Order Petition forms can be obtained from the Board's administrative office.~~

~~(5) The Board authorizes the member who chaired the Board 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.~~

~~(6) Screening Panels The Board 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.~~

0870-01-.16 Officers, Consultants, Records, Declaratory Orders, and Screening Panels.

(1) The Board shall annually elect from its members the following officers:

(a) Chairperson - who shall, unless absent, preside at the Board meetings.

(b) Secretary-Treasurer - who along with the Board Administrator shall be responsible for correspondence from the Board. The secretary shall preside at all meetings at which the chairperson is absent.

(2) Minutes of the Board meetings and all records, documents, applications, and correspondence will be maintained in the Board Administrative Office.

(a) All requests, applications, notices, complaints, other communications and correspondence shall be directed to the Board Administrative Office. Any requests or inquiries requiring a Board decision or official Board action except documents relating to disciplinary actions, declaratory orders or hearing requests must be received fourteen (14) days prior to a scheduled Board meeting and will be retained in the Administrative Office and presented to the Board at the Board meeting. Such documents not timely received shall be set over to the next Board meeting.

(b) All records of the Board, except those made confidential by law, are open for inspection and examination, under the supervision of an employee of the Division at the Board Administrative Office during normal business hours.

(c) All complaints against licensees or establishments should be directed to the Division's Investigations Section and not to the Board or any of its members.

(3) The Board shall appoint a Board Consultant, who may be a Board member or a Board designated licensed massage therapist either serving voluntarily or employed pursuant to contract with the Division, and authorizes said Consultant to act with the authority of the Board to do the following on behalf of the Board:

(a) Review and make initial determinations on licensure, renewal, and reactivation of licensure applications subject to the rules governing those respective applications and subject to subsequent ratification by the Board.

(b) Serve as Consultant to the Division to review complaints and request patient records under T.C.A. § 63-1-117.

- (4) Declaratory Orders - Petitions for Declaratory Order shall be resolved in accordance with the Tennessee Uniform Administrative Procedures Act.
- (5) The Board authorizes the member who chaired the Board for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-04-01-.18 of the Rules of the Department of State regarding petitions for reconsiderations and stays in that case.
- (6) Screening Panels - The Board adopts, as if fully set out herein, rule 1200-10-01-.13, of the Rules 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, 4-5-223, 4-5-224, 63-1-138, 63-18-103, 63-18-108, 63-18-109, and 63-18-111. **Administrative History:** Original rule filed November 13, 1996; effective January 27, 1997. Amendment filed August 10, 1999; effective October 24, 1999. Amendment filed July 31, 2000; effective October 14, 2000. Amendment filed March 24, 2006; effective June 7, 2006. Amendment filed June 16, 2006; effective August 30, 2006.

0870-01-.17 ADVERTISING.

- ~~(1) Policy Statement. The lack of sophistication on the part of many members of the public concerning professional massage services, the importance of the interests affected by the choice of a massage therapist or a massage establishment and the foreseeable consequences of unrestricted advertising by massage therapists or on behalf of massage establishments, which is recognized to pose special possibilities for deception, require that special care be taken to avoid misleading the public. The massage therapist and massage establishments must be mindful that the benefits of advertising depend upon its reliability and accuracy. Since advertising 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 public.~~
- ~~(2) Definitions as used in this rule the following terms shall have the meanings ascribed to them:
 - ~~(a) Advertisement Informational communication to the public in any manner designed to attract public attention to the practice of a Tennessee licensed massage therapist or massage establishment.~~
 - ~~(b) Licensee. Any person holding a license to practice massage therapy or as a massage establishment in the State of Tennessee. Where applicable this shall include partnerships and/or corporations.~~
 - ~~(c) Material Fact. Any fact which an ordinary reasonable and prudent person would need to know or rely upon in making an informed decision concerning the choice of practitioners or establishments to serve his or her particular needs.~~
 - ~~(d) Bait and Switch Advertising. An alluring but insincere offer to sell a product or service which the advertiser in truth does not intend or want to sell or provide. Its purpose is to switch consumers from buying or receiving the advertised merchandise or services, in order to sell or provide something else, usually at a higher fee or on a basis more advantageous to the advertiser.~~
 - ~~(e) Discounted fee. Shall mean a fee offered or charged by a person, organization or establishment for any massage therapy product or service that is less than the fee the person or organization usually offers or charges for the product or service. Products or~~~~

(Rule 0870-01-.17, continued)

~~services expressly offered free of charge shall not be deemed to be offered at a "discounted fee".~~

~~(3) Advertising Fees and Services~~

~~(a) Fixed Fees. Fixed fees may be advertised for any service.~~

~~1. It is presumed unless otherwise stated in the advertisement that a fixed fee for a service shall include the cost of all professionally recognized components within generally accepted standards that are required to complete the service.~~

~~(b) Ranges of Fees. A range of fees may be advertised for services and the advertisement must disclose the factors used in determining the actual fee, necessary to prevent deception of the public.~~

~~(c) Discount Fees. Discount fees may be advertised if:~~

~~1. The discount fee is in fact lower than the licensee's customary or usual fee charged for the service; and~~

~~2. The licensee provides the same quality and components of service and material at the discounted fee that are normally provided at the regular nondiscounted fee for that service.~~

~~(d) Related Services and Additional Fees. Related services which may be required in conjunction with the advertised service for which additional fees will be charged must be identified as such in any advertisement.~~

~~(e) Time period of Advertised Fees. Advertised fees shall be honored for those seeking the advertised services during the entire time period stated in the advertisement whether or not the services are actually rendered or completed within that time.~~

~~1. If no time period is stated in the advertisement of fees, the advertised fee shall be honored for thirty (30) days from the last date of publication or until the next scheduled publication whichever is later whether or not the services are actually rendered or completed within that time.~~

(1) Policy Statement. Lack of sophistication on the part of many members of the public concerning professional massage services, the importance of the interests affected by the choice of a massage therapist or a massage establishment and the foreseeable consequences of unrestricted advertising by massage therapists or on behalf of massage establishments, which is recognized to pose special possibilities for deception, require that special care be taken to avoid misleading the public. Massage therapists and massage establishments must be mindful that the benefits of advertising depend upon its reliability and accuracy. Since advertising 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 public.

(2) Definitions - As used in this rule, the following terms shall have the meanings ascribed to them:

(Rule 0870-01-.17, continued)

- (a) Advertisement - Informational communication to the public in any manner designed to attract public attention to the practice of a Tennessee licensed massage therapist or massage establishment.
- (b) Material Fact - Any fact which a reasonable and prudent person would need to know or rely upon in making an informed decision concerning the choice of practitioners or establishments to serve his or her particular needs.
- (c) Bait and Switch Advertising - An alluring but insincere offer to sell a product or service which the advertiser in truth does not intend or want to sell or provide. Its purpose is to switch consumers from buying or receiving the advertised merchandise or services, in order to sell or provide something else, usually at a higher fee or on a basis more advantageous to the advertiser.
- (d) Discounted Fee - A fee offered or charged by a person, organization or establishment for any massage therapy product or service that is less than the fee the person or organization usually offers or charges for the product or service. Products or services expressly offered free of charge shall not be deemed to be offered at a "discounted fee."

(3) Advertising Fees and Services

- (a) Fixed Fees. Fixed fees may be advertised for any service. It is presumed, unless otherwise stated in the advertisement, that a fixed fee for a service shall include the cost of all professionally recognized components within generally accepted standards that are required to complete the service.
- (b) Ranges of Fees. A range of fees may be advertised for services. However, the advertisement must disclose the factors used in determining the actual fee, necessary to prevent deception of the public.
- (c) Discount Fees. Discount fees may be advertised if:
 - 1. The discount fee is in fact lower than the licensee's customary or usual fee charged for the service; and
 - 2. The licensee provides the same quality and components of service and material at the discounted fee that are normally provided at the regular nondiscounted fee for that service.
- (d) Related Services and Additional Fees. Related services which may be required in conjunction with the advertised service for which additional fees will be charged must be identified as such in any advertisement.
- (e) Time Period of Advertised Fees. Advertised fees shall be honored for those seeking the advertised services during the entire time period stated in the advertisement whether or not the services are actually rendered or completed within that time. If no time period is stated in the advertisement of fees, the advertised fee shall be honored for thirty (30) days from the last date of publication or until the next scheduled publication, whichever is later, whether or not the services are actually rendered or completed within that time.

- (4) **Advertising Content.** The following acts or omissions in the context of advertisement by any licensee shall constitute unethical and unprofessional conduct, and subject the licensee to disciplinary action pursuant to T.C.A. § 63-18-108.

(Rule 0870-01-.17, continued)

- (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 a professional service 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 clientele.~~
- (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 or competence 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 predication 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 client without first obtaining client consent.
- (i) Any misrepresentation of a material fact.
- (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 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 treatment.
- (m) Failure to comply with the rules governing advertisement of fees and services, and advertising records.
- (n) The use of "bait and switch" advertisements. Where the circumstances indicate "bait and switch" advertising, the board may require the licensee to furnish data or other evidence pertaining to those sales at the advertised fee as well as other sales.

(Rule 0870-01-.17, continued)

- (o) Misrepresentation of a licensee's credentials, training, experience or ability.
 - (p) Failure to include the corporation, partnership or individual licensee's name in any advertisement. Any corporation, partnership or association which advertises by use of a trade name or otherwise fails to list all licensees practicing at a particular location shall:
 - 1. Upon request provide a list of all licensees at that location; and
 - 2. Maintain and conspicuously display at the licensee's office, a directory listing all licensees practicing at that location.
 - (q) Failure to disclose the fact of giving compensation or anything of value to representative 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.
 - ~~(r) After thirty (30) days, the use of the name of any licensee 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 occupants if the status of the former associate is disclosed in any advertisement or sign).~~
 - (r) The use of the name of any licensee formerly practicing at or associated with any advertised location or on office signs or buildings after thirty (30) days from the departure of that licensee. (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 occupants if the status of the former associate is disclosed in any advertisement or sign).
 - (s) Stating or implying that a certain licensee provides all services when any such services are performed by another licensee.
 - (t) Directly or indirectly offering, giving, receiving or agreeing to receive any fee or other consideration to or from a third party for the referral of a client in connection with the performance of professional services.
- (5) 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 entity.
 - (b) Any and all advertisement are presumed to have been approved by the licensee names 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 authorized representative.

(Rule 0870-01-.17, continued)

- (d) At the time any type of advertisement is placed, the licensee must possess and reply 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 communication.

~~(6) Severability. It is hereby declared that the sections, clauses, sentences and part of these rules are severable, are not matters of mutual essential inducement, and any of them shall be excinded 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 inapplicability or invalidity of any section, clause, sentence or part in any one or more instances 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, [63-1-145](#), [63-1-146](#), 63-18-108, and 63-18-111. **Administrative History:** Original rule filed November 13, 1996; effective January 27, 1997. Amendments filed March 24, 2006; effective June 7, 2006.

0870-01-.18 CONSUMER RIGHT-TO-KNOW REQUIREMENTS.

~~(1) Malpractice reporting requirements. The threshold amount below which medical malpractice judgments, awards or settlements in which payments are awarded to complaining parties need not be reported pursuant to the "Health Care Consumer Right-To-Know Act of 1998" shall be ten thousand dollars (\$10,000).~~

(1) Malpractice reporting requirements. Pursuant to the "Health Care Consumer Right-to-Know Act of 1998" codified at T.C.A. § 63-51-105, licensees shall report any and all professional malpractice judgments, awards or settlements in which payments to complaining parties exceed ten thousand dollars (\$10,000).

- (2) Criminal conviction reporting requirements. For purposes of the "Health Care Consumer Right-To-Know Act of 1998", the following criminal convictions must be reported:
- (a) Conviction of any felony.
 - (b) Conviction or adjudication of guilt of any misdemeanor, regardless of its classification, in which any element of the misdemeanor involves any one or more of the following:
 - 1. Sex.
 - 2. Alcohol or drugs.
 - 3. Physical injury or threat of injury to any person.
 - 4. Abuse or neglect of any minor, spouse or the elderly.
 - 5. Fraud or theft.
 - (c) If any misdemeanor conviction reported under this rule is ordered expunged, a copy of the order of expungement signed by the judge must be submitted to the Department before the conviction will be expunged from any profile.

(Rule 0870-01-.19, continued)

- (3) Licensees shall notify the Board Administrative Office within thirty (30) days of a reportable event under this Rule (malpractice payment or conviction).

Authority: T.C.A. §§4-5-202, 4-5-204, 63-18-111, 63-18-111, and 63-51-101, et seq. **Administrative History:** Original rule 0870-01-.18 filed March 14, 2000; effective May 28, 2000. Amendment filed March 24, 2006; effective June 7, 2006.

~~0870-01-.19 PROFESSIONAL ETHICAL STANDARDS.~~ Professional and Ethical Standards for Therapists And Establishments.

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- ~~(1) The Board requires licensees to uphold professional ethical standards that allow for the proper discharge of their responsibilities to those served, that protect the integrity of the profession, and that safeguard the interest of individual clients. To adhere to these professional ethical standards, licensees will:~~
- ~~(a) Accurately inform clients, other health care practitioners, and the public of the scope and limitations of their discipline; and~~
 - ~~(b) Acknowledge the limitations of and contraindications for massage and bodywork and refer clients to appropriate health professionals; and~~
 - ~~(c) Avoid any interest, activity or influence which might be in conflict with the licensee's obligation to act in the best interests of the client or the profession; and~~
 - ~~(d) Comply with all applicable Tennessee statutes and regulations as well as Orders issued by the Board pursuant to its disciplinary and/or declaratory order authority; and~~
 - ~~(e) Conduct their business and professional activities with honesty and integrity, and respect the inherent worth of all persons; and~~
 - ~~(f) Consistently maintain and improve professional knowledge and competence, striving for professional excellence through regular assessment of personal and professional strengths and weaknesses and through continued education training; and~~
 - ~~(g) Exercise the right to refuse to treat any person or part of the body for just and reasonable cause; and~~
 - ~~(h) Have a sincere commitment to provide the highest quality of care to those that seek their professional services; and~~
 - ~~(i) Provide draping and treatment in a way that ensures the safety, comfort and privacy of the client; and~~
 - ~~(j) Provide treatment only where there is reasonable expectation that it will be advantageous to the client; and~~
 - ~~(k) Refrain, under all circumstances, from initiating or engaging in any sexual conduct, sexual activities, or sexualizing behavior involving a client, even if the client attempts to sexualize the relationship; and~~
 - ~~(l) Refrain, if the licensees are owners or employees of a massage therapy educational program approved by the Board pursuant to Rule 0870-2-.02, from dating or having a sexual relationship with any student while the student is enrolled, including the period of time between semesters of attendance; and~~

(Rule 0870-01-.19, continued)

- ~~(m) Refrain, if the licensees are owners or employees of a massage therapy educational program approved by the Board pursuant to Rule 0870-02-.02, from soliciting any student to be a client or customer for massage therapy services while the student is enrolled, including the period of time between semesters of attendance; and~~
- ~~(n) Refrain from providing services when they are either physically or mentally incapable of safely doing so. The term "safely" as used in this rule means safety of the massage therapists and anyone they come in contact with during the course of professional practice; and~~
- ~~(o) Refuse any gifts or benefits which are intended to influence a referral, decision or treatment that are purely for personal gain and not for the good of the client; and~~
- ~~(p) Refuse to unjustly discriminate against clients or other health professionals; and~~
- ~~(q) Represent their qualifications honestly, including their educational achievements and professional affiliations, and provide only those services which they are qualified and licensed to perform; and~~
- ~~(r) Respect the client's boundaries with regard to privacy, disclosure, exposure, emotional expression, beliefs, the client's autonomy, and the client's reasonable expectations of professional behavior; and~~
- ~~(s) Respect the client's right to refuse, modify, or terminate treatment regardless of prior consent given; and~~
- ~~(t) Respect the client's right to treatment with informed and voluntary consent by obtaining and recording informed voluntary written consent of the client, or client's advocate, before performing
 - ~~1. therapeutic treatments beyond the normal narrowing of the ear canal and normal narrowing of the nasal passages; and~~
 - ~~2. therapeutic treatments in the oropharynx; and~~
 - ~~3. therapeutic same-gender breast massage; and~~~~
- ~~(u) Respect the client's right to treatment with informed and voluntary consent by obtaining and recording informed voluntary written or verbal consent of the client, or client's advocate, before providing treatment other than the treatments identified in subparagraph (1) (q) of this rule; and~~
- ~~(v) Safeguard the confidentiality of all client information, unless the client provides written permission to release such information; or
 - ~~1. when such information is requested during a formal investigation by representatives of the State of Tennessee or other law enforcement agencies; or~~
 - ~~2. when required to do so pursuant to any action in a court of law; or~~
 - ~~3. where required by law to report to state or federal agencies; and~~~~
- ~~(w) Not practice in an unlicensed massage establishment. A massage therapist may not be prosecuted under this rule if he/she has a written statement, signed by the~~

(Rule 0870-01-.19, continued)

~~establishment owner and notarized prior to the date of the therapist's employment, stating that the establishment is licensed as a massage establishment.~~

- (2) Violation of any provision listed in paragraph (1) is grounds for disciplinary action, as provided in Rule 0870-01-.13.

0870-01-.19 Professional and Ethical Standards for Therapists and Establishments.

(1) The Board requires licensed therapists and licensed establishments to uphold professional and ethical standards that allow for the proper discharge of their responsibilities to those served, that protect the integrity of the profession, and that safeguard the interests of individual clients. To ensure compliance with these professional ethical standards, licensed therapists, and, when applicable, licensed establishments, must:

- (a) Accurately inform clients, other health care practitioners, and the public of the scope and limitations of their discipline; and
- (b) Acknowledge the limitations of and contraindications for massage and bodywork and, when appropriate, refer clients to appropriate health professionals; and
- (c) Avoid any interest, activity or influence which might be in conflict with the licensee's obligation to act in the best interests of the client or the profession; and
- (d) Comply with all applicable Tennessee statutes and regulations as well as Orders issued by the Board pursuant to its disciplinary and/or declaratory order authority; and
- (e) Conduct their business and professional activities with honesty and integrity, and respect the inherent worth of all persons; and
- (f) Consistently maintain and improve professional knowledge and competence, striving for professional excellence through regular assessment of personal and professional strengths and weaknesses and through continued education training; and
- (g) Exercise the right to refuse to treat any person or part of the body for just and reasonable cause; and
- (h) Have a sincere commitment to provide the highest quality of care to those that seek their professional services; and
- (i) Provide draping and treatment in a way that ensures the safety, comfort and privacy of the client; and
- (j) Provide treatment only where there is reasonable expectation that it will be advantageous to the client; and
- (k) Refrain, under all circumstances, from initiating, arranging for, or engaging in any sexual conduct, sexual activity, or sexualizing behavior involving a client, even if the client attempts to sexualize the relationship; and
- (l) Refrain, under all circumstances, from providing the following treatments, which are prohibited and not within the scope of practice for massage therapists:

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(Rule 0870-01-.19, continued)

1. Treatments to the anus or anal canal, including, but not limited to, colonic irrigations and enemas;
 2. Cross-gender breast massage;
 3. Treatments to the genitals.
- (m) Refrain, if the licensees are owners or employees of a massage therapy educational program approved by the Board pursuant to Rule 0870-02-.02, from dating or having a sexual relationship with any student of such program while the student is enrolled, including the period of time between semesters of attendance; and
- (n) Refrain, if the licensees are owners or employees of a massage therapy educational program approved by the Board pursuant to Rule 0870-02-.02, from soliciting any student of such program to be a client or customer for massage therapy services while the student is enrolled, including the period of time between semesters of attendance; and
- (o) Refrain from providing services when the licensee is either physically or mentally incapable of safely doing so. The term "safely" as used in this rule means safety of the massage therapists and anyone they come in contact with during the course of professional practice; and
- (p) Represent their qualifications honestly, including their educational achievements and professional affiliations, and provide only those services which they are qualified and licensed to perform; and
- (q) Respect the client's boundaries with regard to privacy, disclosure, exposure, emotional expression, beliefs, and autonomy, as well as the client's reasonable expectations of professional behavior; and
- (r) Before proceeding with a massage, explain to the client expected draping techniques and provide the client a clean drape large enough for the purpose of draping the buttocks and genitalia and, in the case of female clients, the breasts. Such body parts must remain covered except during therapeutic treatment of those specific areas, with the exception of the genitalia, which shall always remain covered; and
- (s) Respect the client's right to refuse, modify, or terminate treatment regardless of prior consent given; and
- (t) Respect the client's right to treatment with informed and voluntary consent by obtaining and recording informed voluntary written consent of the client, or client's advocate, before performing:
1. Therapeutic treatments beyond the normal narrowing of the ear canal and normal narrowing of the nasal passages; and
 2. Therapeutic treatments in the oropharynx; and
 3. Therapeutic same-gender breast massage.
- (u) Respect the client's right to treatment with informed and voluntary consent by obtaining and recording informed voluntary written or verbal consent of the client,

(Rule 0870-01-.19, continued)

or client's advocate, before providing treatment other than the treatments identified in subparagraph (1) (p) of this rule; and

(v) Safeguard the confidentiality of all client information, unless the client provides written permission to release such information; or

1. Unless such information is requested during a formal investigation by representatives of the State of Tennessee or other law enforcement agencies; or

2. Unless required to do so pursuant to any action in a court of law; or

3. Where required by law to report to state or federal agencies.

(w) Refrain from practicing in an unlicensed establishment.

(x) Launder or sanitize, before reuse, all materials, equipment and supplies utilized for each client.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-18-108, and 63-18-111. **Administrative History:** Original rule filed May 30, 2003; effective August 13, 2003. Amendment filed October 4, 2004; effective December 18, 2004. Amendment filed March 24, 2006; effective June 7, 2006. Amendments filed June 16, 2006; effective August 30, 2006. Amendment filed February 2, 2007; effective April 18, 2007.

**RULES
OF
TENNESSEE MESSAGE LICENSURE BOARD**

**CHAPTER 0870-02
GENERAL RULES GOVERNING MESSAGE THERAPY EDUCATIONAL PROGRAMS**

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0870-02-.01 DEFINITIONS. As used in this chapter, the following terms and acronyms shall have the following meanings ascribed to them:

- (1) Board – Tennessee Massage Licensure Board
- (2) Program – any massage therapy program or school
- (3) TBR – Tennessee Board of Regents
- (4) THEC – Tennessee Higher Education Commission
- (5) NCETMB – National Certification Examination for Therapeutic Massage and Bodywork
- (6) [NCBTMB – The National Certification Board for Therapeutic Massage and Bodywork](#)
- (7) [FSMTB – The Federation of State Massage Therapy Boards](#)
- (8) [MBLEx – The Massage and Bodyworks Licensing Examination established by the FSMTB](#)

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-18-111, and 63-18-115. **Administrative History:** Original rule filed March 24, 2006; effective June 7, 2006.

0870-02-.02 PROGRAM APPROVAL AND CURRICULUM REQUIREMENTS.

- ~~(1) — Massage therapy programs must receive written approval from the Tennessee Massage Licensure Board.~~
- ~~(2) — Application Process~~
 - ~~(a) — Massage therapy programs seeking approval must submit an application which provides the following information a minimum of thirty (30) days prior to the next regularly scheduled Board meeting in order for the Board to review the application:~~
 - ~~1. — Name of parent institution and authority for operations;~~
 - ~~2. — Location of principal clinical facilities;~~
 - ~~3. — Locations of all satellite facilities;~~

(Rule 0870-02-.02, continued)

- ~~4. Names and license number of all licensed teaching staff and the program director;~~
 - ~~5. Curriculum vitae, including professional license numbers and description and explanation of any prior disciplinary action taken against a license, for all teaching staff, including the program director;~~
 - ~~6. Maximum class size;~~
 - ~~7. Submission of the program catalog; and~~
 - ~~8. Submission of other such information that the Board may deem necessary.~~
- ~~(b) The program director shall appear before the Board as part of the initial approval process. The curriculum shall be presented at the meeting.~~
- ~~(3) The Board-approved program shall adhere to the following minimum standards:~~
- ~~(a) Instructor/student ratio shall be at least one (1) instructor to every ten (10) working students for any hands-on class;~~
 - ~~(b) The program curriculum shall include, but not be limited to, the topics contained in the current National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) examination, its successor and/or other approved examination, content outline at the time of admission of the student. The program shall, at a minimum, consist of five hundred (500) classroom hours and must contain:
 - ~~1. Two hundred (200) classroom hours of sciences including, but not limited to, anatomy, physiology-Western and/or/Eastern, kinesiology, pathology, HIV/AIDS, and blood-borne pathogens, and hygiene (including standard precautions). Other sciences related to the human body may be included with Board approval.~~
 - ~~2. Two hundred (200) classroom hours of basic massage theory and practice including, but not limited to, history, benefits, indications, contraindications, demonstration and supervised practice, client assessment/evaluation, soft tissue manipulations including: gliding, kneading, friction, compression, vibration, percussion, stretching, joint movements, draping, positioning, turning, feedback, charting/documentation, proper body mechanics, and self-care.~~
 - ~~3. Eighty-five (85) classroom hours of related subjects including, but not limited to, business standards of practice, communication skills, CPR/First Aid, the Americans with Disabilities Act, referral methods, specialized populations, and specialized and adjunct therapies/modalities (including hydrotherapy).~~
 - ~~4. Ten (10) classroom hours of ethics courses.~~
 - ~~5. Five (5) classroom hours of courses regarding Tennessee massage statutes and regulations.~~~~
 - ~~(c) The program catalog, program syllabus, policies, procedures and the NCBTMB handbook or brochure regarding the examination, its successor and/or other approved examination, current content outline and eligibility criteria, are to be distributed on or before the first (1st) class session.~~

(Rule 0870-02-.02, continued)

- ~~(d) If books are provided by the program, the books on a particular subject shall be distributed prior to the class on that subject;~~
- ~~(e) The program must inform each student of the requirements for licensure and must specifically include the provisions regarding criminal convictions.~~
- ~~(f) The program must have a written policy on the accepted pass-fail rates or grading system used by the program.~~
- ~~(g) The program must have a written protocol or policy on the mechanism to evaluate a student's performance. At least one (1) evaluation is required within the first half of the program.~~
- ~~(h) The program must have a written policy on the dismissal of students.~~
- ~~(i) The program shall create and maintain records on each student, including official transcripts, in compliance with the rules of the Tennessee Higher Education Commission or the Tennessee Board of Regents.~~
- ~~(j) Upon request, a copy of the transcript shall be provided to the student upon completion of or withdrawal from the program. The student must comply with the enrollment agreement to receive a copy.~~
- ~~(k) The transcript shall include the following at a minimum:
 - ~~1. The program name;~~
 - ~~2. Name of the student;~~
 - ~~3. Subjects covered in the program;~~
 - ~~4. Grades for each subject;~~
 - ~~5. Signature of an authorized program/school official;~~
 - ~~6. Date issued;~~
 - ~~7. Date of graduation; and,~~
 - ~~8. Number of contact hours completed.~~~~
- ~~(l) The Board shall be notified of any change in directorship and/or instructors within ten (10) days of hire or discharge. Documentation of the training and experience of any new hires must be received within ten (10) days of hire.~~
- ~~(m) The Board shall be notified immediately of any changes made in the operation of the school such as a change of ownership, director of education, institutional director, location, and/or approval status with THEC or TBR;~~
- ~~(n) Board approval and subsequent re-approvals shall be issued annually. Application for re-approvals shall meet all requirements of this rule;~~
- ~~(o) At any time, designees of the Department of Health or other state agencies shall be provided full access to program materials, examinations, and the classroom during~~

(Rule 0870-02-.02, continued)

~~instruction. Failure to provide access pursuant to this provision may subject the provider to withdrawal of program approval.~~

~~(p) As a prerequisite to approval or continued approval, the Board's professional peer assistance program must be allowed to make a presentation upon request.~~

~~(q) A member of the Board or a Board designee may issue preliminary program approval subject to subsequent Board ratification.~~

~~(4) The program providers shall pay all applicable fees established in rule 0870-02-.08 for the application and renewal of the program approval by the Board as well as fees to process a replacement certificate and a remedial plan.~~

(1) Massage therapy programs must receive written approval from the Tennessee Massage Licensure Board through the application process described in paragraph (2) below. Such approval is not transferable.

(2) Application Process

(a) Massage therapy programs seeking approval must submit an application to the Board a minimum of thirty (30) days prior to the next regularly scheduled Board meeting in order for the Board to review the application. The application must provide the following information:

1. Name of parent institution and authority for operations;

2. Location of principal clinical facilities;

3. Locations of all satellite facilities;

4. Names and license numbers of all licensed teaching staff and the program director;

5. Curriculum vitae, including professional license numbers and description and explanation of any prior disciplinary action taken against a license, for all teaching staff, including the program director;

6. Maximum class size;

7. A complete copy of the program catalog, submitted on plain copy paper, front-side only; and

8. Submission of other such information that the Board may deem necessary.

(b) The program director shall appear before the Board as part of the initial approval process. The curriculum shall be presented at the meeting.

(3) The Board-approved program shall adhere to the following minimum standards:

(a) Instructor/student ratio shall be at least one (1) instructor to every fourteen (14) students for any hands-on class;

(Rule 0870-02-.02, continued)

- (b) The program curriculum shall include, but not be limited to, the topics contained in the current National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) examination, its successor and/or other approved examination, content outline at the time of admission of the student. The program shall, at a minimum, consist of five hundred (500) classroom hours and must contain:
1. Two hundred (200) classroom hours of sciences including, but not limited to, anatomy, physiology-Western and/or/Eastern, kinesiology, pathology, HIV/AIDS and blood-borne pathogens, and hygiene (including standard precautions). Other sciences related to the human body may be included with Board approval.
 2. Two hundred (200) classroom hours of basic massage theory and practice including, but not limited to, history, benefits, indications, contraindications, demonstration and supervised practice, client assessment/evaluation, soft tissue manipulations including: gliding, kneading, friction, compression, vibration, percussion, stretching, joint movements, draping, positioning, turning, feedback, charting/documentation, proper body mechanics, and self-care.
 3. Eighty-five (85) classroom hours of related subjects including, but not limited to, business standards of practice, communication skills, CPR/First Aid, the Americans with Disabilities Act, referral methods, specialized populations, and specialized and adjunct therapies/modalities (including hydrotherapy).
 4. Ten (10) classroom hours of ethics instruction.
 5. Five (5) classroom hours regarding Tennessee massage statutes and regulations.
- (c) The program catalog, program syllabus, policies, procedures and the handbook or brochure regarding the approved examination, current content outline and eligibility criteria, are to be distributed on or before the first (1st) class session.
- (d) The program shall ensure that each graduating class shall have received a minimum of two (2) hours classroom presentation prior to graduation by the impaired professional assistance program contracted by the Board. Both the program and the impaired professional assistance program shall each maintain documentation of each presentation reflecting the date, time and attendance of the presentation and shall make such documentation available upon request by the Board. Failure to comply with this provision may subject the program to withdrawal of program approval.
- (e) The program must document that each student has signed and dated an acknowledgement that they understand the requirements for licensure, specifically the provisions regarding criminal convictions, upon application to the program.
- (f) The program must have a written policy on the accepted pass-fail rates or grading system used by the program.

(Rule 0870-02-.02, continued)

- (g) The program must have a written protocol or policy on the mechanism to evaluate a student's performance. At least one (1) evaluation is required within the first half of the program.
- (h) The program shall create and maintain records on each student, including official transcripts, in compliance with the rules of the Tennessee Higher Education Commission or the Tennessee Board of Regents.
- (i) Upon request, the program shall provide a copy of the transcript to the student upon completion of or withdrawal from the program. The student must comply with the enrollment agreement to receive a copy.
- (j) The transcript shall include the following, at a minimum:

 - 1. The program name;
 - 2. Name of the student;
 - 3. Subjects covered in the program;
 - 4. Grades and contact hours for each subject pursuant to Rule 0870-01-.04(1)(e);
 - 5. Signature of an authorized program/school official;
 - 6. Date issued;
 - 7. Date of graduation; and,
 - 8. Total number of contact hours completed.
- (k) The program shall notify the Board of any change in directorship and/or instructors within ten (10) days of hire or discharge. Documentation of the training and experience of any new hires must be received within ten (10) days of hire.
- (l) The program shall notify the Board within ten (10) days of any changes made in the operation of the school such as a change of ownership, director of education, institutional director, location, and/or approval status with THEC or TBR;
- (m) At any time, designees of the Department of Health or other state agencies shall be provided full access to program materials, examinations, and the classroom during instruction. Failure to provide access pursuant to this provision may subject the provider to withdrawal of program approval.
- (n) A member of the Board or a Board designee may issue preliminary program approval subject to subsequent Board ratification.
- (o) The program must have a written policy on the dismissal of students.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-136, 63-18-111, and 63-18-115. **Administrative History:** Original rule filed March 24, 2006; effective June 7, 2006. Amendment filed April 30, 2008; effective July 14, 2008. Amendment filed April 9, 2009; effective June 23, 2009.

(Rule 0870-02-.03, continued)

~~0870-02-.03 WITHDRAWAL OF PROGRAM APPROVAL. Program approval may be withdrawn if the Board finds the program in violation of any of its statutes or regulations or if the Board finds the program inadequate for certification purposes based upon random auditing of the program and/or its effectiveness in producing qualified graduates. The minimum standard for continued program approval shall be at least seventy percent (70%) of the students over at least a six (6) month period passing the licensure examinations on the first (1st) attempt.~~

0870-02-.03 Withdrawal Of Program Approval. Program approval may be withdrawn if the Board finds the program in violation of any of the Board's statutes or regulations or if the Board finds the program inadequate for certification purposes based upon random auditing of the program and/or its effectiveness in producing qualified graduates. The minimum standard for continued program approval based on effectiveness in producing qualified graduates shall be at least seventy percent (70%) of the students passing the licensure examination on first (1st) attempt over at least a twelve (12) month period.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-18-111, and 63-18-115. **Administrative History:** Original rule filed March 24, 2006; effective June 7, 2006.

0870-02-.04 PROGRAM ADMISSION REQUIREMENTS.

- (1) Students must be at least eighteen (18) years old;
- (2) Students must have either a high school diploma or GED certificate;
- (3) Students must be legally entitled to live and work in the United States; and
- (4) Students may not have been convicted of the offense of prostitution or sexual misconduct.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-18-111, and 63-18-115. **Administrative History:** Original rule filed March 24, 2006; effective June 7, 2006.

0870-02-.05 MINIMUM STANDARDS FOR DIRECTORS, INSTRUCTORS AND CLASSROOMS.

- (1) Directors and Instructors
 - (a) Program Director – The program director of the massage therapy program must be currently licensed in Tennessee as a massage therapist with at least five (5) years experience. The program director must meet all other conditions required by THEC or TBR to be a program director. For purposes of this chapter of rules, the program director is the individual who has direct responsibility for the supervision and daily operations of the massage therapy program or school.
 - (b) Director of Education – The director of education must meet all conditions required by THEC or TBR to be a director of education. If the director of education also functions as the massage therapy program director, he/she must be currently licensed in Tennessee as a massage therapist with at least five (5) years experience.
 - (c) Institution Director – The institution director must meet all conditions required by THEC or TBR to be an institution director. If the institution director also functions as the massage therapy program director, he/she must be currently licensed in Tennessee as a massage therapist with at least five (5) years experience.
 - ~~(d) Instructors – Any persons who instruct must be currently Tennessee licensed professionals in their appropriate profession if such profession requires licensure. If the instructor is required to be licensed in order to practice his/her profession, the~~

(Rule 0870-02-.05, continued)

~~instructor may teach only principles and concepts from that profession. They must have at least three (3) years of practical experience within the past seven (7) years in the subject area to be taught.~~

(d) Instructors – Any persons who instruct must be currently Tennessee licensed professionals in their appropriate profession if such profession requires licensure. Instructors must have at least three (3) years of practical experience within the past seven (7) years in the subject area to be taught.

- (e) Instructors who are professionally licensed/authorized by any state or certified by any national organization must disclose to the program any prior disciplinary action by such states or national organizations, and the program shall so notify the Board. The Board may deny approval of a program based upon an instructor's past disciplinary history.
- (f) The program director shall establish an evaluation system to evaluate the performance of each instructor.
- (g) The program director shall ensure that staff meetings are held to discuss progress of students, policies and procedures for the school, and changes to the statutes and rules of the Tennessee Massage Licensure Board which will affect the program's students.
- (h) The program director is responsible for the conduct of the instructors and students and any violation of the rules or statutes may result in the discipline of the program director's license, the withdrawal of program approval and/or the assessment of civil penalties.

(2) Classrooms

- (a) The classroom size must accommodate the number of students enrolled in the program, and;
- (b) The classroom must be appropriately equipped to promote effective instruction.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-18-111, and 63-18-115. **Administrative History:** Original rule filed March 24, 2006; effective June 7, 2006.

0870-02-.06 PROGRAM POLICIES AND PROCEDURES.

~~(1) Infectious Disease Management~~

- ~~(a) The program must have a written policy on infectious disease management and infection control; and~~
- ~~(b) The policy must be in compliance with all applicable state and federal regulations and guidelines.~~

~~(2) Emergency Management~~

- ~~(a) Protocols shall be established to ensure the safety of instructors, students, clients, and the public in the event of an emergency;~~
- ~~(b) First aid/emergency kits must be available at all times, and~~
- ~~(c) All instructors must be continuously certified in basic life support.~~

(Rule 0870-02-.06, continued)

~~(3) Fire and Safety~~

~~(a) All programs must comply with local and state fire codes.~~

~~(b) Written fire and safety procedures shall be made available to each student. Pertinent fire safety procedures shall be displayed in conspicuous places.~~

~~(4) Sexual Harassment~~

~~(a) All programs must have a written policy on sexual harassment to address situations between instructors, clients, and students.~~

~~(b) The policy must be in compliance with all applicable state and federal regulations and guidelines, and;~~

~~(c) The policy must be reviewed with and distributed to all instructors, staff, and students.~~

~~(5) Equal Employment Opportunity Commission (EEOC) All programs must abide by the requirements imposed by the EEOC.~~

(1) All programs shall create written policies for all of the following and shall distribute them to all students:

(a) Infection control;

(b) Emergency management;

(c) Fire and safety; and

(d) Sexual harassment and misconduct.

(2) All programs shall have at least one (1) person qualified in Basic Life Support (BLS) available during all clinical and classroom hours.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-18-111, and 63-18-115. **Administrative History:** Original rule filed March 24, 2006; effective June 7, 2006.

~~**0870-02-.07 ANNUAL REPORT.** The program shall file an annual report with the Board.~~

0870-02-.07 Annual Report. Every Board-approved program shall file an annual report with the Board on or before December 31 of each calendar year.

(1) The report shall contain:

(a) the number of students enrolled;

(b) the number of students graduated;

(c) the number of students dismissed or withdrawn;

(d) the number of students sitting for the licensure test; and

(Rule 0870-02-.06, continued)

- (e) the percentage of students taking the test for the first (1st) time and passing the licensure test.

(2) A copy of the report filed with THEC or TBR is deemed to meet the requirements of this rule.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-18-111, and 63-18-115. **Administrative History:** Original rule filed March 24, 2006; effective June 7, 2006.

0870-02-.08 FEES.

(1) Types of Fees.

- (a) Program application fee is a non-refundable fee to be paid by all applicants for approval of a new massage therapy program. This fee includes an initial approval fee and the state regulatory fee.
- (b) Annual program renewal fee is a non-refundable fee to be paid prior to the issuance of the renewal certificate. This fee includes an annual renewal fee and the state regulatory fee. This fee must be received annually on or before June 30th.
- (c) Existing program registration fee is a non-refundable fee to be paid by all massage programs that (within ninety (90) days of the effective date of this rule) are currently approved by the Board.
- (d) Late renewal fee is a non-refundable fee to be paid when the program fails to submit the required annual report. This is an additional fee which must be submitted with the annual program renewal fee and state regulatory fee.
- (e) State regulatory fee is a non-refundable fee to be paid by all programs upon initial application and renewal.
- (f) Replacement certificate fee is a non-refundable fee to be paid when an approved massage program requests replacement approval for the massage therapy educational program due to name and/or address changes.
- (g) Remedial application fee is a non-refundable fee to be paid when an approved massage program is required to submit a remedial plan.

(2) Fee Schedule:

(a) Program application fee shall include the following:

- 1. Initial approval fee \$500.00
- 2. State regulatory fee \$5.00

(b) Existing program registration fee \$100.00

(c) Annual program renewal fee shall include the following:

- 1. Annual renewal fee \$250.00
- 2. State regulatory fee \$5.00

(Rule 0870-02-.08, continued)

(d)	Late renewal fee	\$500.00
(e)	Replacement certificate fee	\$25.00
(f)	Remedial application fee	\$750.00

Authority: T.C.A. § 63-18-111, and 63-18-115. **Administrative History:** Original rule filed April 9, 2009; effective June 23, 2009.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Phyllis B. Salyers	X				
Faith Mayton	X				
Chris Sluss	X				
Marcela Collins	X				
Cynthia Jagers	X				
Pamela Edmond	X				
Marilyn Field				X	

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Massage Licensure Board on 10/26/2009 & 02/23/2010, 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: 09/03/09

Rulemaking Hearing(s) Conducted on: (add more dates). 10/26/09 & 02/23/10

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 PUBLIC AFFAIRS

Date: 9/13/11

Signature: *Marc Guilford*

Name of Officer: Marc Guilford

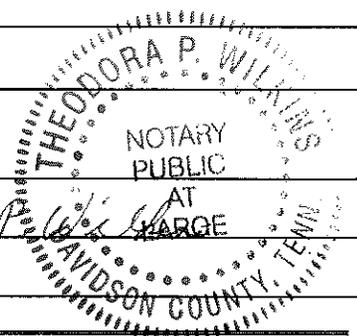
Assistant General Counsel

Title of Officer: Department of Health

Subscribed and sworn to before me on: 7/13/11

Notary Public Signature: *Theodora P. Williams*

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.

Robert E. Cooper, Jr.
 Robert E. Cooper, Jr.
 Attorney General and Reporter
10-4-11
 Date

Department of State Use Only

Filed with the Department of State on: 04/09/2012

Effective on: 07/08/2010
Tre Hargett

Tre Hargett
 Secretary of State

G.O.C. STAFF RULE ABSTRACT

<u>DEPARTMENT:</u>	University of Tennessee
<u>DIVISION:</u>	University of Tennessee at Knoxville
<u>SUBJECT:</u>	Student Conduct Code
<u>STATUTORY AUTHORITY:</u>	Tennessee Code Annotated, Section 49-9-209
<u>EFFECTIVE DATES:</u>	September 28, 2012 through June 30, 2013
<u>FISCAL IMPACT:</u>	Minimal

STAFF RULE ABSTRACT:

The University of Tennessee at Knoxville has revised its code of conduct for students. The following briefly summarizes the new rule and the key changes from the rule being repealed:

Rule 1720-04-03-.01 provides a description of the University's interests in students' conduct.

Rule 1720-04-03-.02 defines key terms used in the code of conduct.

Rule 1720-04-03-.03 sets forth the University's position on common jurisdictional issues that arise in student conduct cases.

Rule 1720-04-03-.04 sets forth: (1) the rights of students and student organizations charged with violating the University's standards of conduct; and (2) the rights of victims in sexual assault cases.

Rule 1720-04-03-.05 sets forth the standards of conduct for University students and student organizations. Some former standards have been combined, and three standards have been added (harassment, sexual assault, and invasion of privacy). However, the total number of standards of conduct is not changing under the new rule. The new rule also eliminates unnecessary language, clarifies other language, and adds language to the former standards of conduct.

Rule 1720-04-03-.06 differs from former Rule 1720-04-03-.11 by: (1) providing a non-exclusive list of examples of academic dishonesty in addition to cheating and plagiarism; (2) clarifying that the Office of Student Judicial Affairs, not the class instructor, is responsible for determining whether to charge a student with violating the standards of

conduct; (3) clarifying a student's right to appeal an instructor's imposition of an instructor's penalty for alleged academic dishonesty; and eliminating the "student appeal statement" as a part of a student's appeal to an Academic Review Board.

Rule 1720-04-03-.07 adds guidance for administrators and hearing boards in determining the appropriate penalty for a violation of the standards of conduct; adds a non-exclusive list of aggravating and mitigating factors that an administrator or hearing board may consider in determining a penalty; informs students that intoxication or impairment because of alcohol, drugs, chemicals, or other substances does not excuse a violation of the standards of conduct; adds four penalties; informs students about which penalties become part of the student's record; informs students about the University's policy concerning coursework and pending disciplinary charges; informs student organizations about the penalties that may be imposed if a student organization violates the standards of conduct; and clarifies the penalty of indefinite suspension.

Rule 1720-04-03-.08 is a new rule describing a no-contact directive, which is a tool used by student affairs administrators in appropriate cases to prohibit a student from having verbal, physical, or written contact with specific persons for a definite or indefinite period of time.

Rule 1720-04-03-.09 is a new rule describing an interim suspension, which may be imposed on a student prior to the conclusion of a full due process hearing in certain situations.

Rule 1720-04-03-.10 is substantially the same as former Rule 1720-04-03-.17.

Rule 1720-04-03-.11 differs from former Rule 1720-04-03-.08 by: (1) clarifying the original and appellate jurisdiction, membership, and hearing procedures for each hearing board; (2) including Academic Review Boards in the list of hearing boards (listed in a separate section of the current rule); (3) clarifying the process of appealing a decision of an Academic Review Board; (4) creating a single Greek judicial board by combining the Interfraternity Council Judicial Board and Panhellenic Judicial Board; and (5) creating a subgroup of the Student Life Council to hear appeals from the Student Tribunal or an Academic Review Board.

Rule 1720-04-03-.12 differs from former Rule 1720-04-03-.10 by adding procedures for appeal by victims in sexual assault cases.

Rule 1720-04-03-.13 is substantially the same as former Rule 1720-04-03-.05.

Rule 1720-04-03-.14 is substantially the same as former Rule 1720-04-03-.07.

Rule 1720-04-03-.15 is substantially the same as former Rule 1720-04-03-.13.

Rule 1720-04-03-.16 is substantially the same as former Rule 1720-04-03-.15.

Rule 1720-04-03-.17 is substantially the same as former Rule 1720-04-03-.16.

Impact on Local Governments

Pursuant to T.C.A. 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The University of Tennessee anticipates that this rule will have no financial impact on local governments.

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)

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For Department of State Use Only

Sequence Number: 04-11-12
Rule ID(s): 5190
File Date: 04/12/2012
Effective Date: 09/28/2012

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §4-5-202, 4-5-207 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Agency/Board/Commission:	University of Tennessee
Division:	
Contact Person:	Matthew Scoggins, Assistant General Counsel
Address:	719 Andy Holt Tower, 1331 Circle Park, Knoxville, TN
Zip:	37996-0170
Phone:	865-974-3245
Email:	scoggins@tennessee.edu

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
1720-04-03	Student Rights and Responsibilities
Rule Number	Rule Title
1720-04-03-.01	Introduction
1720-04-03-.02	Disciplinary Regulations and Procedures
1720-04-03-.03	Standards of Conduct
1720-04-03-.04	Fundamental Rights of the Accused
1720-04-03-.05	Inspection and Search Policy
1720-04-03-.06	Requests to Report to an Administrative Office
1720-04-03-.07	Administrative Procedures
1720-04-03-.08	The Hearing Boards
1720-04-03-.09	Penalties
1720-04-03-.10	Appeal and Scope of Review
1720-04-03-.11	Honor Statement
1720-04-03-.12	Student Academic Conduct
1720-04-03-.13	Emergency Powers
1720-04-03-.14	Training and Advising
1720-04-03-.15	Termination of Student Employees
1720-04-03-.16	Termination of Financial Assistance
1720-04-03-.17	Withdrawal or Temporary Suspension due to Mental or Physical Problems

Chapter Number	Chapter Title
1720-04-03	Student Rights and Responsibilities
Rule Number	Rule Title
1720-04-03-.01	Introduction
1720-04-03-.02	Definitions
1720-04-03-.03	Jurisdiction
1720-04-03-.04	Fundamental Rights of the Accused
1720-04-03-.05	Standards of Conduct
1720-04-03-.06	Honor Statement
1720-04-03-.07	Penalties
1720-04-03-.08	No Contact Directives
1720-04-03-.09	Interim Suspension
1720-04-03-.10	Involuntary Medical Withdrawal or Suspension
1720-04-03-.11	The Hearing Boards
1720-04-03-.12	Appeal and Scope of Review
1720-04-03-.13	Inspection and Search Policy
1720-04-03-.14	Administrative Procedures
1720-04-03-.15	Emergency Powers
1720-04-03-.16	Termination of Student Employees
1720-04-03-.17	Termination of Financial Assistance

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

Substance of Proposed Rules
of
The University of Tennessee at Knoxville

Repeal

Rule 1720-04-03 Student Rights and Responsibilities is repealed.

New Rule

Chapter 1720-04-03
Student Rights and Responsibilities

1720-04-03-.01 Introduction.

- (1) Students at the University of Tennessee at Knoxville are members of both the University community and the larger community of which the University is a part. Accordingly, students are responsible for conducting themselves in a lawful manner and in compliance with University rules and policies. The University has established the following rules in order to advance the mission of the University by maintaining a safe and secure learning environment; protecting the rights and privileges of all members of the University community; providing a basis for orderly conduct of the affairs of the University; promoting a positive relationship between the University and its surrounding community; preserving institutional integrity and property; encouraging students to engage in conduct that brings credit to themselves and the University; and ensuring that each student who matriculates at the University graduates ready to contribute to society as an ethical and law-abiding citizen.
- (2) The University of Tennessee is committed to respecting students' constitutional rights. Nothing in this chapter is intended or shall be interpreted to restrict students' constitutional rights, including, but not limited to, rights of freedom of speech and assembly.
- (3) Students are responsible for being fully acquainted and for complying with the University catalog,

handbook, and other rules and policies relating to students. Failure or refusal to comply with the rules and policies established by the University may subject a student to disciplinary action up to and including permanent dismissal from the University.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-04-03-.02 Definitions.

- (1) The term "University" means the University of Tennessee at Knoxville.
- (2) The term "student" means a person admitted, enrolled or registered for study at the University of Tennessee, either full-time or part-time, pursuing undergraduate, graduate, or professional studies, as well as non-degree students. Persons not officially registered or enrolled for a particular term but who have a continuing relationship with the University also are considered students for purposes of these rules.
- (3) The term "student organization" means an organization that is composed solely of University students that has submitted a pending application or has completed the process for registration according to University rules.
- (4) The term "University-controlled property" means all land, buildings, facilities, grounds, structures, or any other property owned, leased, used, maintained, or operated by the University. For purposes of this rule, University-controlled property includes all streets, alleys, sidewalks, and public ways abutting such property. University-controlled property also includes computers and network systems owned, maintained, or controlled by the University or funded by the University.
- (5) The term "University-affiliated activity" means any activity on or off University-controlled property that is initiated, aided, authorized, sponsored, or supervised by the University.
- (6) The term "University official" means an employee of the University, including faculty members and staff, or for purposes of this rule a University-recognized volunteer. Student employees may be considered University officials when acting in the performance of their duties (e.g., event staff, resident assistants, and teaching assistants).
- (7) The term "member of the University community" means any person who is a student, University official, campus visitor, or participant in a University-sponsored or University-affiliated activity.
- (8) The term "possession" means actual knowledge of a substance or property and/or being in such close proximity to the substance or property that it is a reasonable presumption that one had knowledge of the substance or property.
- (9) The term "weapon" means any device, instrument, or substance that is designed to, or reasonably could be expected to, inflict a wound, incapacitate, or cause serious bodily injury or death, including, but not limited to, firearms (loaded and unloaded, real and replica), ammunition, electronic control devices (such as tasers and stun guns), devices designed to discharge an object (such as bb guns, air guns, pellet guns, potato guns, and slingshots), explosives, dangerous chemicals (such as mace, tear gas, and oleoresin capsicum), martial arts weapons, bows and arrows, artificial knuckles, nightsticks, blackjacks, dirks, daggers, swords, and knives with fixed blades longer than three (3) inches. The term "weapon" does not include chemical repellents available over-the-counter for self-defense; instruments used solely for personal hygiene, preparation of food, maintenance, University-related instruction, or University employment-related duties.
- (10) The term "notice" means notice given in writing delivered by regular mail, courier service, or hand delivery to the address the University has on file for the student or student organization, or by e-mail to the student's or student organization's University-provided e-mail account.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public SS-7038 (July 2010)

1720-04-03-.03 Jurisdiction.

- (1) The Standards of Conduct, Chapter 1720-04-03-.05, apply to conduct that occurs on University-controlled property.
- (2) The University also has the discretion to discipline a student for an act in violation of the Standards of Conduct that occurs off University-controlled property if the conduct adversely affects the interests of the University, including, but not limited to, conduct which:
 - (a) Occurs in connection with a University-affiliated activity, including, but not limited to, an overseas study program or a clinical, field, internship, or in-service experience;
 - (b) Involves another member of the University community; or
 - (c) Threatens, or indicates that the student may pose a threat to, the health or safety of him/herself or others or the security of any person's property, including, but not limited to, alcohol-related offenses, drug-related offenses, arson, battery, fraud, hazing, participation in group violence, rape, sexual assault or misconduct, stalking, and theft.
- (3) The Standards of Conduct have been adopted in furtherance of the University's interests and serve to supplement, rather than substitute for, the enforcement of the civil and criminal law. Accordingly, University disciplinary action may be instituted against a student charged with conduct that potentially violates both the criminal law and the Standards of Conduct without regard to the pendency of criminal charges or civil litigation. At the discretion of the Vice Chancellor for Student Life, or his/her designee, disciplinary action relating to a violation of the Standards of Conduct may be carried out prior to, simultaneously with, or following criminal proceedings. Students accused of violating the Standards of Conduct may not challenge the University disciplinary proceedings on the grounds that criminal charges, civil litigation, or other University proceedings regarding the same incident are pending or have been terminated, dismissed, reduced, or not yet adjudicated.
- (4) Each student shall be responsible for his/her conduct from the time of application for admission through the actual awarding of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment (and even if conduct is not discovered by the University until after a degree is awarded). Should a student withdraw from the University with disciplinary charges pending, the student's academic record and/or ability to register for classes may be encumbered by the appropriate University office.
- (5) Graduate or professional programs within the University may initiate charges against students for alleged violations of professional standards or ethics as a separate issue or as an extension of alleged acts of academic dishonesty or other violations of the Standards of Conduct.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-04-03-.04 Fundamental Rights of the Accused.

- (1) Students and student organizations charged with violating the Standards of Conduct, Chapter 1720-04-03-.05, are entitled to the following rights under the University of Tennessee at Knoxville's student judicial system:
 - (a) Notice of charge(s), account of the alleged misconduct, witnesses, and notice of the scheduled hearing delivered seventy-two (72) hours before the hearing. The student may request additional time by showing good cause.
 - (b) Notice of the maximum allowable penalty (i.e., permanent dismissal).

- (c) The right to a hearing closed to the public.
 - (d) The right to: (i) a non-adversarial hearing before the Director of Student Judicial Affairs or his/her designee; or (ii) an adversarial hearing before a University hearing board with jurisdiction.
 - (e) The right to be assisted by a Student Judicial Advisor before a University hearing board. If an adversarial criminal proceeding has been initiated against a student (e.g., a criminal charge or indictment) arising out of the same conduct at issue in the disciplinary hearing, then the student also has a right to have an attorney present during the hearing before a University hearing board. The attorney's role shall be limited to advising the student about answering questions that may be self-incriminating.
 - (f) Testify or remain silent in a University hearing at his/her option. However, a University hearing board is not prohibited from drawing an adverse inference against a student if the student remains silent or refuses to attend a disciplinary hearing or testify in response to evidence offered against him/her. A University hearing board shall not base its decision solely on a student's failure to attend a hearing or a student's refusal to testify or remain silent.
 - (g) Present the testimony of witnesses and other evidence.
 - (h) The presumption of innocence. The burden of proof rests with the University, such that the University must prove the student's guilt by a preponderance of the evidence.
 - (i) A written decision specifying the rule violated, penalty assessed, and right of appeal.
 - (j) Challenge the seating of any board member for good cause. The dismissal of a challenged hearing board member shall be at the discretion of the hearing board chairperson. If the chairperson is challenged, he/she may be excused at the discretion of the majority of the hearing board.
 - (k) Have his/her case heard only on the misconduct specified in the written notice.
 - (l) Challenge the admissibility of evidence.
 - (m) Cross-examine all available adverse witnesses.
 - (n) Appeal the decision of a University disciplinary board in accordance with Chapter 1720-04-03-.12.
- (2) In cases involving a complaint of sexual assault or misconduct, the alleged victim shall have the right to:
- (a) Notice concerning the process by which the University will handle the complaint and an opportunity to ask questions about the process;
 - (b) A prompt, thorough, and impartial investigation of the complaint;
 - (c) The same opportunity as the accused student to present his/her explanation of the facts during the University's investigation;
 - (d) Have the investigation of the complaint concluded within sixty (60) days of the University's receipt of a complaint, unless circumstances make it impracticable for the University to complete its investigation within that timeframe;
 - (e) Notice of the outcome of the University's investigation;

- (f) Have a disciplinary hearing conducted within thirty (30) days of a University charge that the accused student committed sexual assault or misconduct, unless circumstances make it impracticable for the University to conduct a hearing within that timeframe;
 - (g) Notice of the date, time, and location of the disciplinary hearing, the right to have the disciplinary hearing closed to the public, and the right to request rescheduling of the hearing for good cause;
 - (h) The same access as the accused student to any information or documents that will be used by the University during the disciplinary hearing, unless prohibited by law;
 - (i) Challenge the seating of any disciplinary board member for good cause, which will be determined at the discretion of the chairperson of the hearing board, or, if the seating of the chairperson is challenged, then at the discretion of the majority of the hearing board;
 - (j) Be accompanied by a person, other than a Student Judicial Advisor, of his/her choosing during the University's investigation or a disciplinary hearing, but the person shall not be permitted to speak for the victim during a disciplinary hearing;
 - (k) The same opportunity as the accused student to be present during the hearing, present witnesses and other evidence through a Student Judicial Advisor, challenge the admissibility of evidence through a Student Judicial Advisor, and cross-examine adverse witnesses through a Student Judicial Advisor during the disciplinary hearing;
 - (l) Testify or remain silent in a hearing at his/her option;
 - (m) Not to be questioned directly by the accused student during the disciplinary hearing;
 - (n) Submit a written impact statement to the Student Disciplinary Board for consideration of the sanctioning phase of the disciplinary hearing, if the accused student is found guilty of the charges against him/her, or to the Office of Student Judicial Affairs for consideration during the sanctioning phase of the administrative hearing, if the accused student pleads guilty to the charges against him/her;
 - (o) Notice of the decision of the Student Disciplinary Board or the outcome of an administrative hearing within three (3) business days of the hearing; and
 - (p) Appeal the decision of a University disciplinary board in accordance with Chapter 1720-04-03-.12(3).
- (3) As an alternative to the procedures described in this Chapter, any student or student organization whose legal rights, duties or privileges are required by any statute or constitutional provision to be determined after an opportunity for a hearing shall be afforded that opportunity for hearing in accordance with the Tennessee Uniform Administrative Procedures Act, T.C.A. § 4-5-301, et seq. The University's procedures for conducting contested case hearings under the Tennessee Uniform Administrative Procedures Act are contained in Chapter 1720-01-05, and the University's rules concerning waivers of contested case hearings are contained in Chapter 1720-01-03.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-04-03-.05 Standards of Conduct. A student or student organization may be disciplined for the following types of misconduct:

- (1) Cheating, plagiarism, or any other act of academic dishonesty, including, but not limited to, an act in violation of the Honor Statement.
- (2) Providing false information to a University official.

- (3) Falsifying, distorting, misrepresenting, or withholding information in connection with a University investigation or hearing.
- (4) Forging, altering, destroying, falsifying, or misusing records, identification, or documents, whether in print or electronic form.
- (5) Causing physical harm to any person (including oneself); endangering the health or safety of any person (including oneself); engaging in conduct that causes a reasonable person to fear harm to his/her health or safety; or making an oral or written statement (including electronically) that an objectively reasonable person hearing or reading the statement would interpret as a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals, although the speaker need not mean to carry out the act of unlawful violence in order to constitute a violation of this rule.
- (6) Harassment, which is defined as unwelcome conduct that is so severe or pervasive, and objectively offensive, that it substantially interferes with the ability of a person to work, learn, live, or participate in or benefit from the services, activities, or privileges provided by the University. In no event shall this rule be construed to discipline a student for speech protected by the First Amendment to the United States Constitution (e.g., mere insulting or offensive speech).
- (7) Sexual assault or misconduct. "Sexual assault" is defined as any sexual act or attempt to engage in any sexual act with another person without the consent of the other person, or in circumstances in which the person is unable to give consent due to age, disability, or an alcohol/chemical or other impairment. "Sexual misconduct" is defined as any intimate touching of another person, or forcing a person to engage in intimate touching of another, without the consent of the other person, or in circumstances in which the person is unable to give consent due to age, disability, or an alcohol/chemical or other impairment. It is the responsibility of the person initiating sexual activity to ensure the other person is capable of consenting to that activity. Consent is given by an affirmative verbal response or acts that are unmistakable in their meaning. Consent to one form of sexual activity does not mean consent is given to another type of sexual activity.
- (8) Invasion of another person's privacy when that person has a reasonable expectation of privacy, including, but not limited to, using electronic or other means to make a video or photographic record of any person in a location in which the person has a reasonable expectation of privacy, without the person's knowledge or consent. This includes, but is not limited to, making a video or photographic record of a person in shower/locker rooms or restrooms. The storing, sharing, and/or distributing of such unauthorized recordings by any means is also prohibited.
- (9) Theft, misappropriation, unauthorized possession, or unauthorized sale of private or public property, including but not limited to University-controlled property.
- (10) Vandalizing, destroying, damaging, engaging in conduct that reasonably could cause damage to, or misusing private or public property, including but not limited to University-controlled property.
- (11) Participating in hazing. "Hazing" is defined as any intentional or reckless act, on or off University-controlled property, by one (1) student, acting alone or with others, which is directed against any other student, which endangers the mental or physical health or safety of that student, or which induces or coerces a student to endanger his or her mental or physical health or safety. "Hazing" does not include customary athletic events or similar contests or competitions and is limited to those actions taken and situations created in connection with initiation into or affiliation with any organization.
- (12) Engaging in disorderly, lewd, indecent, or obscene conduct. "Disorderly" conduct means fighting or other physically violent or threatening conduct; creating a hazardous or physically offensive condition by any act that serves no legitimate purpose; making noise that could unreasonably disturb others who are carrying on lawful activities; or conduct that breaches the peace. "Lewd, indecent, or obscene" conduct includes, but is not limited to, public exposure of one's sexual organs, public urinating, and public sexual acts.

- (13) Engaging in speech, either orally or in writing, that is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.
- (14) Any act of arson; falsely reporting a fire, the presence of an explosive or incendiary device, or other emergency; setting off a false fire alarm; or tampering with, removing, or damaging fire alarms, fire extinguishers or any other safety or emergency equipment from its proper location except when removed in a situation in which there is a reasonable belief of the need for such equipment.
- (15) Possessing, using, or duplicating University keys, access cards, or identification cards without authorization; possessing, using, or entering University-controlled property without authorization.
- (16) Theft, misuse, or unauthorized use of information technology facilities, resources, or access codes, including, but not limited to: unauthorized entry into or transfer of a file; using another person's identification and/or password without that person's consent; using information technology facilities or resources to interfere with the work of another student, faculty member, staff member, or other member of the University community; using information technology facilities or resources to interfere with normal operation of a University information technology system or network; circumventing University information technology system or network security; using information technology facilities or resources in violation of copyright laws; falsifying an e-mail header; and conduct that violates the University's policy on the Acceptable Use of Information Technology Resources.
- (17) Possessing, using, storing, or manufacturing any weapon or any facsimile of a weapon on University-controlled property or in connection with a University-affiliated activity, unless authorized in writing by the Chief of Police or his/her designee.
- (18) Consuming, manufacturing, possessing, distributing, dispensing, selling, or being under the influence of alcoholic beverages on University-controlled property or in connection with a University-affiliated activity.
- (19) Consuming, manufacturing, possessing, distributing, dispensing, selling, or being under the influence of alcoholic beverages, if prohibited by federal, state, or local law.
- (20) Providing an alcoholic beverage to a person younger than twenty-one (21) years of age, unless permitted by law.
- (21) Using, manufacturing, possessing, distributing, selling, dispensing, or being under the influence of drugs or drug paraphernalia, if prohibited by federal, state, or local law; using or possessing a prescription drug if the prescription was not issued to the student; or distributing or selling a prescription drug to a person to whom the prescription was not originally issued.
- (22) Failing to pay a University bill, account, or other University financial obligation.
- (23) Failing to respond to a request to report to a University administrative office; failing to comply with a lawful directive of a University employee or other public official acting within the scope of his/her duties; or failing to identify oneself to a University employee or other public official acting within the scope of his/her duties when requested to do so.
- (24) Failing to appear at a University hearing, including, but not limited to, a hearing of a University judicial board, following a request to appear either as a party or as a witness.
- (25) Violating the terms of an interim suspension, a no-contact directive, or a disciplinary penalty imposed by the University.
- (26) Obstructing or disrupting teaching, learning, studying, research, public service, administration, disciplinary proceedings, emergency services, or any other University-affiliated activity, or the free flow of pedestrian or vehicular traffic on University-controlled property. In no event shall this rule be construed to discipline a student for speech protected by the First Amendment to the United

States Constitution.

- (27) Violating a University policy or rule, including but not limited to University policies or rules relating to facilities use, smoking, the acceptable use of information technology resources, research or service misconduct, finder's fees relating to clinical investigations involving human subjects or access to University data or materials, University libraries, dining services, parking or transportation, University identification card use, sexual harassment, residence halls, and registered student organizations.
- (28) Committing an act that is prohibited by local, state, or federal law.
- (29) Attempting to commit a violation of a Standard of Conduct or being an accessory to the commission of an act or attempted act in violation of a Standard of Conduct.

Authority: T.C.A. § 49-9-209(e), T.C.A. § 49-7-123, and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-04-03-.06 Honor Statement.

- (1) Honor Statement. An essential feature of the University of Tennessee at Knoxville is a commitment to maintaining an atmosphere of intellectual integrity and academic honesty. As a student of the University, I pledge that I will neither knowingly give nor receive any inappropriate assistance in academic work, thus affirming my own personal commitment to honor and integrity.
- (2) A thorough understanding of the Honor Statement is essential to the success of the honor system. To facilitate implementation of the Honor Statement, the following avenues will be utilized:
 - (a) The Honor Statement, with its attendant pledge, will appear on applications for admission (undergraduate and graduate); and applicants to the University will be required to acknowledge their affirmation by signing the document in a designated location.
 - (b) Information regarding the Honor Statement will be included in the catalogs (undergraduate and graduate), Hilltopics, and in a brochure specifically addressing the Honor Statement.
 - (c) The Honor Statement will be discussed during freshman, transfer, graduate student, and international student orientation programs.
 - (d) A thorough discussion of the Honor Statement in freshmen English is encouraged.
 - (e) Implementation methods and alternatives will be discussed during faculty orientation programs.
 - (f) The Honor Statement is furthered by Standard of Conduct No. 1, Chapter 1720-04-03-.05.
- (3) Prohibited Conduct.
 - (a) The Honor Statement prohibits cheating, plagiarism, and any other type of academic dishonesty.
 - (b) Plagiarism is using the intellectual property or product of someone else without giving proper credit. The undocumented use of someone else's words or ideas in any medium of communication (unless such information is recognized as common knowledge) is a serious offense, subject to disciplinary action that may include failure in a course and/or dismissal from the university. Specific examples of plagiarism include, but are not limited to:

1. Using without proper documentation (quotation marks and a citation) written or spoken words, phrases, or sentences from any source;
2. Summarizing without proper documentation (usually a citation) ideas from another source (unless such information is recognized as common knowledge);
3. Borrowing facts, statistics, graphs, pictorial representations, or phrases without acknowledging the source (unless such information is recognized as common knowledge);
4. Collaborating on a graded assignment without the instructor's approval; and
5. Submitting work, either in whole or in part, created by a professional service and used without attribution (e.g., paper, speech, bibliography, or photograph).

(c) Specific examples of other types of academic dishonesty include, but are not limited to:

1. Providing or receiving unauthorized information during an examination or academic assignment, or the possession and/or use of unauthorized materials during an examination or academic assignment;
2. Providing or receiving unauthorized assistance in connection with laboratory work, field work, scholarship, or another academic assignment;
3. Falsifying, fabricating, or misrepresenting data, laboratory results, research results, citations, or other information in connection with an academic assignment;
4. Serving as, or enlisting the assistance of, a substitute for a student in the taking of an examination or the performance of an academic assignment;
5. Altering grades, answers, or marks in an effort to change the earned grade or credit;
6. Submitting without authorization the same assignment for credit in more than one course;
7. Forging the signature of another or allowing forgery by another on any class- or University-related document such as a class roll or drop/add sheet;
8. Failing to observe the expressed procedures or instructions relating to an exam or academic assignment; and
9. Engaging in an activity that unfairly places another student at a disadvantage, such as taking, hiding, or altering resource material, or manipulating a grading system.

(4) Responsibilities.

- (a) All groups within the University community have responsibilities associated with the Honor Statement. These responsibilities are unique to each sector of the University community.
- (b) Student Responsibilities. Each student is responsible for his/her own personal integrity in academic life. While there is no affirmative duty to report the academic dishonesty of another, each student, given the dictates of his/her own conscience, may choose to act on any violation of the Honor Statement. Each student is responsible for knowing and adhering to the terms and conditions of the Honor Statement and may acknowledge his/her adherence to the Honor Statement by writing "Pledged" and signing each graded

class assignment and examination.

- (c) **Instructor Responsibilities.** Regulation of academic dishonesty is the immediate responsibility of the instructor. However, students are not excused from complying with the Honor Statement because of an instructor's failure to prevent or discourage academic dishonesty.

(5) **Process.**

- (a) When an act of alleged academic dishonesty is discovered by or brought to the attention of an instructor, the instructor shall inform the student orally or in writing about the alleged academic dishonesty, describe the evidence supporting the allegation, and give the student an informal opportunity to respond to the allegation(s) and evidence. The instructor may proceed with imposing an academic penalty for academic dishonesty if the student has not responded to the instructor's notice to the student concerning the alleged academic dishonesty.

- (b) After giving the student notice and an informal opportunity to respond, if the instructor concludes that the student engaged in academic dishonesty, then the instructor may take any or all of the following actions:

1. Impose an academic penalty of a failing or reduced grade in an academic exercise, assignment, examination, and/or course; loss of credit for the work involved; an assignment to repeat the work, to be graded on its merits; or an oral or written reprimand.

- a. If the instructor decides to impose an academic penalty, then the instructor shall notify the student of the charges, evidence, findings, penalties imposed, and the procedures to appeal the findings and/or penalties. The notice should be countersigned by the department head.

- b. Copies of the notice to the student shall be submitted to the Office of Student Judicial Affairs, the administrative head of the instructor's academic unit, and, where different, the head of the academic unit in which the student is enrolled.

- c. After receiving notice from the instructor, the Office of Student Judicial Affairs shall provide the student with notice and information relating to an appeal of the instructor's findings of academic dishonesty and/or academic penalties.

2. Request that the Office of Student Judicial Affairs charge the student with violating Standard of Conduct No. 1, Chapter 1720-04-03-.05, and impose one or more of the disciplinary penalties described in Chapter 1720-04-03-.07. The instructor is not required to notify a student that a request has been made to the Office of Student Judicial Affairs.

- (c) The Office of Student Judicial Affairs is responsible for determining whether to charge a student with violating Standard of Conduct No. 1. The decision of the Office of Student Judicial Affairs not to charge a student with violating Standard of Conduct No. 1 may not be used by the student to support an appeal of an academic penalty imposed by the instructor. The Office of Student Judicial Affairs may charge a student with violating Standard of Conduct No. 1 regardless of the response of the instructor to the alleged academic dishonesty.

- (d) If a student denies a charge of academic dishonesty made by an instructor and/or the Office of Student Judicial Affairs, and/or if the student does not accept the academic penalties imposed by the instructor and/or the penalties recommended by the Office of Student Judicial Affairs, then the student may appeal to the appropriate Academic

Review Board within seven (7) days of the date of the notice of the academic penalty or disciplinary charge, whichever occurs later. If the student does not file a timely notice of appeal, then the determination of academic dishonesty and the recommended academic penalty and/or disciplinary penalty become final.

- (6) The University of Tennessee College of Law has adopted and promulgated its own Code of Academic Conduct, Chapter 1720-04-09, which governs academic dishonesty by students enrolled in the College of Law and controls in the event of a conflict between this Chapter and Chapter 1720-04-09.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-04-03-.07 Penalties.

- (1) Disciplinary penalties are primarily intended to educate students and student organizations about appropriate behavior, encourage students and student organizations to take responsibility for misconduct, promote the personal and professional development of students, discourage other students and student organizations from violating the Standards of Conduct, and protect members of the University community. The penalties imposed should be appropriate for the particular case based on the gravity of the offense (including without limitation how the violation affected or reasonably could have affected other members of the University community). Consideration may also be given to the student's or student organization's conduct record; the student's or student organization's responsiveness to the conduct process; whether the student acted in self-defense, and, if so, whether the amount of force used was reasonable under the circumstances; student academic classification; and other aggravating or mitigating factors.
- (2) The following penalties may be imposed on any student found to have violated the Standards of Conduct:
- (a) **Warning.** A warning is a notice that the student is violating or has violated the Standards of Conduct.
 - (b) **Loss of Privilege.** A loss of privilege is intended to serve as a reminder of the Standards of Conduct and is for a specific period of time. Privileges that may be lost include, but are not limited to, scholarships, stipends, participation in extracurricular activities (e.g. intramurals), housing privileges, participation in social activities, and use of certain University-controlled property (e.g., information technology resources).
 - (c) **Education.** Students may be required to attend classes, at their own expense, dealing with issues such as the consequences of alcohol or drug use, civility, ethics, or other topics as deemed appropriate by the Dean of Students or his/her designee.
 - (d) **Restitution.** Restitution may be required in situations that involve destruction, damage, or loss of property, or unreimbursed medical expenses resulting from physical injury. Restitution may take the form of a monetary payment or appropriate service to repair or otherwise compensate for the destruction, damage, or loss.
 - (e) **Disciplinary Reprimand.** A disciplinary reprimand is used for minor violations of the Standards of Conduct. A reprimand indicates that further violations will result in more severe disciplinary actions.
 - (f) **Disciplinary Probation.** Disciplinary probation permits a student to remain at the University on probationary status but with the understanding that a future violation of the Standards of Conduct may result in suspension. Probation may be for a defined or indefinite period. Other conditions of probation are specific to each individual case and may include a requirement of community service or other requirement or restriction.
 - (g) **Suspension for a Specific Period of Time.** Suspension for a specific period of time

means that the student is withdrawn from the University and is not eligible to apply for readmission for a designated period of time. Usually, the period of designated suspension does not exceed one (1) calendar year. Upon return to the University following a suspension for a specific period of time, the student may be placed on indefinite disciplinary probation.

- (h) **Indefinite Suspension.** Indefinite suspension is imposed in cases of serious or repeated misconduct or in cases in which the prognosis for rehabilitation is uncertain. Indefinite suspension means that the student is withdrawn from the University for an unspecified period of time but typically for a minimum of one (1) calendar year from the effective date of the indefinite suspension. A student who receives the penalty of indefinite suspension is not eligible to apply for readmission until the student successfully petitions the Student Life Council to lift the suspension. The student will be expected to meet regularly with the Dean of Students, or his/her designee, throughout the period of indefinite suspension. At a minimum, the student is expected to contact and begin meeting regularly with the Dean of Students, or his/her designee, at least fifteen (15) weeks prior to the semester for which the student desires to be readmitted to the University. Upon return to the University following an indefinite suspension, the student shall be placed on indefinite disciplinary probation.
 - (i) **Permanent Dismissal.** Permanent dismissal means that a student is permanently barred from matriculating as a student at the University of Tennessee at Knoxville. This penalty is used when the violation of one (1) or more of the Standards of Conduct is deemed so serious as to warrant total and permanent disassociation from the University community without the possibility of re-enrollment; or when, by his/her repeated violation of the Standards of Conduct, a student exhibits blatant disregard for the health and safety of other members of the University community or the University's right to establish rules of conduct. If a disciplinary hearing board desires to impose permanent dismissal, then the board shall communicate a recommendation of permanent dismissal to the Dean of Students. In the event a recommendation of permanent dismissal is not approved by the Dean of Students, he/she may substitute any less severe penalty; if probation is substituted, it may be for a greater period than the period specified for suspension. The Dean of Students shall notify the Director of Student Judicial Affairs when a recommendation for permanent dismissal is not approved.
 - (j) **Revocation of Degree.** Revocation of a degree means revoking a degree already awarded to a student by the University. If a disciplinary hearing board desires to revoke a degree, then the board shall communicate the recommendation to the Dean of Students, who shall either accept or reject the recommendation. Revocation of a degree shall be approved by the University of Tennessee Board of Trustees.
- (3) The following penalties, by themselves, do not create a disciplinary record for a student in the Office of Student Judicial Affairs for purposes of reporting a student's conduct history: (a) warning; (b) loss of privilege; (c) education; and (d) restitution. However, those penalties may be considered as part of a student's conduct history for purposes of determining what penalty should be imposed for a future disciplinary offense.
 - (4) A disciplinary hold may be placed on a student's account until the completion of the student disciplinary process and/or until the student satisfies the terms and conditions of any penalties imposed. A student who, at the time of commencement, is subject to a continuing disciplinary penalty or an unresolved disciplinary charge shall not be awarded a degree before the conclusion of all penalties and/or resolution of all disciplinary charges.
 - (5) The following penalties may be imposed on a student organization found to have violated the Standards of Conduct:
 - (a) **Warning.** A warning is a notice that the student organization is violating or has violated the Standards of Conduct.

- (b) Education. Student organizations or their representatives may be required to attend classes, at their own expense, dealing with issues such as the consequences of alcohol or drug use, civility, ethics, or other topics as deemed appropriate by the Dean of Students or his/her designee.
 - (c) Loss of Privilege. A loss of privilege is intended to serve as a reminder of the Standards of Conduct and is for a specific period of time. Examples of privileges that may be lost include participating in extracurricular activities (e.g., intramurals), housing privileges, participating in social activities, and using certain University-controlled property.
 - (d) Restitution. Restitution may be required in situations that involve destruction, damage, or loss of property, or unreimbursed medical expenses resulting from physical injury. Restitution may take the form of a monetary payment or appropriate service to repair or otherwise compensate for the destruction, damage, or loss.
 - (e) Social Probation. Social probation prohibits a student organization from sponsoring or participating in specified social activities. While on social probation, a student organization may not host social events (e.g., mixers, date parties, formals, and band parties) or participate in University-affiliated activities (e.g., Homecoming, All Sing, Carnicus, intramurals). Any exceptions to social probation must be approved, in advance, by the Dean of Students or his/her designee.
 - (f) Disciplinary Probation. Disciplinary probation means that a student organization is permitted to retain University registration on a probationary status. Violation of the Standards of Conduct during the period of disciplinary probation may result in more serious penalties, including revocation of University registration.
 - (g) Revocation of University Registration. In cases of serious or repeated misconduct, a student organization's University registration may be revoked.
- (6) More than one (1) of the penalties listed above may be imposed for any single violation of the Standards of Conduct.
 - (7) Except for an interim suspension, disciplinary penalties shall not become effective until after opportunities for appeal have been exhausted. Penalties may be applied retroactively to the date of the offense. Coursework performed while disciplinary charges are pending or disciplinary proceedings are underway shall be considered conditional. Coursework may be affected or disregarded based on a final finding of misconduct or the penalty imposed, which may result in loss of course credit, a loss of tuition and/or fees, a delay in the awarding of a degree, or revocation of a degree that was awarded prior to a final decision in the disciplinary proceeding.
 - (8) Intoxication or impairment because of alcohol, drugs, chemicals, or other substances does not diminish or excuse a violation of the Standards of Conduct.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-04-03-.08 No Contact Directive. In cases involving allegations of assault, injury, sexual abuse, harassment, or in cases where there is reason to believe continued contact between a student/student organization and specific persons, including complainants and witnesses, may interfere with those persons' security, safety or ability to participate effectively in work or studies, the Vice Chancellor for Student Life, or his/her designee, may require that the student/student organization not have verbal, physical, or written contact with specific persons for a definite or indefinite period of time. The student/student organization will receive notice of the no contact directive. Any student, faculty or staff member or other person with a reasonable justification may request that a no contact directive be issued to a student/student organization. In addition to an internal University no contact directive, complainants are advised that other similar options exist and can be obtained from law enforcement and civil and criminal courts.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public SS-7038 (July 2010)

1720-04-03-.09 Interim Suspension.

- (1) When the Vice Chancellor for Student Life or his/her designee has reasonable cause to believe that a student's or student organization's continued presence on University-controlled property or at University-affiliated activities poses a significant risk of substantial harm to the health or safety of others or to property or poses an ongoing threat to the disruption of, or interference with, the normal operations of the University, the Vice Chancellor for Student Life or his/her designee may impose an interim suspension prior to the conclusion of a full hearing on the alleged misconduct.
- (2) An interim suspension shall be confirmed by notice to the student or student organization that explains the basis for the interim suspension and shall remain in effect until the conclusion of a full hearing in accordance with the rules of the University of Tennessee, which shall be held without undue delay.
- (3) Within three (3) business days of the imposition of the suspension, the student or student organization shall be offered an opportunity to appear personally before the Vice Chancellor for Student Life or his/her designee in order to discuss the following issues only: (i) the reliability of the information concerning the student's or student organization's conduct; and (ii) whether the conduct and surrounding circumstances reasonably indicate that the student's or student organization's continued presence on University-controlled property or at University-affiliated activities poses a significant risk of substantial harm to the health or safety of others or to property or poses an imminent threat of disruption of or interference with the normal operations of the University.
- (4) During an interim suspension, the student or student organization shall be denied access to University-controlled property, including residence halls, and all other University-affiliated activities or privileges for which the student or student organization might otherwise be eligible, as the Vice Chancellor for Student Life or his/her designee determines in his/her sole discretion to be appropriate. A student or student organization who receives an interim suspension and violates the terms of the interim suspension shall be subject to further disciplinary action and may be treated as a trespasser. Permission to be on University-controlled property or participate in University-affiliated activities may be granted by the Vice Chancellor for Student Life or his/her designee.
- (5) When a student is placed on interim suspension, he/she may be assigned a grade of "W" or "I," whichever is deemed appropriate by the faculty member involved.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-04-03-.10 Involuntary Medical Withdrawal or Suspension.

- (1) When a student is unable to effectively pursue his/her academic work, or when his/her behavior is disruptive to the normal educational processes of the University, or constitutes a threat to members of the University community, due to, among other things, alcohol use, drug use, or a physical or mental incapacitating illness or condition, he/she may be withdrawn or temporarily suspended from the University as hereinafter provided.
- (2) **Withdrawal.** A student may be withdrawn from the University only after an evaluation of his/her mental and physical condition by a panel of at least three (3) persons appointed by the Vice Chancellor for Student Life. The student shall be notified of the reasons for the evaluation and given an opportunity to present evidence to the committee. The committee's findings and recommendations shall be forwarded to the Vice Chancellor for Student Life, who will notify the student in writing of his/her decision. A student withdrawn under this procedure shall not be readmitted to the University without the approval of the Vice Chancellor for Student Life.
- (3) **Temporary Suspension.** Whenever a student, because of his/her mental or physical condition

constitutes an apparent danger to persons or property, or when his/her behavior is disruptive to the normal educational processes of the University, he/she may be suspended from the University, for a reasonable period of time, by the Vice Chancellor for Student Life or the Dean of Students. If the University does not withdraw the student in accordance with procedures outlined above, he/she may return to the University at the end of the suspension period.

- (4) Grades. When a student is withdrawn or temporarily suspended from the University, he/she may be assigned a grade of "W" or "I," whichever is deemed appropriate by the faculty member involved.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-04-03-.11 The Hearing Boards.

- (1) Greek Judicial Board.

- (a) This board has original jurisdiction in cases in which a Greek student organization has allegedly violated the InterFraternity Council (IFC), Panhellenic, or National Pan-Hellenic Council (NPHC) Rules, Constitution, or By-Laws, or University Standards of Conduct. Hearing procedures shall afford student organizations all of the rights set forth in Chapter 1720-04-03-.04 ("Fundamental Rights of the Accused") and be similar to the procedures used by the Student Disciplinary Board. Following a hearing, the board shall determine guilt or innocence and decide upon an appropriate penalty. Appeals from these decisions are to the Student Tribunal in accordance with Chapter 1720-04-03-.12.
- (b) An individual(s) member of a Greek student organization alleged to have violated a University Standard of Conduct will be referred to the Office of Student Judicial Affairs for appropriate action. The Director of Student Judicial Affairs, who will decide all jurisdictional questions, may assign jurisdiction over cases of individual discipline to the Greek Judicial Board, except for cases involving allegations of sexual harassment, sexual assault, or sexual misconduct. In such cases the Greek Judicial Board will operate under the procedures established for the Student Disciplinary Board. Appeals from these decisions are to Student Disciplinary Board and must be filed with the Office of Student Judicial Affairs in accordance with Chapter 1720-04-03-.12.
- (c) Students serving as members of the Greek Judicial Board must be active members of a Greek organization and in good standing during their terms of office. Guidelines for appointing, replacing and removing board members will be suggested by the Greek Council to the Office of Student Judicial Affairs for approval. Members of the Greek Judicial Board will be required to participate in training seminars scheduled by the Office of Student Judicial Affairs.

- (2) Student Disciplinary Board.

- (a) Jurisdiction. The Student Disciplinary Board has the following responsibilities:
 1. To hear allegations of student misconduct involving violations of the Standards of Conduct;
 2. To determine the innocence or guilt of the student charged and establish an appropriate penalty in cases where the student is found guilty; and
 3. To hear individual discipline cases appealed from the Greek Judicial Board and to make decisions appropriate with appellate responsibility.
- (b) Membership. Members of the Student Disciplinary Board must be sophomores or above. Undergraduate and law students must have at least a 2.0 overall grade point average. Graduate students must have at least a 3.0 grade point average in all graduate work

attempted. Members shall be screened and selected by a committee that consists of Office of Student Judicial Affairs staff. A member may be removed from office, for cause, by the Student Life Council following notice and a hearing.

(c) Hearing Procedures.

1. For each hearing, three (3) to seven (7) student board members will be selected from a pool of members. A quorum of three (3) board members must be present in order to hear a case. A majority vote of the members present is required for all decisions of the board. The chairperson votes in all cases.
2. Any board member who cannot hear the evidence fairly and objectively for any reason shall dismiss himself/herself from the case.
3. The Director of Student Judicial Affairs shall appoint a chairperson prior to the start of each hearing. The chairperson shall conduct the hearing and rule on all motions, objections, and other procedural issues. The chairperson shall ascertain that the accused has been advised of his/her rights and shall then read the statement of charges. A student who fails to appear before the Student Disciplinary Board in accordance with proper notification shall be deemed to have waived his/her rights to be present during the hearing, to know the evidence against him/her, to present evidence in his/her own behalf, and to exercise reasonable cross-examination of witnesses appearing against him/her. This waiver shall become effective if the student fails to appear at the designated time and place of the hearing unless, at least twenty-four (24) hours prior to the hearing, the student communicates in writing to the Office of Student Judicial Affairs good cause for granting a continuance of the hearing.
4. The accused shall enter a plea of guilty or not guilty. If a guilty plea is entered, he/she shall be advised of the maximum penalty.
5. The chairperson is responsible for maintaining an orderly discussion throughout the hearing. Proceedings should be conducted with fitting dignity and should reflect the importance and seriousness of the hearings. Any person who fails to follow the instructions of the chairperson, after a warning, shall be referred to the Director of Student Judicial Affairs for appropriate disciplinary action.
6. In the event that the accused pleads guilty, the board shall review the circumstances of the case and make appropriate decisions or recommendations regarding the penalty.
7. If accused's attorney is present, the accused's attorney shall not question any individual, introduce evidence, raise objections, present arguments, or otherwise participate in the hearing. The failure of an accused's attorney to attend the hearing shall not be grounds for delaying the proceeding or challenging the validity of the proceeding.
8. The Student Judicial Advisor, on behalf of the University, shall present such evidence as he/she has at the hearing, including any witnesses. He/she shall not present written statements as evidence, unless circumstances make such presentation necessary and unavoidable. Under similar restrictions the accused may present written statements in his/her defense. Unsigned statements shall not be admitted as evidence. However, a statement submitted via electronic mail may be admitted if party against whom the statement is offered does not object to its admission or the chairperson determines that the statement's authenticity and validity has been verified. Hearsay evidence is, however, admissible.
9. After the presentation of evidence by the Judicial Advisor, the accused shall be allowed to present all relevant evidence. If a not guilty plea has been entered,

evidence in mitigation of the alleged offense shall be presented only after the board has determined the issue of innocence or guilt.

10. During board deliberations all persons except the board members shall be excused from the hearing room. The decision shall be based solely upon the evidence presented. No mention will be made during the hearing on innocence or guilt of the student's previous disciplinary record, unless appropriate as rebuttal to character evidence introduced by the accused.
 11. After a determination of guilt by the board, the Student Judicial Advisor, on behalf of the University, shall present the previous disciplinary record of the accused, if any, and evidence of any other aggravating circumstances, to the board together with the recommendation of the Director of Student Judicial Affairs as to an appropriate penalty.
 12. After presentation of evidence by the Judicial Advisor, the accused shall be allowed to present character evidence, evidence of mitigating circumstances, and an alternative penalty recommendation.
 13. After the board determines the penalty, the accused shall be advised in writing of its decision.
 14. The results of the board's decision shall be kept on official University judicial forms. If a verbatim record of the hearing is prepared, it shall be retained in the custody of the Office of Student Judicial Affairs and considered a confidential disciplinary record. If necessary for adjudication of an appeal, the Director of Student Judicial Affairs may prepare a summary, certified by the chairperson of the Student Disciplinary Board, or provide that portion of the record that has been designated by the Student Tribunal or Student Life Council as material to the appeal.
 15. A board member shall not discuss cases prior to or after the hearing. The information received by members of the board during a case is considered strictly confidential. Violations of this confidence by any board member could result in disciplinary action.
 16. In cases involving an allegation of sexual assault or misconduct, the hearing procedures shall be modified to afford the alleged victim all of the rights described in Chapter 1720-04-03-.04(2). The board may consider evidence presented by the victim as part of the University's proof.
- (d) Appeals. Appeals from decisions of the Student Disciplinary Board may be made to the Student Tribunal in accordance with Chapter 1720-04-03-.12.

(3) Academic Review Boards.

- (a) Jurisdiction. Academic Review Boards have original jurisdiction over cases of alleged academic dishonesty (i.e., violations of Standard of Conduct No. 1, Chapter 1720-04-03-.05) that arise out of a course or program offered by the college or a student's appeal of an academic penalty imposed as a result of alleged academic dishonesty relating to a course or program offered by the college. Jurisdiction may include cases of academic dishonesty which involve violations of other Standards of Conduct, but such cases shall initially be referred to the Office of Student Judicial Affairs for determination of appropriate jurisdiction.
- (b) Membership. The Academic Review Board of each college shall consist of an ad hoc group of three (3) faculty members and three (3) students selected from the college's membership by the administrative head of the college. Alternative methods of selection of the three faculty members and the three students may be adopted by an individual

college with the approval of the administrative head of the college. Also, under extenuating circumstances, a college may recommend, for approval by the Student Life Council, a board composition which differs from that prescribed above.

(c) Hearing Procedures.

1. A quorum shall consist of four (4) members. The college shall make provision for alternates to insure the availability of a quorum.
2. In order to establish continuity among the various Academic Review Boards and to ensure the maintenance of procedural due process, a member of the Dean of Students staff shall serve as the non-voting chairperson of each Academic Review Board. His/her responsibilities shall include the scheduling of meetings, notification of parties and witnesses, and other duties as needed to ensure due process is afforded.
3. Hearing procedures shall be established by the Office of Student Judicial Affairs. Hearing procedures shall afford students all of the rights set forth in Chapter 1720-04-03-.04 ("Fundamental Rights of the Accused") and be similar to the procedures used by the Student Disciplinary Board. All decisions shall be by a majority vote.

(d) Appeals.

1. Appeal of Decision Concerning Academic Dishonesty.
 - (i) Student Appeal. A student may appeal a decision of the Academic Review Board that a student is guilty of academic dishonesty to the Student Life Council in accordance with Chapter 1720-04-03-.12.
 - (ii) University Appeal. The University may appeal a decision of the Academic Review Board that a student is not guilty of academic dishonesty to the Student Life Council in accordance with Chapter 1720-04-03-.12. The administrative head of the college involved makes the decision whether to appeal.
2. Appeal of Decision Concerning Academic Penalty.
 - (i) A student may appeal a decision of the Academic Review Board concerning an academic penalty to the Student Life Council in accordance with Chapter 1720-04-03-.12.
 - (ii) If the Academic Review Board recommends that the instructor change the academic penalty proposed by the instructor, the Office of Student Judicial Affairs shall notify the instructor of the Academic Review Board's recommendation. The instructor may either accept or reject the Academic Review Board's recommendation to change an academic penalty, and the instructor or the administrative head of the college involved shall notify the Office of Student Judicial Affairs of the decision to accept or reject the Academic Review Board's recommendation within seven (7) days of the Academic Review Board's recommendation. If the instructor rejects the Academic Review Board's recommendation, then the Office of Student Judicial Affairs shall notify the student of the student's right to appeal the instructor's academic penalty in accordance with Chapter 1720-04-03-.12, in which case the student shall submit the request for appeal within seven (7) calendar days of the notice of the instructor's decision to reject the Academic Review Board's recommendation.

- (iii) In the event the instructor rejects the recommendation of the Student Life Council following an appeal by the student of an academic penalty, then the student may appeal to the Chancellor, who, in consultation with the Provost, shall be the final decision maker concerning changes to student's grades on the student's official University academic record. The student must file a request for appeal within seven (7) calendar days of the notice to the student concerning the instructor's rejection of the recommendation of the Student Life Council.

(4) Student Tribunal.

- (a) Original Jurisdiction. The Student Tribunal has original jurisdiction in cases of conflicts between (non-Greek) student organizations, conflicts between individuals and student organizations, cases which involve allegations that a student organization has violated the Standards of Conduct, cases which involve interpretation of the Student Government Constitution, cases of challenge to results of Student Government elections, and discipline cases involving charges of dishonesty in these elections.
- (b) Appellate Jurisdiction. The Student Tribunal has appellate jurisdiction to review decisions of the Student Disciplinary Board and the Greek Judicial Board. Any other jurisdiction may be assigned by the Director of Student Judicial Affairs. The forms to be used on appeal and other procedural requirements shall be established by the Office of Student Judicial Affairs.
- (c) Membership. The Student Tribunal consists of three (3) to seven (7) members, selected by the Director of Student Judicial Affairs or designee from the Student Disciplinary Board.
- (d) Hearing Procedures. A quorum of three (3) members is required for a hearing before the Student Tribunal, and a majority vote of the members present is required for all decisions. Other hearing procedures shall be established by the Office of Student Judicial Affairs. In cases of original jurisdiction, the hearing procedures shall afford students all of the rights set forth in Chapter 1720-04-03-.04 ("Fundamental Rights of the Accused") and be consistent with the procedures used by the Student Disciplinary Board.
- (e) Appeals. Appeals from decisions of the Student Tribunal may be made to the Student Life Council in accordance with Chapter 1720-04-03-.13.

(5) Student Life Council.

- (a) Jurisdiction. The Student Life Council is the hearing board for appeals from decisions of the Student Tribunal, Academic Review Boards, and for appeals filed by the Dean of Students or his/her designee. It is the final decision making board in the judicial system. The Council also hears petitions to lift the disciplinary penalty of indefinite suspension. The Council may periodically review the status of student conduct and the judicial system and make appropriate recommendations.
- (b) Membership. The Student Life Council is composed of the following members:
 1. The Vice Chancellor for Student Life, who serves as the chairperson;
 2. All the Deans of the University of Tennessee at Knoxville;
 3. Three (3) faculty members, associate professor or above, appointed by the Faculty Senate (the initial appointments shall be staggered in terms so that one (1) new faculty member is appointed each year after the initial appointment); and
 4. Eight (8) student members (one of whom shall be a graduate student), appointed by the Student Government Association, for a period of one (1) year.

- (c) Except for appeals from the Student Tribunal, a majority of the Student Life Council shall constitute a quorum for the conducting of all business, and a majority vote of the members present is required for all decisions.
- (d) Appeals from the Student Tribunal. A subgroup of eleven (11) members of the Student Life Council, four (4) of whom shall be students, shall hear appeals from the Student Tribunal or an Academic Review Board. The Vice Chancellor for Student Life or his/her designee shall serve as the chairperson of the subgroup and shall select the ten (10) other members of the subgroup from the general membership of the Student Life Council. The Student Life Council will hear appeals on the record, unless it elects by a majority vote of members present to hear the case de novo.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-04-03-.12 Appeal and Scope of Review.

- (1) Appeal. The disciplinary action of any board may be appealed to the next higher board.
 - (a) In all cases the request for appeal must be submitted in writing to the Office of Student Judicial Affairs within seven (7) calendar days of written notice of the board decision. If the seventh day falls on a weekend or holiday, the time is extended to the next regular workday.
 - (b) If written briefs are submitted or if required by the appellate board's bylaws, they must be submitted within fourteen (14) calendar days of submission of the request for appeal. Under normal circumstances appeals will be heard within seven (7) days after written briefs have been submitted.
 - (c) All appeals (except those to the Student Life Council, which may elect to hear the case de novo) must be taken upon the record made before the original board.
 - (d) Pending the outcome of an appeal, the penalty specified in the original decision shall not be imposed.
- (2) Scope of Review. The appellate board will review the request for appeal together with any written briefs or other supporting documents to determine if the appeal presents a substantial question within the scope of review. The scope of review shall be limited to the following:
 - (a) Appropriateness of the Penalty. In cases appealing the appropriateness of the penalty, the appeal board shall uphold the penalty unless the penalty is shown to be clearly unreasonable (i.e., that which has been clearly and fully proven to have no sound basis or justification in reason).
 - (b) New Evidence. In cases appealed on grounds of new evidence, the moving party must show that such evidence is material to the decision of the board on the issue of innocence or guilt, and that said evidence could not have been discovered by due diligence prior to the original hearing.
 - (c) Due Process. In cases appealed on the grounds of denial of due process, the moving party must show that the adjudicatory process of the initial hearing was not conducted in conformity with properly prescribed procedures. The moving party must also show that the alleged discrepancy was materially adverse to the moving party's interest. Nothing contained in the foregoing shall be construed as limiting the right of the Dean of Students to request the Student Life Council to review the decision of any judicial board.
- (3) In cases of involving a finding that a student is guilty of sexual assault or misconduct, the alleged victim shall have the right to appeal the decision of a University disciplinary board to the next

higher board. The appellate board will review the request for appeal together with any written briefs or other supporting documents to determine if the appeal presents a substantial question within the scope of review. The scope of review shall be limited to the following:

- (a) Appropriateness of the Penalty. In cases appealing the appropriateness of the penalty, the appeal board shall uphold the penalty unless the penalty is shown to be clearly unreasonable (i.e., that which has been clearly and fully proven to have no sound basis or justification in reason).
 - (b) New Evidence. An alleged victim may appeal a decision by showing that there is new evidence material to the decision of the board on the issue of innocence or guilt, and that the evidence could not have been discovered by the exercise of due diligence prior to the original disciplinary hearing.
- (4) The decision of any board or administrative officer of the University of Tennessee at Knoxville is subject to review by the Chancellor and the President pursuant to the University of Tennessee Bylaws, Article V, Section 7.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-04-03-.13 Inspection and Search Policy.

- (1) Entry by University authorities into occupied rooms in residence halls, fraternity houses, or sorority houses on University-controlled property will be divided into three (3) categories: inspection, search, and emergency. Inspection is defined as the entry into an occupied room by University authorities in order to ascertain the health and safety conditions in the room, to check the physical condition of the room, to make repairs on facilities, or to perform cleaning and janitorial operations. Search is defined as the entry into an occupied room by on-campus authorities for the purpose of investigating suspected violations of campus regulations. An emergency situation exists when the delay necessary to obtain a search authorization constitutes an apparent danger to person, property, or the building itself.
 - (a) Inspection: Scheduled inspections by on-campus authorities with the exception of daily janitorial operations shall be preceded, if possible, by twenty-four (24) hours' notice to the residents. During the inspection there will be no search of drawers, closets, or personal belongings.
 - (b) Search: On-campus authorities will not enter a room for purposes of search without permission from the resident(s) or prior permission from the Dean of Students, the Vice Chancellor for Student Life, or a designee of Dean of Students or Vice Chancellor for Student Life, unless in compliance with federal or state law.
 - (c) Procedure for Search in Residence Hall Rooms: A request for permission to search may be made by the Hall Director, Assistant Hall Director, or their superiors when reasonable cause exists to suspect that a violation is occurring or has occurred. If permission to search is verbally authorized, it must be verified in writing to the occupant(s) of the facility searched by the hall staff members requesting the search. A copy of the authorization form is presented to the occupant(s) or left in the room if the occupant(s) is absent. The authorization form shall contain the following:
 - 1. Description of the place to be searched;
 - 2. Name of the person authorizing the search;
 - 3. Description of the item(s) sought; and
 - 4. Name of the person requesting the search authorization.

- (d) Procedure for Search in Fraternity or Sorority Houses: For purposes of search, the fraternity or sorority house will be divided into open and closed areas. The closed areas will be the dorm section and chapter room. University authorities may enter the open areas for purpose of inspection or search without permission, but there will be no search of personal belongings or closed areas of the house. University authorities will not enter the closed areas without the written permission of the Dean of Students, the Vice Chancellor for Student Life, or their designees, or in compliance with federal or state laws.
- (e) Resident Complaint: Should a resident believe that a University staff member has misused or abused his/her authority to inspect his/her room, the resident should file a complaint. He/she may prepare a written statement for review by the Office of Student Judicial Affairs. Or, if he/she prefers, the resident may state his/her complaint to an Area Coordinator or to a staff member of the Office of Student Judicial Affairs. The complaint will then be investigated, appropriate action will be taken, and the student will be informed in writing of the results of the investigation.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-04-03-.14 Administrative Procedures.

- (1) Residence Hall Regulations. Initially, violations of residence hall regulations will be handled by the Hall Director of the appropriate residence hall. Based upon the nature of the alleged violations and the past conduct of the accused, the Hall Director shall determine if the Hall Director Option is appropriate or refer the case to the Office of Student Judicial Affairs. If the Hall Director Option is deemed appropriate, it will be administered as follows:
 - (a) The accused student will be notified:
 1. That he/she is suspected of an alleged violation;
 2. Of circumstances of the violation;
 3. Of his/her rights under the judicial system;
 4. Of his/her rights to have his/her case heard by a student disciplinary board;
 5. That the Hall Director Option does not include imposition of a penalty; and
 6. That acceptance of the Hall Director Option constitutes an admission of guilt which may be introduced at any subsequent disciplinary hearing.
 - (b) If the student accepts the Hall Director Option he/she shall reply, in writing:
 1. Acknowledging his/her participation in the alleged violation;
 2. Waiving his/her right to a hearing before the Student Disciplinary Board; and
 3. Waiving a right to appeal the administrative decision.
 - (c) If the student rejects the Hall Director Option, his/her case will be forwarded to the Office of Student Judicial Affairs for action in accordance with violations of Standards of Conduct.
- (2) Standards of Conduct. When allegations of individual misconduct are referred to the Office of Student Judicial Affairs, the case will be adjudicated in accordance with procedures governing alleged violations of Standards of Conduct.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-04-03-.15 Emergency Powers. When, in the judgment of the Student Life Council of the University of Tennessee, conditions are such that it is impractical for the Student Disciplinary Boards to function, the Vice Chancellor for Student Life may suspend these procedural regulations and appoint an ad hoc committee to hear disciplinary matters. Any such ad hoc committee shall follow procedures that will insure the protection of the rights of the students involved, as stated herein. Any decisions by the ad hoc committee may be appealed to the Student Life Council.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-04-03-.16 Termination of Student Employees.

- (1) General:
 - (a) The provisions of this policy statement apply to all student employees except those on college work-study (see policy statement on termination of financial assistance).
 - (b) The purpose of this statement is to provide procedures for the termination of student employees.
- (2) Definitions:
 - (a) Student Employee. An employee who is classified as a "student employee" by the payroll section of the Office of the Treasurer, University of Tennessee.
 - (b) Contract Employee. A student employee who has a written contract with the University providing employment for a specified period of time.
 - (c) Non-Contract Employee. A student not employed for a specified period of time, whose employment is terminable at the will of the University irrespective of the quality of the performance of the student.
 - (d) Gross Misconduct. Theft or dishonesty, gross insubordination, destruction of University property, falsification of records, acts of moral turpitude, reporting to duty under the influence of intoxicants, using or selling illicit drugs on University premises, disorderly conduct, provoking a fight, and such other similar acts involving intolerable behavior by the employee.
 - (e) Grounds for Termination of Contract Employees. A contract employee may be terminated during the term of his or her employment for gross misconduct or inadequate job performance.
- (3) Notice:
 - (a) Non-Contract Employee. Whenever, in the opinion of the supervisor, a non-contract employee should be terminated, he/she shall be notified in writing setting forth the date of termination. If the reason for termination involves gross misconduct, the supervisor will, prior to termination, consult with the Vice Chancellor having administrative responsibility for the employee.
 - (b) Contract Employee. Whenever a supervisor is of the opinion that a contract employee should be terminated, he/she shall notify the appropriate Vice Chancellor. The Vice Chancellor shall notify the employee in writing of the reasons for his/her immediate termination or suspension, as appropriate, and of his/her right to request a hearing in accordance with the Administrative Procedures Act (T.C.A. § 4-5-301, et seq.) or as hereinafter provided.

- (4) Request for a Hearing:
- (a) Contract Employee. The request of a contract employee for a hearing together with his/her election of an Administrative Procedures Act hearing or one under this policy statement shall be forwarded in writing within five (5) business days of the notice of termination to the Vice Chancellor having administrative responsibility for the employee.
 - 1. If the employee elects a hearing under the provisions of the Administrative Procedures Act, the Vice Chancellor shall forward the file to the Chancellor for the appointment of a hearing officer.
 - 2. If the employee elects a hearing under this policy statement, the Vice Chancellor shall immediately thereafter establish a three member hearing committee.
 - (b) Non-Contract Employee. A non-contract employee may appeal his or her termination through the appropriate Dean/Director and Vice Chancellor to the Chancellor. No right to a hearing accompanies this right of appeal.
- (5) Responsibility of the Hearing Committee: It shall be the responsibility of the hearing committee to:
- (a) Conduct a hearing within ten (10) business days of the employee's request for said hearing;
 - (b) Make findings of fact and recommendations to the appropriate Vice Chancellor;
 - (c) Notify the employee within five (5) business days after the hearing of the committee's findings and recommendations; and
 - (d) Prepare and forward as soon as it is practicable a written report of the hearing to the appropriate Vice Chancellor.
- (6) Hearing Procedures: Employees who are entitled to a hearing as provided above are entitled to the following procedural rights:
- (a) A written account of the alleged misconduct or grounds for inadequate work performance;
 - (b) Reasonable notice of the time and place of the requested hearing;
 - (c) The assistance of a representative of his/her choice; if the employee requesting a hearing desires to be represented by an attorney, the appropriate Vice Chancellor must be notified by the employee at least three (3) days prior to the scheduled hearing;
 - (d) To present all pertinent evidence including witnesses; and
 - (e) To confront and cross-examine all adverse witnesses.
- (7) Decision and Appeal:
- (a) Hearing Committee. The appropriate Vice Chancellor shall within five (5) business days after receipt of findings and recommendations of the hearing committee notify the employee in writing of his/her decision and of the employee's right to appeal as provided by Article 5, Section 7 of the University By-Laws. An employee's appeal must be submitted in writing to the Chancellor within ten (10) business days after receipt of the decision.
 - (b) Administrative Procedures Act. The decision of the Chancellor is final in all cases heard under the contested case provision of the Administrative Procedures Act. Further appeal shall be in accordance with the provisions of that Act.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-04-03-.17 Termination of Financial Assistance.

- (1) General:
 - (a) Coverage: The provisions of this policy apply to student financial assistance except graduate assistantships and fellowships.
 - (b) Purpose: The purpose of this policy is to provide procedures for the termination of student financial assistance.
- (2) Definitions:
 - (a) Athletic Grant-in-aid: A contract for financial assistance which has been approved by the Advisory Committee on Student Financial Aid and awarded in accordance with the provisions of the Constitution and By-Laws of the Southeastern Conference and the National Collegiate Athletic Association.
 - (b) Financial Aid: Assistance awarded to a student in one (1) of the following categories: college work-study, scholarships (including graduate), loans, and grants.
- (3) Notice:
 - (a) Athletic Grant-in-Aid.
 1. Whenever the Athletic Department proposes that a student's financial assistance be terminated within the contract period, the student shall be notified in writing by the Director of Financial Aid of the proposed termination. The notice shall contain the reasons for termination, the student's right to a hearing in accordance with the contested case provision of the Administrative Procedures Act or in accordance with the provisions hereinafter provided.
 2. Whenever athletic financial aid is not to be renewed at the end of the contract period, the student shall be notified of his/her right to a hearing, in accordance with the requirements of the Constitution of the National Collegiate Athletic Association, before the Advisory Committee on Student Financial Aid.
 - (b) Financial Aid. Whenever financial aid is to be modified or terminated, the student shall be notified of the reasons for the proposed modification or termination and of the right to appeal by contacting the Director of Financial Aid. If the Director of Financial Aid is unable to amiably resolve the student's appeal, it shall proceed as follows:
 1. If the appeal concerns interpretation of policy, the student shall be afforded the right of further appeal through the Dean of Admissions and Records and the Vice Chancellor for Academic Affairs to the Chancellor.
 2. If the appeal concerns a disputed question of fact, the student shall be advised of the right to a hearing before the Advisory Committee on Student Financial Aid or in accordance with the Administrative Procedures Act.
- (4) Request for a Hearing: The request for a hearing together with his/her election of an Administrative Procedures hearing or one under this policy shall be made in writing to the Director of Financial Aid within five (5) calendar days of receipt of the notice of proposed termination.
 - (a) If the student elects a hearing under the provision of the Administrative Procedures Act, the Director of Financial Aid shall forward the file to the Provost for the appointment of a

hearing officer.

- (b) If the student elects a hearing under this policy statement, the Director of Financial Aid shall immediately forward the request for a hearing together with a copy of the complete file to the Chairperson of the Advisory Committee on Student Financial Aid.
- (5) Hearing Committee. At the beginning of each semester, the Chairperson of the Advisory Committee on Student Financial Aid shall appoint a hearing subcommittee of not less than three (3) persons who shall be charged with the responsibility of hearing all appeals during that semester.
- (6) Responsibility of the Hearing Committee: It shall be the responsibility of the hearing committee to:
 - (a) Conduct a hearing within ten (10) business days of the student's request for said hearing. When the University is not in session, the hearing shall be held as soon as reasonably possible.
 - (b) Make findings of fact and a determination as to the termination of financial aid.
 - (c) Notify the student as soon as possible of the committee's decision.
 - (d) Notify the student of his/her right to appeal, as indicated below.
- (7) Hearing Procedures: Students who are entitled to a hearing as above provided are entitled to the following procedural rights:
 - (a) A written notice of the alleged grounds for termination of financial assistance.
 - (b) To reasonable notice of the time and place of the requested hearing.
 - (c) The assistance of a representative of his/her choice. If the student requesting a hearing desires to be represented by an attorney, the University must be notified by the student at least three (3) days prior to the scheduled hearing.
 - (d) To present the testimony of witnesses and other evidence.
 - (e) To confront and cross-examine all adverse witnesses.
- (8) Appeal:
 - (a) Hearing Committee Decision. The student may appeal the decision of the hearing committee in accordance with Article V, Section 7 of the University By-Laws. An appeal must be submitted in writing to the Chancellor within five (5) business days.
 - (b) Administrative Procedures Act. The decision of the Chancellor is final in all cases heard under the contested case provision of the Administrative Procedures Act. Further appeal shall be in accordance with the provisions of that Act.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Governor Bill Haslam				x	
Commissioner Julius Johnson				x	

Commissioner Kevin Huffman				x	
Dr. Joe DiPietro	x				
Dr. Richard D. Rhoda			Non-voting		
Charles C. Anderson, Jr.	x				
Ann Holt Blackburn	x				
Dr. J.A.M. "Toby" Boulet	x				
William Y. Carroll	x				
George E. Cates	x				
Spruell Driver, Jr.	x				
Teresa K. Fowler			Non-voting		
John N. Foy	x				
Crawford Gallimore	x				
Monice Moore Hagler	x				
James E. Hall	x				
Douglas A. Horne	x				
Andrea J. Loughry	x				
James L. Murphy, III	x				
Karl A. Schledwitz	x				
Carey Smith	x				
Don Stansberry	x				
Robert S. Talbott	x				
Betty Ann Tanner	x				
Charles E. Wharton	x				
Dr. Janet M. Wilbert			Non-voting		

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the University of Tennessee Board of Trustees on June 23, 2011, and is in compliance with the provisions of TCA 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

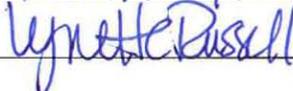
Date: March 16, 2012

Signature: 

Name of Officer: Matthew Scoggins

Title of Officer: Assistant General Counsel

Subscribed and sworn to before me on: March 16, 2012

Notary Public Signature: 

RULES
OF
THE UNIVERSITY OF TENNESSEE

CHAPTER 1720-4-3
STUDENT RIGHTS AND RESPONSIBILITIES

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~~1720-4-3-.01 INTRODUCTION:~~

- ~~(1) The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the academic community. This University has a duty to develop policies and procedures which provide a safeguard to this freedom. Such policies and procedures are developed at this institution with the participation of all members of the academic community.~~
- ~~(2) By registering in the University, the student neither loses the rights nor escapes the duties of a citizen. Each student should conduct his/her personal life in the context of mutual regard for the rights and privileges of others. Therefore, it is expected that students will demonstrate respect for the law and for the necessity of orderly conduct in the affairs of the community.~~
- ~~(3) Students are responsible for being fully acquainted with the University catalog, handbook, and other regulations relating to students and for complying with them in the interest of an orderly and productive community. Failure or refusal to comply with the rules and policies established by the University may subject the offender to disciplinary action up to and including permanent dismissal from the University.~~

~~Authority: Public Acts of Tennessee, 1839-1840, chapter 98, Section 5 and Public Acts of Tennessee, 1807, chapter 64. Administrative History: Original rule filed September 15, 1976; effective October 15, 1976. Amendment filed March 29, 1978; effective June 14, 1978. Repealed by Public Chapter 575, effective July 1, 1986. New rule filed May 27, 1986; effective August 12, 1986. Amendment filed October 31, 1990; effective January 29, 1991. Amendment filed August 31, 1995; effective December 30, 1995.~~

~~1720-4-3-.02 DISCIPLINARY REGULATIONS AND PROCEDURES. The policies and procedures described below have been established to insure the rights and privileges of all members of the University community, to communicate the expectations of the community to its members, and to provide a basis for orderly conduct of the affairs of the University.~~

~~Authority: Public Acts of Tennessee, 1839-1840, chapter 98, Section 5 and Public Acts of Tennessee, 1807, chapter 64. Administrative History: Original rule filed May 27, 1986; effective August 12, 1986. Amendment filed August 31, 1995; effective December 30, 1995.~~

~~1720-4-3-.03 STANDARDS OF CONDUCT.~~

- (1) ~~Exclusion from the University or any lesser penalty may be the result from any of the following misconduct:~~
- (a) ~~Academic cheating or plagiarism;~~
 - (b) ~~Furnishing false information to the University with the intent to deceive;~~
 - (c) ~~Knowingly giving false information or testimony during the investigation or hearing of a disciplinary matter;~~
 - (d) ~~Violation of the terms of probation;~~
 - (e) ~~Vandalism, malicious destruction, damage, or misuse of private or public property, including library material;~~
 - (f) ~~Forgery, alteration, destruction or misuse of University documents, records or identification;~~
 - (g) ~~Obstruction or disruption of teaching, research, administration, disciplinary proceedings, or other University activities, including public service functions, or of any authorized activities on University premises;~~
 - (h) ~~Physical abuse of any person, or other conduct which threatens or endangers the health or safety of any person, whether such conduct occurs on or off University property. In no event shall this rule be construed to prevent speech protected by the First Amendment to the United States Constitution.~~
 - (i) ~~Theft, wrongful appropriation (i.e., theft with intent to temporarily deprive the owner of possession), unauthorized possession, or sale or damage to property of the University or of any organization affiliated with the University or of another member of the University community (i.e., faculty, staff, student, or campus visitor);~~
 - (j) ~~Unauthorized use of or entry to University facilities and/or unauthorized possession of keys to University facilities;~~
 - (k) ~~Unlawful use, manufacture, possession, distribution or dispensing of drugs or alcohol on University-owned or controlled property or during University activities.~~
 - (l) ~~Reserved.~~
 - (m) ~~Possession, while on University-owned or controlled property or at University-sponsored or supervised activities, of any weapon such as, but not limited to, rifles, shotguns, ammunition, handguns, and air guns, including explosives, such as firecrackers unless authorized in writing by the Chief of Police;~~
 - (n) ~~Disorderly conduct or lewd, indecent, or obscene conduct on University-owned or controlled property or at University-sponsored or supervised functions;~~
 - (o) ~~Failure to pay promptly, after notice, all University bills, accounts, and other University financial obligations;~~
 - (p) ~~Participation of students in group activities on or adjacent to the campus which causes damages to public or private property, causes injuries to persons, or interferes with the orderly functioning of the University or the normal flow of traffic;~~

(Rule 1720-4-3-.03, continued)

- (q) ~~Use, possession, or being under the influence of alcoholic beverages on University-owned or -controlled property;~~
- (r) ~~Violation of properly constituted rules and regulations governing the use of motor vehicles on University-owned or -controlled property;~~
- (s) ~~Refusal to respond to a request to report to a University administrative office;~~
- (t) ~~Failure to comply with directives of the University officials acting in the performance of their duty;~~
- (u) ~~Violation of written University policies and regulations as stipulated herein or as promulgated and announced by authorized personnel;~~
- (v) ~~Inciting other students to violate written University policies and regulations as promulgated and announced by authorized personnel;~~
- (w) ~~Falsely reporting the presence of an unlawful explosive or incendiary device with the intent to mislead, deceive, or disrupt the operation of the University or a scheduled event sponsored by the University;~~
- (x) ~~Any act of arson, falsely reporting a fire or other emergency, falsely setting off a fire alarm, tampering with or removing from its proper location fire extinguishers, hoses, or any other fire emergency equipment except when done with real need for such equipment;~~
- (y) ~~Willful failure to appear at a judicial board hearing following proper notification to appear either as a party or as a witness;~~
- (z) ~~An attempt to commit or to be accessory to the commission of any act in violation of other Standards of Conduct;~~
- (aa) ~~Commission of an act or an attempt to commit an act on University property or involving members of the University community (i.e., faculty, staff, student, or campus visitor) that would be in violation of state or federal law;~~
- (bb) ~~Unauthorized use or misuse of the University's computing facilities to include: logging on an account without the knowledge and permission of the owner; changing, deleting or adding to the programs, files and/or data without authorization of the owner; theft of program data or machine resources; attempts to thwart security of the computer system; attempts to disrupt the normal operations of the computer system, including hardware and software;~~
- (cc) ~~Violation of local, state, or federal law, whether on or off campus, when it appears that the student has acted in a way which adversely affects or seriously interferes with the University's normal educational function, or which injures or endangers the welfare of any member of the University community. Such violation includes, but is not limited to, violation of state or federal drug laws, commission of or attempt or threat to commit rape, murder, felonious assault, arson or any other felonious crime against person or property.~~
- (dd) ~~Participation of students in hazing activities. "Hazing" means any intentional or reckless act, on or off University property, by one student, acting alone or with others, which is directed against any other student, that endangers the mental or physical health or safety of that student, or which induces or coerces a student to endanger his or her mental or physical health or safety, and includes treatment of a violent, abusive, shameful;~~

(Rule 1720-4-3-.03, continued)

~~insulting, or humiliating nature. Such action is prohibited when connected with initiation into or affiliation with an organization and does not include participation in customary athletic events or similar competition.~~

~~Authority: T.C.A. §49-7-123. Administrative History: Original rule filed May 27, 1986; effective August 12, 1986. Amendment filed March 22, 1990; effective June 26, 1990. Amendment filed October 31, 1990; effective January 29, 1991. Amendment filed November 20, 1990; effective February 27, 1991. Amendment filed September 3, 1992; effective December 29, 1992. Amendment filed August 31, 1995; effective December 30, 1995. Amendment filed June 18, 1996; effective October 28, 1996.~~

~~1720-4-3-.04 FUNDAMENTAL RIGHTS OF THE ACCUSED:~~

- (1) ~~Under The University of Tennessee Judicial System, persons accused of violations of existing rules and/or regulations of the residence halls, food services, the Interfraternity Council, the Panhellenic Council, and The University of Tennessee are entitled to the following rights:~~
- (a) ~~Written notice of charge(s), account of the alleged misconduct, witnesses, and notice of the scheduled hearing delivered 72 hours before the hearing. The student may request additional time by showing good cause.~~
 - (b) ~~The right to a public hearing. A public hearing can involve only a limited number of spectators and appropriate control measures will be established by the Dean of Students. If there is difficulty with crowd control, the hearing board chairperson can designate those parties to be present.~~
 - (c) ~~Notice of the maximum allowable penalty (i.e., permanent dismissal).~~
 - (d) ~~The assistance of the counsel of his/her choice.~~
 - (e) ~~Testify or remain silent at his/her option.~~
 - (f) ~~Present witnesses.~~
 - (g) ~~The presumption of innocence. The burden of proof rests with the University, such that the University must prove the student's guilt by a preponderance of the evidence.~~
 - (h) ~~A written decision specifying the rule violated, penalty assessed, and right of appeal.~~
 - (i) ~~Challenge the seating of any board member for good cause. The dismissal of a challenged hearing board member shall be at the discretion of the hearing board chairperson. If the chairperson is challenged, he/she may be excused at the discretion of the majority of the hearing board.~~
 - (j) ~~Have his/her case heard only on the misconduct specified in the written notice.~~
 - (k) ~~Challenge the admissibility of evidence.~~
 - (l) ~~Remain silent or confront or cross-examine all available adverse witnesses.~~
 - (m) ~~Appeal to the next higher board.~~

~~Authority: Public Acts of Tennessee, 1839-1840, chapter 98, Section 5 and Public Acts of Tennessee, 1807, chapter 64. Administrative History: Original rule filed May 27, 1986; effective August 12, 1986. Amendment filed March 22, 1990; effective June 26, 1990. Amendment filed October 31, 1990; effective January 29, 1991. Amendment filed August 31, 1995; effective December 30, 1995.~~

1720-4-3-.05 INSPECTION AND SEARCH POLICY.

- (1) ~~Entry by University authorities into occupied rooms in residence halls will be divided into three categories; inspection, search, and emergency. Inspection is defined as the entry into an occupied room by University authorities in order to ascertain the health and safety conditions in the room, to check the physical condition of the room, to make repairs on facilities, or to perform cleaning and janitorial operations. Search is defined as the entry into an occupied room by on-campus authorities for the purpose of investigating suspected violations of campus regulations and/or city, state or federal law. An emergency situation exists when the delay necessary to obtain a search authorization constitutes a danger to person, property, or the building itself.~~
- (a) ~~Inspection: Scheduled inspections by on-campus authorities with the exception of daily janitorial operations shall be preceded, if possible, by twenty-four hours notice to the residents. During the inspection there will be no search of drawers, closets, or personal belongings. This policy is applicable for residence halls and fraternity houses.~~
- (b) ~~Search: On-campus authorities will not enter a room for purposes of search without permission from the resident(s) or prior permission from (1) Dean of Students, (2) the Vice Provost for Student Affairs, or (3) Designee of Dean of Students or Vice Provost for Student Affairs, unless in compliance with federal or state law.~~
- (c) ~~Procedure for Search in Residence Hall Rooms: A request for permission to search may be made by the Hall Director, Assistant Hall Director, or their superiors when reasonable cause exists to suspect that a violation is occurring or has occurred. If permission to search is verbally authorized, it must be verified in writing to the occupant(s) of the facility searched by the hall staff members requesting the search. A copy of the authorization form is presented to the occupant(s) or left in the room if the occupant(s) is absent. The authorization form shall contain the following:~~
- ~~1. Description of the place to be searched;~~
 - ~~2. Name of the person authorizing the search;~~
 - ~~3. Description of the item(s) sought; and~~
 - ~~4. Name of the person requesting the search authorization.~~
- (d) ~~Procedure for Search in Fraternity Houses: For purposes of search, the fraternity house will be divided into open and closed areas. The closed areas will be the dorm section and chapter room. University authorities may enter the open areas for purpose of inspection or search without permission, but there will be no search of personal belongings or closed areas of the house. University authorities will not enter the closed areas without the written permission of the~~
- ~~1. The Dean of Students;~~
 - ~~2. The Vice Provost for Student Affairs, or~~
 - ~~3. Their designees, or in compliance with federal or state laws.~~
- (e) ~~Resident Complaint: should a resident believe that a University staff member has misused or abused his/her authority to inspect his/her room, the resident should file a complaint. He/she may prepare a written statement for review by the Judicial Advisory Board. The statement should be delivered to the Office of the Dean of Students. Or, if he/she prefers, the resident may state his/her complaint to an Area Coordinator or to a staff member of the Dean of Students Office. The complaint will then be investigated, appropriate action~~

(Rule 1720-4-3-.05, continued)

~~will be taken, and the student will be informed in writing of the results of the investigation.~~

~~Authority: T.C.A. §49-9-209(e). Administrative History: Original rule filed May 27, 1986; effective August 12, 1986. Amendment filed March 22, 1990; effective June 26, 1990. Amendment filed October 31, 1990; effective January 29, 1991. Amendment filed August 31, 1995; effective December 30, 1995. Amendment filed November 17, 2000; effective March 30, 2001.~~

~~1720-4-3-.06 REQUESTS TO REPORT TO AN ADMINISTRATIVE OFFICE. Such requests, including a summons to any judicial hearing, must be promptly carried out. When the request to report at a specific date conflicts with a student's schedule, notification of class absence for such person will be issued by the Dean of Students or his/her designee.~~

~~Authority: Public Acts of Tennessee, 1839-1840, chapter 98, Section 5 and Public Acts of Tennessee, 1807, chapter 64. Administrative History: Original rule filed May 27, 1986; effective August 12, 1986. Amendment filed August 31, 1995; effective December 30, 1995.~~

~~1720-4-3-.07 ADMINISTRATIVE PROCEDURES:~~

- (1) ~~Residence Hall Regulations. Initially, violations of residence hall regulations will be handled by the Hall Director of the appropriate residence hall. Based upon the nature of the alleged violations and the past conduct of the accused, the Hall Director shall determine if the Hall Director Option is appropriate or refer the case to the Dean of Students. If the Hall Director Option is deemed appropriate, it will be administered as follows:~~
- (a) ~~The accused student will be notified in writing;~~
 - 1. ~~That he/she is suspected of an alleged violation;~~
 - 2. ~~Of circumstances of the violation;~~
 - 3. ~~Of his/her rights under the judicial system;~~
 - 4. ~~Of his/her rights to have his/her case heard by a student disciplinary board;~~
 - 5. ~~That the Hall Director Option does not include imposition of a penalty; and~~
 - 6. ~~That acceptance of the Hall Director Option constitutes an admission of guilt which may be introduced at any subsequent disciplinary hearing.~~
 - (b) ~~If the student accepts the Hall Director Option he/she shall reply, in writing:~~
 - 1. ~~Acknowledging his/her participation in the alleged offense;~~
 - 2. ~~Waiving his/her right to a hearing before the Student Disciplinary Board; and~~
 - 3. ~~Waiving a right to appeal the administrative decision.~~
 - (c) ~~If the student requests that his/her case be heard by a Student Disciplinary Board, the case shall be referred to the Dean of Students for action in accordance with violations of Standards of Conduct.~~
- (2) ~~Standards of Conduct. When allegations of individual misconduct are referred to the Dean of Students, the student will be scheduled for a conference. In the event that the student wishes to waive his/her right to a hearing before the Student Disciplinary Board and have his/her case~~

(Rule 1720-4-3-.07, continued)

~~determined administratively, he/she may request the Dean of Students to assume jurisdiction. If the Dean accepts jurisdiction, he/she may, after determining that a violation was committed, impose an appropriate penalty. Once a student has been informed of his/her rights and has voluntarily waived, in writing, his/her right to a hearing before the board, the action of the Dean of Students shall be final, except in cases of indefinite suspension or permanent dismissal which may be appealed to the Student Affairs Council. If the matter is not resolved by the conference, the Dean of Students shall refer it to an appropriate board.~~

~~*Authority: Public Acts of Tennessee, 1839-1840, chapter 98, Section 5 and Public Acts of Tennessee, 1807, chapter 64. Administrative History: Original rule filed May 27, 1986; effective August 12, 1986. Amendment filed March 22, 1990; effective June 26, 1990. Amendment filed October 31, 1990; effective January 29, 1991. Amendment filed August 31, 1995; effective December 30, 1995.*~~

~~1720-4-3-.08 THE HEARING BOARDS:~~

- (1) ~~Interfraternity Council Judicial Board:~~
 - (a) ~~This board has primary jurisdiction in cases in which a fraternity, fraternities, or fraternity members having allegedly violated the IFC rules, Constitution, or By-Laws or University Standards of Conduct. Following a hearing, the board shall determine guilt or innocence and decide upon an appropriate penalty. Appeals of these decisions are to the Student Tribunal and must be made in writing within seven (7) calendar days of notice of decision.~~
 - (b) ~~An individual(s) alleged to have violated a University Standard of Conduct will be referred to the Dean of Students for appropriate action. The Dean of Students, who will decide all jurisdictional questions, may assign jurisdiction over cases of individual discipline to the IFC Judicial Board. In such cases the board will operate under the procedures established for the Student Disciplinary Boards. Appeals from these decisions are to Student Disciplinary Boards and must be filed with the Dean of Students in accordance with the requirements of "Appeal and Scope of Review" (below).~~
 - (c) ~~Students serving as members of the Interfraternity Council Judicial Board must be active members of fraternities, in good standing during their terms of office. Guidelines for appointing, replacing and removing board members will be suggested by the Interfraternity Council to the Dean of Students for approval. Members of this board will be required to participate in training seminars scheduled by the Dean of Students.~~
- (2) ~~Panhellenic Judicial Board: This board has primary jurisdiction in cases in which a sorority, sororities, or sorority members have allegedly violated the Panhellenic rules, Constitution, or By-Laws, or University Standards of Conduct. Appeals of these decisions are to the Student Tribunal and must be made in writing within seven (7) calendar days of notice of decision. Additionally, the Dean of Students may assign jurisdiction over cases of individual discipline to the Panhellenic Judicial Board. In such cases the board will operate under the procedures established for the Student Disciplinary Boards. Appeals of such decisions are to Student Disciplinary Boards and must be filed with the Dean of Students in accordance with the requirements of "Appeal and Scope of Review" (below).~~
- (3) ~~Student Publications Board: If, in the opinion of either the Manager of Student Publications or the appropriate student editor, a student staff member of a University publication has violated a standard in the Code of Ethics of the American Society of Newspaper Editors or other University regulation, and by doing so has compromised his/her effectiveness in the position he/she holds, that student staff member may be temporarily suspended, for a period not to exceed ten (10) calendar days without financial penalty, until the Student Publications Board meets, considers, and~~

(Rule 1720-4-3-.08, continued)

~~adjudicates the alleged infraction. A finding by the Student Publications Board may be appealed by either party through the appropriate administrative channels.~~

(4) ~~Student Disciplinary boards:~~

(a) ~~Jurisdiction. The primary hearing boards are the Student Disciplinary Boards, each comprised of five student members. The number of boards required will be determined by the Dean of Students. These boards share a pool of 15 alternate members to be used as needed during the year. The Student Disciplinary Boards have the following responsibilities:~~

- ~~1. To hear allegations of student misconduct involving violations of the Standards of Conduct or residence halls or food services rules and regulations referred to the board for original jurisdiction by the Dean of Students.~~
- ~~2. To determine the innocence or guilt of the student charged and establish an appropriate penalty.~~
- ~~3. To hear individual discipline cases appealed from the Interfraternity Council Judicial Board and to make decisions appropriate with appellate responsibility.~~
- ~~4. Appeals from the Student Disciplinary Boards may be made to the Student Tribunal or Student Affairs Council in accordance with the procedure provided in "Appeal and Scope of Review" (below).~~

(b) ~~Membership: During Spring Term, and at other times when vacancies arise, the Dean of Students shall call for applications for membership on the Student Disciplinary Boards by placing an appropriate announcement in The Daily Beacon. Members or alternates selected for membership must be sophomores or above. Undergraduate and law students must have at least a 2.0 overall grade point average. Graduate students must have at least a 3.0 grade point average in all graduate work attempted. Members and alternates of the Student Disciplinary Boards shall be screened and selected by a committee composed of the Student Discipline Specialist, a chairperson of one of the Student Disciplinary Boards, and the Dean of Students, or their representatives. No person may serve more than one academic year (not including summer school) unless he/she has been reappointed to the board by the screening committee (screening is not required for reappointment). A member may be removed from office, for cause, by the Student Affairs Council following notice and a hearing. At the first meeting in the fall, or after a vacancy in the office, the Student Discipline Specialist shall appoint a chairperson for each board. Unless reappointed, the chairperson's term ends at the first meeting in the fall. In the absence of the chairperson, one of the members shall assume the duties of the chairperson and shall conduct the hearing and rule on all motions, subject to objection from other board members.~~

(c) ~~Hearing Procedures:~~

- ~~1. A quorum of three board members must be present in order to hear a case. A majority vote of the members present is required for all decisions of the board.~~
- ~~2. Any board member who cannot hear the evidence fairly and objectively for any reason is obligated to dismiss himself/herself from the case.~~
- ~~3. The chairperson shall ascertain that the accused has been advised of his/her rights and shall then read the statement of charges. A student who fails to appear before the Student Disciplinary Board in accordance with proper notification~~

(Rule 1720-4-3-.08, continued)

- shall be deemed to have waived his/her rights to be present during the board's deliberation, to know the evidence against him/her, to present evidence in his/her own behalf, and to exercise reasonable cross-examination of witnesses appearing against him/her. This waiver shall become effective if the student fails to appear at the designated time and place of the hearing unless prior to the time set for the hearing, the student communicates in writing to the Dean of Students good cause for granting a continuance of a scheduled hearing.
4. The accused shall enter a plea of guilty or not guilty. If a guilty plea is entered, he/she shall be advised of the maximum penalty.
 5. The chairperson is in charge of maintaining an orderly discussion throughout the hearing. Proceedings should be conducted with fitting dignity and should reflect the importance and seriousness of the hearings. Any person who fails to follow the instructions of the chairperson, after a warning, shall be referred to the Dean of Students for appropriate disciplinary action.
 6. In the event that the accused pleads guilty, the board shall review the circumstances of the case and make appropriate decisions or recommendations regarding the penalty.
 7. The Dean of Students or his/her designee shall present such evidence as he/she has at the hearing, including any witnesses. He/she shall not present written statements as evidence, unless circumstances make such presentation necessary and unavoidable. Under similar restrictions the accused may present written statements in his/her defense. Unsigned statements shall not be admitted as evidence. Hearsay evidence is, however, admissible.
 8. After the presentation of evidence by the Dean of Students, the accused shall be allowed to present all relevant evidence. If a not guilty plea has been entered, evidence in mitigation of the alleged offense shall be presented only after the board has determined the issue of innocence or guilt.
 9. During board deliberations all persons except the board members shall be excused from the hearing room. All matters upon which the decision may be based solely upon the evidence presented. No mention will be made during the hearing on innocence or guilt of the student's previous disciplinary record, unless appropriate as rebuttal to character evidence introduced by the accused.
 10. After a determination of guilt by the board, the previous disciplinary record of the accused, if any, shall be given to the board together with the recommendation of the Dean of Students as to an appropriate penalty.
 11. After the Board determines the penalty, the accused shall be advised in writing of its decision.
 12. The results of the board's decision shall be kept on official University judicial forms, and such a record will be considered sufficient. If a verbatim record of the hearing is prepared, it shall be retained in the custody of the Dean of Students and considered a confidential disciplinary record. If necessary for adjudication of an appeal, the Dean of Students may prepare a summary, certified by the chairperson of the Student Disciplinary Board, or that portion of the record that has been designated by the Tribunal or Student Affairs Council as material to the appeal.

(Rule 1720-4-3-.08, continued)

13. ~~A board member shall not discuss cases prior to or after the hearing. The information received by members of a judicial board during a case is considered strictly confidential. Violations of this confidence by any board member could result in disciplinary action.~~

(5) Student Tribunal

- (a) ~~Appellate Jurisdiction: The Student Tribunal consists of seven members. It has appellate jurisdiction to review decisions of the Student Disciplinary Boards, the Panhellenic Judicial Board, and decisions of the Interfraternity Council Judicial Board in those cases concerning alleged violations of the IFC rules, Constitution, or By-Laws or violations of University Standards of Conduct by a Fraternity. Any other jurisdiction may be assigned by the Dean of Students. The forms to be used on appeal and other procedural requirements shall be established by Tribunal By-Laws. The Tribunal By-Laws must be approved by the Judicial Advisory Board and the Dean of Students.~~
- (b) ~~Original Jurisdiction: The Student Tribunal has original jurisdiction in cases of conflicts between student organizations or conflicts between individuals and student organizations; cases which involve interpretation of the Student Government Constitution, cases of challenge to results of Student Government elections, and discipline cases involving charges of dishonesty in these elections. Procedures for hearing are set forth in the Tribunal By-Laws.~~
- (c) ~~Membership: During Spring Term, and at other times when vacancies arise, the Dean of Students shall call for applications for membership by placing an appropriate announcement in The Daily Beacon. Members or alternates selected must be juniors or above. The minimum overall grade point average required is 2.0 for undergraduates and law students and 3.0 for graduate students. Members and alternates will be selected by a screening committee composed of the Student Discipline Specialist, the Chairperson of the Tribunal, and the Director of Student Judicial Affairs, or their representatives. Because of the basic appellate name of this board, special consideration will be given to an applicant with a legal background or previous experience on a Student Disciplinary Board. No person may serve more than one academic year (not including summer school) unless he/she has been reappointed to the board by the screening committee (screening is not required for reappointment).~~
- (6) ~~Student Affairs Council. The Student Affairs Council is the hearing board for appeals from decisions of the Academic Review Boards and the Student Tribunal and for appeals filed by the Dean of Students. It is the final decision-making board in the judicial system. A majority of the Student Affairs Council shall constitute a quorum for the conducting of all business.~~

~~The council is composed of the following members:~~

- (a) ~~The Vice-Provost for Student Affairs, who serves as chairperson;~~
- (b) ~~All the Deans of The University of Tennessee, Knoxville;~~
- (c) ~~Three (3) faculty members, associate professor or above, appointed by the Faculty Senate (the initial appointments shall be staggered in terms so that one new faculty member is appointed each year after the initial appointment); and~~
- (d) ~~Eight (8) student members (one of whom shall be a graduate student), appointed by the Student Government Association, for a period of one year. The council shall periodically review the status of student conduct and the judicial system and make appropriate recommendations.~~

(Rule 1720-4-3-.08, continued)

Authority: ~~T.C.A. §49-9-209(e). Administrative History: Original rule filed May 27, 1986; effective August 12, 1986. Amendment filed March 22, 1990; effective June 26, 1990. Amendment filed October 31, 1990; effective January 29, 1991. Amendment filed August 31, 1995; effective December 30, 1995. Amendment filed November 17, 2000; effective March 30, 2001.~~

~~1720-4-3-.09 PENALTIES. The penalties which may be assessed and brief explanatory notes are as follows:~~

- (1) ~~Loss of Privilege. These penalties are intended to serve as reminders of operating regulations, and are for specific periods of time. Such penalties may include loss of scholarship, stipend, right to participate in certain extracurricular activities, use of facilities, etc.~~
- (2) ~~Disciplinary Reprimand. Disciplinary reprimands are used for minor infractions. A reprimand indicates that further violations will result in more severe disciplinary actions. Reprimands may be issued to a student orally or in written form.~~
- (3) ~~Disciplinary Probation. Disciplinary Probation means that a student is permitted to remain in the University on a probationary status. Conviction of a similar violation during probation will result in suspension. Other conditions of probation are specific to the individual case and may include loss of eligibility to serve as a student organization officer or to participate in specified student activities. The Dean of Students and/or the Director of the Office of Probation Services, who is charged with the responsibility of supervising those on probation, may also specify the terms of probation.~~
- (4) ~~Suspension for a Specific Period of Time. Suspension for a specific period of time is used in cases of serious misconduct or repeat offenders and means that the student is withdrawn from the University and is not eligible to apply for readmission for the designated period of time. Usually, the period of designated suspension does not exceed one year.~~
- (5) ~~Indefinite Suspension. Indefinite suspension means that no specific date has been recommended by the board for readmission of the suspended student. This penalty is used when the prognosis of rehabilitation is uncertain and the board desires that some additional evidence of rehabilitation be presented by the student before he/she is readmitted to the University. Applications for readmission shall be considered by the Student Affairs Council.~~
- (6) ~~Permanent Dismissal. Permanent dismissal means that a student is permanently barred from matriculating as a student on the Knoxville campus. This penalty is used when the violation of one or more of the institution's Standards of Conduct is deemed so serious as to warrant total and permanent disassociation from the University community without the possibility of re-enrollment; or when, by his/her repeated violation of the institution's Standards of Conduct, a student exhibits blatant disregard for the health and safety of other members of the University community or the University's right to establish rules of conduct. In cases where a board desires to impose permanent dismissal or suspension, it may be so recommended to the Dean of Students. In the event a recommendation for permanent dismissal or suspension is not approved by the Dean of Students, he may substitute any less severe penalty; if probation is substituted, it may be for a greater period than the period specified for suspension. The Dean of Students shall notify the Student Discipline Specialist when a recommendation for permanent dismissal or suspension is not approved.~~

Authority: ~~T.C.A. §49-9-209(e). Administrative History: Original rule filed May 27, 1986; effective August 12, 1986. Amendment filed March 22, 1990; effective June 26, 1990. Amendment filed October 31, 1990; effective January 29, 1991. Amendment filed August 31, 1995; effective December 30, 1995. Amendment filed November 17, 2000; effective March 30, 2001.~~

~~1720-4-3-10 APPEAL AND SCOPE OF REVIEW.~~

- (1) ~~Appeal. The disciplinary action of any board may be appealed to the next higher board.~~
- (a) ~~In all cases the request for appeal must be submitted in writing to the Dean of Students within seven (7) calendar days of written notice of the board decision. If the seventh day falls on a weekend or holiday, the time is extended to the next regular workday.~~
 - (b) ~~If written briefs are submitted or if required by the appellate board's bylaws, they must be submitted within the same time allowed for filing a request for appeal. Under normal circumstances appeals will be heard within fourteen (14) days after they have been filed.~~
 - (c) ~~All appeals (except those to the Student Affairs Council, which may elect to hear the case de novo) must be taken upon the record made before the original board.~~
 - (d) ~~Pending the outcome of an appeal, the penalty specified in the original decision shall not be imposed.~~
- (2) ~~Appellate Jurisdiction. The appellate jurisdiction of each judicial board is set forth as follows:~~
- (a) ~~Student Disciplinary Board. Decisions of the Interfraternity Council Judicial Board, involving individual discipline.~~
 - (b) ~~Student Tribunal. Decisions of the Student Disciplinary Boards, the Panhellenic Judicial Board, and decisions of the Interfraternity Council Judicial Board in cases of alleged violation of the IFC rules, Constitution, or By-Laws or violations of University Standards of Conduct by a Fraternity. If a student appeals a professorial penalty for alleged academic dishonesty to an Academic Review Board, and the board supports the instructor, the student may make an appeal based on procedural due process to Student Tribunal.~~
 - (c) ~~Student Affairs Council. Decisions of Student Tribunal, Decisions of Academic Review Boards, except a Board's decision to support the instructor in a student's appeal of a professorial penalty. Appeals by the Dean of Students of any board's decision.~~
 - (d) ~~The decision of any board or administrative officer of The University of Tennessee is subject to review by the Provost and the President.~~
- (3) ~~Scope of Review. The appellate board will review the request for appeal together with any written briefs or other supporting documents to determine if the appeal presents a substantial question within the scope of review. The scope of review shall be limited to the following:~~
- (a) ~~Appropriateness of the Penalty. In cases appealing the appropriateness of the penalty, the appeal board shall uphold the penalty unless the penalty is shown to be "clearly unreasonable" (i.e., "that which has been clearly and fully proven to have no sound basis or justification in reason").~~
 - (b) ~~New Evidence. In cases appealed on grounds of new evidence, the moving party must show that such evidence is material to the decision of the board on the issue of innocence or guilt, and that said evidence could not have been discovered by due diligence prior to the original hearing.~~
 - (c) ~~Due Process. In cases appealed on the grounds of denial of due process, the moving party must show that the adjudicatory process of the initial hearing was not conducted in conformity with properly prescribed procedures. In this regard, the moving party must also show that the alleged discrepancy was materially adverse to the moving party's~~

(Rule 1720-4-3-.10, continued)

~~interest. Nothing contained in the foregoing shall be construed as limiting the right of the Dean of Students to request the Student Affairs Council to review the decision of any judicial board.~~

~~Authority: T.C.A. §49-9-209(e). Administrative History: Original rule filed May 27, 1986; effective August 12, 1986. Amendment filed March 22, 1990; effective June 26, 1990. Amendment filed October 31, 1990; effective January 29, 1991. Amendment filed August 31, 1995; effective December 30, 1995. Amendment filed November 17, 2000; effective March 30, 2001.~~

1720-4-3-.11 HONOR STATEMENT:

- (1) ~~An essential feature of The University of Tennessee, Knoxville is a commitment to maintaining an atmosphere of intellectual integrity and academic honesty. As a student of the University, I pledge that I will neither knowingly give nor receive any inappropriate assistance in academic work, thus affirming my own personal commitment to honor and integrity.~~
- (2) ~~A thorough understanding of the Honor Statement is essential to the success of the honor system. To facilitate implementation of the statement, the following avenues will be utilized:~~
 - (3) ~~Implementation~~
 - (a) ~~The Honor Statement, with its attendant pledge, will appear on applications for admission (undergraduate and graduate); and applicants to the University will be required to acknowledge their affirmation by signing the document in a designated location.~~
 - (b) ~~Information regarding the Honor Statement will be included in the catalogs (undergraduate and graduate), Hilltopics: The Student Handbook, and in a brochure specifically addressing the Honor Statement at UT.~~
 - (c) ~~The Honor Statement will be discussed during freshman, transfer, graduate student, and international student orientation programs.~~
 - (d) ~~A thorough discussion of the Honor Statement in freshmen English is encouraged.~~
 - (e) ~~Implementation methods and alternatives will be discussed during faculty orientation programs.~~
 - (4) ~~Responsibilities~~
 - (a) ~~All groups within the University community have responsibilities associated with the Honor Statement. These responsibilities are unique to each sector of the university community.~~
 - (b) ~~Each student is responsible for his/her own personal integrity in academic life. While there is no affirmative duty to report the academic dishonesty of another, each student, given the dictates of his/her own conscience, may choose to act on any violation of the Honor Statement. Each student is responsible for knowing the terms and conditions of the Honor Statement and may acknowledge his/her adherence to the Honor Statement by writing "Pledged" and signing each graded class assignment and examination.~~
 - (c) ~~Students shall not plagiarize. Plagiarism is using the intellectual property or product of someone else without giving proper credit. The undocumented use of someone else's words or ideas in any medium of communication (unless such information is recognized as common knowledge) is a serious offense, subject to disciplinary action that may include failure in a course and/or dismissal from the university.~~

(Rule 1720-4-3-.11, continued)

- (d) Specific examples of plagiarism are:
1. ~~Using without proper documentation (quotation marks and a citation) written or spoken words, phrases, or sentences from any source;~~
 2. ~~Summarizing without proper documentation (usually a citation) ideas from another source (unless such information is recognized as common knowledge);~~
 3. ~~Borrowing facts, statistics, graphs, pictorial representations, or phrases without acknowledging the source (unless such information is recognized as common knowledge);~~
 4. ~~Collaborating on a graded assignment without the instructor's approval;~~
 5. ~~Submitting work, either in whole or in part, created by a professional service and used without attribution (e.g., paper, speech, bibliography, or photograph).~~

Authority: Public Acts of Tennessee, 1839-1840, chapter 98, Section 5 and Public Acts of Tennessee, 1807, chapter 64, Administrative History: Original rule filed January 13, 1999; effective May 31, 1999.

1720-4-3-.12 STUDENT ACADEMIC CONDUCT:

- (1) ~~Academic integrity is a responsibility of all members of the academic community. In a university as large and complex as The University of Tennessee, a system to monitor, supervise, and guarantee the essentials of academic integrity is necessary. To implement such a system an Academic Review Board has been created for each of the following academic units:~~
- (a) ~~Graduate School~~
 - (b) ~~College of Agriculture~~
 - (c) ~~School of Architecture~~
 - (d) ~~College of Business Administration~~
 - (e) ~~College of Communications~~
 - (f) ~~College of Education~~
 - (g) ~~College of Engineering~~
 - (h) ~~College of Human Ecology~~
 - (i) ~~College of Law~~
 - (j) ~~College of Liberal Arts (includes Social Work and Air and Army ROTC)~~
 - (k) ~~College of Nursing~~
 - (l) ~~College of Veterinary Medicine~~
 - (m) ~~College of Social Work~~

(Rule 1720-4-3-.12, continued)

(2) ~~Academic Review Boards:~~

(a) ~~Jurisdiction. A case of alleged academic dishonesty or a student's appeal of a professorial penalty shall be assigned to the Academic Review Board of the academic unit in which the instructor involved is a member. Each board shall have jurisdiction in the following areas:~~

- ~~1. Academic Dishonesty. To hear charges of alleged violation of Standard of Conduct 1., "academic cheating or plagiarism." (Academic units may adopt additional standards of academic conduct with the approval of the unit head and faculty). Jurisdiction may include cases of academic dishonesty which involve violations of other Standards of Conduct, but such cases shall initially be referred to the Dean of Students Office for determination of appropriate jurisdiction.~~
- ~~2. Student Appeal. To hear appeals by students against whom a penalty has been assessed by an instructor for alleged academic misconduct.~~
- ~~3. Review and Recommendation. At least annually, representatives of the Academic Review Boards shall meet and review the status of academic integrity on The University of Tennessee, Knoxville campus. The results of the review together with any recommendations shall be forwarded to the Student Affairs Council and Faculty Senate for appropriate action.~~

(b) ~~Membership. The Academic Review Board of each academic unit shall consist of three faculty members and three students selected from the unit's membership by the administrative head of that academic unit. Alternative methods of selection of the three faculty members and the three students may be adopted by an individual academic unit with the approval of the administrative head of that unit. Also, under extenuating circumstances, an academic unit may recommend for approval by the Student Affairs Council, a board composition which differs from that prescribed above.~~

- ~~1. A quorum shall consist of six members. The academic unit shall make provision for alternates to insure the availability of a quorum.~~
- ~~2. Chairperson. In order to establish continuity among the various review boards and to insure the maintenance of procedural due process, a member of the Dean of Students staff shall serve as the non-voting chairperson of each of the Academic Review Boards. His/her responsibilities shall include the scheduling of meetings, notification of parties and witnesses, and reporting regularly to the Student Affairs Council, the activities of the Academic Review Boards.~~

(c) ~~Decisions. All decisions shall be by a two-thirds vote.~~

(3) ~~Instructor's Responsibilities:~~

(a) ~~Academic Dishonesty. Student classroom conduct, including academic dishonesty, is the immediate responsibility of the instructor. He/she has full authority to suspend a student from his/her class, to assign an "F" in an exercise or examination, or to assign an "F" in the course. In addition to or prior to establishing a penalty, the instructor may refer the case to an Academic Review Board by notifying the administrative head of his/her academic unit and the Dean of Students, which shall prepare and present the case to the appropriate Academic Review Board. In all cases involving suspension of a student from his/her class, the student must be provided a hearing, as hereinafter described, prior to the effective date of such suspension.~~

(Rule 1720-4-3-.12, continued)

(b) ~~Notification. An instructor shall notify, in writing, countersigned by the department head, any student to whom a penalty is assigned, pointing out to the student the penalty and the route of appeal. Copies shall go to the Dean of Students, the administrative head of the instructor's academic unit, and where different, the head of the academic unit in which the student is enrolled.~~

(4) ~~Appeal of Professorial Penalty:~~

(a) ~~Initial Discussions. Initially, a student shall discuss the penalty with the instructor involved and, if necessary, the department head. (When no Department exist within the academic unit, the administrative head may appoint an individual to fulfill this responsibility). If the student is unable to resolve the penalty with the instructor and department head, he/she may appeal said penalty to the Academic Review Board by notifying the Dean of Students within seven calendar days of receipt of written notice of the penalty from the instructor.~~

(b) ~~Student Appeal Statement. An appeal by a student to an Academic Review Board must be in writing. It is the responsibility of the student to make a complete and thorough case for the appeal to the board. This is particularly important because of the procedure which allows the Academic Review Board to make a determination based on documentary evidence without providing the student an opportunity to make an oral presentation. The appeal statement should contain the following information:~~

- ~~1. Name the person your appeal is against, what class (if any) is involved, and when and where the problem took place.~~
- ~~2. What is your complaint? In what way were you aggrieved, harmed, injured or denied your rights? (Example: unjust allegation of academic dishonesty).~~
- ~~3. Give specifics of the problem. A mere statement like, "I did not cheat, misuse material, etc." is not sufficient. State why you feel the penalty is improper or unfair.~~
- ~~4. Verification: What papers, exams, reports, etc., exist which verify your statements? Is there anyone (another student, advisor, etc.) who can verify the facts?~~
- ~~5. History: What have you done to solve the problem? Have you talked to the person with whom you have the problem? Who else have you talked to or attempted to talk to? When?~~
- ~~6. Remedy: What solution do you want to your appeal?~~
- ~~7. Identification: Give your name, address, telephone number, and student identification number. Sign the appeal statement.~~

(c) ~~Hearing:~~

- ~~1. Procedure. The procedure for this type of hearing shall be established by the Academic Review Board with the approval of the Student Affairs Council. The procedure adopted shall provide necessary safeguards to insure that fundamental fairness is extended both to the student and the instructor involved. The hearing procedure shall also provide for a two step process as follows:~~

(Rule 1720-4-3-.12, continued)

- (i) ~~Step One. The Academic Review Board shall review all written documentation and, if necessary, conduct a preliminary investigation to determine if a full evidentiary hearing by the board is necessary.~~
- (ii) ~~Step Two. If a formal hearing is approved by the Academic Review Board, the procedure for that hearing shall include the right to counsel, the right to cross examination, the right to a closed hearing, the right to challenge members of the board for cause, and right to receive a written decision of the board.~~

2. ~~Decision and Right of Appeal.~~

- (i) ~~Supporting Penalty. If the board supports the determination made by the instructor, the case is terminated. However, an appeal based upon procedural due process may be made to the Student Tribunal in accordance with its prescribed procedure.~~
- (ii) ~~Not Supporting Penalty. If the board makes findings and recommendations at variance with the determination of the instructor, these recommendations shall be forwarded to the instructor, and to the administrative head of the academic unit.~~

(I) ~~Instructor Accepts Recommendation. If the instructor accepts the recommendations of the board, the case is terminated.~~

(H) ~~Instructor Does Not Accept Recommendation. If the instructor elects not to follow the recommendation of the Academic Review Board, the student may appeal the penalty to the Student Affairs Council by notifying the Office of the Dean of Students:~~

I. ~~Student Affairs Council. If the Student Affairs Council supports the determination of the instructor, the case is terminated.~~

H. ~~Provost. Any other recommendations of the Student Affairs Council will be forwarded to the Provost for final adjudication (when a case involves a graduate student, it shall be forwarded to the Dean of the Graduate School and the Provost for final adjudication).~~

HH. ~~The results of the appeal shall be forwarded by the Dean of Students to the administrative head of all academic units involved.~~

(5) ~~Academic Dishonesty Cases.~~

(a) ~~Procedure. The procedure for adjudication of alleged acts of academic dishonesty by the Academic Review Board shall be in accordance with the rules governing other violations of University Standards of Conduct.~~

(b) ~~Appeal. An appeal of a decision of the Academic Review Board concerning alleged academic dishonesty is to the Student Affairs Council and shall be conducted in accordance with the appeal procedure specified in Hilltopics, XVI. The right of the~~

(Rule 1720-4-3-.12, continued)

~~University to appeal any decision of an Academic Review Board regarding alleged violations of academic dishonesty may be exercised by the head of the academic unit involved by notifying the Office of the Dean of Students.~~

- (6) ~~The decision of any board or administrative officer of The University of Tennessee is subject to review by the Provost and the President.~~

~~Authority: T.C.A. §49-9-209(e). Administrative History: Original rule filed May 27, 1986; effective August 12, 1986. Amendment filed March 22, 1990; effective June 26, 1990. Amendment filed October 31, 1990; effective January 29, 1991. Amendment filed August 31, 1995; effective December 30, 1995. Amendment to Renumber rule from 1720-4-3-.11 filed January 13, 1999; effective May 31, 1999. Amendment filed November 17, 2000; effective March 30, 2001.~~

~~1720-4-3-.13 EMERGENCY POWERS. When, in the judgment of the Student Affairs Council of The University of Tennessee, conditions are such that it is impractical for the Student Disciplinary Boards to function, the Vice Provost for Student Affairs may suspend these procedural regulations and appoint an ad hoc committee to hear disciplinary matters. Any such ad hoc committee shall follow procedures that will insure the protection of the rights of the students involved, as stated herein. Any decisions by the ad hoc committee may be appealed to the Student Affairs Council.~~

~~Authority: T.C.A. §49-9-209(e). Administrative History: Original rule filed May 27, 1986; effective August 12, 1986. Amendment filed March 22, 1990; effective June 26, 1990. Amendment filed August 31, 1995; effective December 30, 1995. Amendment to Renumber rule from 1720-4-3-.12 filed January 13, 1999; effective May 31, 1999. Amendment filed November 17, 2000; effective March 30, 2001.~~

~~1720-4-3-.14 TRAINING AND ADVISING.~~

- (1) ~~Judicial Advisory Board. The Judicial Advisory Board has a primary responsibility to observe and work with all judicial bodies in consultation, training, investigation, and evaluation. The Board shall consist of the chairperson or chairperson's designated representative of the following boards: Student Tribunal, each Student Disciplinary Board, Interfraternity Council Judicial Board and the Panhellenic Judicial Board.~~
- (a) ~~The Judicial Advisory Board shall meet at the call of the Student Discipline Specialist to discuss observations, make appropriate recommendations, and receive suggestions for consideration from the Dean of Students.~~
- (b) ~~At the beginning of each term, the respective boards shall designate their representative for that term.~~
- (2) ~~Training Seminars. Annually, and at such other times as is necessary, seminars on judicial and disciplinary procedures shall be conducted by the Office of the Dean of Students. All individuals serving on University judicial boards must attend these training seminars. A waiver of this regulation may be issued by the Dean of Students only for "good cause." Training seminars should commence as soon as possible following selection of new judicial board members. In addition to the Dean of Students, the Student Tribunal, the Judicial Advisory Board, the Student Discipline Specialist, and Residence Hall staff personnel will be involved in the annual seminar and in a continuing training program.~~

~~Authority: Public Acts of Tennessee, 1839-1840, chapter 98, Section 5 and Public Acts of Tennessee, 1807, chapter 64. Administrative History: Original rule filed May 27, 1986; effective August 12, 1986. Amendment filed March 22, 1990; effective June 26, 1990. Amendment filed August 31, 1995; effective December 30, 1995. Amendment to Renumber rule from 1720-4-3-.13 filed January 13, 1999; effective May 31, 1999.~~

~~1720-4-3-15 TERMINATION OF STUDENT EMPLOYEES.~~

- (1) General:
- (a) ~~The provisions of this policy statement apply to all student employees except those on college workstudy (see policy statement on termination of financial assistance.)~~
 - (b) ~~The purpose of this statement is to provide procedures for the termination of student employees.~~
- (2) Definitions:
- (a) ~~Student Employee. An employee who is classified as a "student employee" by the payroll section of the Office of the Treasurer, University of Tennessee.~~
 - (b) ~~Contract Employee. A student employee who has a written contract with the University providing employment for a specified period of time.~~
 - (c) ~~Non-Contract Employees. All students not employed for a specified period of time, their employment being terminable at the will of either party irrespective of the quality of the performance of the other party.~~
 - (d) ~~Gross Misconduct. Theft or dishonesty, gross insubordination, destruction of University property, falsification of records, acts of moral turpitude, reporting to duty under the influence of intoxicants, using or selling illicit drugs on University premises, disorderly conduct, provoking a fight, and such other similar acts involving intolerable behavior by the employee.~~
 - (e) ~~Grounds for Termination of Contract Employees. Contract employees may be terminated during the term of their employment for gross misconduct or inadequate job performance.~~
- (3) Notice:
- (a) ~~Non-Contract Employees. Whenever, in the opinion of the supervisor, a non-contract employee should be terminated, he/she shall be notified in writing setting forth the date of termination. If the reason for termination involves gross misconduct, the supervisor will, prior to termination, consult with the Vice Provost having administrative responsibility for the employee.~~
 - (b) ~~Contract Employees. Whenever a supervisor is of the opinion that a contract employee should be terminated, he/she shall notify the appropriate Vice Provost. The Vice Provost shall notify the employee in writing of the reasons for his/her immediate termination or suspension, as appropriate, and of his/her right to request a hearing in accordance with the Administrative Procedures Act (T.C.A. § 4-507, et seq.) or as hereinafter provided.~~
- (4) Request for a Hearing:
- (a) ~~Contract Employee. The request of the employee together with his/her election of an Administrative Procedures Act hearing or one under this policy statement shall be forwarded in writing within five working days to the Vice Provost having administrative responsibility for the employee.~~
 - 1. ~~If the employee elects a hearing under the provisions of the Administrative Procedures Act, the Vice Provost shall forward the file to the Provost for the appointment of a hearing officer.~~

(Rule 1720-4-3-.15, continued)

2. ~~If the employee elects a hearing under this policy statement, the Vice Provost shall immediately thereafter establish a three member hearing committee.~~
- (b) ~~Non-Contract Employees. Non-contract employees may appeal their termination through the appropriate Dean/Director and Vice Provost to the Provost. No right to a hearing accompanies this right of appeal.~~
- (5) ~~Responsibility of the Hearing Committee: It shall be the responsibility of the hearing committee to:~~
- (a) ~~Conduct a hearing within ten working days of the employee's request for said hearing;~~
- (b) ~~Make findings of fact and recommendations to the appropriate Vice Provost;~~
- (c) ~~Notify the employee within five working days after the hearing of the committee's findings and recommendations;~~
- (d) ~~Prepare and forward as soon as it is practicable a written report of the hearing to the appropriate Vice Provost.~~
- (6) ~~Hearing Procedures: Employees who are entitled to a hearing as provided above are entitled to the following procedural rights:~~
- (a) ~~A written account of the alleged misconduct or grounds for inadequate work performance;~~
- (b) ~~Reasonable notice of the time and place of the requested hearing;~~
- (c) ~~The assistance of a representative of his/her choice; if the employee requesting a hearing desires to be represented by an attorney, the appropriate Vice Provost must be notified by the employee at least three days prior to the scheduled hearing;~~
- (d) ~~To present all pertinent evidence including witnesses;~~
- (e) ~~To confront and cross-examine all adverse witnesses.~~
- (7) ~~Decision and Appeal:~~
- (a) ~~Hearing Committee. The appropriate Vice Provost shall within five working days after receipt of findings and recommendations of the hearing committee notify the employee in writing of his/her decision and of the employee's right to appeal as provided by Article 5, Section 7 of the University By-Laws:~~
- ~~Officers, faculty and staff members, students, employees, alumni and all others who feel that they may have a grievance against the University shall have the right of appeal through the Provost to the President.~~
- ~~An employee's appeal must be submitted in writing to the Provost within ten working days after receipt of the decision.~~
- (b) ~~Administrative Procedures Act. The decision of the Provost is final in all cases heard under the contested case provision of the Administrative Procedures Act. Further appeal shall be in accordance with the provisions of that act.~~

(Rule 1720-4-3-.15, continued)

~~Authority: T.C.A. §49-9-209(e). Administrative History: Original rule filed May 27, 1986; effective August 12, 1986. Amendment filed August 31, 1995; effective December 31, 1995. Amendment to Remember rule from 1720-4-3-.14 filed January 13, 1999; effective May 31, 1999. Amendment filed November 17, 2000; effective March 30, 2001.~~

~~1720-4-3-.16 TERMINATION OF FINANCIAL ASSISTANCE.~~

- (1) General:
- (a) Coverage: ~~The provisions of this policy apply to student financial assistance except graduate assistantships and fellowships.~~
 - (b) Purpose: ~~The purpose this policy is to provide procedures for the termination of financial assistance.~~
- (2) Definitions:
- (a) Athletic Grant-in-aid: ~~A contract for financial assistance which has been approved by the Advisory Committee on Student Financial Aid and awarded in accordance with the provisions of the Constitution and By-Laws of the Southeastern Conference and the National Collegiate Athletic Association.~~
 - (b) Financial Aid: ~~Assistance awarded to a student in one of the following categories: college workstudy, scholarships (including graduate), loans, and grants.~~
- (3) Notice:
- (a) Athletic Grant-in-Aid:
 - 1. ~~Whenever the Athletic Department proposes that the financial assistance be terminated within the contract period, the student shall be notified in writing by the Director of Financial Aid of the proposed termination. The notice shall contain the reasons for termination, the student's right to a hearing in accordance with the contested case provision of the Administrative Procedures Act or in accordance with the provisions hereinafter provided.~~
 - 2. ~~Whenever athletic financial aid is not to be renewed at the end of the contract period, the student shall be notified of his/her right to a hearing, in accordance with the requirements of the Constitution of the National Collegiate Athletic Association, before the Financial Aid Hearing Committee.~~
 - (b) Financial Aid: ~~Whenever financial aid is to be modified or terminated, the student shall be notified of the reasons for the proposed modification or termination and of the right to appeal by contacting the Director of Financial Aid. If the Director of Financial Aid is unable to amiably resolve the student's appeal, it shall proceed as follows:~~
 - 1. ~~If the appeal concerns interpretation of policy, the student shall be afforded the right of further appeal through the Dean of Admissions and Records and the Vice Provost for Academic Affairs to the Provost.~~
 - 2. ~~If the appeal concerns a disputed question of fact, the student shall be advised of the right to a hearing before the Financial Aid Hearing Committee or in accordance with the Administrative Procedures Act.~~
- (4) Request for a Hearing: ~~The request for a hearing together with his/her election of an Administrative Procedures hearing or one under this policy shall be made in writing to the~~

(Rule 1720-4-3-.16, continued)

- ~~Director of Financial Aid within five (5) calendar days of receipt of the notice of proposed termination:~~
- ~~(a) If the student elects a hearing under the provision of the Administrative Procedures Act, the Director of Financial Aid shall forward the file to the Provost for the appointment of a hearing officer.~~
 - ~~(b) If the student elects a hearing under this policy statement, the Director of Financial Aid shall immediately forward the request for a hearing together with a copy of the complete file to the Chairperson of the Advisory Committee on Student Financial Aid.~~
- ~~(5) Hearing Committee. At the beginning of each semester, the Chairperson of the advisory committee on Student Financial Aid shall appoint a hearing subcommittee of not less than three (3) persons who shall be charged with the responsibility of hearing all appeals during that semester.~~
- ~~(6) Responsibility of the Hearing Committee: It shall be the responsibility of the hearing committee to:~~
- ~~(a) Conduct a hearing within ten working days of the student's request for said hearing. When the University is not in session, the hearing shall be held as soon as reasonably possible.~~
 - ~~(b) Make findings of fact and a determination as to the termination of financial aid.~~
 - ~~(c) Notify the student as soon as possible of the committee's decision.~~
 - ~~(d) Notify the student of his/her right to appeal, as indicated below.~~
- ~~(7) Hearing Procedures: Students who are entitled to a hearing as above provided are entitled to the following procedural rights:~~
- ~~(a) A written notice of the alleged grounds for termination of financial assistance.~~
 - ~~(b) To reasonable notice of the time and place of the requested hearing.~~
 - ~~(c) The assistance of a representative of his/her choice. If the student requesting a hearing desires to be represented by an attorney, the University must be notified by the student at least three days prior to the scheduled hearing.~~
 - ~~(e) To confront and cross-examine all adverse witnesses.~~
- ~~(8) Appeal:~~
- ~~(a) Hearing Committee Decision. The student may appeal the decision of the hearing committee in accordance with Article V, Section 7 of the University By-Laws:

 - ~~1. Officers, faculty and staff members, students, employees, alumni and all others who feel that they may have a grievance against the University shall have the right of appeal through the Provost to the President.~~
 - ~~2. An appeal must be submitted in writing to the Provost within five (5) working days.~~~~

(Rule 1720-4-3-.16, continued)

- (b) ~~Administrative Procedures Act. The decision of the Provost is final in all cases heard under the contested case provision of the Administrative Procedures Act. Further appeal shall be in accordance with the provisions of that act.~~

~~Authority: T.C.A. §49-9-209(e). Administrative History: Original rule filed May 27, 1986; effective August 12, 1986. Amendment filed March 22, 1990; effective June 26, 1990. Repeal filed October 31, 1990; effective January 29, 1991. Amendment filed August 31, 1995; effective December 30, 1995. Amendment to Renumber rule from 1720-4-3-.15 filed January 13, 1999; effective May 31, 1999. Amendment filed November 17, 2000; effective March 30, 2001.~~

1720-4-3-.17 WITHDRAWAL OR TEMPORARY SUSPENSION DUE TO MENTAL OR PHYSICAL PROBLEMS:

- (1) ~~When a student is unable to effectively pursue his/her academic work, or when his/her behavior is disruptive to the normal educational processes of the University, or constitutes a threat to members of the University community, due to alcoholism, drug addiction, mental instability or other physical or psychologically incapacitating illness or condition, he/she may be withdrawn or temporarily suspended from the University as hereinafter provided.~~
- (a) ~~Withdrawal. A student may be withdrawn from the University only after an evaluation of his/her mental and physical condition by a panel of at least three persons appointed by the Vice Provost for Student Affairs. The student shall be notified of the reasons for the evaluation and given an opportunity to present evidence to the committee. The committee's findings and recommendations shall be forwarded to the Vice Provost, who will notify the student in writing of his/her decision. A student withdrawn under this procedure shall not be readmitted to the University without the approval of the Vice Provost.~~
- (b) ~~Temporary Suspension. Whenever a student, because of his/her mental or physical condition constitutes a danger to persons or property, or when his/her behavior is disruptive to the normal educational processes of the University, he/she may be suspended from the University, for a reasonable period of time, by the Vice Provost for Student Affairs or the Dean of Students. If the University does not withdraw the student in accordance with procedures outlined above, he/she may return to the University at the end of the suspension period.~~
- (c) ~~Grades. When a student is withdrawn or temporarily suspended from the University, he/she may be assigned a grade of "W" or "I" whichever is deemed appropriate by the faculty member involved.~~

~~Authority: T.C.A. §49-9-209(e). Administrative History: Original rule filed May 27, 1986; effective August 12, 1986. Amendment filed August 31, 1995; effective December 30, 1995. Amendment to Renumber rule from 1720-4-3-.16 filed January 13, 1999; effective May 31, 1999. Amendment filed November 17, 2000; effective March 30, 2001.~~

G.O.C. STAFF RULE ABSTRACT

<u>DEPARTMENT:</u>	University of Tennessee
<u>DIVISION:</u>	University of Tennessee at Chattanooga
<u>SUBJECT:</u>	Student Conduct Code
<u>STATUTORY AUTHORITY:</u>	Tennessee Code Annotated, Section 49-9-209
<u>EFFECTIVE DATES:</u>	September 28, 2012 through June 30, 2013
<u>FISCAL IMPACT:</u>	Minimal

STAFF RULE ABSTRACT:

The University of Tennessee at Chattanooga has revised its code of conduct for students. The following briefly summarizes the new rule and the key changes from the rule being repealed:

Rule 1720-02-05-.01 provides a description of the University's interests in students' conduct.

Rule 1720-02-05-.02 defines key terms used in the code of conduct.

Rule 1720-02-05-.03 sets forth the University's position on common jurisdictional issues that arise in student conduct cases.

Rule 1720-02-05-.04 sets forth the standards of conduct for University students. The number of standards of conduct have been increased from twenty-one (21) to twenty-nine (29). The new rule also eliminates unnecessary language, clarifies other language, and adds language to the former standards of conduct.

Rule 1720-02-05-.05 contains the same text as former Rule 1720-02-05.03 except for the deletion of section (1).

Rule 1720-02-05-.06 contains the same text as former Rule 1720-02-05-.04 except for the addition of a list of rights for victims in sexual assault cases, to comply with recent guidance by the United States Department of Education concerning Title IX of the Education Amendments of 1972. The new rule also clarifies that its provisions also apply to student organizations.

Rule 1720-02-05-.07 contains the same text as former Rule 1720-02-05-.05 except for the addition of a sentence describing how hearing procedures shall be modified in cases

of sexual assault and language clarifying that its provisions also apply to student organizations.

Rule 1720-02-05-.08 adds guidance for administrators and hearing boards in determining the appropriate penalty for a violation of the standards of conduct; adds a non-exclusive list of aggravating and mitigating factors that an administrator or hearing board may consider in determining a penalty; informs students that intoxication or impairment because of alcohol, drugs, chemicals, or other substances does not excuse a violation of the standards of conduct; and adds four penalties.

Rule 1720-02-05.09 is a new rule describing a no-contact directive, which is a tool used by student affairs administrators in appropriate cases to prohibit a student from having verbal, physical, or written contact with specific persons for a definite or indefinite period of time.

Rule 1720-02-05-.10 is a new rule describing an interim suspension, which may be imposed on a student or student organization prior to the conclusion of a full due process hearing in certain situations.

Rule 1720-02-05-.11 revises former Rule 1720-02-05-.07 to simplify and clarify the grounds for a student's appeal.

Rule 1720-02-05-.12 contains essentially the same text as the former rule.

Rules 1720-02-05-.13, 1720-02-05-.14, 1720-02-05-.15 contain the same text as former rules 1720-02-05-.08, 1720-02-05-.09, and 1720-02-05-.10, respectively.

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)

Impact on Local Governments

Pursuant to T.C.A. 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The University of Tennessee anticipates that this rule will have no financial impact on local governments.

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Sequence Number: 0443-12
 Rule ID(s): 5792
 File Date: 09/17/2012
 Effective Date: 09/28/2012

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §4-5-202, 4-5-207 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Agency/Board/Commission:	University of Tennessee
Division:	
Contact Person:	Matthew Scoggins, Assistant General Counsel
Address:	719 Andy Holt Tower, 1331 Circle Park, Knoxville, TN
Zip:	37996-0170
Phone:	865-974-3245
Email:	scoggins@tennessee.edu

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
1720-03-03	Student Conduct
Rule Number	Rule Title
1720-03-03-.01	Introduction
1720-03-03-.02	Standards of Conduct
1720-03-03-.03	Student Identification Cards
1720-03-03-.04	Investigations of Student Conduct
1720-03-03-.05	The Judicial Systems and Due Process
1720-03-03-.06	Repealed
1720-03-03-.07	Student Health Insurance

Chapter Number	Chapter Title
1720-03-03	Student Rights and Responsibilities
Rule Number	Rule Title
1720-03-03-.01	Introduction
1720-03-03-.02	Definitions
1720-03-03-.03	Jurisdiction
1720-03-03-.04	Standards of Conduct
1720-03-03-.05	Penalties
1720-03-03-.06	No Contact Directives

1720-02-05-.03	Jurisdiction
1720-02-05-.04	Standards of Conduct
1720-02-05-.05	Residence Hall Inspections
1720-02-05-.06	Due Process, Student Rights, and Student Organization Rights
1720-02-05-.07	Student Conduct Hearing Procedures
1720-02-05-.08	Penalties
1720-02-05-.09	No Contact Directive
1720-02-05-.10	Interim Suspension
1720-02-05-.11	Appeals
1720-02-05-.12	Withdrawal or Temporary Suspension Due to Physical or Psychological Illness
1720-02-05-.13	Parking Appeals
1720-02-05-.14	Composition of Student Parking Appeals Board
1720-02-05-.15	Emergency Situations

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

Substance of Proposed Rules
of
The University of Tennessee at Chattanooga

Repeal

Rule 1720-02-05 Student Code is repealed.

New Rule

Chapter 1720-02-05
Student Code

1720-02-05-.01 Introduction.

- (1) Students at the University of Tennessee at Chattanooga are members of both the University community and the larger community of which the University is a part. Accordingly, students are responsible for conducting themselves in a lawful manner and in compliance with University rules and policies. The University has established the following rules in order to advance the mission of the University by maintaining a safe and secure learning environment, protecting the rights and privileges of all members of the University community, providing a basis for orderly conduct of the affairs of the University, promoting a positive relationship between the University and its surrounding community, preserving institutional integrity and property, encouraging students to engage in conduct that brings credit to themselves and the University, and ensuring that each student who matriculates at the University graduates ready to contribute to society as an ethical and law-abiding citizen.
- (2) The University of Tennessee is committed to respecting students' constitutional rights. Nothing in this chapter is intended or shall be interpreted to restrict students' constitutional rights, including, but not limited to, rights of freedom of speech and assembly.
- (3) Disputes between student organizations (including fraternity/sorority cases which may be within the jurisdiction of the appropriate Greek governing council and/or the Dean of Students office) shall be subject to the jurisdiction of the Vice Chancellor for Student Development or his or her designee.
- (4) The Vice Chancellor for Student Development or his or her designee shall have jurisdiction over disputes between individual students and student organizations when such arbitration is requested by either of the parties involved.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public

Acts of Tennessee, 1807, Chapter 64.

1720-02-05-.02 Definitions.

- (1) The term "University" means the University of Tennessee at Chattanooga.
- (2) The term "student" means a person admitted, enrolled or registered for study at the University of Tennessee at Chattanooga, either full-time or part-time, pursuing undergraduate, graduate, or professional studies, as well as non-degree students. Persons not officially registered or enrolled for a particular term but who have a continuing relationship with the University also are considered students for purposes of these rules.
- (3) The term "student organization" means an organization that is composed solely of University students that has submitted a pending application or has completed the process for registration according to University rules.
- (4) The term "University-controlled property" means all land, buildings, facilities, grounds, structures, or any other property owned, leased, used, maintained, or operated by the University. For purposes of this rule, University-controlled property includes all streets, alleys, sidewalks, and public ways abutting such property. University-controlled property also includes computers and network systems owned, maintained, or controlled by the University or funded by the University.
- (5) The term "University-affiliated activity" means any activity on or off University-controlled property that is initiated, aided, authorized, sponsored, or supervised by the University.
- (6) The term "University official" means an employee of the University, including faculty members and staff, or a University-recognized volunteer. Student employees may be considered University officials when acting in the performance of their duties (e.g., event staff, resident assistants, and teaching assistants).
- (7) The term "member of the University community" means any person who is a student, University official, campus visitor, or participant in a University-sponsored or University-affiliated activity.
- (8) The term "possession" means actual knowledge of a substance or property and/or being in such close proximity to the substance or property that it is a reasonable presumption that one had knowledge of the substance or property.
- (9) The term "weapon" means any device, instrument, or substance that is designed to, or reasonably could be expected to, inflict a wound, incapacitate, or cause serious bodily injury or death, including, but not limited to, firearms (loaded and unloaded, real and replica), ammunition, electronic control devices (such as tasers and stun guns), devices designed to discharge an object (such as bb guns, air guns, pellet guns, potato guns, and slingshots), explosives, dangerous chemicals (such as mace, tear gas, and oleoresin capsicum), martial arts weapons, bows and arrows, artificial knuckles, nightsticks, blackjacks, dirks, daggers, swords, and knives with fixed blades longer than three (3) inches. The term "weapon" does not include chemical repellents available over-the-counter for self-defense; instruments used solely for personal hygiene, preparation of food, maintenance, University-related instruction, or University employment-related duties.
- (10) The term "notice" means notice given in writing delivered by regular mail, courier service, or hand delivery to the address the University has on file for the student or student organization, or by e-mail to the student's or student organization's University-provided e-mail account.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-02-05-.03 Jurisdiction.

- (1) The Standards of Conduct, Chapter 1720-02-05-.04, apply to conduct that occurs on University-controlled property.
- (2) The University also has the discretion to discipline a student for an act in violation of the Standards of Conduct that occurs off University-controlled property if the conduct adversely affects the interests of the University, including, but not limited to, conduct which:
 - (a) Occurs in connection with a University-affiliated activity, including, but not limited to, an overseas study program or a clinical, field, internship, or in-service experience;
 - (b) Involves another member of the University community; or
 - (c) Threatens, or indicates that the student may pose a threat to, the health or safety of him/herself or others or the security of any person's property, including, but not limited to, alcohol-related offenses, drug-related offenses, arson, battery, fraud, hazing, participation in group violence, rape, sexual assault or misconduct, stalking, and theft.
- (3) The Standards of Conduct have been adopted in furtherance of the University's interests and serve to supplement, rather than substitute for, the enforcement of the civil and criminal law. Accordingly, University disciplinary action may be instituted against a student charged with conduct that potentially violates both the criminal law and the Standards of Conduct without regard to the pendency of criminal charges or civil litigation. At the discretion of the Vice Chancellor for Student Development, or his/her designee, disciplinary action relating to a violation of the Standards of Conduct may be carried out prior to, simultaneously with, or following criminal proceedings. Students accused of violating the Standards of Conduct may not challenge the University disciplinary proceedings on the grounds that criminal charges, civil litigation, or other University proceedings regarding the same incident are pending or have been terminated, dismissed, reduced, or not yet adjudicated.
- (4) Each student shall be responsible for his/her conduct from the time of application for admission through the actual awarding of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment (and even if conduct is not discovered by the University until after a degree is awarded). Should a student withdraw from the University with disciplinary charges pending, the student's academic record and/or ability to register for classes may be encumbered by the appropriate University office.
- (5) Graduate or professional programs within the University may initiate charges against students for alleged violations of professional standards or ethics as a separate issue or as an extension of alleged acts of academic dishonesty or other violations of the Standards of Conduct.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-02-05-.04 Standards of Conduct. A student or student organization may be disciplined for the following types of misconduct:

- (1) Cheating, plagiarism, or any other act of academic dishonesty, including, but not limited to, an act in violation of The Honor Code.
- (2) Providing false information to a University official.
- (3) Falsifying, distorting, misrepresenting, or withholding information in connection with a University investigation or hearing.
- (4) Forging, altering, destroying, falsifying, or misusing records, identification, or documents, whether in print or electronic form.
- (5) Causing physical harm to any person (including oneself); endangering the health or safety of any

person (including oneself); engaging in conduct that causes a reasonable person to fear harm to his/her health or safety; or making an oral or written statement (including electronically) that an objectively reasonable person hearing or reading the statement would interpret as a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals, although the speaker need not mean to carry out the act of unlawful violence in order to constitute a violation of this rule.

- (6) Harassment, which is defined as unwelcome conduct that is so severe or pervasive, and objectively offensive, that it substantially interferes with the ability of a person to work, learn, live, or participate in or benefit from the services, activities, or privileges provided by the University. In no event shall this rule be construed to discipline a student for speech protected by the First Amendment to the United States Constitution (e.g., mere insulting or offensive speech).
- (7) Sexual assault or misconduct. "Sexual assault" is defined as any sexual act or attempt to engage in any sexual act with another person without the consent of the other person, or in circumstances in which the person is unable to give consent due to age, disability, or an alcohol/chemical or other impairment. "Sexual misconduct" is defined as any intimate touching of another person, or forcing a person to engage in intimate touching of another, without the consent of the other person, or in circumstances in which the person is unable to give consent due to age, disability, or an alcohol/chemical or other impairment. It is the responsibility of the person initiating sexual activity to ensure the other person is capable of consenting to that activity. Consent is given by an affirmative verbal response or acts that are unmistakable in their meaning. Consent to one form of sexual activity does not mean consent is given to another type of sexual activity.
- (8) Invasion of another person's privacy when that person has a reasonable expectation of privacy, including, but not limited to, using electronic or other means to make a video or photographic record of any person in a location in which the person has a reasonable expectation of privacy, without the person's knowledge or consent. This includes, but is not limited to, making a video or photographic record of a person in shower/locker rooms or restrooms. The storing, sharing, and/or distributing of such unauthorized recordings by any means is also prohibited.
- (9) Theft, misappropriation, unauthorized possession, or unauthorized sale of private or public property, including but not limited to University-controlled property.
- (10) Vandalizing, destroying, damaging, engaging in conduct that reasonably could cause damage to, or misusing private or public property, including but not limited to University-controlled property.
- (11) Participating in hazing. "Hazing" is defined as any intentional or reckless act, on or off University-controlled property, by one (1) student, acting alone or with others, which is directed against any other student, which endangers the mental or physical health or safety of that student, or which induces or coerces a student to endanger his or her mental or physical health or safety. "Hazing" does not include customary athletic events or similar contests or competitions and is limited to those actions taken and situations created in connection with initiation into or affiliation with any organization.
- (12) Engaging in disorderly, lewd, indecent, or obscene conduct. "Disorderly" conduct means fighting or other physically violent or threatening conduct; creating a hazardous or physically offensive condition by any act that serves no legitimate purpose; making noise that could unreasonably disturb others who are carrying on lawful activities; or conduct that breaches the peace. "Lewd, indecent, or obscene" conduct includes, but is not limited to, public exposure of one's sexual organs, public urinating, and public sexual acts.
- (13) Engaging in speech, either orally or in writing, which is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.
- (14) Any act of arson; falsely reporting a fire, the presence of an explosive or incendiary device, or other emergency; setting off a false fire alarm; or tampering with, removing, or damaging fire alarms, fire extinguishers or any other safety or emergency equipment from its proper location except when removed in a situation in which there is a reasonable belief of the need for such

equipment.

- (15) Possessing, using, or duplicating University keys, access cards, or identification cards without authorization; possessing, using, or entering University-controlled property without authorization.
- (16) Theft, misuse, or unauthorized use of information technology facilities, resources, or access codes, including, but not limited to: unauthorized entry into or transfer of a file; using another person's identification and/or password without that person's consent; using information technology facilities or resources to interfere with the work of another student, faculty member, staff member, or other member of the University community; using information technology facilities or resources to interfere with normal operation of a University information technology system or network; circumventing University information technology system or network security; using information technology facilities or resources in violation of copyright laws; falsifying an e-mail header; and conduct that violates the University's policy on the Acceptable Use of Information Technology Resources.
- (17) Possessing, using, storing, or manufacturing any weapon or any facsimile of a weapon on University-controlled property or in connection with a University-affiliated activity, unless authorized in writing by the Chief of Police or his/her designee.
- (18) Consuming, manufacturing, possessing, distributing, dispensing, selling, or being under the influence of alcoholic beverages on University-controlled property or in connection with a University-affiliated activity.
- (19) Consuming, manufacturing, possessing, distributing, dispensing, selling, or being under the influence of alcoholic beverages, if prohibited by federal, state, or local law.
- (20) Providing an alcoholic beverage to a person younger than twenty-one (21) years of age, unless permitted by law.
- (21) Using, manufacturing, possessing, distributing, selling, dispensing, or being under the influence of drugs or drug paraphernalia, if prohibited by federal, state, or local law; using or possessing a prescription drug if the prescription was not issued to the student; or distributing or selling a prescription drug to a person to whom the prescription was not originally issued.
- (22) Failing to pay a University bill, account, or other University financial obligation.
- (23) Failing to respond to a request to report to a University administrative office; failing to comply with a lawful directive of a University employee or other public official acting within the scope of his/her duties; or failing to identify oneself to a University employee or other public official acting within the scope of his/her duties when requested to do so.
- (24) Failing to appear at a University hearing, including, but not limited to, a hearing of a University judicial board, following a request to appear either as a party or as a witness.
- (25) Violating the terms of an interim suspension, a no-contact directive, or a disciplinary penalty imposed by the University.
- (26) Obstructing or disrupting teaching, learning, studying, research, public service, administration, disciplinary proceedings, emergency services, or any other University-affiliated activity, or the free flow of pedestrian or vehicular traffic on University-controlled property. In no event shall this rule be construed to discipline a student for speech protected by the First Amendment to the United States Constitution.
- (27) Violating a University policy or rule, including but not limited to University policies or rules relating to facilities use, smoking, the acceptable use of information technology resources, research or service misconduct, finder's fees relating to clinical investigations involving human subjects or access to University data or materials, University libraries, dining services, parking or transportation, University identification card use, sexual harassment, residence halls, and

registered student organizations.

- (28) Committing an act that is prohibited by local, state, or federal law.
- (29) Attempting to commit a violation of a Standard of Conduct or being an accessory to the commission of an act or attempted act in violation of a Standard of Conduct.

Authority: T.C.A. § 49-9-209(e), T.C.A. § 49-7-123, and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-02-05-.05 Residence Hall Inspections.

- (1) Entry by University officials into occupied rooms in residence halls will be divided into three categories: inspection, search, and emergency. Inspection is defined as the entry into an occupied room by University officials in order to ascertain the health and safety conditions in the room, or to make repairs on facilities, or to perform cleaning and janitorial operations. Search is defined as the entry into an occupied room by on-campus authorities for the purpose of investigating suspected violations of campus regulations and/or city, state, or federal law. An emergency situation exists when the delay necessary to obtain search authorization constitutes an apparent danger to persons, property, or the building itself.
- (2) Inspection: Scheduled inspections by University officials, with the exception of daily janitorial and maintenance operations, shall be preceded, if possible, by twenty-four (24) hours' notice to the residents. During the inspection, there will be no search of drawers or closets or personal belongings.
- (3) Search: University officials will not enter a room for purposes of a search except in compliance with state law or with the permission of the resident or the permission of the Vice Chancellor for Student Development or his or her designee. University officials shall have, if possible, the Resident Director or his or her designee accompany them on the search.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-02-05-.06 Due Process, Student Rights, and Student Organization Rights.

- (1) Due process shall guarantee to the accused student or student organization the following:
 - (a) The right to be informed of charges in writing prior to the hearing.
 - (b) The right of reasonable time in which to prepare a defense.
 - (c) The right to a fair and just hearing.
 - (d) The right to challenge all charges and testimony used against the accused student or student organization and to question witnesses.
 - (e) The right to be informed in writing of:
 - 1. The final decision of the case.
 - 2. The proper procedure for appeal.
 - (f) The right to be accompanied by an advisor he/she/it chooses, at his/her/its own expense.
 - 1. The accused student or student organization is responsible for presenting his/her/its own information, and therefore, advisors are not to speak or participate directly in a University hearing.

2. A student or student organization should select as an advisor a person whose schedule allows attendance at the scheduled date and time for the University hearing.
 3. Delays will not normally be allowed due to the scheduling conflicts of an advisor.
- (2) Any student or student organization shall be formally charged in writing with the alleged offense. The date, time, and place of occurrence of the offense shall be stated on the statement of charges.
 - (3) The Dean of Students office must keep accurate records of each hearing and the disposition of each case.
 - (4) In cases involving a complaint of sexual assault or misconduct, the alleged victim shall have the right to:
 - (a) Notice concerning the process by which the University will handle the complaint and an opportunity to ask questions about the process;
 - (b) A prompt, thorough, and impartial investigation of the complaint;
 - (c) The same opportunity as the accused student to present his/her explanation of the facts during the University's investigation;
 - (d) Have the investigation of the complaint concluded within sixty (60) days of the University's receipt of a complaint, unless circumstances make it impracticable for the University to complete its investigation within that timeframe;
 - (e) Notice of the outcome of the University's investigation;
 - (f) Have a disciplinary hearing conducted within thirty (30) days of a University charge that the accused student committed sexual assault or misconduct, unless circumstances make it impracticable for the University to conduct a hearing within that timeframe;
 - (g) Notice of the date, time, and location of the disciplinary hearing, the right to have the disciplinary hearing closed to the public, and the right to request rescheduling of the hearing for good cause;
 - (h) The same access as the accused student to any information or documents that will be used by the University during a disciplinary hearing, unless prohibited by law;
 - (i) Challenge the seating of any Student Conduct Board member for good cause, which will be determined at the discretion of the University Hearing Officer;
 - (j) Be accompanied by an advisor of his/her choosing during the University's investigation or a disciplinary hearing, but the advisor shall not be permitted to speak for the victim during a disciplinary hearing;
 - (k) The same opportunity as the accused student to be present during the hearing, present witnesses and other evidence, challenge the admissibility of evidence, and cross-examine adverse witnesses during the disciplinary hearing;
 - (l) Testify or remain silent at his/her option; however, choosing to remain silent may result in the University dismissing the charges against the accused student or the Student Conduct Board or University Hearing Officer finding that there is insufficient evidence to find the accused student guilty of the charges against him/her;
 - (m) Not to be questioned personally by the accused student during the disciplinary hearing;

- (n) Submit a written impact statement to the Student Conduct Board or University Hearing Officer for consideration during the sanctioning phase of the disciplinary hearing, if the accused student is found guilty of the charges against him/her;
- (o) Notice of the decision of the Student Conduct Board or University Hearing Officer within three (3) business days of the disciplinary hearing; and
- (p) Appeal the decision of the Student Conduct Board or University Hearing Officer to the Vice Chancellor for Student Development.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-02-05-.07 Student Conduct Hearing Procedures.

- (1) Complaints
 - (a) Any member of the University community may present a complaint to the Dean of Students office against a student or student organization for violations of the Student Code. Any complaint should be submitted as soon as possible after the event takes place. Any charge(s) shall be prepared in writing by the Dean of Students office.
 - (b) All charges shall be presented to the accused student or student organization in written form.
- (2) Hearing Options
 - (a) An accused student or student organization desiring to contest the charge(s) against them must do so by requesting a hearing within five (5) days of their receipt of written notice of the charge(s).
 - (b) The accused student or student organization may, at their option, request a hearing before a panel of individuals (Student Conduct Board) or by a University Hearing Officer selected by the Vice Chancellor for Student Development (or his or her designee). A hearing before a Student Conduct Board will be chaired by a University Hearing Officer similarly selected. Board members and hearing officers shall be impartial and anyone lacking such impartiality shall recuse him/herself or may be removed by the Vice Chancellor for Student Development upon request of any party to a University hearing.
 - (c) A requested hearing shall be scheduled promptly after receipt of the request.
 - (d) In the absence of a voluntary written waiver of the accused student's or student organization's right to a hearing under the provisions of the Tennessee Uniform Administrative Procedures Act (T.C.A. § 4-5-108, et seq.), a requested hearing will be conducted in accordance with the University's APA hearing procedures and these procedures shall not apply.
- (3) Hearing Procedures – The Student Conduct Board or University Hearing Officer sitting alone will conduct the hearing within the following general guidelines:
 - (a) All University hearings shall be closed to the public.
 - (b) The accused student (and certain "victims" where permitted by law) or student organization, and their advisor, if any, shall be allowed to attend the entire portion of the University Hearing at which information is received (excluding deliberations).
 - (c) Each party will be afforded a full and fair opportunity to present all evidence, including witnesses, reasonably relating to the charge or action at issue; evidence which is irrelevant, immaterial, repetitious or voluminous may be limited.

- (d) All procedural questions are determined by the University Hearing Officer.
 - (e) The Student Conduct Board or University Hearing Officer sitting alone will consider all evidence presented, giving due consideration to the credibility or weight of each item presented; technical rules of evidence will not apply.
 - (f) The standard for a finding of responsibility is a preponderance of the evidence.
 - (g) Following the conclusion of the University hearing, the Student Conduct Board or University Hearing Officer sitting alone will consider the evidence and present written findings.
 - (h) An appropriate record will be made of the hearing procedures. Deliberations shall not be recorded. Defects in the record will not invalidate the proceedings.
- (4) In cases involving an allegation of sexual assault or misconduct, the hearing procedures shall be modified to afford the alleged victim all of the rights described in Chapter 1720-02-05-.06(4).

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-02-05-.08 Penalties.

- (1) Disciplinary penalties are primarily intended to educate students and student organizations about appropriate behavior, encourage students and student organizations to take responsibility for misconduct, promote the personal and professional development of students, discourage other students and student organizations from violating the Standards of Conduct, and protect members of the University community. The penalties imposed should be appropriate for the particular case based on the gravity of the offense (including without limitation how the violation affected or reasonably could have affected other members of the University community). Consideration may also be given to the student's or student organization's conduct record, the student's or student organization's responsiveness to the conduct process, student academic classification, and other aggravating or mitigating factors.
- (2) The following penalties may be imposed on any student found to have violated the Standards of Conduct:
 - (a) Warning. A warning is a notice that the student is violating or has violated the Standards of Conduct.
 - (b) Loss of Privilege. This penalty is intended to serve as a reminder of the Standards of Conduct and is for a specific period of time. Privileges that may be lost include, but are not limited to, scholarships, stipends, participation in extracurricular activities (e.g. intramurals), housing privileges, participation in social activities, and use of certain University-controlled property (e.g., information technology resources).
 - (c) Educational Sanction. Students may be required to attend classes, at their own expense, dealing with issues such as the consequences of alcohol or drug use, civility, ethics, or other topics as deemed appropriate by the Vice Chancellor for Student Development or his/her designee.
 - (d) Restitution. Restitution may be required in situations that involve destruction, damage, or loss of property, or unreimbursed medical expenses resulting from physical injury. Restitution may take the form of a monetary payment or appropriate service to repair or otherwise compensate for the destruction, damage, or loss.

- (e) **Disciplinary Reprimand.** A disciplinary reprimand is used for minor violations of the Standards of Conduct. A reprimand indicates that further violations will result in more severe disciplinary actions.
 - (f) **Disciplinary Probation.** This penalty permits a student to remain at the University on probationary status but with the understanding that a future violation of the Standards of Conduct may result in suspension. Probation may be for a defined or indefinite period. Other conditions of probation are specific to each individual case and may include a requirement of community service or other requirement or restriction.
 - (g) **Suspension for a Specific Period of Time.** Suspension for a specific period of time means that the student is withdrawn from the University and is not eligible to apply for readmission for a designated period of time. Usually, the period of designated suspension does not exceed one (1) calendar year. Other conditions of suspension are specific to each individual case and may include a requirement of community service or other requirement or restriction. Upon return to the University following a suspension for a specific period of time, the student may be placed on indefinite disciplinary probation.
 - (h) **Permanent Dismissal.** Permanent dismissal means that a student is permanently barred from matriculating as a student on the Chattanooga campus. This penalty is used when the violation of one (1) or more of the institution's Standards of Conduct is deemed so serious as to warrant total and permanent disassociation from the University community without the possibility of re-enrollment; or when, by his/her repeated violation of the institution's Standards of Conduct, a student exhibits blatant disregard for the health and safety of other members of the University community or the University's right to establish rules of conduct.
 - (i) **Revocation of Admission or Degree.** Revocation of admission or degree means revoking a student's admission to the University or revoking a degree already awarded by the University. Revocation of a degree shall be approved by the University of Tennessee Board of Trustees.
- (3) A disciplinary hold may be placed on a student's account until the completion of the student disciplinary process and/or until the student satisfies the terms and conditions of any penalties imposed. A student who, at the time of commencement, is subject to a continuing disciplinary penalty or an unresolved disciplinary charge shall not be awarded a degree before the conclusion of all penalties and/or resolution of all disciplinary charges.
- (4) The following penalties may be imposed on a student organization found to have violated the Standards of Conduct:
- (a) **Warning.** A warning is a notice that the student organization is violating or has violated the Standards of Conduct.
 - (b) **Educational Sanction.** Representatives of student organizations may be required to attend classes, at their own expense, dealing with issues such as the consequences of alcohol or drug use, civility, ethics, or other topics as deemed appropriate by the Dean of Students or his/her designee.
 - (c) **Loss of Privilege.** This penalty is intended to serve as a reminder of the Standards of Conduct and is for a specific period of time. Examples of privileges that may be lost include participating in extracurricular activities (e.g., intramurals), housing privileges, participating in social activities, and using certain University-controlled property.
 - (d) **Restitution.** Restitution may be required in situations that involve destruction, damage, or loss of property, or unreimbursed medical expenses resulting from physical injury. Restitution may take the form of a monetary payment or appropriate service to repair or otherwise compensate for the destruction, damage, or loss.

- (e) Disciplinary Probation. Disciplinary probation means that a student organization is permitted to retain University registration on a probationary status. Probation may be for a defined or indefinite period. Violation of the Standards of Conduct during the period of disciplinary probation may result in more serious penalties, including revocation of University registration.
- (f) Revocation of University Recognition. In cases of serious misconduct, a student organization's University registration may be revoked.
- (5) More than one (1) of the penalties listed above may be imposed for any single violation of the Standards of Conduct. Penalties may be applied retroactively to the date of the offense.
- (6) Intoxication or impairment because of alcohol, drugs, chemicals, or other substances does not diminish or excuse a violation of the Standards of Conduct.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-02-05-.09 No Contact Directive. In cases involving allegations of assault, injury, sexual abuse, harassment, or where there is reason to believe continued contact between a student/student organization and specific persons, including complainants and witnesses, may interfere with those persons' security, safety or ability to participate effectively in work or studies, the Vice Chancellor for Student Development, or his/her designee, may require that the student/student organization not have verbal, physical, or written contact with specific persons for a definite or indefinite period of time. The student/student organization will receive notice of the no contact directive. Any student, faculty or staff member or other person with a reasonable justification may request a no contact directive. In addition to an internal University no contact directive, complainants are advised that other similar options exist and can be obtained from law enforcement and civil and criminal courts.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-02-05-.10 Interim Suspension.

- (1) When the Vice Chancellor for Student Development or his/her designee has reasonable cause to believe that a student's or student organization's continued presence on University-controlled property or at University-affiliated activities poses a significant risk of substantial harm to the health or safety of others or to property or poses an ongoing threat to the disruption of, or interference with, the normal operations of the University, the Vice Chancellor for Student Development or his/her designee may impose an interim suspension prior to the conclusion of a full hearing on the alleged misconduct.
- (2) An interim suspension shall be confirmed by notice to the student or student organization that explains the basis for the interim suspension and shall remain in effect until the conclusion of a full hearing in accordance with the rules of the University of Tennessee, which shall be held without undue delay.
- (3) Within three (3) business days of the imposition of the suspension, the student or student organization shall be offered an opportunity to appear personally before the Vice Chancellor for Student Development or his/her designee in order to discuss the following issues only: (i) the reliability of the information concerning the student's or student organization's conduct; and (ii) whether the conduct and surrounding circumstances reasonably indicate that the student's or student organization's continued presence on University-controlled property or at University-affiliated activities poses a significant risk of substantial harm to the health or safety of others or to property or poses an imminent threat of disruption of or interference with the normal operations of the University.
- (4) During an interim suspension, the student or student organization shall be denied access to University-controlled property, including residence halls, and all other University-affiliated activities or privileges for which the student or student organization might otherwise be eligible, as

the Vice Chancellor for Student Development or his/her designee determines in his/her sole discretion to be appropriate. A student or student organization who receives an interim suspension and violates the terms of the interim suspension shall be subject to further disciplinary action and may be treated as a trespasser. Permission to be on University-controlled property or participate in University-affiliated activities may be granted by the Vice Chancellor for Student Development or his/her designee.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-02-05-.11 Appeals.

- (1) Decisions of the Student Conduct Board or University Hearing Officer sitting alone may be appealed to the Vice Chancellor for Student Development by delivering a signed statement containing:
 - (a) A statement that he/she appeals the decision;
 - (b) A brief statement of the grounds for the appeal. The appeal shall be submitted within five (5) business days of receiving written notification of the decision. The basis for filing an appeal is limited to the following grounds:
 1. The student's or student organization's rights were violated in the hearing process;
 2. New relevant material evidence or information has been provided that could not have been discovered at the time of the hearing;
 3. The information presented did not support the decision by a preponderance of the evidence (more likely than not) standard; or
 4. The sanction(s) imposed were not appropriate for the violation.
- (2) The Vice Chancellor for Student Development may:
 - (a) Uphold the decision;
 - (b) Amend the decision;
 - (c) Return the case for reconsideration; or
 - (d) Overturn the decision.
- (3) Either party may appeal to the Chancellor of the University. In cases of involving a finding that a student is guilty of sexual assault or misconduct, the alleged victim shall have the right to appeal the decision of the Student Conduct Board or University Hearing Officer to the Vice Chancellor for Student Development.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-02-05-.12 Withdrawal or Temporary Suspension Due to Physical or Psychological Illness.

- (1) When a student is unable to pursue his or her academic work effectively, or when his or her behavior is disruptive to the normal educational processes of the University, or constitutes a threat to members of the University community, due to, among other things, the use of alcohol, drugs, or a physical or mental incapacitating illness or condition, he or she may be withdrawn or temporarily suspended from the University as hereinafter provided.

- (a) **Withdrawal.** A student may be withdrawn from the University only after an evaluation of his or her mental, physical condition, or behavior by a panel of at least three (3) persons appointed by the Vice Chancellor for Student Development. The student shall be notified of the reasons for the evaluation and given an opportunity to present evidence to the committee. He or she shall enjoy the rights of normal due process procedures. The committee's findings and recommendations shall be forwarded to the Vice Chancellor for Student Development who will notify the student in writing of his or her decision. A student withdrawn under this procedure shall not be readmitted to the University without the approval of the Vice Chancellor for Student Development.
 - (b) **Grades.** When a student is suspended or withdrawn from the University for reasons described in this section, he or she will be assigned a grade of "W" or "I".
 - (c) **Committee Composition and Hearing.** The panel referred to herein will include at least one (1) member of the faculty at large and representative of the Counseling Center or a psychologist. The Dean of Students or his or her designee would normally have responsibility for preparing the charges and presenting the case. The student in question would have the right to normal due process provisions.
- (2) **Temporary Suspension.** Whenever a student, because of his or her mental or physical condition, is unable to pursue his or her academic work effectively, or is disruptive to educational processes or constitutes an apparent danger to persons or property, he or she may be suspended from the University for a reasonable period of time by the Vice Chancellor for Student Development. The University will then schedule a hearing within five (5) class days of the beginning of the suspension. If the University does not withdraw the student after the hearing, he or she may return to the University at the end of the suspension period.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-02-05-.13 **Parking Appeals.** Appeals of student parking tickets are reviewed by the Student Parking Appeals Board. Decisions concerning the appeals are based on a majority vote of the Board.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-02-05-.14 **Composition of Student Parking Appeals Board.**

- (1) The Student Parking Appeals Board shall be composed of six (6) student members plus a Chair and six (6) alternates. Two (2) students will be appointed by the Student Senate from the general student body. Two (2) students will be appointed by the faculty, one (1) appointed by the President of SGA, and one (1) appointed by the Office of Student Development. Each appointing body shall also appoint the alternates. An alternate will serve when a regular member cannot be present or when a member is excused for reasons such as personal friendship with the principals.
- (2) All members must have a 2.00 cumulative grade point average and be enrolled as full time students and not be on any form of probation.
- (3) The Chair will be elected by the Board and votes in case of a tie.
- (4) A temporary chair will be elected by the members of the Board in the event:
 - (a) The Chair is a party to the case;
 - (b) The Chair is absent; or
 - (c) The Chair removes himself/herself from the case.
- (5) Once appointed, students remain on the Student Parking Appeals Board until they terminate at

the University, cease to be eligible to serve, or resign voluntarily.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-02-05-.15 Emergency Situations. When in the opinion of the Chancellor, conditions are such that there exists a clear and immediate danger to the physical safety or well-being of the members of the University community or safety of University property, he or she may direct that the accused student or organization be suspended pending initiation (and completion) of normal disciplinary proceedings provided those procedures are offered as soon as can reasonably be accomplished. The Chancellor may delegate this authority to the Vice Chancellor for Student Development.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Governor Bill Haslam				x	
Commissioner Julius Johnson				x	
Commissioner Kevin Huffman				x	
Dr. Joe DiPietro	x				
Dr. Richard D. Rhoda			Non-voting		
Charles C. Anderson, Jr.	x				
Ann Holt Blackburn	x				
Dr. J.A.M. "Toby" Boulet	x				
William Y. Carroll	x				
George E. Cates	x				
Spruell Driver, Jr.	x				
Teresa K. Fowler			Non-voting		
John N. Foy	x				
Crawford Gallimore	x				
Monice Moore Hagler	x				
James E. Hall	x				
Douglas A. Horne	x				
Andrea J. Loughry	x				
James L. Murphy, III	x				
Karl A. Schledwitz	x				
Carey Smith	x				
Don Stansberry	x				
Robert S. Talbott	x				
Betty Ann Tanner	x				
Charles E. Wharton	x				

Dr. Janet M. Wilbert			Non-voting		
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I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the University of Tennessee Board of Trustees on June 23, 2011, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: March 16, 2012

Signature: 

Name of Officer: Matthew Scoggins

Title of Officer: Assistant General Counsel



Subscribed and sworn to before me on: March 16, 2012

Notary Public Signature: Lynette Russell

My commission expires on: 1-27-15

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



Robert E. Cooper, Jr.
Attorney General and Reporter

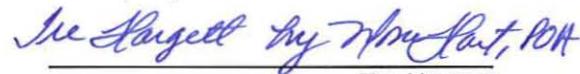
4-6-12

Date

Department of State Use Only

Filed with the Department of State on: 04/17/2012

Effective on: 09/28/2012



Tre Hargett
Secretary of State



**RULES
OF
THE UNIVERSITY OF TENNESSEE AT CHATTANOOGA**

**CHAPTER 1720-2-5
STUDENT CODE**

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~~1720-2-5-.01 JURISDICTION.~~

- ~~(1) The supervision of student discipline is delegated by the Chancellor to the Vice Chancellor for Student Development, and the Vice Chancellor for Student Development, may in turn, identify appropriate University officials to assist in this duty and/or to serve as University Hearing Officers.~~
- ~~(2) The University Student Code shall apply to conduct that occurs on University premises, at University sponsored activities, and to off campus conduct that adversely affects a member of the University Community. Each student shall be responsible for his or her conduct from the time of application for admission through the actual awarding of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment (and even if their conduct is not discovered until after a degree is awarded). The Student Code shall apply to a student's conduct even if the student withdraws from school while a disciplinary matter is pending.~~
- ~~(3) Disputes between organizations (except in fraternity/sorority cases which may be within the jurisdiction of the appropriate Greek governing council and/or the Dean of Students office) shall be subject to the jurisdiction of the Vice Chancellor for Student Development or his or her designee.~~
- ~~(4) The Vice Chancellor for Student Development or his or her designee shall have jurisdiction over disputes between individual students and organizations when such arbitration is requested by either of the parties involved.~~
- ~~(5) The Honor Code applies to academic matters primarily, although its purpose has implications for all student conduct. The Honor Code regulates certain activities of all students and faculty members in any college or division of the University during all sessions.~~

~~Authority: TCA §49-9-209(e). Administrative History: Original rule filed September 15, 1976; effective October 15, 1976. Repealed by Public Chapter 575; effective July 1, 1986. New rule filed May 27, 1986; effective August 12, 1986. Amendment filed March 12, 1987; effective June 29, 1987. Amendment filed June 22, 2006; effective October 27, 2006.~~

~~1720-2-5-.02 REGULATIONS GOVERNING STUDENT CONDUCT.~~

- ~~(1) All students violating Civil or Criminal Law, whether on University property or not, are answerable to civil or criminal authorities. In addition, students at the University will be responsible for abiding by the regulations governing student conduct. Specific violations are:
 - ~~(a) Failure to adhere to the Honor Code Pledge.~~~~

(Rule 1720-2-5-.02, continued)

- (b) ~~Forgery, alteration, destruction, falsification or misuse of University documents, records, or identification, or acting in a conspiracy or assisting others to perform or commit any of the aforementioned acts.~~
- (c) ~~Knowingly provide false information to the University or other similar forms of dishonesty in University-related affairs.~~
- (d) ~~Disruption, obstruction, or interruption of teaching, research, administration, conduct procedures or other University activities, including its public service functions, or other authorized University activities. In no event shall this rule be construed to prevent speech protected by the First Amendment to the United States Constitution.~~
- (e) ~~Threat or harassment of any person, or conduct which poses a clear and present danger to the health, safety or well being of any person on University-owned or controlled property or at University-supervised functions.~~
- (f) ~~Physical abuse of any person, or other conduct which threatens or endangers the health or safety of any person, whether such conduct occurs on or off University property. In no event shall this rule be construed to prevent speech protected by the First Amendment to the United States Constitution.~~
- (g) ~~Vandalism, malicious destruction, damage, or misuse of private or public property, including library material.~~
- (h) ~~Theft, misappropriation, unauthorized possession, sale, or damage to property belonging to the University, an organization affiliated with the University, a member of the University community, or a campus visitor.~~
- (i) ~~Violations of properly constituted rules and regulations governing the use of motor vehicles on University-owned property.~~
- (j) ~~Lewd, obscene, indecent, or disorderly conduct on University-owned or controlled property or at University-supervised functions.~~
- (k) ~~Possession, while on University-owned or controlled property or at University-supervised activity, of any weapon such as, but not limited to, rifles, shotguns, ammunition, handguns, air guns, explosives such as firecrackers, and bladed weapons, unless authorized by the Vice Chancellor for Student Development or his or her designee.~~
- (l) ~~Unauthorized use of or entry into University facilities and/or unauthorized possession or duplication of keys to University facilities.~~
- (m) ~~Use, possession, or being under the influence of alcoholic beverages on University-owned property.~~
- (n) ~~Gambling on University-owned or controlled property.~~
- (o) ~~Unlawful use, manufacture, possession, distribution or dispensing of drugs or alcohol on University property or during University activities.~~
- (p) ~~Failure to comply with the directions of any University official, acting in the normal discharge of their duties.~~

(Rule 1720-2-5-.02, continued)

- (q) ~~Any act of arson, falsely reporting a fire or other emergency, falsely setting off a fire alarm, tampering with or removing from its proper location fire extinguishers, hoses, or any other fire emergency equipment except when done with real need for such equipment.~~
- (r) ~~Violation of local, state, or federal law, whether on or off campus, when it appears that the student has acted in a way which adversely affects or seriously interferes with the University's normal educational function, or which injures or endangers the welfare of any member of the University community. Such violation includes, but is not limited to, violation of state or federal drug laws, commission of or attempt or threat to commit rape, violent or non-violent sexual offenses, murder, felonious assault, arson or any other felonious crime against person or property.~~
- (s) ~~Unauthorized use or misuse of the University's computing facilities. This includes:~~
 - 1. ~~Logging on an account without the knowledge and permission of the owner.~~
 - 2. ~~Changing, deleting, and adding to the programs, files and data without authorization of the owner.~~
 - 3. ~~Theft of program data and machine resources.~~
 - 4. ~~Attempts to thwart security of the computer system(s).~~
 - 5. ~~Attempts to disrupt the normal operations of the computer system(s), including hardware and software.~~
- (t) ~~An attempt to commit or to be an accessory to the commission of any act in violation of the student code.~~
- (u) ~~Participation of students in hazing activities. "Hazing" means any intentional or reckless act, on or off University property, by one student, acting alone or with others, which is directed against any other student, that endangers the mental or physical health or safety of that student, or which induces or coerces a student to endanger his or her mental or physical health or safety, and includes treatment of a violent, abusive, shameful, insulting, or humiliating nature, whether the student voluntarily participates or not. Such action is prohibited when connected with initiation into or affiliation with an organization and does not include participation in customary athletic events or similar competition.~~

~~Authority: TCA §49-9-209(e). Administrative History: Original rule filed September 15, 1976; effective October 15, 1976. Repealed by Public Chapter 575; effective July 1, 1986. New rule filed May 27, 1986; effective August 12, 1986. Amendment filed October 31, 1990; effective January 29, 1991. Amendment filed November 20, 1990; effective February 27, 1991. Amendment filed September 3, 1992; effective December 29, 1992. Amendment filed June 18, 1996; effective October 28, 1996. Amendment filed June 22, 2006; effective October 27, 2006.~~

1720-2-5-.03 INVESTIGATIONS OF STUDENT CONDUCT.

- (1) ~~All University investigations shall be conducted in an ethical manner, keeping in mind the rights of students. The following regulations shall be strictly observed.~~
- (2) ~~Inspection and Search Policy. Entry by University officials into occupied rooms in residence halls will be divided into three categories: inspection, search, and emergency. Inspection is defined as the entry into an occupied room by University officials in order to ascertain the health and safety conditions in the room, or to make repairs on facilities, or to perform cleaning and janitorial operations. Search is defined as the entry into an occupied room by on campus authorities for the purpose of investigating~~

(Rule 1720-2-5-.03, continued)

~~suspected violations of campus regulations and/or city, state, or federal law. An emergency situation exists when the delay necessary to obtain search authorization constitutes a danger to persons, property, or the building itself.~~

- (a) ~~Inspection: Scheduled inspections by University officials, with the exception of daily janitorial and maintenance operations, shall be preceded, if possible, by twenty-four hours notice to the residents. During the inspection, there will be no search of drawers or closets or personal belongings.~~
- (b) ~~Search: University officials will not enter a room for purposes of search except in compliance with state law or with the permission of the resident or the written permission of the Vice Chancellor for Student Development or his or her designee. University officials shall have, if possible, the Resident Director or his or her designee accompany them on the search.~~

~~Authority: TCA §49-9-209(e). Administrative History: Original rule filed September 15, 1976; effective October 15, 1976. Repealed by Public Chapter 575; effective July 1, 1986. New rule filed May 27, 1986; effective August 12, 1986. Amendment filed March 12, 1987; effective June 29, 1987. Amendment filed June 22, 2006; effective October 27, 2006.~~

1720-2-5-.04 DUE PROCESS AND STUDENT RIGHTS.

- (1) ~~Due process shall guarantee to the accused student the following:~~
 - (a) ~~The right to be informed of charges in writing prior to the hearing.~~
 - (b) ~~The right of reasonable time in which to prepare a defense.~~
 - (c) ~~The right to a fair and just hearing.~~
 - (d) ~~The right to challenge all charges and testimony used against the accused student and to question witnesses.~~
 - (e) ~~The right to be informed in writing of:~~
 - 1. ~~The final decision of his or her case.~~
 - 2. ~~The proper procedure for appeal.~~
 - (f) ~~The right to be accompanied by an advisor he or she chooses, at his or her own expense.~~
 - 1. ~~The accused student is responsible for presenting his or her own information, and therefore, advisors are not to speak or participate directly in a University hearing.~~
 - 2. ~~Students should select as an advisor a person whose schedule allows attendance at the scheduled date and time for the University hearing.~~
 - 3. ~~Delays will not normally be allowed due to the scheduling conflicts of an advisor.~~
- (2) ~~Any student or student organization shall be formally charged in writing with the alleged offense. The date, time, and place of occurrence of the offense shall be stated on the statement of charges.~~
- (3) ~~The Dean of Students office must keep accurate records of each hearing and the disposition of each case.~~

(Rule 1720-5-1-.04, continued)

6. ~~His right to legal or other counsel. If representation by counsel is desired, he must provide notice of his intent to be represented by counsel concurrent with his request for a hearing; in the absence of such notice, the hearing panel will within the dictates of justice, direct either that a hearing proceed without presence of counsel or that the hearing be postponed;~~
 7. ~~His right to a hearing in accordance with the contested case provisions of the Uniform Administrative Procedures Act, T.C.A. §4-5-108 et seq. In the absence of a voluntary written waiver of his right to a hearing under the provisions of the UAPA, a requested hearing will be conducted in accordance with the University's APA hearing procedures and these procedures shall not apply.~~
- (b) ~~*Hearing Panel*—A requested hearing will be provided by a panel of individuals or hearing examiner, selected in accordance with policies of UTM or, in the absence of applicable policies or procedures, by the Chancellor (or his designee). The hearing will be conducted by a panel chairman similarly selected. Panel members shall be impartial and anyone lacking such impartiality shall recuse himself or be removed by the Chancellor upon the request of any party to a hearing.~~
- (c) ~~*Hearing Process*—The chairman of a hearing panel will conduct the hearing, without regard to technical rules of procedures, in such manner as will best serve the cause of justice within the following general guidelines:~~
1. ~~Each party to a hearing will be afforded a full and fair opportunity to present all evidence, including witnesses, reasonably relating to the charge or action at issue; evidence which is irrelevant, immaterial, repetitious or voluminous may be limited;~~
 2. ~~The hearing panel will consider all evidence presented, giving due consideration to the credibility or weight of each item presented; technical rules of evidence will not apply;~~
 3. ~~Each party will have the right to question opposing witnesses;~~
 4. ~~An appropriate record will be made of the hearing procedures. However, defects in the record will not invalidate the proceedings;~~
 5. ~~The University will have the burden of proving, by a preponderance of the evidence, the truth of the charge(s) at issue. Where the charge(s) is found to be true, the person charge will have the burden of proving that the disciplinary action taken or proposed is arbitrary, capricious, or unreasonable;~~
 6. ~~Following the conclusion of the hearing, the hearing panel will consider the evidence and present written findings.~~
- (d) ~~*Reserved.*~~
- (e) ~~*Emergency Powers.*—When in the judgment of the Chancellor of The University of Tennessee at Martin, conditions are such that an emergency exists which makes it impossible for the system of judicial boards to function, he/she may suspend these procedural regulations. If the procedures are suspended, he/she may substitute for them arrangements for handling disciplinary matters that will insure the orderly functioning of the University and at the same time safeguard the basic rights of the students.~~

(Rule 1720-2-5-.05, continued)

- (f) ~~The University will have the burden of proving, by a preponderance of the evidence, the truth of the charge(s) at issue.~~
- (g) ~~Following the conclusion of the University hearing, the Student Conduct Board or University Hearing Officer sitting alone will consider the evidence and present written findings.~~
- (h) ~~An appropriate record will be made of the hearing procedures. Deliberations shall not be recorded. Defects in the record will not invalidate the proceedings.~~

Authority: TCA §49-9-209(e). Administrative History: Original rule filed September 15, 1976; effective October 15, 1976. Repealed filed August 22, 1980; effective December 1, 1980. Repealed by Public Chapter 575; effective July 1, 1986. New rule filed May 27, 1986; effective August 12, 1986. Amendment filed June 22, 2006; effective October 27, 2006.

~~1720-2-5-.06 DISCIPLINARY ACTIONS AND PENALTIES.~~

- (1) ~~Disciplinary actions are taken and penalties are assigned by the Student Conduct Board or University Hearing Officer sitting alone on the basis of all attendant circumstances.~~
 - (a) ~~The penalties which may be assessed for violation of the Student Code are:~~
 1. ~~Loss of Privilege. This penalty may involve loss of scholarship, stipend, right to participate in certain extracurricular activities, etc.~~
 2. ~~Educational Sanction.~~
 3. ~~Housing Probation. Housing probation means a student is permitted to remain in University housing on a probationary status.~~
 4. ~~Disciplinary Reprimand. Disciplinary reprimands are used for minor infractions or misconduct where it is evident the misconduct occurred with knowledge and awareness of the University regulations. Reprimands are given to students in either verbal or written form. Any specific conditions on the student's behavior or activities may be described in a personal letter to the student.~~
 5. ~~Disciplinary Probation. Disciplinary probation means that a student is permitted to remain in the University with a probationary status. Should a violation of regulations occur during probation, the student is normally suspended. Any specific conditions are described in a personal letter to the student.~~
 6. ~~Suspension. Suspension is used in cases of serious misconduct, or violation of probation, and means that the student is required to cancel his registration and is not eligible to apply for readmission for a designated period of time. Suspension may be indefinite or for a specified time, and a suspension may be deferred pending good behavior. (Persons suspended from the University may not return to the campus for the duration of their suspension, except to conduct official business with an administrative officer or faculty member.)~~
 7. ~~Dismissal. Dismissal is used when the misconduct is serious enough to warrant the decision that the student is not to return to the University.~~
 - (b) ~~The following sanctions may be imposed upon groups or organizations:~~
 1. ~~Those sanctions listed above in sections 1., 2., 5., 6.~~

(Rule 1720-2-5-.06, continued)

2. ~~Deactivation. Loss of all privileges, including University recognition, for a specified period of time.~~

~~Authority: TCA §49-9-209(e). Administrative History: Original rule filed September 15, 1976; effective October 15, 1976. Repealed filed August 22, 1980; effective December 1, 1980. Repealed by Public Chapter 575; effective July 1, 1986. New rule filed May 27, 1986; effective August 12, 1986. Amendment filed June 22, 2006; effective October 27, 2006.~~

~~1720-2-5-.07 APPEALS.~~

- (1) ~~Decisions of the Student Conduct Board or University Hearing Officer sitting alone may be appealed to the Vice Chancellor for Student Development by delivering a signed statement containing:~~
- ~~(a) A statement that he/she appeals the decision;~~
 - ~~(b) A brief statement of grounds of appeal. The appeal must be submitted within five (5) business days of receiving written notification of the decision.~~
- (2) ~~The Vice Chancellor may:~~
- ~~(a) Uphold the decision~~
 - ~~(b) Amend the decision~~
 - ~~(c) Return case for reconsideration~~
 - ~~(d) Overturn decision~~
- (3) ~~Either Party may appeal to the Chancellor of the University.~~

~~Authority: TCA §49-9-209(e). Administrative History: Original rule filed September 15, 1976; effective October 15, 1976. Repealed by Public Chapter 575; effective July 1, 1986. New rule filed May 27, 1986; effective August 12, 1986. Amendment filed June 22, 2006; effective October 27, 2006~~

~~1720-2-5-.08 PARKING APPEALS~~

~~Parking Appeals. Appeals of student parking tickets are reviewed by the Student Parking Appeals Board. Decisions concerning the appeals are based on a majority vote of the Board.~~

~~Authority: TCA §49-9-209(e). Administrative History: Original rule filed September 15, 1976; effective October 15, 1976. Repealed by Public Chapter 575; effective July 1, 1986. New rule filed May 27, 1986; effective August 12, 1986. Amendment filed June 22, 2006; effective October 27, 2006.~~

~~1720-2-5-.09 COMPOSITION OF STUDENT PARKING APPEALS BOARD.~~

- (1) ~~The Student Parking Appeals Board shall be composed of six student members plus a Chair and six alternates. Two students will be appointed by the Student Senate from the general student body. Two students will be appointed by the faculty, one appointed by the President of SGA, and one appointed by the Office of Student Development. Each appointing body shall also appoint the alternates. An alternate will serve when a regular member cannot be present or when a member is excused for reasons such as personal friendship with the principals.~~

(Rule 1720-2-5-.09, continued)

- (2) ~~All members must have a 2.00 cumulative grade point average and be enrolled as full-time students and not be on any form of probation.~~
- (3) ~~The Chair will be elected by the Board and votes in case of tie.~~
- (4) ~~A temporary chair will be elected by the members of the board in the event:~~
 - (a) ~~The Chair is a party to the case.~~
 - (b) ~~The Chair is absent.~~
 - (c) ~~The Chair removes himself from the case.~~
- (5) ~~Once appointed, students remain on the Student Parking Appeals Board until they terminate at the University, cease to be eligible to serve, or resign voluntarily.~~

~~Authority: TCA §49-9-209(e). Administrative History: Original rule filed May 27, 1986; effective August 12, 1986. Amendment filed June 22, 2006; effective October 27, 2006~~

~~1720-2-5-10 EMERGENCY SITUATIONS.~~

~~When in the opinion of the Chancellor, conditions are such that there exists a clear and immediate danger to the physical safety or well-being of the members of the University community or safety of University property, he or she may direct that the accused student or organization be suspended pending initiation (and completion) of normal disciplinary proceedings provided those procedures are offered as soon as can reasonably be accomplished. The Chancellor may delegate this authority to the Vice Chancellor for Student Development.~~

~~Authority: TCA §49-9-209(e). Administrative History: Original rule filed May 27, 1986; effective August 12, 1986. Amendment filed June 22, 2006; effective October 27, 2006~~

~~1720-2-5-11 WITHDRAWAL OR TEMPORARY SUSPENSION DUE TO PHYSICAL OR PSYCHOLOGICAL ILLNESS.~~

- (1) ~~When a student is unable to pursue his or her academic work effectively, or when his or her behavior is disruptive to the normal educational processes of the University, or constitutes a threat to members of the University community, due to, among other things, the use of alcohol, drugs, or other psychologically incapacitating illnesses or conditions, he or she may be withdrawn or temporarily suspended from the University as hereinafter provided:~~
 - (a) ~~Withdrawal. A student may be withdrawn from the University only after an evaluation of his or her mental, physical condition, or behavior by a panel of at least three persons appointed by the Vice Chancellor for Student Development. The student shall be notified of the reasons for the evaluation and given an opportunity to present evidence to the committee. He or she shall enjoy the rights of normal due process procedures. The committee's findings and recommendations shall be forwarded to the Vice Chancellor for Student Development who will notify the student in writing of his or her decision. A student withdrawn under this procedure shall not be readmitted to the University without the approval of the Vice Chancellor for Student Development.~~
 - (b) ~~Grades. When a student is suspended or withdrawn from the University for reasons described in this section, he or she will be assigned a grade of "W".~~
 - (c) ~~Committee Composition and Hearing. The panel referred to herein will include at least one member of the faculty at large and representative of the Counseling Center or a psychologist.~~

(Rule 1720-2-5.11, continued)

~~The Dean of Students or his or her designee would normally have responsibility for preparing the charges and presenting the case. The student in question would have the right to normal due process provisions.~~

- (2) ~~Temporary Suspension. Whenever a student, because of his or her mental or physical condition, is unable to pursue his or her academic work effectively, or is disruptive to educational processes or constitutes a danger to persons or property, he or she may be suspended from the University for a reasonable period of time by the Vice Chancellor for Student Development. The University will then schedule a hearing within 5 class days of the beginning of the suspension. If the University does not withdraw the student after the hearing, he or she may return to the University at the end of the suspension period.~~

~~Authority: TCA §49-9-209(e). Administrative History: Original rule filed May 27, 1986; effective August 12, 1986. Amendment filed March 12, 1987; effective June 29, 1987. Amendment filed June 22, 2006; effective October 27, 2006~~

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: University of Tennessee

DIVISION: University of Tennessee at Martin

SUBJECT: Traffic and Parking Regulations

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 49-9-209

EFFECTIVE DATES: September 28, 2012 through June 30, 2013

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT:

The University of Tennessee at Martin has revised its traffic and parking regulations to allow for a \$200 fine for possessing, using, reproducing, or altering a University registration decal in a manner that would violate state or local law and to allow restitution to the victim.

The provision also states that University students and employees may be subject to discipline under other University policies and procedures.

The proposed changes are a result of the request of local officials, so that offenders are handled through university procedures rather than the Weakley County court system.

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)

Impact on Local Governments

Pursuant to T.C.A. 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The University of Tennessee anticipates that this rule change will have minimal impact on local governments. The rule change was made at the request of local government officials so that offenders are handled through university procedures rather than the Weakley County court system.

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For Department of State Use Only

Sequence Number: 04-10-12
 Rule ID(s): 5189
 File Date: 04/12/2012
 Effective Date: 09/28/2012

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §4-5-202, 4-5-207 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Agency/Board/Commission:	University of Tennessee
Division:	
Contact Person:	Matthew Scoggins, Assistant General Counsel
Address:	719 Andy Holt Tower, 1331 Circle Park, Knoxville, TN
Zip:	37996-0170
Phone:	865-974-3245
Email:	scoggins@tennessee.edu

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
1720-05-06	Traffic and Parking Regulations
Rule Number	Rule Title
1720-05-06-.05	Penalties

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

Substance of Proposed Rules
 of
 The University of Tennessee at Martin
 Amendments
 Chapter 1720-05-06
 Traffic and Parking Regulations

Subparagraph (a) of Paragraph (1) of Rule 1720-05-06-.05 Penalties is amended by adding the following language as subparagraph (8):

Unauthorized possession of registration decals; falsification of registration information; and/or illegal use, reproduction, or alteration of registration decals – at the discretion of the University, up to two hundred dollars (\$200) per violation and restitution to the victim; or referral to City or General Sessions Court. University students and employees also may be subject to discipline under other University policies and procedures.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

Subparagraph (b) of Paragraph (1) of Rule 1720-05-06-.05 Penalties is amended by deleting the words, “or illegally uses, reproduces, or alters a vehicle registration decal,” so that, as amended, the subparagraph will read:

A person who commits a moving violation will be referred to City or General Sessions Court.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Governor Bill Haslam				x	
Commissioner Julius Johnson	x				
Commissioner Kevin Huffman				x	
Dr. Joe DiPietro	x				
Dr. Richard D. Rhoda			Non-voting		
Charles C. Anderson, Jr.	x				
Ann Holt Blackburn	x				
Dr. J.A.M. "Toby" Boulet	x				
George E. Cates				x	
Spruell Driver, Jr.	x				
J. Brian Ferguson	x				
Teresa K. Fowler			Non-voting		
John N. Foy	x				
Crawford Gallimore	x				
Monice Moore Hagler	x				
James E. Hall	x				
Douglas A. Horne	x				
Andrea J. Loughry	x				
James L. Murphy, III	x				
Karl A. Schledwitz	x				
Carey Smith	x				
Don Stansberry	x				
Robert S. Talbott	x				
Betty Ann Tanner	x				
Charles E. Wharton	x				

Tommy G. Whittaker				x	
Dr. Janet M. Wilbert			Non-voting		

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the University of Tennessee Board of Trustees on February 29, 2012, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: March 19, 2012

Signature: *[Handwritten Signature]*

Name of Officer: Matthew Scoggins

Title of Officer: Assistant General Counsel



Subscribed and sworn to before me on: March 19, 2012

Notary Public Signature: *Lynette Russell*

My commission expires on: 1-27-15

All proposed 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.

[Handwritten Signature]
 Robert E. Cooper, Jr.
 Attorney General and Reporter
3-29-12
 Date

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Filed with the Department of State on: 04-10-12

Effective on: 09/28/2012

[Handwritten Signature]
 Tre Hargett
 Secretary of State

**RULES
OF
THE UNIVERSITY OF TENNESSEE AT MARTIN**

**CHAPTER 1720-05-06
TRAFFIC AND PARKING REGULATIONS**

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1720-05-06-.01 REGISTRATION OF VEHICLES.

- (1) All motor vehicles operated by faculty, staff and students in connection with their employment or attendance at UTM must be registered at the UTM Department of Public Safety.
- (2) All persons employed by other agencies who regularly use University facilities must annually register their vehicles with the University. "Vendor" decals will be used for this purpose. "Honorary" decals will be issued to all retired University personnel and "Special Guests" decals may be issued to all others who do not fit the vendor classification.
- (3) Vehicle registration decals are issued at the time of student registration and must be properly displayed.
- (4) Faculty and staff vehicle registration and collection of associated fees will be conducted prior to the beginning of each Fall Semester and will be valid for the entire academic year. Vehicle registration will not be completed until the previous year's citations have been cleared. New employees will be required to pay the registration fee at the time of their employment.
- (5) Student vehicle registration and collection of associated fees must be renewed at, or prior to, the beginning of each fall semester and will be valid for the entire academic year.
- (6) Student vehicle registrations must be completed prior to the first day of classes, or within 24 hours for those who enroll at a subsequent date or acquire a vehicle.
- (7) Generally, a student vehicle can only be registered in one classification: commuter or non-commuter. However, students who meet certain requirements may register vehicles as staff. To register as a staff member the student must teach eight (8) semester hours or have a forty (40) hour work week specified on appointment papers. The registration of student vehicles as staff members will be by agreement between the appropriate department chairman or dean and the Department of Public Safety.
- (8) The annual vehicle registration decal will be provided at no cost to anyone qualifying for a permanent disability sticker.
- (9) The person to whom a vehicle is registered is responsible for that vehicle and all violation citations issued thereto. If the person operating the vehicle is other than the registrant when a violation is committed, both he and the registrant may be cited.
- (10) Expired campus registration decals must be removed so that only the current registration decals are displayed.

- (11) Only one parking decal may be purchased by each staff/faculty member or student, unless it is a replacement decal. The decal may be transferred to another vehicle either permanently or temporarily.

Authority: T.C.A. §49-9-209(e), *Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.*

1720-05-06-.02 PARKING.

- (1) Staff parking areas are designated for all academic buildings. Students are not to park in these areas.
- (2) Student parking areas are designated by letter, e.g., C-Commuting students, N-Non-commuting students. Student's vehicles may be parked only in lots designated on the student's registration decal.
- (3) Parking lot designations are not applicable from 3:00 p.m. to 8:00 a.m. nor on weekends except where posted. The designations are for the hours between 8:00 a.m. and 3:00 p.m. Monday through Friday.

Authority: §49-9-208(e), *Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.*

1720-05-06-.03 VEHICLE OPERATION.

- (1) All persons operating vehicles on University property or in the campus area, which includes city streets adjacent to University property, must be properly licensed operators
- (2) Pedestrians have the right-of-way at established pedestrian crossings, except where regulated by traffic control lights or police officers.
- (3) Under normal conditions the maximum speed limit on campus streets is 15 mph and 30 mph on the city streets. However, vehicles may not be operated at any speed which is excessive for the conditions which may exist as a result of weather, traffic congestion, pedestrians, etc.
- (4) Traffic control signs and directions of police officers must be obeyed.
- (5) All persons operating vehicles are responsible for maintaining control of the vehicle, safe operation, and observance of traffic control signs, barriers and devices.
- (6) Operating or parking a motor vehicle in any area other than a street, roadway, or parking lot intended for motor vehicles is prohibited.

1720-05-06-.04 VIOLATIONS.

- (1) Registration.

- (a) Vehicles not registered.
 - (b) Registration decals not properly affixed to vehicle.
 - (c) Unauthorized possession of registration decals.
 - (d) Falsification of registration information.
 - (e) Illegal use, reproduction, or alteration of registration decals.
- (2) Parking.
- (a) In no parking areas, loading zones, or on grass.
 - (b) In unauthorized areas.
 - (c) In such a manner as to block or obstruct traffic, street, sidewalk, driveway, fire hydrant, building entrance or exit, or another vehicle.
 - (d) In areas where curb is painted yellow or where not marked as a parking area with painted white lines.
 - (e) Vehicles parked in such a manner as to prohibit the emptying of trash dumpsters will be towed away at the owner's expense.
 - (f) Disability parking violation, as defined by state law (e.g., an unauthorized use of a disabled parking space, ramp, plate, or placard; parking a vehicle so that a portion of the vehicle encroaches into a disabled parking space in a manner which restricts, or reasonably could restrict, a person confined to a wheelchair from exiting or entering a vehicle properly parked within the disabled parking space).
- (3) Moving.
- (a) Exceeding posted speed limit.
 - (b) Excessive speed for existing conditions.
 - (c) Failure to obey traffic control sign or signal.
 - (d) Failure to obey police officer.
 - (e) Operating vehicle without valid operator's license.
 - (f) Driving off of roadway or street.
 - (g) Reckless driving and/or racing.
 - (h) Failure to yield right-of-way at pedestrian crossing.
 - (i) Leaving scene of accident.
 - (j) Failure to signal turn or stop.
 - (k) Following too closely.
 - (l) Operating mechanically unsafe vehicle.

- (m) Driving while under the influence of alcohol or narcotics.
- (n) Operating vehicle causing loud or unnecessary noise, such as loud mufflers, horns, P.A. systems, etc.

1720-05-06-.05 PENALTIES.

(1) Fines and Other Penalties.

(a) The fine for registration or parking violations is twenty-five (\$25) dollars, except for the following violations:

1. Registration decal not properly affixed to a vehicle – twenty (\$20) dollars;
2. Parking in a no parking area or a loading zone – thirty (\$30) dollars;
3. Parking in such a manner as to block or obstruct traffic, a street, a driveway, a fire hydrant, a building entrance or exit, or another vehicle – thirty (\$30) dollars (the fine is twenty-five (\$25) dollars for blocking a sidewalk or building entrance or exit);
4. Parking in an area where curb is painted red – forty (\$40) dollars;
5. Parking in an area that is not marked as a parking area with painted white lines – twenty (\$20) dollars;
6. Parking in such a manner as to prohibit the emptying of trash dumpsters – thirty (\$30) dollars and the vehicle will be towed; and
7. The fine for a disability parking violation is set by State law, T.C.A. § 55-21-108. As of July 1, 2008, the fine was set at two-hundred (\$200) dollars. The fine imposed under these regulations will increase or decrease automatically when increased or decreased by State law. The fine shall not be suspended or waived. In addition to the fine, not more than five (5) hours of community service work may be imposed. Any community service work requirements imposed shall be to assist the disabled community by monitoring disabled parking spaces, providing assistance to disability centers or to disabled veterans, or other such purposes.

8. Unauthorized possession of registration decals; falsification of registration information; and/or illegal use, reproduction, or alteration of registration decals – at the discretion of the University, up to two hundred dollars (\$200) per violation and restitution to the victim; or referral to City or General Sessions Court. University students and employees also may be subject to discipline other University policies and procedures.

Forn
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(b) ~~A person who commits a moving violation or illegally uses, reproduces, or alters a vehicle registration decal~~ will be referred to City or General Sessions Court.

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Right

(2) Disciplinary Action.

(a) Students who persist in violating these regulations or commit a single violation surrounded by aggravated circumstances will be referred to the Office of Student Affairs for disciplinary action.

- (b) If more than five citations are issued to a student in one semester, the student will be notified that the vehicle is subject to being towed. If, after this notification, the student receives another citation during the same semester, the student's vehicle will be subject to towing for that citation and each subsequent citation for the remainder of that semester, even if the previous citations have been satisfied by paying fines or other penalties.
- (c) Any student having outstanding citations (citations which have not been paid) will not be allowed to register for further work until all such charges have been paid.

No transcripts or other information will be made available for such students who are seeking entrance into other institutions.

(3) Enforcement.

- (a) A citation for any type of parking violation must be paid or appealed within fourteen (14) calendar days after the issuance of the citation. If a fine is not paid or appealed within fourteen (14) calendar days after the issuance of the citation, a \$15.00 late charge will be added.
- (b) Windshield notices and/or other methods of notification will be used to provide the owner of the vehicle with: (1) advance notice of the University's intent to tow the owner's vehicle as a result of the owner receiving more than five citations in one semester and (2) the owner's right to a hearing. In the event the owner does not request a hearing or prevail at the hearing, his or her vehicle will be towed whenever it is next found upon the University property parked illegally.
- (c) Vehicles parked in a fire lane, designated disability parking space, reserved parking space, or in such manner as to impede the flow of traffic or disrupt the orderly affairs of the University may be towed/booted/impounded. Owners of vehicles towed/booted/impounded for the above reasons have a right to a hearing by a University official that will be provided on request prior to the payment of any tow charges, fines, and penalties. If tow charges, fines, or penalties are assessed after such hearing, impounded/towed/booted vehicles will be released upon proper identification and receipt of payment of all tow charges, fines, and penalties.

Authority: T.C.A. §49-9-209(e), *Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.*

1720-05-06-.06 APPEALS.

- (1) Appeals must be made within fourteen days of the date of citation issuance.
- (2) Citations may be appealed to the Traffic Office and then to the Traffic Appeals Board. The Traffic Appeals Board, which is composed of faculty, staff and students, meets each semester.

Authority: *Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.*

1720-05-06-.07 RESTRICTIONS.

- (1) University streets or grounds may not be used by any firm, corporation, or unauthorized person for advertising or commercial purposes.

Authority: *Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.*

- (1) Students and staff members must not endanger their safety or constitute an unreasonable impediment to lawful vehicular traffic by crossing streets at other than authorized lanes or by willfully walking or congregating in the streets.

Authority: §49-9-209(e), *Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.*

1720-05-06-.09 SPECIAL OCCASIONS AND EMERGENCIES.

- (1) On special occasions, such as athletic events, concerts, and graduation exercises, and in emergencies, parking and traffic limitations may be imposed by the Department of Public Safety as required by the conditions which prevail.

Authority: *Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.*

G.O.C. STAFF RULE ABSTRACT

<u>DEPARTMENT:</u>	University of Tennessee
<u>DIVISION:</u>	University of Tennessee at Martin
<u>SUBJECT:</u>	Student Conduct Code
<u>STATUTORY AUTHORITY:</u>	Tennessee Code Annotated, Section 49-9-209
<u>EFFECTIVE DATES:</u>	September 28, 2012 through June 30, 2013
<u>FISCAL IMPACT:</u>	Minimal

STAFF RULE ABSTRACT:

The University of Tennessee at Martin has revised its code of conduct for students. The following briefly summarizes the new rule and the key changes from the rule being repealed:

Rule 1720-05-01-.01 provides a description of the University's interests in students' conduct.

Rule 1720-05-01-.02 defines key terms used in the code of conduct.

Rule 1720-05-01-.03 sets forth the University's position on common jurisdictional issues that arise in student conduct cases.

Rule 1720-05-01-.04 sets forth the standards of conduct for University students. UTM currently has twenty-two (22) Standards of Conduct. The proposed rule adds seven (7) new standards and combines other standards, for a total of twenty-nine (29) standards of conduct, which are the same standards of conduct being proposed by the other UT campuses. The most significant additions and changes to the new standards of conduct relate to academic dishonesty, physical harm, harassment, sexual assault or misconduct, invasion of privacy, information technology, compliance with University instructions, alcohol, and drugs.

Rule 1720-05-01-.05 addresses penalties imposed for violations of the Standards of Conduct in a separate rule, in contrast to the former Rule 1720-05-01-.04. The proposed rule adds guidance for administrators and hearing boards in determining the appropriate penalty for a violation of the standards of conduct; adds a non-exclusive list of aggravating and mitigating factors that an administrator or hearing board may consider in determining a penalty; informs students that intoxication or impairment because of alcohol, drugs, chemicals, or other substances does not excuse a violation of the

standards of conduct; adds four penalties; informs students about the University's policy concerning coursework and pending disciplinary charges; informs student organizations about the penalties that may be imposed if a student organization violates the standards of conduct; and clarifies the penalty of indefinite suspension.

Rule 1720-05-01-.06 is a new rule describing a no-contact directive, which is a tool used by student affairs administrators in appropriate cases to prohibit a student from having verbal, physical, or written contact with specific persons for a definite or indefinite period of time.

Rule 1720-05-01-.07 is a new rule describing an interim suspension, which may be imposed on a student or student organization prior to the conclusion of a full due process hearing in certain situations.

Rule 1720-05-01-.08 explains the ways in which a student or student organization may oppose a charge that he/she has violated the standards of conduct. The rule also provides a list of rights for victims in sexual assault cases, to comply with recent guidance by the United States Department of Education concerning Title IX of the Education Amendments of 1972.

Rule 1720-05-01-.09 explains the process by which a student or student organization may appeal the decision of a disciplinary board. The proposed rule also explains the types of the decisions that may be appealed, to whom decisions may be appealed, and the procedures for appeals.

Rule 1720-05-01-.10 is substantially the same as former Rule 1720-05-01-.04(1)(e).

Rule 1720-05-01-.11 is the same as former Rule 1720-05-01-.05, except the proposed rule addresses: (1) the issue of what grades a student may be assigned if he or she is involuntarily withdrawn or suspended; and (2) the procedures through which a student who has been involuntarily withdrawn or suspended may reapply for admission.

Rule 1720-05-01-.12 is substantially the same as former Rule 1720-05-01-.13.

Rule 1720-05-01-.13 sets forth the University's expectations of students concerning academic integrity.

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Sequence Number: 04-14-12
 Rule ID(s): 5793
 File Date: 04/17/2012
 Effective Date: 09/28/2012

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §4-5-202, 4-5-207 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Agency/Board/Commission:	University of Tennessee
Division:	
Contact Person:	Matthew Scoggins, Assistant General Counsel
Address:	719 Andy Holt Tower, 1331 Circle Park, Knoxville, TN
Zip:	37996-0170
Phone:	865-974-3245
Email:	scoggins@tennessee.edu

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
1720-05-01	Student Conduct
Rule Number	Rule Title
1720-05-01-.01	Introduction
1720-05-01-.02	Rights
1720-05-01-.03	Standards of Conduct
1720-05-01-.04	Hearing Procedures
1720-05-01-.05	Withdrawal or Temporary Suspension Due to Mental or Physical Problems

Chapter Number	Chapter Title
1720-05-01	Student Rights and Responsibilities
Rule Number	Rule Title
1720-05-01-.01	Introduction
1720-05-01-.02	Definitions
1720-05-01-.03	Jurisdiction
1720-05-01-.04	Standards of Conduct
1720-05-01-.05	Penalties
1720-05-01-.06	No Contact Directives
1720-05-01-.07	Interim Suspension
1720-05-01-.08	Hearing Procedures

1720-05-01-.09	Appeals
1720-05-01-.10	Emergency Powers
1720-05-01-.11	Involuntary Medical Withdrawal or Suspension
1720-05-01-.12	Inspection and Search Policies
1720-05-01-.13	Academic Dishonesty

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

Substance of Proposed Rules
of
The University of Tennessee at Martin

Repeal

Rule 1720-05-01 Student Conduct is repealed.

New Rule

Chapter 1720-05-01
Student Rights and Responsibilities

1720-05-01-.01 Introduction.

- (1) Students at the University of Tennessee at Martin are members of both the University community and the larger community of which the University is a part. Accordingly, students are responsible for conducting themselves in a lawful manner and in compliance with University rules and policies. The University has established the following rules in order to advance the mission of the University by maintaining a safe and secure learning environment; protecting the rights and privileges of all members of the University community; providing a basis for orderly conduct of the affairs of the University; promoting a positive relationship between the University and its surrounding community; preserving institutional integrity and property; encouraging students to engage in conduct that brings credit to themselves and the University; and ensuring that each student who matriculates at the University graduates ready to contribute to society as an ethical and law-abiding citizen.
- (2) The University is committed to respecting students' constitutional rights. Nothing in this chapter is intended or shall be interpreted to restrict students' constitutional rights, including, but not limited to, rights of freedom of speech and assembly.
- (3) Students are responsible for being fully acquainted and for complying with the University catalog, handbook, and other rules and policies relating to students. Failure or refusal to comply with the rules and policies established by the University may subject a student to disciplinary action up to and including permanent dismissal from the University.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-05-01-.02 Definitions.

- (1) The term "University" means the University of Tennessee at Martin.
- (2) The term "student" means a person admitted, enrolled or registered for study at the University of Tennessee, either full-time or part-time, pursuing undergraduate, graduate, or professional studies, as well as non-degree students. Persons not officially registered or enrolled for a particular term but who have a continuing relationship with the University also are considered students for purposes of these rules.

- (3) The term "student organization" means an organization that is composed solely of University students that has submitted a pending application or has completed the process for registration according to University rules.
- (4) The term "University-controlled property" means all land, buildings, facilities, grounds, structures, or any other property owned, leased, used, maintained, or operated by the University. For purposes of this rule, University-controlled property includes all streets, alleys, sidewalks, and public ways abutting such property. University-controlled property also includes computers and network systems owned, maintained, or controlled by the University or funded by the University.
- (5) The term "University-affiliated activity" means any activity on or off University-controlled property that is initiated, aided, authorized, sponsored, or supervised by the University.
- (6) The term "University official" means an employee of the University, including faculty members and staff, or for purposes of this rule a University-recognized volunteer. Student employees may be considered University officials when acting in the performance of their duties (e.g., event staff, resident assistants, and teaching assistants).
- (7) The term "member of the University community" means any person who is a student, University official, campus visitor, or participant in a University-sponsored or University-affiliated activity.
- (8) The term "possession" means actual knowledge of a substance or property and/or being in such close proximity to the substance or property that it is a reasonable presumption that one had knowledge of the substance or property.
- (9) The term "weapon" means any device, instrument, or substance that is designed to, or reasonably could be expected to, inflict a wound, incapacitate, or cause serious bodily injury or death, including, but not limited to, firearms (loaded and unloaded, real and replica), ammunition, electronic control devices (such as tasers and stun guns), devices designed to discharge an object (such as bb guns, air guns, pellet guns, potato guns, and slingshots), explosives, dangerous chemicals (such as mace, tear gas, and oleoresin capsicum), martial arts weapons, bows and arrows, artificial knuckles, nightsticks, blackjacks, dirks, daggers, swords, and knives with fixed blades longer than three (3) inches. The term "weapon" does not include chemical repellents available over-the-counter for self-defense; instruments used solely for personal hygiene, preparation of food, maintenance, University-related instruction, or University employment-related duties.
- (10) The term "notice" means notice given in writing delivered by regular mail, courier service, or hand delivery to the address the University has on file for the student or student organization, or by e-mail to the student's or student organization's University-provided e-mail account.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-05-01-.03 Jurisdiction.

- (1) The Standards of Conduct, Chapter 1720-05-01-.04, apply to conduct that occurs on University-controlled property.
- (2) The University also has the discretion to discipline a student for an act in violation of the Standards of Conduct that occurs off University-controlled property if the conduct adversely affects the interests of the University, including, but not limited to, conduct which:
 - (a) Occurs in connection with a University-affiliated activity, including, but not limited to, an overseas study program or a clinical, field, internship, or in-service experience;
 - (b) Involves another member of the University community; or
 - (c) Threatens, or indicates that the student may pose a threat to, the health or safety of

him/herself or others or the security of any person's property, including, but not limited to, alcohol-related offenses, drug-related offenses, arson, battery, fraud, hazing, participation in group violence, rape, sexual assault or misconduct, stalking, and theft.

- (3) The Standards of Conduct have been adopted in furtherance of the University's interests and serve to supplement, rather than substitute for, the enforcement of the civil and criminal law. Accordingly, University disciplinary action may be instituted against a student charged with conduct that potentially violates both the criminal law and the Standards of Conduct without regard to the pendency of criminal charges or civil litigation. At the discretion of the Vice Chancellor for Student Affairs, or his/her designee, disciplinary action relating to a violation of the Standards of Conduct may be carried out prior to, simultaneously with, or following criminal proceedings. Students accused of violating the Standards of Conduct may not challenge the University disciplinary proceedings on the grounds that criminal charges, civil litigation, or other University proceedings regarding the same incident are pending or have been terminated, dismissed, reduced, or not yet adjudicated.
- (4) Each student shall be responsible for his/her conduct from the time of application for admission through the actual awarding of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment (and even if conduct is not discovered by the University until after a degree is awarded). Should a student withdraw from the University with disciplinary charges pending, the student's academic record and/or ability to register for classes may be encumbered by the appropriate University office.
- (5) Graduate or professional programs within the University may initiate charges against students for alleged violations of professional standards or ethics as a separate issue or as an extension of alleged acts of academic dishonesty or other violations of the Standards of Conduct.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-05-01-.04 Standards of Conduct. A student or student organization may be disciplined for the following types of misconduct:

- (1) Cheating, plagiarism, or any other act of academic dishonesty as described in Chapter 1720-05-01-.13.
- (2) Providing false information to a University official.
- (3) Falsifying, distorting, misrepresenting, or withholding information in connection with a University investigation or hearing.
- (4) Forging, altering, destroying, falsifying, or misusing records, identification, or documents, whether in print or electronic form.
- (5) Causing physical harm to any person (including oneself); endangering the health or safety of any person (including oneself); engaging in conduct that causes a reasonable person to fear harm to his/her health or safety; or making an oral or written statement (including electronically) that an objectively reasonable person hearing or reading the statement would interpret as a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals, although the speaker need not mean to carry out the act of unlawful violence in order to constitute a violation of this rule.
- (6) Harassment, which is defined as unwelcome conduct that is so severe or pervasive, and objectively offensive, that it substantially interferes with the ability of a person to work, learn, live, or participate in or benefit from the services, activities, or privileges provided by the University. In no event shall this rule be construed to discipline a student for speech protected by the First Amendment to the United States Constitution (e.g., mere insulting or offensive speech).

- (7) Sexual assault or misconduct. "Sexual assault" is defined as any sexual act or attempt to engage in any sexual act with another person without the consent of the other person, or in circumstances in which the person is unable to give consent due to age, disability, or an alcohol/chemical or other impairment. "Sexual misconduct" is defined as any intimate touching of another person, or forcing a person to engage in intimate touching of another, without the consent of the other person, or in circumstances in which the person is unable to give consent due to age, disability, or an alcohol/chemical or other impairment. It is the responsibility of the person initiating sexual activity to ensure the other person is capable of consenting to that activity. Consent is given by an affirmative verbal response or acts that are unmistakable in their meaning. Consent to one form of sexual activity does not mean consent is given to another type of sexual activity.
- (8) Invasion of another person's privacy when that person has a reasonable expectation of privacy, including, but not limited to, using electronic or other means to make a video or photographic record of any person in a location in which the person has a reasonable expectation of privacy, without the person's knowledge or consent. This includes, but is not limited to, making a video or photographic record of a person in shower/locker rooms or restrooms. The storing, sharing, and/or distributing of such unauthorized recordings by any means is also prohibited.
- (9) Theft, misappropriation, unauthorized possession, or unauthorized sale of private or public property, including but not limited to University-controlled property.
- (10) Vandalizing, destroying, damaging, engaging in conduct that reasonably could cause damage to, or misusing private or public property, including but not limited to University-controlled property.
- (11) Participating in hazing. "Hazing" is defined as any intentional or reckless act, on or off University-controlled property, by one (1) student, acting alone or with others, which is directed against any other student, which endangers the mental or physical health or safety of that student, or which induces or coerces a student to endanger his or her mental or physical health or safety. "Hazing" does not include customary athletic events or similar contests or competitions and is limited to those actions taken and situations created in connection with initiation into or affiliation with any organization.
- (12) Engaging in disorderly, lewd, indecent, or obscene conduct. "Disorderly" conduct means fighting or other physically violent or threatening conduct; creating a hazardous or physically offensive condition by any act that serves no legitimate purpose; making noise that could unreasonably disturb others who are carrying on lawful activities; or conduct that breaches the peace. "Lewd, indecent, or obscene" conduct includes, but is not limited to, public exposure of one's sexual organs, public urinating, and public sexual acts.
- (13) Engaging in speech, either orally or in writing, which is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.
- (14) Any act of arson; falsely reporting a fire, the presence of an explosive or incendiary device, or other emergency; setting off a false fire alarm; or tampering with, removing, or damaging fire alarms, fire extinguishers or any other safety or emergency equipment from its proper location except when removed in a situation in which there is a reasonable belief of the need for such equipment.
- (15) Possessing, using, or duplicating University keys, access cards, or identification cards without authorization; possessing, using, or entering University-controlled property without authorization.
- (16) Theft, misuse, or unauthorized use of information technology facilities, resources, or access codes, including, but not limited to: unauthorized entry into or transfer of a file; using another person's identification and/or password without that person's consent; using information technology facilities or resources to interfere with the work of another student, faculty member, staff member, or other member of the University community; using information technology facilities or resources to interfere with normal operation of a University information technology system or network; circumventing University information technology system or network security; using information technology facilities or resources in violation of copyright laws; falsifying an e-

mail header; and conduct that violates the University's policy on the Acceptable Use of Information Technology Resources.

- (17) Possessing, using, storing, or manufacturing any weapon or any facsimile of a weapon on University-controlled property or in connection with a University-affiliated activity, unless authorized in writing by the Department of Public Safety.
- (18) Consuming, manufacturing, possessing, distributing, dispensing, selling, or being under the influence of alcoholic beverages on University-controlled property or in connection with a University-affiliated activity.
- (19) Consuming, manufacturing, possessing, distributing, dispensing, selling, or being under the influence of alcoholic beverages, if prohibited by federal, state, or local law.
- (20) Providing an alcoholic beverage to a person younger than twenty-one (21) years of age, unless permitted by law.
- (21) Using, manufacturing, possessing, distributing, selling, dispensing, or being under the influence of drugs or drug paraphernalia, if prohibited by federal, state, or local law; using or possessing a prescription drug if the prescription was not issued to the student; or distributing or selling a prescription drug to a person to whom the prescription was not originally issued.
- (22) Failing to pay a University bill, account, or other University financial obligation.
- (23) Failing to respond to a request to report to a University administrative office; failing to comply with a lawful directive of a University employee or other public official acting within the scope of his/her duties; or failing to identify oneself to a University employee or other public official acting within the scope of his/her duties when requested to do so.
- (24) Failing to appear at a University hearing, including, but not limited to, a hearing of a University judicial board, following a request to appear either as a party or as a witness.
- (25) Violating the terms of an interim suspension, a no-contact directive, or a disciplinary penalty imposed by the University.
- (26) Obstructing or disrupting teaching, learning, studying, research, public service, administration, disciplinary proceedings, emergency services, or any other University-affiliated activity, or the free flow of pedestrian or vehicular traffic on University-controlled property. In no event shall this rule be construed to discipline a student for speech protected by the First Amendment to the United States Constitution.
- (27) Violating a University policy or rule, including but not limited to University policies or rules relating to facilities use, smoking, the acceptable use of information technology resources, research or service misconduct, finder's fees relating to clinical investigations involving human subjects or access to University data or materials, University libraries, dining services, parking or transportation, University identification card use, sexual harassment, residence halls, and registered student organizations.
- (28) Committing an act that is prohibited by local, state, or federal law.
- (29) Attempting to commit a violation of a Standard of Conduct or being an accessory to the commission of an act or attempted act in violation of a Standard of Conduct.

Authority: T.C.A. § 49-9-209(e), T.C.A. § 49-7-123, and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-05-01-.05 Penalties.

(1) Disciplinary penalties are primarily intended to educate students and student organizations about
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appropriate behavior, encourage students and student organizations to take responsibility for misconduct, promote the personal and professional development of students, discourage other students and student organizations from violating the Standards of Conduct, and protect members of the University community. The penalties imposed should be appropriate for the particular case based on the gravity of the offense (including without limitation how the violation affected or reasonably could have affected other members of the University community). Consideration may also be given to the student's or student organization's conduct record; the student's or student organization's responsiveness to the conduct process; whether the student acted in self-defense, and, if so, whether the amount of force used was reasonable under the circumstances; student academic classification; and other aggravating or mitigating factors.

(2) The following penalties may be imposed on any student found to have violated the Standards of Conduct:

- (a) **Warning.** A warning is a notice that the student is violating or has violated the Standards of Conduct. A disciplinary warning is used for minor infractions and consists of a restatement of the Standard(s) of Conduct violated with an official warning concerning future behavior.
- (b) **Loss of Privilege.** A loss of privilege is intended to serve as a reminder of the Standards of Conduct and is for a specific period of time. Privileges that may be lost include, but are not limited to, scholarships, stipends, participation in extracurricular activities (e.g. intramurals), housing privileges, participation in social activities, and use of certain University-controlled property (e.g., information technology resources).
- (c) **Education.** Students may be required to attend classes, at their own expense, dealing with issues such as the consequences of alcohol or drug use, civility, ethics, or other topics as deemed appropriate by the Vice Chancellor for Student Affairs or his/her designee.
- (d) **Restitution.** Restitution may be required in situations that involve destruction, damage, or loss of property, or unreimbursed medical expenses resulting from physical injury. Restitution may take the form of a monetary payment or appropriate service to repair or otherwise compensate for the destruction, damage, or loss.
- (e) **Disciplinary Probation.** Disciplinary probation permits a student to remain at the University on probationary status but with the understanding that a future violation of the Standards of Conduct may result in suspension. Conditions of probation include loss of eligibility to join a student organization and to serve as an officer in a student organization. Other conditions are specific to the individual case and may include ineligibility to participate in certain student activities. Probation may be for a definite or indefinite period.
- (f) **Suspension for a Specific Period of Time.** Suspension for a specific period of time means that the student is withdrawn from the University and is not eligible to apply for readmission for a designated period of time. Usually, the designated period of time does not exceed one (1) calendar year. Persons suspended from the University may not return to the campus for the duration of their suspension, except to conduct official business with an administrative officer or faculty member. Upon return to the University following a suspension for a specific period of time, the student shall be placed on indefinite disciplinary probation.
- (g) **Indefinite Suspension.** Indefinite suspension is imposed in cases of serious or repeated misconduct or in cases in which the prognosis for rehabilitation is uncertain. Indefinite suspension means that the student is withdrawn from the University for an unspecified period of time but typically for a minimum of one (1) calendar year from the effective date of the indefinite suspension. A student who receives the penalty of indefinite suspension is not eligible to apply for readmission until the student successfully petitions the University Council to lift the suspension. Upon return to the University following an

indefinite suspension, the student shall be placed on indefinite disciplinary probation.

- (h) **Permanent Dismissal.** Permanent dismissal means that a student is permanently barred from matriculating as a student on the Martin campus. This penalty is used when the violation of one (1) or more Standards of Conduct is deemed so serious as to warrant total and permanent disassociation from the University community without the possibility of re-enrollment; or when, by his/her repeated violation of the Standards of Conduct, a student exhibits blatant disregard for the health and safety of other members of the University community or the University's right to establish rules of conduct.
 - (i) **Revocation of Degree.** Revocation of a degree means revoking a degree already awarded to a student by the University. Revocation of a degree shall be approved by the University of Tennessee Board of Trustees.
- (3) A disciplinary hold may be placed on a student's account until the completion of the student disciplinary process and/or until the student satisfies the terms and conditions of any penalties imposed. A student who, at the time of commencement, is subject to a continuing disciplinary penalty or an unresolved disciplinary charge shall not be awarded a degree before the conclusion of all penalties and/or resolution of all disciplinary charges.
- (4) The following penalties may be imposed on a student organization found to have violated the Standards of Conduct:
- (a) **Warning.** A warning is a notice that the student organization is violating or has violated the Standards of Conduct. A disciplinary warning is used for minor infractions and consists of a restatement of the Standard(s) of Conduct violated with an official warning concerning future behavior.
 - (b) **Loss of Privilege.** A loss of privilege is intended to serve as a reminder of the Standards of Conduct and is for a specific period of time. Examples of privileges that may be lost include participating in extracurricular activities (e.g., intramurals), housing privileges, participating in social activities, and using certain University-controlled property.
 - (c) **Education.** Student organizations and/or their representatives may be required to attend classes, at their own expense, dealing with issues such as the consequences of alcohol or drug use, civility, ethics, or other topics as deemed appropriate by the Vice Chancellor for Student Affairs or his/her designee.
 - (d) **Restitution.** Restitution may be required in situations that involve destruction, damage, or loss of property, or unreimbursed medical expenses resulting from physical injury. Restitution may take the form of a monetary payment or appropriate service to repair or otherwise compensate for the destruction, damage, or loss.
 - (e) **Social Probation.** This penalty prohibits a student organization from sponsoring or participating in specified social activities. While on social probation, a student organization may not host social events (e.g., mixers, date parties, formals, and band parties) or participate in University-affiliated activities (e.g., Homecoming). Any exceptions to social probation must be approved, in advance, by the Vice Chancellor for Student Affairs or his/her designee.
 - (f) **Disciplinary Probation.** Disciplinary probation means that a student organization is permitted to retain University registration on a probationary status. Violation of the Standards of Conduct during the period of disciplinary probation may result in more serious penalties, including revocation of University registration.
 - (g) **Revocation of University Registration.** In cases of serious misconduct, a student organization's University registration may be revoked.
- (5) More than one (1) of the penalties listed above may be imposed for any single violation of the

Standards of Conduct. Penalties may be applied retroactively to the date of the offense.

- (6) Intoxication or impairment because of alcohol, drugs, chemicals, or other substances does not diminish or excuse a violation of the Standards of Conduct.
- (7) Except for an interim suspension, disciplinary penalties shall not become effective until after opportunities for appeal have been exhausted. Penalties may be applied retroactively to the date of the offense. Coursework performed while disciplinary charges are pending or disciplinary proceedings are underway shall be considered conditional. Coursework may be affected or disregarded based on a final finding of misconduct or the penalty imposed, which may result in loss of course credit, a loss of tuition and/or fees, a delay in the awarding of a degree, or revocation of a degree that was awarded prior to a final decision in the disciplinary proceeding.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-05-01-.06 No Contact Directive. In cases involving allegations of assault, injury, sexual abuse, harassment, or in cases where there is reason to believe continued contact between a student/student organization and specific persons, including complainants and witnesses, may interfere with those persons' security, safety or ability to participate effectively in work or studies, the Vice Chancellor for Student Affairs, or his/her designee, may require that the student/student organization not have verbal, physical, or written contact with specific persons for a definite or indefinite period of time. The student/student organization will receive written or electronic notice of the no contact directive. Any student, faculty or staff member or other person with a reasonable justification may request that a no contact directive be issued to a student/student organization. In addition to an internal University no contact directive, complainants are advised that other similar options exist and can be obtained from law enforcement and civil and criminal courts.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-05-01-.07 Interim Suspension.

- (1) When the Vice Chancellor for Student Affairs or his/her designee has reasonable cause to believe that a student's or student organization's continued presence on University-controlled property or at University-affiliated activities poses a significant risk of substantial harm to the health or safety of others or to property or poses an ongoing threat to the disruption of, or interference with, the normal operations of the University, the Vice Chancellor for Student Affairs or his/her designee may impose an interim suspension prior to the conclusion of a full hearing on the alleged misconduct.
- (2) An interim suspension shall be confirmed by a written statement that explains the basis for the interim suspension and shall remain in effect until the conclusion of a full hearing in accordance with the rules of the University of Tennessee, which shall be held without undue delay. The statement shall be delivered to the student in person, to the address the University has on file for the student, or to the student's University-provided e-mail account. The statement shall be delivered in person or via e-mail to the advisor to the student organization.
- (3) Within three (3) business days of the imposition of the suspension, the student or student organization shall be offered an opportunity to appear personally before the Vice Chancellor for Student Affairs or his/her designee in order to discuss the following issues only: (i) the reliability of the information concerning the student's conduct; and (ii) whether the conduct and surrounding circumstances reasonably indicate that the student's or student organization's continued presence on University-controlled property or at University-affiliated activities poses a significant risk of substantial harm to the health or safety of others or to property or poses an imminent threat of disruption of or interference with the normal operations of the University.
- (4) During an interim suspension, the student or student organization shall be denied access to University-controlled property, including residence halls, and all other University-affiliated activities or privileges for which the student or student organization might otherwise be eligible, as

the Vice Chancellor for Student Affairs or his/her designee determines in his/her sole discretion to be appropriate. A student or student organization who receives an interim suspension and violates the terms of the interim suspension shall be subject to further disciplinary action and may be treated as a trespasser. Permission to be on University-controlled property or participate in University-affiliated activities may be granted by the Vice Chancellor for Student Affairs or his/her designee.

- (5) When a student is placed on interim suspension from the University, he/she may be assigned a grade of "W" or "I," whichever is deemed appropriate by the faculty member involved.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-05-01-.08 Hearing Procedures.

- (1) A student charged with violating the Standards of Conduct, Chapter 1720-05-01-.04, shall be provided written notice of:
 - (a) The substance of the charge(s) against him/her;
 - (b) The disciplinary action taken or proposed; and
 - (c) His/her rights to a hearing should he/she wish to contest the charge(s) and information concerning the process for requesting a hearing, including the requirement that a request for a hearing before the Disciplinary Hearing Board must be made within five (5) days of the student's receipt of the notice of the charges against him/her.
- (2) A student charged with violating the Standards of Conduct, Chapter 1720-05-01-.04, shall have the following options for a hearing:
 - (a) An administrative hearing before the Student Conduct Officer;
 - (b) A hearing before the Disciplinary Hearing Board; or
 - (c) A hearing in accordance with the contested case provisions of the Tennessee Uniform Administrative Procedures Act ("TUAPA"). All disciplinary cases that may result in suspension or permanent dismissal of a student, the revocation of a degree, or the revocation of registration of a student organization are subject to the contested case provisions of the TUAPA. The University's procedures for conducting contested case hearings under the TUAPA are contained in Chapter 1720-01-05, and the University's rules concerning waivers of contested case hearings are contained in Chapter 1720-01-3. Disciplinary hearings will be conducted in accordance with the University's procedures for conducting contested case hearings under the TUAPA unless the student waives those procedures in writing and elects to have his or her case disposed of in accordance with the University procedures established by these rules.
- (3) Administrative Hearing. A student charged with violating the Standards of Conduct has a right to resolve a disciplinary case through an administrative hearing with the Student Conduct Officer by accepting responsibility for violating the Standards of Conduct. Following the student's written acceptance of responsibility and written waiver of the right to a hearing under the TUAPA, the Student Conduct Officer will assess a penalty that is appropriate under Chapter 1720-05-01-.05. Following the assessment of the penalty, the student may acknowledge the acceptance of the penalty in writing or appeal the penalty to the Vice Chancellor for Student Affairs in accordance with Chapter 1720-05-01-.09. A student who resolves a disciplinary case through an administrative hearing with the Student Conduct Officer may only appeal the penalty to the Vice Chancellor for Student Affairs.
- (4) Disciplinary Hearing Board.

- (a) The Disciplinary Hearing Board is an ad hoc board composed of five (5) members of the University Council, in addition to the Vice Chancellor for Student Affairs, who shall serve as the non-voting chairperson of the Disciplinary Hearing Board. The Disciplinary Hearing Board hears cases of alleged violations of the Standards of Conduct and other cases deemed appropriate by the Vice Chancellor for Student Affairs. The Vice Chancellor for Student Affairs shall select the members of the Disciplinary Hearing Board from the membership of the University Council. A majority vote of the members present is required for all decisions of the board.
- (b) A request for a hearing before the Disciplinary Hearing Board shall be made within five (5) days of the student's receipt of the notice of the charges against him/her. A hearing shall be scheduled promptly after receipt of the request for a hearing. A student shall be notified of the date, place, and time for the hearing at least seventy-two (72) hours in advance of the hearing. A student has no right to have a hearing before the Disciplinary Hearing Board unless the student waives the provisions of the TUAPA in writing.
- (c) Members of the Disciplinary Hearing Board shall be impartial and anyone lacking such impartiality shall recuse himself/herself. The accused student has the right to challenge any member of the Disciplinary Hearing Board for good cause and request that he/she be dismissed and replaced. The chairperson of the Board determines whether to dismiss and replace a member of the Disciplinary Hearing Board.
- (d) The chairperson of the Disciplinary Hearing Board will conduct the hearing, without regard to technical rules of procedures in such a manner as will best serve the cause of justice within the following general guidelines:
1. An accused student has a right to a hearing closed to the public. In cases involving more than one (1) student, the chairperson may permit the hearings concerning each student to be conducted separately.
 2. The chairperson shall rule on all motions, objections, and other procedural issues. The chairperson shall ascertain that the accused student has been advised of the charges against him/her and shall then read a statement describing the charges. A student who fails to appear before the Disciplinary Hearing Board following proper notice shall be deemed to have waived his/her rights to be present during the hearing, to know the evidence against him/her, to present evidence in his/her own behalf, and to exercise reasonable cross-examination of witnesses appearing against him/her. This waiver shall become effective if the student fails to appear at the designated time and place of the hearing unless, at least twenty-four (24) hours prior to the hearing, the student communicates in writing to the Dean of Students good cause for granting a continuance of the hearing. However, no student may be found to have violated the Standards of Conduct solely because the student failed to appear before the Disciplinary Hearing Board. In all cases, the evidence in support of the charges shall be presented to and considered by the Disciplinary Hearing Board.
 3. The accused shall enter a plea of guilty or not guilty. If a guilty plea is entered, he/she shall be advised of the maximum penalty, and the Board shall review the circumstances of the case and make appropriate decisions or recommendations regarding the penalty.
 4. The accused student may be accompanied by no more than one (1) advisor during the hearing, including but not limited to a parent, spouse, friend, or attorney. The role of the advisor shall be limited to providing advice or support to the accused student. Even if accompanied by an advisor, the accused student is responsible for presenting his/her own case to the Disciplinary Hearing Board. An advisor is not permitted to: introduce evidence; raise objections; present arguments; directly address the members of the Disciplinary Hearing Board, the Student Conduct Officer, or any witnesses participating in the hearing; or

otherwise participate in the hearing. In consideration of the limited role of the advisor, and of the compelling interest of the University to expeditiously conclude the matter, a hearing shall not be delayed due to the unavailability of an advisor. The accused student shall inform the Student Conduct Officer of the name of the student's advisor, if any, at least three (3) days before the hearing before the Disciplinary Hearing Board.

5. Each party to a hearing shall be given an opportunity to make opening and closing statements.
6. Each party to a hearing shall be afforded a full and fair opportunity to present all evidence, including witnesses, reasonably relating to the charge or action at issue. Each party will have the right to question opposing witnesses. Technical rules of evidence will not apply. Evidence which is irrelevant, immaterial, repetitious or voluminous may be limited or excluded. Hearsay evidence is admissible. If a not guilty plea has been entered, evidence in mitigation of the alleged offense shall be presented only after the Board has determined the issue of innocence or guilt.
7. The Student Conduct Officer shall present the case on behalf of the University. The University shall have the burden of proving, by a preponderance of the evidence, the truth of the charge(s) at issue. Where the charge(s) is found to be true, the accused student shall have the burden of proving that the disciplinary action taken or proposed is arbitrary, capricious, or unreasonable.
8. The Board will consider all evidence presented, giving due consideration to the credibility or weight of each item presented. During Board deliberations all persons except the Board members shall be excused from the hearing room. The decision shall be based solely upon the evidence presented. No mention will be made during the hearing on innocence or guilt of the student's previous disciplinary record, unless appropriate as rebuttal to character evidence introduced by the accused.
9. After a determination of guilt by the Board, the Student Conduct Officer, on behalf of the University, shall present the previous disciplinary record of the accused student if any, and evidence of any other aggravating circumstances, to the Board together with the recommendation of the Student Conduct Officer as to an appropriate penalty.
10. After presentation of evidence by the Student Conduct Officer, the accused shall be allowed to present character evidence, evidence of mitigating circumstances, and an alternative penalty recommendation.
11. After the Board determines the penalty, the accused student shall be advised in writing of its decision within forty-eight (48) hours of the hearing.
12. A record will be made of the hearing procedures. However, defects in the record will not invalidate the proceedings. The results of the Board's decision shall be kept on official University forms. If a verbatim record of the hearing is prepared, it shall be retained in the custody of the Office of Student Conduct and considered a confidential disciplinary record.
13. Appeals from decisions of the Disciplinary Hearing Board may be made to the Vice Chancellor for Student Affairs in accordance with Chapter 1720-05-01-.09.
14. In cases involving an allegation of sexual assault or misconduct, the hearing procedures shall be modified to afford the alleged victim all of the rights described in Chapter 1720-05-01-.08(4)(e). The Disciplinary Hearing Board may consider evidence introduced by the alleged victim as part of the University's

proof.

- (e) In cases involving a complaint of sexual assault or misconduct, the alleged victim shall have the right to:
1. Notice concerning the process by which the University will handle the complaint and an opportunity to ask questions about the process;
 2. A prompt, thorough, and impartial investigation of the complaint;
 3. The same opportunity as the accused student to present his/her explanation of the facts during the University's investigation;
 4. Have the investigation of the complaint concluded within sixty (60) days of the University's receipt of a complaint, unless circumstances make it impracticable for the University to complete its investigation within that timeframe;
 5. Notice of the outcome of the University's investigation;
 6. Have a disciplinary hearing conducted by the Disciplinary Hearing Board within thirty (30) days of a University charge that the accused student committed sexual assault or misconduct, unless the accused student chooses an administrative hearing under Chapter 1720-05-01-.08(3) or the circumstances make it impracticable for the University to conduct a hearing within that timeframe;
 7. Notice of the date, time, and location of the hearing before the Disciplinary Hearing Board, the right to have the hearing closed to the public, and the right to request rescheduling of the hearing for good cause;
 8. The same access as the accused student to any information or documents that will be used by the Student Conduct Officer during the hearing before the Disciplinary Hearing Board, unless prohibited by law;
 9. Challenge the seating of any Disciplinary Hearing Board member for good cause, which will be determined at the discretion of the Vice Chancellor for Student Affairs;
 10. Be accompanied by an advisor of his/her choosing during the University's investigation or a hearing before the Disciplinary Hearing Board, but the advisor shall not be permitted to speak for the victim during a hearing;
 11. The same opportunity as the accused student to be present during a hearing before the Disciplinary Hearing Board, present witnesses and other evidence, challenge the admissibility of evidence, and cross-examine adverse witnesses during a hearing before the Disciplinary Hearing Board;
 12. Testify or remain silent at his/her option; however, choosing to remain silent may result in the University dismissing the charges against the accused student or the Disciplinary Hearing Board finding that there is insufficient evidence to find the accused student guilty of the charges against him/her;
 13. Not to be questioned directly by the accused student during the hearing before the Disciplinary Hearing Board;
 14. Submit a written impact statement to the Disciplinary Hearing Board or Student Conduct Officer for consideration during the sanctioning phase of an administrative or disciplinary hearing, if the accused student is found guilty of the charges against him/her;

15. Notice of the decision of the Student Conduct Officer or Disciplinary Hearing Board within three (3) business days of an administrative or disciplinary hearing; and
16. Appeal the decision of the Student Conduct Officer, following an administrative hearing, or the Disciplinary Hearing Board to the Vice Chancellor for Student Development.

(5) For purposes of this rule, the term "student" shall mean a student or a student organization.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-05-01-.09 Appeals.

- (1) Appeal. A decision of the Disciplinary Hearing Board, or a decision of the Student Conduct Officer concerning a penalty following an administrative hearing, may be appealed to the Vice Chancellor for Student Affairs.
 - (a) The request for appeal shall be submitted in writing to the Vice Chancellor for Student Affairs within seven (7) calendar days of written notice of the decision of the Disciplinary Hearing Board or Student Conduct Officer. If the seventh day falls on a weekend or holiday, the time is extended to the next regular workday.
 - (b) The request for appeal shall contain:
 1. A statement that the student or student organization appeals the decision of the Disciplinary Hearing Board or Student Conduct Officer; and
 2. A brief statement of the grounds for the appeal.
 - (c) All appeals to the Vice Chancellor for Student Affairs are written and heard based upon the record made before the Disciplinary Hearing Board.
 - (d) Pending the outcome of an appeal, the penalty specified in the decision of the Disciplinary Hearing Board shall not be imposed.
- (2) The Vice Chancellor for Student Affairs may:
 - (a) Affirm the decision of the Disciplinary Hearing Board or Student Conduct Officer;
 - (b) Amend the decision of the Disciplinary Hearing Board or Student Conduct Officer;
 - (c) Return the case to the Disciplinary Hearing Board or Student Conduct Officer with instructions for reconsideration of the case; or
 - (d) Overturn the decision of the Disciplinary Hearing Board.
- (3) The decision of any board or administrative officer of the University of Tennessee at Martin is subject to review by the Chancellor.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-05-01-.10 Emergency Powers. When, in the judgment of the Chancellor of The University of Tennessee at Martin, conditions are such that an emergency exists which makes it impossible for the system of judicial boards to function, he/she may suspend these procedural regulations. If the procedures are suspended, he/she may substitute for them arrangements for handling disciplinary matters that will insure the orderly functioning of the

University and at the same time safeguard the basic rights of the students and student organizations.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-05-01-.11 Involuntary Medical Withdrawal or Suspension.

- (1) When a student is unable to effectively pursue his/her academic work, or when his/her behavior is disruptive to the normal educational processes of the University, or constitutes a threat to members of the University community, due to, among other things, alcohol use, drug use, or a physical or mental incapacitating condition, he/she may be withdrawn or temporarily suspended from the University as hereinafter provided.
- (1) **Withdrawal.** A student may be withdrawn from the University only after an evaluation of his/her mental and physical condition by a panel of at least three (3) persons appointed by the Vice Chancellor for Student Affairs. The student shall be notified of the reasons for the evaluation and given an opportunity to present evidence to the committee. The committee's findings and recommendations shall be forwarded to the Vice Chancellor for Student Affairs, who will notify the student in writing of his/her decision.
- (2) **Temporary Suspension.** Whenever a student, because of his/her mental or physical condition constitutes a danger to persons or property, or when his/her behavior is disruptive to the normal educational processes of the University, he/she may be suspended from the University, for a reasonable period of time, by the Vice Chancellor for Student Affairs. If the University does not withdraw the student in accordance with procedures outlined above, he/she may return to the University at the end of the suspension period.
- (3) **Grades.** When a student is withdrawn or temporarily suspended from the University, he/she may be assigned a grade of "W" or "I," whichever is deemed appropriate by the faculty member involved.
- (4) **Readmission.**
 - (a) A student who is involuntarily withdrawn under this rule may not be readmitted to the University before the start of the next semester or without the approval of the Vice Chancellor for Student Affairs. The student shall also meet all of the admission requirements of the University and of the school or college in which he/she wishes to be readmitted.
 - (b) A student shall submit a written request for permission to reapply to the University with the Vice Chancellor for Student Affairs by October 1 for Spring enrollment, by February 1 for Summer enrollment, and by May 1 for Fall enrollment. The student's written request shall include an explanation of why the Vice Chancellor for Student Affairs should allow the student to reapply and an explanation of the student's plan to transition successfully back into the academic community.
 - (c) The Vice Chancellor for Student Affairs may require the student to provide the panel of individuals who recommended that the student be involuntarily withdrawn with proof that the condition that caused the withdrawal is no longer present or that the condition is under control through treatment such that the student does not present a direct threat to the health or safety of him/herself or others and will not disrupt the normal educational processes of the University. Proof may consist of a current medical or mental health evaluation, demonstration of ongoing medical or mental health treatment, and a plan for treatment upon readmission. The panel may request any other information or documentation that it deems necessary. In exceptional circumstances, the panel may request a second, independent opinion of a qualified medical or mental health professional paid for by the University. In cases where the Vice Chancellor for Student Affairs has imposed other conditions for readmission, it is the responsibility of the student to provide documentation of compliance with those conditions.

- (d) The panel's recommendation concerning reenrollment or readmission shall be provided to the Vice Chancellor for Student Affairs, who will notify the student in writing of his/her decision. The decision of the Vice Chancellor for Student Affairs is final and may not be appealed.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-05-01-.12 Inspection and Search Policies.

- (1) Entry by University authorities into occupied rooms in residence halls will be divided into three (3) categories; inspection, search, and emergency. Inspection is defined as the entry into an occupied room by University authorities in order to ascertain the health and safety conditions in the room, to check the physical condition of the room, to make repairs on facilities, or to perform cleaning and janitorial operations. Search is defined as the entry into an occupied room by on-campus authorities for the purpose of investigating suspected violations of campus regulations. An emergency situation exists when the delay necessary to obtain a search authorization constitutes an apparent danger to person, property, or the building itself.
- (2) Inspection: Scheduled inspections by on-campus authorities with the exception of daily janitorial operations shall be preceded, if possible, by twenty-four (24) hours' notice to the residents. During the inspection there will be no search of drawers, closets, or personal belongings. This policy is applicable for residence halls and fraternity houses.
- (3) Search: On-campus authorities will not enter a room for purposes of search without the permission of the resident unless they have a campus authorization to search, authorized by the Vice Chancellor for Student Affairs or his/her designee, which specifies the reasons for the search and the objects or information sought, or unless they enter in compliance with federal or state law. If possible, the student should be present during the search. Normally these searches will not be made unless the Vice Chancellor for Student Affairs or his/her designee is present.
- (4) If the search reveals objects the possession of which violates a law or a University rule, the University may take appropriate disciplinary action even though the objects were not listed on the search authorization.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-05-01-.13 Academic Dishonesty. The University of Tennessee at Martin has chosen as its primary objective quality undergraduate education. Commitment to this objective must include an obligation by all members of the University community to promote and protect the highest standards of integrity in study, research, instruction and evaluation. Dishonesty or unethical behavior does not belong at an institution dedicated to the promotion of knowledge and learning. Integrity of the academic process requires fair and impartial evaluation by faculty and honest academic conduct by students. A student may be found to have violated this obligation if he/she:

- (1) Refers during an academic evaluation to materials, sources, or devices not authorized by the instructor;
- (2) Provides assistance during an academic evaluation or assignment to another person in a manner not authorized by the instructor;
- (3) Receives assistance during an academic evaluation or assignment from another person in a manner not authorized by the instructor;
- (4) Possesses, buys, sells, obtains, or uses a copy of any materials intended to be used as an instrument of academic evaluation in advance of its administration;
- (5) Acts as a substitute for another person in any academic evaluation or assignment;

- (6) Utilizes another person as a substitute for him/herself in any academic evaluation or assignment;
- (7) Practices any form of deceit in an academic evaluation or assignment;
- (8) Depends on the aid of others, in a manner expressly prohibited by the instructor, in the research, preparation, creation, writing, performing, or publication of work to be submitted for academic credit or evaluation;
- (9) Provides aid to another person, knowing such aid is expressly prohibited by the instructor, in the research, preparation, creation, writing, performing, or publication of work to be submitted for academic credit or evaluation;
- (10) Indulges in plagiarism by presenting as one's own, for academic evaluation or assignment, the ideas, representations, or works of another person or persons without customary and proper acknowledgment of sources;
- (11) Submits the work of another person in a manner that represents the work to be one's own;
- (12) Knowingly permits one's work to be submitted by another person without the instructor's authorization;
- (13) Attempts deceitfully to influence or change one's academic evaluation or record; or
- (14) Indulges in conduct that is so disruptive as to infringe upon the rights of an instructor or fellow students during a class or examination session.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Governor Bill Haslam				x	
Commissioner Julius Johnson				x	
Commissioner Kevin Huffman				x	
Dr. Joe DiPietro	x				
Dr. Richard D. Rhoda			Non-voting		
Charles C. Anderson, Jr.	x				
Ann Holt Blackburn	x				
Dr. J.A.M. "Toby" Boulet	x				
William Y. Carroll	x				
George E. Cates	x				
Spruell Driver, Jr.	x				
Teresa K. Fowler			Non-voting		
John N. Foy	x				
Crawford Gallimore	x				
Monice Moore Hagler	x				
James E. Hall	x				

Douglas A. Horne	x				
Andrea J. Loughry	x				
James L. Murphy, III	x				
Karl A. Schledwitz	x				
Carey Smith	x				
Don Stansberry	x				
Robert S. Talbott	x				
Betty Ann Tanner	x				
Charles E. Wharton	x				
Dr. Janet M. Wilbert			Non-voting		

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the University of Tennessee Board of Trustees on June 23, 2011, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: March 16, 2012

Signature: *[Handwritten Signature]*

Name of Officer: Matthew Scoggins

Title of Officer: Assistant General Counsel



Subscribed and sworn to before me on: March 16, 2012

Notary Public Signature: *Lynette Russell*

My commission expires on: 1-27-15

All proposed 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.

[Handwritten Signature]
 Robert E. Cooper, Jr.
 Attorney General and Reporter
4-6-12
 Date

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**RULES
OF
THE UNIVERSITY OF TENNESSEE AT MARTIN**

**CHAPTER 1720-5-1
STUDENT CONDUCT**

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1720-5-1-.01 INTRODUCTION.

- (1) ~~The University of Tennessee at Martin, as an educational institution, is primarily concerned with providing learning experiences for its students. Through participation in curricula and extracurricular activities, the student has an opportunity to develop a foundation for intelligent participation in society, a successful career, and a meaningful personal life.~~
- (2) ~~To discharge its responsibility successfully, the University needs the understanding support and the thoughtful assistance of each student. In the academic world, it is especially important that persons conduct themselves with regard for the rights and privileges of others, demonstrating respect for the law and for order in the affairs of the University.~~
- (3) ~~The policies and procedures described in the following pages have been established to assure that the affairs of the University are conducted in an orderly manner, to point out the duties and responsibilities of its students, and to insure their rights and privileges.~~

Authority: Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64. Administrative History: Original rule filed September 15, 1976. Repeal and new rule filed May 27, 1986; effective August 12, 1986. Amendment filed October 31, 1990; effective January 29, 1991.

1720-5-1-.02 RIGHTS.

- (1) ~~ACCESS. Within the limits of its facilities and resources, The University of Tennessee at Martin is open to all students who are qualified by its admission standards.~~
- (2) ~~PARTICIPATION IN POLICY MAKING. Students may participate in the orderly process of formulating and changing policies, regulations, and procedures that affect their welfare. It is expected that such participation will occur through appropriate student government agencies and University committees.~~
- (3) ~~FAIR EVALUATION OF PERFORMANCE. Students may expect their academic performance to be evaluated only on an academic basis and may expect their teachers to make clear the basis for the evaluation used in their classes. They should feel free to take reasoned exceptions to opinions or views expressed by an instructor, but they are responsible for learning the content of any course of study for which they are enrolled and may expect to be tested on it.~~

~~A student alleging unfair methods or bases of evaluation should appeal first to the teacher, then if desired to the department head, the dean of the school, and the academic vice chancellor. Alternatively, the matter may be reported to the Vice Chancellor for Student Affairs for consultation.~~

(Rule 1720-5-1-.02, continued)

- (4) ~~FAIR DISCIPLINARY HEARING. Students have the right to a fair hearing and an opportunity for appeal when charged with violations of the standards of conduct that have been established for University students.~~
- (5) ~~FREEDOM FOR UNWARRANTED SEARCH.~~
- (a) ~~Entry by University authorities into occupied rooms in residence halls or University apartments will be divided into two categories: inspection and search. Inspection is defined as entry into a room to ascertain health and safety conditions, to make repairs, or to perform cleaning and janitorial operations. Search is defined as entry into a room by campus authorities for the purpose of investigating suspected violation of campus regulations and/or local, state, or federal laws.~~
- (b) ~~On-campus authorities will not enter a room for purposes of search without the permission of the resident unless they have a campus authorization to search, authorized by the Vice Chancellor for Student Affairs or his designee which specifies the reasons for the search and the objects or information sought or unless they enter in compliance with state law. If possible, the student should be present during the search. Normally these searches will not be made unless the Vice Chancellor for Student Affairs or his designee is present.~~
- (c) ~~In case the search reveals objects the possession of which violates a law or a University regulation, the University may take appropriate disciplinary action even though the objects were not listed on the search authorization.~~
- (6) ~~FREEDOM FROM ABUSE OR HARASSMENT DURING AN INTERROGATION. No form of intimidation will be used by University authorities to coerce admissions of guilt.~~

Authority: ~~Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64. Administrative History: Original rule filed September 15, 1976. Repeal and new rule filed May 27, 1986; effective August 12, 1986. Amendment filed October 31, 1990; effective January 29, 1991. Amendment filed January 13, 1999; effective May 31, 1999.~~

~~1720-5-1-.03 STANDARDS OF CONDUCT.~~

- (1) ~~When persons enroll in The University of Tennessee at Martin, they retain the rights and duties of a citizen. Additionally, they must assume the duties and observe the regulations imposed by the University community.~~
- (2) ~~Failure or refusal to comply with the rules and policies established by the University may subject the offender to disciplinary action up to and including permanent dismissal from the University.~~
- (3) ~~The policies and procedures described below have been established to insure the rights and privileges of all members of the University community, to communicate the expectations of the community to its members and to provide a basis for orderly conduct of the affairs of the University.~~
- (4) ~~Misconduct for which students are subject to discipline include the following categories:~~
- (a) ~~Plagiarism, cheating, knowingly furnishing false information to the University or other similar forms of dishonesty in University-related affairs.~~
- (b) ~~Forgery, alteration, destruction or misuse of University documents, records, or identification.~~

(Rule 1720-5-1-03, continued)

- (e) ~~Obstruction or disruption of teaching, research, administration, disciplinary procedures or other University activities, including its public service functions, or of other authorized activities on University premises.~~
- (d) ~~Physical abuse of any person, or other conduct which threatens or endangers the health or safety of any person, whether such conduct occurs on or off University property. In no event shall this rule be construed to prevent speech protected by the First Amendment to the United States Constitution.~~
- (e) ~~Theft, misappropriation, illegal possession of, or sale of or damage to property of the University, of an organization affiliated with the University, of a member of the University community or of (a) campus visitor(s).~~
- (f) ~~Unauthorized use of or entry to University facilities (including computer facilities) and unauthorized possession of keys to University facilities.~~
- (g) ~~Unlawful use, manufacture, possession, distribution, or dispensing of drugs or alcohol on University property or during University activities.~~
- (h) ~~Disorderly conduct, or lewd, indecent, or obscene conduct or expression; distributing on University-owned or controlled property, or at University-sponsored or supervised functions printed materials that are libelous, scurrilous, or that encourage violation of public laws and University regulations.~~
- (i) ~~Possession, while on University-owned or controlled property, or at University-sponsored or supervised activities, of any weapons such as, but not limited to, rifles, shotguns, ammunition, handguns, and air guns, including explosives such as firecrackers, etc., unless authorized in writing by an official in the Public Safety Office.~~
- (j) ~~Failure to pay promptly all University bills, accounts, and other University financial obligations when due.~~
- (k) ~~Gambling on University-owned or controlled property.~~
- (l) ~~Gathering of groups of students on or adjacent to the campus in manner which causes damage to public or private property, causes injury to persons, or interferes with the orderly functioning of the University, or the normal flow of traffic.~~
- (m) ~~Commission of an act, or an attempt to commit an act, on University property, or involving members of the University community (i.e. faculty, staff, student, or campus visitor) that would be in violation of state or federal law.~~
- (n) ~~Possession, use or being under the influence of alcoholic beverages on University-owned or controlled property or at University-sponsored or supervised activities.~~
- (o) ~~Violation of properly constituted rules and regulations governing the use of motor vehicles on University-owned or controlled property.~~
- (p) ~~Failure to comply with directions of University officials acting in the performance of their duties.~~
- (q) ~~Violation of written University policies and regulations as stipulated herein or as promulgated and announced by authorized personnel.~~

(Rule 1720-5-1-.03, continued)

- (r) ~~Inciting and/or aiding others to violate written University policies and regulations as promulgated and announced by authorized personnel.~~
- (s) ~~Any act of arson, falsely reporting a fire or other emergency, falsely setting off a fire alarm, tampering with, or removing from its proper location fire extinguishers, hoses, or any other fire emergency equipment except when done with real need for such equipment.~~
- (t) ~~An attempt to commit or be an accessory to the commission of any act in violation of other Standards of Conduct.~~
- (u) ~~Violation of local, state, or federal law, whether on or off campus, when it appears that the student has acted in a way which adversely affects or seriously interferes with the University's normal educational function, or which injures or endangers the welfare of any member of the University community. Such violation includes, but is not limited to, violation of state or federal drug laws, commission of or attempt or threat to commit rape, murder, felonious assault, arson or any other felonious crime against person or property.~~
- (v) ~~Participation of students in hazing activities. "Hazing" means any intentional or reckless act, on or off University property, by one student, acting alone or with others, which is directed against any other student, that endangers the mental or physical health or safety of that student, or which induces or coerces a student to endanger his or her mental or physical health or safety, and includes treatment of a violent, abusive, shameful, insulting, or humiliating nature. Such action is prohibited when connected with initiation into or affiliation with an organization and does not include participation in customary athletic events or similar competition.~~

~~Authority: T.C.A. §49-7-123 and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64. Administrative History: Original rule filed September 15, 1976. Repeal and new rule filed May 27, 1986; effective August 12, 1986. Amendment filed October 31, 1990; effective January 29, 1991. Amendment filed November 20, 1990; effective February 27, 1991. Amendment filed September 3, 1992; effective December 29, 1992. Amendment filed June 18, 1996; effective October 28, 1996. Amendment filed January 13, 1999; effective May 31, 1999~~

1720-5-1-.04 HEARING PROCEDURES.

- (1) ~~Unless otherwise specified in the published policies and procedures of The University of Tennessee at Martin, a student charged with misconduct or who is otherwise entitled to an opportunity for a hearing will, upon his/her request, be provided a hearing in accordance with the following procedures:~~
 - (a) ~~Notice—A person charged with misconduct will receive written notification of the following:~~
 1. ~~The substance of the charge(s) against him;~~
 2. ~~The disciplinary action taken or proposed;~~
 3. ~~His rights to a hearing should he wish to contest the charge(s) or action;~~
 4. ~~To whom a request for a hearing should be addressed;~~
 5. ~~That a request for a hearing must be made within five (5) days of the person's receipt of this notice;~~

(Rule 1720-5-1-.04, continued)

6. ~~His right to legal or other counsel. If representation by counsel is desired, he must provide notice of his intent to be represented by counsel concurrent with his request for a hearing; in the absence of such notice, the hearing panel will within the dictates of justice, direct either that a hearing proceed without presence of counsel or that the hearing be postponed;~~
 7. ~~His right to a hearing in accordance with the contested case provisions of the Uniform Administrative Procedures Act, T.C.A. §4-5-108 et seq. In the absence of a voluntary written waiver of his right to a hearing under the provisions of the UAPA, a requested hearing will be conducted in accordance with the University's APA hearing procedures and these procedures shall not apply.~~
- (b) ~~Hearing Panel—A requested hearing will be provided by a panel of individuals or hearing examiner, selected in accordance with policies of UTM or, in the absence of applicable policies or procedures, by the Chancellor (or his designee). The hearing will be conducted by a panel chairman similarly selected. Panel members shall be impartial and anyone lacking such impartiality shall recuse himself or be removed by the Chancellor upon the request of any party to a hearing.~~
- (c) ~~Hearing Process—The chairman of a hearing panel will conduct the hearing, without regard to technical rules of procedures, in such manner as will best serve the cause of justice within the following general guidelines:~~
1. ~~Each party to a hearing will be afforded a full and fair opportunity to present all evidence, including witnesses, reasonably relating to the charge or action at issue; evidence which is irrelevant, immaterial, repetitious or voluminous may be limited;~~
 2. ~~The hearing panel will consider all evidence presented, giving due consideration to the credibility or weight of each item presented; technical rules of evidence will not apply;~~
 3. ~~Each party will have the right to question opposing witnesses;~~
 4. ~~An appropriate record will be made of the hearing procedures. However, defects in the record will not invalidate the proceedings;~~
 5. ~~The University will have the burden of proving, by a preponderance of the evidence, the truth of the charge(s) at issue. Where the charge(s) is found to be true, the person charge will have the burden of proving that the disciplinary action taken or proposed is arbitrary, capricious, or unreasonable;~~
 6. ~~Following the conclusion of the hearing, the hearing panel will consider the evidence and present written findings.~~
- (d) ~~Reserved.~~
- (e) ~~Emergency Powers.—When in the judgment of the Chancellor of The University of Tennessee at Martin, conditions are such that an emergency exists which makes it impossible for the system of judicial boards to function, he/she may suspend these procedural regulations. If the procedures are suspended, he/she may substitute for them arrangements for handling disciplinary matters that will insure the orderly functioning of the University and at the same time safeguard the basic rights of the students.~~

(Rule 1720-5-1-.04, continued)

- (f) ~~*Disciplinary Actions and Penalties.* Disciplinary actions are taken and penalties are assigned by staff members or appropriate committees and councils on the basis of all attendant circumstances. Official notifications are given by the appropriate office, and official records are maintained in the Office of Student Affairs. Efforts are made to keep penalties consistent with those applied in similar cases. However, in recognition of the fact that the University is an educational institution with a rehabilitative point of view, penalties are assessed in accordance with conditions accompanying each offense. The penalties which may be assessed for violation of University regulations are:~~
1. ~~Loss of Privilege. This penalty may involve loss of scholarships, stipends, right to participate in certain extracurricular activities, etc.~~
 2. ~~Disciplinary Warning and/or Loss of Privilege. A disciplinary warning and/or loss of privilege is used for minor infractions and consists of a restatement of the regulation violated with an official warning concerning future behavior and/or loss of certain University privileges for a specific period of time.~~
 3. ~~Disciplinary Probation. Disciplinary probation means that a student is permitted to remain in the University on probationary status. Should a violation of regulations occur during probation, the student may be suspended. Conditions of probation include loss of eligibility to join a student organization and to serve as an officer in a student organization. Other conditions are specific to the individual case and may include ineligibility to participate in certain student activities. Any specific probation conditions are described in a personal letter to the student.~~
 4. ~~Suspension. Suspension is used in cases of serious misconduct, or violation of probation, and means that the student is required to cancel his registration and is not eligible to apply for readmission for a designated period of time. Usually the period of designated suspension does not exceed one year. (Persons suspended from the University may not return to the campus for the duration of their suspension, except to conduct official business with an administrative officer or faculty member.)~~
 5. ~~Indefinite Suspension. Indefinite suspension means that a specific date has not been recommended for the readmission of the suspended student. The penalty is used in cases of extremely serious misconduct where the appropriate hearing body desires that evidence of rehabilitation be presented by the student before he or she is readmitted to the University. (Persons suspended from the University may not return to the campus for the duration of their suspension, except to conduct official business with an administrative officer or faculty member.)~~
 6. ~~Permanent Dismissal.~~

~~*Authority: Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5 and Public Acts of Tennessee, 1807, Chapter 64. Administrative History: Original rule filed September 15, 1976; effective October 15, 1976. Amendment filed August 22, 1980; effective December 1, 1980. Amendment filed August 27, 1981; effective November 30, 1981. Amendment filed July 29, 1983; effective October 14, 1983. Repeal and new rule filed May 27, 1986; effective August 12, 1986. Amendment filed October 14, 1990; effective January 29, 1991. Amendment filed January 13, 1999; effective May 31, 1999.*~~

~~1720-5-1.05 WITHDRAWAL OR TEMPORARY SUSPENSION DUE TO MENTAL OR PHYSICAL PROBLEMS. When a student is unable to effectively pursue his/her academic work, (or when his/her behavior is disruptive to the normal educational processes of the University), or constitutes a threat to members of the University community, due to alcoholism, drug addiction, mental instability or other physical or psychologically incapacitating illness or condition, he/she may be withdrawn or temporarily suspended from the University as hereinafter provided.~~

- ~~(1) WITHDRAWAL. A student may be withdrawn from the University only after an evaluation of his/her mental and physical condition by a panel of at least three persons appointed by the Vice Chancellor for Student Affairs. The student shall be notified of the reasons for the evaluation and given an opportunity to present evidence to the committee. The committee's findings and recommendations shall be forwarded to the Vice Chancellor who will notify the student in writing of his/her decision. A student withdrawn under this procedure shall not be readmitted to the University without the approval of the Vice Chancellor.~~
- ~~(2) TEMPORARY SUSPENSION. Whenever a student, because of his/her mental or physical condition constitutes a danger to persons or property, or when his/her behavior is disruptive to the normal educational processes of the University, he/she may be suspended from the University, for a reasonable period of time, by the Vice Chancellor for Student Affairs or his/her designee. If the University does not withdraw the student in accordance with the procedures outlined above, he/she may return to the University at the end of the suspension period.~~

~~Authority: Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5 and Public Acts of Tennessee, 1807, Chapter 64. Administrative History: Original rule filed July 29, 1983; effective October 14, 1983. Repeal and new rule filed May 27, 1986; effective August 12, 1986. Amendment filed January 13, 1999; effective May 31, 1999.~~

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: University of Tennessee

DIVISION: University of Tennessee Health Science Center

SUBJECT: Student Conduct Code

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 49-9-209

EFFECTIVE DATES: September 28, 2012 through June 30, 2013

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT:

The University of Tennessee Health Science Center has revised its code of conduct for students. The following briefly summarizes the new rule and the key changes from the rule being repealed:

Rule 1720-03-03-.01 provides a description of the University's interests in students' conduct.

Rule 1720-03-03-.02 defines key terms used in the code of conduct.

Rule 1720-03-03-.03 sets forth the University's position on common jurisdictional issues that arise in student conduct cases.

Rule 1720-03-03-.04 sets forth the standards of conduct for University students and student organizations. The most significant additions and changes to former Rule 1720-03-03 relate to academic dishonesty, providing false information, physical harm, harassment, sexual assault or misconduct, invasion of privacy, arson, information technology, compliance with University instructions, alcohol, and drugs.

Rule 1720-03-03-.05 addresses penalties imposed for violations of the Standards of Conduct. The proposed rule adds guidance for administrators and hearing boards in determining the appropriate penalty for a violation of the standards of conduct; adds a non-exclusive list of aggravating and mitigating factors that an administrator or hearing board may consider in determining a penalty; informs students that intoxication or impairment because of alcohol, drugs, chemicals, or other substances does not excuse a violation of the standards of conduct; adds three (3) penalties; informs students about the University's policy concerning coursework and pending disciplinary charges; and informs student organizations about the penalties that may be imposed if a student organization violates the standards of conduct.

Rule 1720-03-03-.06 is a new rule describing a no-contact directive, which is a tool used by student affairs administrators in appropriate cases to prohibit a student from having verbal, physical, or written contact with specific persons for a definite or indefinite period of time.

Rule 1720-03-03-.07 is a new rule describing an interim suspension, which may be imposed on a student prior to the conclusion of a full due process hearing in certain situations.

Rule 1720-03-03-.08 changes former Rule 1720-03-03-.05 by providing a list of rights for victims in sexual assault cases, to comply with recent guidance by the United States Department of Education concerning Title IX of the Education Amendments of 1972.

Rule 1720-03-03-.09 and Rule 1720-03-03-.10 are the same as former Rule 1720-03-03-.03 and Rule 1720-0303-.07, respectively.

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)

Impact on Local Governments

Pursuant to T.C.A. 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The University of Tennessee anticipates that this rule will have no financial impact on local governments.

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For Department of State Use Only

Sequence Number: 04-12-12
Rule ID(s): 5194
File Date: 04/17/2012
Effective Date: 09/28/2012

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §4-5-202, 4-5-207 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Agency/Board/Commission:	University of Tennessee
Division:	
Contact Person:	Matthew Scoggins, Assistant General Counsel
Address:	719 Andy Holt Tower, 1331 Circle Park, Knoxville, TN
Zip:	37996-0170
Phone:	865-974-3245
Email:	scoggins@tennessee.edu

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
1720-03-03	Student Conduct
Rule Number	Rule Title
1720-03-03-.01	Introduction
1720-03-03-.02	Standards of Conduct
1720-03-03-.03	Student Identification Cards
1720-03-03-.04	Investigations of Student Conduct
1720-03-03-.05	The Judicial Systems and Due Process
1720-03-03-.06	Repealed
1720-03-03-.07	Student Health Insurance

Chapter Number	Chapter Title
1720-03-03	Student Rights and Responsibilities
Rule Number	Rule Title
1720-03-03-.01	Introduction
1720-03-03-.02	Definitions
1720-03-03-.03	Jurisdiction
1720-03-03-.04	Standards of Conduct
1720-03-03-.05	Penalties
1720-03-03-.06	No Contact Directives

1720-03-03-.07	Interim Suspension
1720-03-03-.08	Hearing Procedures
1720-03-03-.09	Student Identification Cards
1720-03-03-.10	Student Health Insurance

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

Substance of Proposed Rules
of
The University of Tennessee, Health Science Center

Repeal

Rule 1720-03-03 Student Rights and Responsibilities is repealed.

New Rule

Chapter 1720-03-03
Student Rights and Responsibilities

1720-03-03-.01 Introduction.

- (1) Students at the University of Tennessee Health Science Center are members of both the University community and the larger community of which the University is a part. Accordingly, students are responsible for conducting themselves in a lawful manner and in compliance with University rules and policies. The University has established the following rules in order to advance the mission of the University by maintaining a safe and secure learning environment, protecting the rights and privileges of all members of the University community, providing a basis for orderly conduct of the affairs of the University, promoting a positive relationship between the University and its surrounding community, preserving institutional integrity and property, encouraging students to engage in conduct that brings credit to themselves and the University, and ensuring that each student who matriculates at the University graduates ready to contribute to society as an ethical and law-abiding citizen.
- (2) The University of Tennessee is committed to respecting students' constitutional rights. Nothing in this chapter is intended or shall be interpreted to restrict students' constitutional rights, including, but not limited to, rights of freedom of speech and assembly.
- (3) Students are responsible for being fully acquainted and for complying with the University catalog, student handbook, and other rules and policies relating to students. Failure or refusal to comply with the rules and policies established by the University may subject a student to disciplinary action up to and including permanent dismissal from the University.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-03-03-.02 Definitions.

- (1) The term "University" means the University of Tennessee Health Science Center.
- (2) The term "student" means a person admitted, enrolled or registered for study at the University of Tennessee, either full-time or part-time, pursuing undergraduate, graduate, or professional studies, as well as non-degree students. Persons not officially registered or enrolled for a particular term but who have a continuing relationship with the University also are considered students for purposes of these rules.
- (3) The term "student organization" means an organization that is composed solely of University students that has submitted a pending application or has completed the process for registration

according to University rules.

- (4) The term "University-controlled property" means all land, buildings, facilities, grounds, structures, or any other property owned, leased, used, maintained, or operated by the University. For purposes of this rule, University-controlled property includes all streets, alleys, sidewalks, and public ways abutting such property. University-controlled property also includes computers and network systems owned, maintained, or controlled by the University or funded by the University.
- (5) The term "University-affiliated activity" means any activity on or off University-controlled property that is initiated, aided, authorized, sponsored, or supervised by the University.
- (6) The term "University official" means an employee of the University, including faculty members and staff, or for purposes of this rule a University-recognized volunteer. Student employees may be considered University officials when acting in the performance of their duties (e.g., event staff, resident assistants, and teaching assistants).
- (7) The term "member of the University community" means any person who is a student, University official, campus visitor, or participant in a University-sponsored or University-affiliated activity.
- (8) The term "possession" means actual knowledge of a substance or property and/or being in such close proximity to the substance or property that it is a reasonable presumption that one had knowledge of the substance or property.
- (9) The term "weapon" means any device, instrument, or substance that is designed to, or reasonably could be expected to, inflict a wound, incapacitate, or cause serious bodily injury or death, including, but not limited to, firearms (loaded and unloaded, real and replica), ammunition, electronic control devices (such as tasers and stun guns), devices designed to discharge an object (such as bb guns, air guns, pellet guns, potato guns, and slingshots), explosives, dangerous chemicals (such as mace, tear gas, and oleoresin capsicum), martial arts weapons, bows and arrows, artificial knuckles, nightsticks, blackjacks, dirks, daggers, swords, and knives with fixed blades longer than three (3) inches. The term "weapon" does not include chemical repellents available over-the-counter for self-defense; instruments used solely for personal hygiene, preparation of food, maintenance, University-related instruction, or University employment-related duties.
- (10) The term "notice" means notice given in writing delivered by regular mail, courier service, or hand delivery to the address the University has on file for the student or student organization, or by e-mail to the student's or student organization's University-provided e-mail account.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-03-03-.03 Jurisdiction.

- (1) The Standards of Conduct, Chapter 1720-03-03-.04, apply to conduct that occurs on University-controlled property.
- (2) The University also has the discretion to discipline a student for an act in violation of the Standards of Conduct that occurs off University-controlled property if the conduct adversely affects the interests of the University, including, but not limited to, conduct which:
 - (a) Occurs in connection with a University-affiliated activity, including, but not limited to, an overseas study program or a clinical, field, internship, or in-service experience;
 - (b) Involves another member of the University community; or
 - (c) Threatens, or indicates that the student may pose a threat to, the health or safety of him/herself or others or the security of any person's property, including, but not limited to, alcohol-related offenses, drug-related offenses, arson, battery, fraud, hazing, participation

in group violence, rape, sexual assault or misconduct, stalking, and theft.

- (3) The Standards of Conduct have been adopted in furtherance of the University's interests and serve to supplement, rather than substitute for, the enforcement of the civil and criminal law. Accordingly, University disciplinary action may be instituted against a student charged with conduct that potentially violates both the criminal law and the Standards of Conduct without regard to the pendency of criminal charges or civil litigation. At the discretion of the Chief Student Affairs Officer, or his/her designee, disciplinary action relating to a violation of the Standards of Conduct may be carried out prior to, simultaneously with, or following criminal proceedings. Students accused of violating the Standards of Conduct may not challenge the University disciplinary proceedings on the grounds that criminal charges, civil litigation, or other University proceedings regarding the same incident are pending or have been terminated, dismissed, reduced, or not yet adjudicated.
- (4) Each student shall be responsible for his/her conduct from the time of application for admission through the actual awarding of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment (and even if conduct is not discovered by the University until after a degree is awarded). Should a student withdraw from the University with disciplinary charges pending, the student's academic record and/or ability to register for classes may be encumbered by the appropriate University office.
- (5) Graduate or professional programs within the University may initiate charges against students for alleged violations of professional standards or ethics as a separate issue or as an extension of alleged acts of academic dishonesty or other violations of the Standards of Conduct.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-03-03-.04 Standards of Conduct. A student or student organization may be disciplined for the following types of misconduct:

- (1) Cheating, plagiarism, or any other act of academic dishonesty, including but not limited to an act in violation of the Honor Code.
- (2) Providing false information to a University official.
- (3) Falsifying, distorting, misrepresenting, or withholding information in connection with a University investigation or hearing.
- (4) Forging, altering, destroying, falsifying, or misusing records, identification, or documents, whether in print or electronic form.
- (5) Causing physical harm to any person (including oneself); endangering the health or safety of any person (including oneself); engaging in conduct that causes a reasonable person to fear harm to his/her health or safety; or making an oral or written statement (including electronically) that an objectively reasonable person hearing or reading the statement would interpret as a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals, although the speaker need not mean to carry out the act of unlawful violence in order to constitute a violation of this rule.
- (6) Harassment, which is defined as unwelcome conduct that is so severe or pervasive, and objectively offensive, that it substantially interferes with the ability of a person to work, learn, live, or participate in or benefit from the services, activities, or privileges provided by the University. In no event shall this rule be construed to discipline a student for speech protected by the First Amendment to the United States Constitution (e.g., mere insulting or offensive speech).
- (7) Sexual assault or misconduct. "Sexual assault" is defined as any sexual act or attempt to engage in any sexual act with another person without the consent of the other person, or in

circumstances in which the person is unable to give consent due to age, disability, or an alcohol/chemical or other impairment. "Sexual misconduct" is defined as any intimate touching of another person, or forcing a person to engage in intimate touching of another, without the consent of the other person, or in circumstances in which the person is unable to give consent due to age, disability, or an alcohol/chemical or other impairment. It is the responsibility of the person initiating sexual activity to ensure the other person is capable of consenting to that activity. Consent is given by an affirmative verbal response or acts that are unmistakable in their meaning. Consent to one form of sexual activity does not mean consent is given to another type of sexual activity.

- (8) Invasion of another person's privacy when that person has a reasonable expectation of privacy, including, but not limited to, using electronic or other means to make a video or photographic record of any person in a location in which the person has a reasonable expectation of privacy, without the person's knowledge or consent. This includes, but is not limited to, making a video or photographic record of a person in shower/locker rooms or restrooms. The storing, sharing, and/or distributing of such unauthorized recordings by any means is also prohibited.
- (9) Theft, misappropriation, unauthorized possession, or unauthorized sale of private or public property, including but not limited to University-controlled property.
- (10) Vandalizing, destroying, damaging, engaging in conduct that reasonably could cause damage to, or misusing private or public property, including but not limited to University-controlled property.
- (11) Participating in hazing. "Hazing" is defined as any intentional or reckless act, on or off University-controlled property, by one (1) student, acting alone or with others, which is directed against any other student, which endangers the mental or physical health or safety of that student, or which induces or coerces a student to endanger his or her mental or physical health or safety. "Hazing" does not include customary athletic events or similar contests or competitions and is limited to those actions taken and situations created in connection with initiation into or affiliation with any organization.
- (12) Engaging in disorderly, lewd, indecent, or obscene conduct. "Disorderly" conduct means fighting or other physically violent or threatening conduct; creating a hazardous or physically offensive condition by any act that serves no legitimate purpose; making noise that could unreasonably disturb others who are carrying on lawful activities; or conduct that breaches the peace. "Lewd, indecent, or obscene" conduct includes, but is not limited to, public exposure of one's sexual organs, public urinating, and public sexual acts.
- (13) Engaging in speech, either orally or in writing, that is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.
- (14) Any act of arson; falsely reporting a fire, the presence of an explosive or incendiary device, or other emergency; setting off a false fire alarm; or tampering with, removing, or damaging fire alarms, fire extinguishers or any other safety or emergency equipment from its proper location except when removed in a situation in which there is a reasonable belief of the need for such equipment.
- (15) Possessing, using, or duplicating University keys, access cards, or identification cards without authorization; possessing, using, or entering University-controlled property without authorization.
- (16) Theft, misuse, or unauthorized use of information technology facilities, resources, or access codes, including, but not limited to: unauthorized entry into or transfer of a file; using another person's identification and/or password without that person's consent; using information technology facilities or resources to interfere with the work of another student, faculty member, staff member, or other member of the University community; using information technology facilities or resources to interfere with normal operation of a University information technology system or network; circumventing University information technology system or network security; using information technology facilities or resources in violation of copyright laws; falsifying an e-mail header; and conduct that violates the University's policy on the Acceptable Use of Information Technology Resources.

- (17) Possessing, using, storing, or manufacturing any weapon or any facsimile of a weapon on University-controlled property or in connection with a University-affiliated activity, unless authorized in writing by the Chief of Police or his/her designee.
- (18) Consuming, manufacturing, possessing, distributing, dispensing, selling, or being under the influence of alcoholic beverages on University-controlled property or in connection with a University-affiliated activity.
- (19) Consuming, manufacturing, possessing, distributing, dispensing, selling, or being under the influence of alcoholic beverages, if prohibited by federal, state, or local law.
- (20) Providing an alcoholic beverage to a person younger than twenty-one (21) years of age, unless permitted by law.
- (21) Using, manufacturing, possessing, distributing, selling, dispensing, or being under the influence of drugs or drug paraphernalia, if prohibited by federal, state, or local law; using or possessing a prescription drug if the prescription was not issued to the student; or distributing or selling a prescription drug to a person to whom the prescription was not originally issued.
- (22) Failing to pay a University bill, account, or other University financial obligation.
- (23) Failing to respond to a request to report to a University administrative office; failing to comply with a lawful directive of a University employee or other public official acting within the scope of his/her duties; or failing to identify oneself to a University employee or other public official acting within the scope of his/her duties when requested to do so.
- (24) Failing to appear at a University hearing, including, but not limited to, a hearing of a University judicial board, following a request to appear either as a party or as a witness.
- (25) Violating the terms of an interim suspension, a no-contact directive, or a disciplinary penalty imposed by the University.
- (26) Obstructing or disrupting teaching, learning, studying, research, public service, administration, disciplinary proceedings, emergency services, or any other University-affiliated activity, or the free flow of pedestrian or vehicular traffic on University-controlled property. In no event shall this rule be construed to discipline a student for speech protected by the First Amendment to the United States Constitution.
- (27) Violating a University policy or rule, including but not limited to University policies or rules relating to facilities use, smoking, the acceptable use of information technology resources, research or service misconduct, finder's fees relating to clinical investigations involving human subjects or access to University data or materials, University libraries, dining services, parking or transportation, University identification card use, sexual harassment, residence halls, and registered student organizations.
- (28) Committing an act that is prohibited by local, state, or federal law.
- (29) Attempting to commit a violation of a Standard of Conduct or being an accessory to the commission of an act or attempted act in violation of a Standard of Conduct.

Authority: T.C.A. § 49-9-209(e), T.C.A. § 49-7-123, and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-03-03-.05 Penalties.

- (1) Disciplinary penalties are primarily intended to educate students and student organizations about appropriate behavior, encourage students and student organizations to take responsibility for misconduct, promote the personal and professional development of students, discourage other

students and student organizations from violating the Standards of Conduct, and protect members of the University community. The penalties imposed should be appropriate for the particular case based on the gravity of the offense (including without limitation how the violation affected or reasonably could have affected other members of the University community). Efforts are made to keep penalties consistent with those applied to similar cases. In recognition of the fact that the University is an educational institution with a rehabilitative point of view, penalties are assessed in accordance with conditions accompanying each offense. Consideration may also be given to the student's or student organization's conduct record; the student's or student organization's responsiveness to the conduct process; whether the student acted in self-defense, and, if so, whether the amount of force used was reasonable under the circumstances; student academic classification; and other aggravating or mitigating factors. Penalties may be applied retroactively to the date of the offense. Intoxication or impairment because of alcohol, drugs, chemicals, or other substances does not diminish or excuse a student violation of the Standards of Conduct. Additionally, official violation notifications are given by the appropriate office, and official records are maintained in that office.

- (2) The following penalties may be imposed on any student found to have violated the Standards of Conduct:
- (a) **Disciplinary Warning.** A disciplinary warning is a notice that the student is violating or has violated the Standards of Conduct. It is used for minor violations and consists of a restatement of the regulation violated with an official warning concerning future action.
 - (b) **Disciplinary Reprimand.** A disciplinary reprimand is used for minor violations of the Standards of Conduct when it is evident the misconduct occurred with knowledge and awareness of applicable Standards of Conduct. A reprimand indicates that further violations will result in more severe disciplinary actions. Reprimands may be given to students in either verbal or written form.
 - (c) **Loss of Privilege.** Loss of privilege is a penalty imposed most commonly in cases involving violation of University rules governing hours, social standards, intramural sports, or misuse of University facilities. The loss of privilege is ordinarily established for a specific period of time, and actions are recorded in appropriate records. Privileges that may be lost include, but are not limited to, scholarships, stipends, participation in extracurricular activities (e.g. intramurals), participation in social activities, and use of certain University-controlled property (e.g., information technology resources).
 - (d) **Education.** Students may be required to attend classes, at their own expense, dealing with issues such as the consequences of alcohol or drug use, civility, ethics, or other topics as deemed appropriate by the Chief Student Affairs Officer or his/her designee.
 - (e) **Restitution.** Restitution may be required in situations that involve destruction, damage, or loss of property, or unreimbursed medical expenses resulting from physical injury. Restitution may take the form of a monetary payment or appropriate service to repair or otherwise compensate for the destruction, damage, or loss.
 - (f) **Disciplinary Probation.** Disciplinary probation means that a student is permitted to remain in the University on a probationary status. Should a violation occur during probation, the student is normally suspended. Disciplinary probation is recorded on the student's personnel file in the Office of Student Affairs. Conditions of probation are specific to the individual case and may include loss of eligibility to serve as a student organization officer or participation in major student activities. Any specific probation conditions are described in a personal letter to the student. Other conditions of probation are specific to each individual case and may include a requirement of community service or other requirement or restriction.
 - (g) **Suspension.** The penalty of suspension is imposed in cases of serious or repeated misconduct or a violation of probation. A student who is suspended shall have his/her registration cancelled and is not eligible to apply for readmission for a designated period

of time. Suspensions are always recorded on the student's permanent record. (Persons suspended from the University may not return to the campus for the duration of their suspension, except to conduct official business with an administrative officer or faculty member).

- (h) **Permanent Dismissal.** Permanent dismissal means that a student is permanently barred from matriculating as a student at the University of Tennessee Health Science Center. This penalty is used when the violation of one (1) or more of the Standards of Conduct is deemed so serious as to warrant total and permanent disassociation from the University community without the possibility of re-enrollment; or when, by his/her repeated violation of the Standards of Conduct, a student exhibits blatant disregard for the health and safety of other members of the University community or the University's right to establish rules of conduct.
 - (i) **Revocation of Degree.** Revocation of a degree means revoking a student's a degree already awarded by the University. Revocation of a degree shall be approved by the University of Tennessee Board of Trustees.
- (3) A disciplinary hold may be placed on a student's account until the completion of the student disciplinary process and/or until the student satisfies the terms and conditions of any penalties imposed. A student who, at the time of commencement, is subject to a continuing disciplinary penalty or an unresolved disciplinary charge shall not be awarded a degree before the conclusion of all penalties and/or resolution of all disciplinary charges.
- (4) The following penalties may be imposed on a student organization found to have violated the Standards of Conduct:
- (a) **Disciplinary Warning.** A disciplinary warning is used for minor violations of the Standards of Conduct and consists of a restatement of the Standard of Conduct violated with an official warning concerning future action.
 - (b) **Loss of Privilege.** This penalty is intended to serve as a reminder of the Standards of Conduct and is for a specific period of time. Examples of privileges that may be lost include participating in extracurricular activities (e.g., intramurals), housing privileges, participating in social activities, and using certain University-controlled property.
 - (c) **Education.** Student organizations or their representatives may be required to attend classes, at their own expense, dealing with issues such as the consequences of alcohol or drug use, civility, ethics, or other topics as deemed appropriate by the Chief Student Affairs Officer, Student Conduct Officer, and/or his/her designee.
 - (d) **Restitution.** Restitution may be required in situations that involve destruction, damage, or loss of property, or unreimbursed medical expenses resulting from physical injury. Restitution may take the form of a monetary payment or appropriate service to repair or otherwise compensate for the destruction, damage, or loss.
 - (e) **Social Probation.** This penalty prohibits a student organization from sponsoring or participating in specified social activities. While on social probation, a student organization may not host social events or participate in University-affiliated activities. Any exceptions to social probation must be approved, in advance, by the Chief Student Affairs Officer or his/her designee.
 - (f) **Disciplinary Probation.** Disciplinary probation means that a student organization is permitted to retain University registration on a probationary status. Violation of the Standards of Conduct during the period of disciplinary probation may result in more serious penalties, including revocation of University registration.
 - (g) **Revocation of University Registration.** In cases of serious misconduct, a student organization's University registration may be revoked.

- (5) More than one (1) of the penalties listed above may be imposed for any single violation of the Standards of Conduct.
- (6) Except for an interim suspension, disciplinary penalties shall not become effective until after opportunities for appeal have been exhausted. Penalties may be applied retroactively to the date of the offense. Coursework performed while disciplinary charges are pending or disciplinary proceedings are underway shall be considered conditional. Coursework may be affected or disregarded based on a final finding of misconduct or the penalty imposed, which may result in loss of course credit, a loss of tuition and/or fees, a delay in the awarding of a degree, or revocation of a degree that was awarded prior to a final decision in the disciplinary proceeding.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-03-03-.06 No Contact Directive. In cases involving allegations of assault, injury, sexual abuse, harassment, or in cases where there is reason to believe continued contact between a student/student organization and specific persons, including complainants and witnesses, may interfere with those persons' security, safety or ability to participate effectively in work or studies, the Chief Student Affairs Officer, or his/her designee, may require that the student/student organization not have verbal, physical, or written contact with specific persons for a definite or indefinite period of time. The student/student organization will receive notice of the no contact directive. Any student, faculty or staff member or other person with a reasonable justification may request that a no contact directive be issued to a student/student organization. In addition to an internal University no contact directive, complainants are advised that other similar options exist and can be obtained from law enforcement and civil and criminal courts.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-03-03-.07 Interim Suspension.

- (1) When the Chief Student Affairs Officer or his/her designee has reasonable cause to believe that a student's or student organization's continued presence on University-controlled property or at University-affiliated activities poses a significant risk of substantial harm to the health or safety of others or to property or poses an ongoing threat to the disruption of, or interference with, the normal operations of the University, the Chief Student Affairs Officer or his/her designee may impose an interim suspension prior to the conclusion of a full hearing on the alleged misconduct.
- (2) An interim suspension shall be confirmed by a notice that explains the basis for the interim suspension and shall remain in effect until the conclusion of a full hearing in accordance with the rules of the University of Tennessee, which shall be held without undue delay.
- (3) Within three (3) business days of the imposition of the suspension, the student or student organization shall be offered an opportunity to appear personally before the Chief Student Affairs Officer or his/her designee in order to discuss the following issues only: (i) the reliability of the information concerning the student's or student organization's conduct; and (ii) whether the conduct and surrounding circumstances reasonably indicate that the student's or student organization's continued presence on University-controlled property or at University-affiliated activities poses a significant risk of substantial harm to the health or safety of others or to property or poses an imminent threat of disruption of or interference with the normal operations of the University.
- (4) During an interim suspension, the student or student organization shall be denied access to University-controlled property, including residence halls, and all other University-affiliated activities or privileges for which the student might otherwise be eligible, as the Chief Student Affairs Officer or his/her designee determines in his/her sole discretion to be appropriate. A student or student organization who receives an interim suspension and violates the terms of the interim suspension shall be subject to further disciplinary action and may be treated as a

trespasser. Permission to be on University-controlled property or participate in University-affiliated activities may be granted by the Chief Student Affairs Officer or his/her designee.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-03-03-.08 Hearing Procedures.

- (1) Unless otherwise specified in the published policies and procedures of the UT Health Science Center, a student charged with misconduct or who is entitled to an opportunity for a hearing will, upon request, be provided a hearing in accordance with the following procedures:
 - (a) Notice - A person charged with misconduct will receive written notification of the following:
 1. The substance of the charge(s) against him/her.
 2. The disciplinary action taken or proposed.
 3. His/her right to a hearing should he/she wish to contest the charge(s) or action.
 4. To whom a request for a hearing should be addressed.
 5. That a request for a hearing must be made within five (5) days of the person's receipt of this notice.
 6. His/her right to be accompanied by no more than one (1) advisor during the hearing, including but not limited to a parent, spouse, friend, or attorney. The role of the advisor shall be limited to providing advice or support to the accused student. Even if accompanied by an advisor, the accused student is responsible for presenting his/her own case to the hearing panel. An advisor is not permitted to: introduce evidence; raise objections; present arguments; address directly the members of the hearing panel, the student conduct officer, or any witnesses participating in the hearing; or otherwise participate in the hearing. In consideration of the limited role of the advisor, and of the compelling interest of the University to expeditiously conclude the matter, a hearing shall not be delayed due to the unavailability of an advisor.
 7. His/her rights to a hearing in accordance with the contested case provisions of the Uniform Administrative Procedures Act, T.C.A. § 4-5-108 et seq. In the absence of a voluntary written waiver of his/her rights to a hearing under the provisions of the TUAPA, a requested hearing will be conducted in accordance with the University's TUAPA hearing procedures shall not apply.
 - (b) Hearing Panel - A requested hearing will be provided by a panel of individuals or a hearing examiner, selected in accordance with policies of UT Health Science Center or, in the absence of applicable policies or procedures, by the Chancellor of the UT Health Science Center or his/her designee. The hearing will be conducted by a panel chairman similarly selected. Panel members shall be impartial and anyone lacking such impartiality shall recuse himself or be removed by the Chancellor of the UT Health Science Center or his/her designee upon the request of any party to a hearing.
 - (c) Hearing Process - The chairman of a hearing panel or hearing examiner will conduct the hearing, without regard to technical rules of procedure, in such manner as will best serve the cause of justice within the following general guidelines:
 1. Each party to a hearing will be afforded a full and fair opportunity to present all evidence including witnesses, reasonably relating to the charge or action at issue; evidence which is irrelevant, immaterial, repetitious or voluminous may be

limited.

2. The hearing panel or examiner will consider all evidence presented, giving due consideration to the credibility or weight of each item presented; technical rules of evidence will not apply.
 3. Each party will have the right to question opposing witnesses.
 4. A record will be made of the hearing procedures. However, defects in the record will not invalidate the proceedings.
 5. The University will have the burden of providing, by a preponderance of the evidence, the truth of the charge(s) at issue. Where the charge(s) is found to be true, the person charged will have the burden of proving that the disciplinary action taken or proposed is arbitrary, capricious, or unreasonable.
 6. Following the conclusion of the hearing, the hearing panel or examiner will consider the evidence and present written findings within a reasonable time.
 7. In cases involving an allegation of sexual assault or misconduct, the hearing procedures shall be modified to afford the alleged victim all of the rights described in Chapter 1720-03-03-.08(1)(d).
- (d) In cases involving a complaint of sexual assault or misconduct, the alleged victim shall have the right to:
1. Notice concerning the process by which the University will handle the complaint and an opportunity to ask questions about the process;
 2. A prompt, thorough, and impartial investigation of the complaint;
 3. The same opportunity as the accused student to present his/her explanation of the facts during the University's investigation;
 4. Have the investigation of the complaint concluded within sixty (60) days of the University's receipt of a complaint, unless circumstances make it impracticable for the University to complete its investigation within that timeframe;
 5. Notice of the outcome of the University's investigation;
 6. Have a disciplinary hearing conducted within thirty (30) days of a University charge that the accused student committed sexual assault or misconduct, unless circumstances make it impracticable for the University to conduct a hearing within that timeframe;
 7. Notice of the date, time, and location of the disciplinary hearing, the right to have the disciplinary hearing closed to the public, and the right to request rescheduling of the hearing for good cause;
 8. The same access as the accused student to any information or documents that will be used by the University during a disciplinary hearing, unless prohibited by law;
 9. Challenge the selection of any member of a hearing panel or a hearing examiner for good cause, which will be determined at the discretion of the Chancellor or his/her designee;

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Finance and Administration

DIVISION: Bureau of TennCare

SUBJECT: TennCare Standard Covered Services

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 71-5-105

EFFECTIVE DATES: August 29, 2012 through June 30, 2013

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: This rule is being promulgated to update and correct an internal reference in the rules.

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)

The rule has no effect on small businesses.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

(Insert statement here)

The rule is not projected to have an impact on local governments.

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Sequence Number: 04-19-12
 Rule ID(s): 5/95
 File Date: 04/25/2012
 Effective Date: 08/29/2012

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §§ 4-5-202, 4-5-207 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Agency/Board/Commission: Tennessee Department of Finance and Administration
Division: Bureau of TennCare
Contact Person: George Woods
Address: 310 Great Circle Road
Zip: 37243
Phone: (615)507-6446
Email: George.woods@tn.gov

Revision Type (check all that apply):

Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
1200-13-14	TennCare Standard
Rule Number	Rule Title
1200-13-14-.04	Covered Services

(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>)

Subparagraph (d) of Paragraph (1) of Rule 1200-13-14-.04 Covered Services is amended by deleting the reference to paragraph (20) in the first sentence and replacing it with a reference to paragraph (29) so as amended Subparagraph (d) shall read as follows:

- (d) The MCC shall be allowed to provide cost effective alternative services as defined in paragraph 1200-13-14-.01(29). Cost effective alternative services are not reimbursable in any circumstances other than those described in that paragraph.

Statutory Authority: T.C.A. §§ 4-5-202 and 71-5-105.

(Rule 1200-13-14-.03, continued)

3. High cost medical bills.

Coverage by a particular MCO shall cease at 12:00 midnight local time on the date that an individual has been reassigned by TennCare from one MCO and placed in another plan. Coverage by the new MCO will begin when coverage by the old MCO ends.

Authority: T.C.A. §§4-5-202, 4-5-208, 4-5-209, 71-5-105, 71-5-109, Executive Order No. 23. **Administrative History:** Public necessity rule filed July 1, 2002; effective through December 13, 2002. Original rule filed September 30, 2002; to be effective December 14, 2002; however, on December 9, 2002, the House Government Operations Committee of the General Assembly stayed rule 1200-13-14-.03; new effective date February 12, 2003. Emergency rule filed December 13, 2002; effective through May 27, 2003. Public necessity rule filed December 29, 2005; effective through June 12, 2006. Public necessity rule filed December 29, 2005, expired June 12, 2006. On June 13, 2006, affected rules reverted to status on December 28, 2005. Amendment filed March 31, 2006; effective June 14, 2006. Amendment filed August 14, 2006; effective October 28, 2006. Amendment filed January 26, 2007; effective April 11, 2007. Amendment filed September 13, 2007; effective November 27, 2007. Public necessity rule filed February 8, 2008; effective through July 22, 2008. Repeal and new rule filed May 7, 2008; effective July 21, 2008. Amendments filed September 25, 2009; effective December 24, 2009. Amendment filed November 30, 2009; effective February 28, 2010. Emergency rule filed March 1, 2010; effective through August 28, 2010. Amendment filed May 27, 2010; effective August 25, 2010. Amendments filed October 26, 2010; effective January 24, 2011.

1200-13-14-.04 COVERED SERVICES.

(1) Benefits covered under the managed care program

(a) TennCare MCCs shall cover the following services and benefits subject to any applicable limitations described herein. TennCare MCCs shall cover TennCare CHOICES services and benefits in accordance with Rule 1200-13-01-.05.

1. Any and all medically necessary services may require prior authorization or approval by the MCC, except where prohibited by law.
2. An MCC shall not refuse to pay for a service solely because of a lack of prior authorization as follows:
 - (i) Preventive, diagnostic, and treatment services for persons under age 21. MCCs shall provide all medically necessary, covered services regardless of whether the need for such services was identified by a provider whose services had received prior authorization from the MCC or by an in-network provider.
 - (ii) Emergency services. MCCs shall not require prior authorization or approval for covered services rendered in the event of an emergency, as defined in these rules. Such emergency services may be reviewed on the basis of medical necessity or other MCC administrator requirements, but cannot be denied solely because the provider did not obtain prior authorization or approval from the enrollee's MCC.
3. MCCs shall not impose any service limitations that are more restrictive than those described herein; however, this shall not limit the MCC's ability to establish procedures for the determination of medical necessity.
4. Services for which there is no federal financial participation (FFP) are not covered.

(Rule 1200-13-14-.04, continued)

7. Nonprescription drugs.
 8. Covered outpatient drugs, which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or his designee.
 9. TennCare shall not cover drugs considered by the FDA to be Less Than Effective (LTE) and DESI drugs, or drugs considered to be Identical, Related and Similar (IRS) to DESI and LTE drugs or any other pharmacy services for which federal financial participation (FFP) is not available. The exclusion of drugs for which no FFP is available extends to all TennCare enrollees regardless of the enrollee's age. TennCare shall not cover experimental or investigational drugs which have not received final approval from the FDA.
 10. Buprenorphine and buprenorphine/naloxone products and sedative hypnotics for persons aged 21 and older are restricted to the quantity limits specified below:
 - (i) Generic buprenorphine, Subutex (buprenorphine), and Suboxone (buprenorphine/naloxone) products shall not exceed sixteen milligrams (16 mg) per day for a period of up to six (6) months from the initiation of therapy. For enrollees who are pregnant while receiving this dosage, the six-month period does not begin until the enrollee is no longer pregnant. At the end of either six month period, the covered dosage amount shall not exceed eight milligrams (8 mg) per day.
 - (ii) Sedative hypnotic medications shall not exceed fourteen (14) pills per month for sedative hypnotic formulations in pill form such as Ambien and Lunesta, one hundred forty milliliters (140 ml) per month of chloral hydrate, or one (1) bottle every sixty (60) days of Zolpimist.
- (d) The MCC shall be allowed to provide cost effective alternative services as defined in paragraph 1200-13-14-.01(20). Cost effective alternative services are not reimbursable in any circumstances other than those described in that paragraph.
- (2) Use of Cost Effective Alternative Services.
- (a) MCCs shall be allowed, but are not required, to use cost effective alternative services if and only if:
 1. These services are listed in the MCC contract and/or in Policy BEN 08-001; or
 2. These services are provided under the CHOICES program in accordance with Rule 1200-13-01-.05; and
 3. They are medically appropriate and cost effective.
 - (b) Use of approved cost effective alternative services is made at the sole discretion of the MCC.
- (3) Emergency Medical Services.
- Emergency medical services shall be available twenty-four (24) hours per day, seven (7) days per week. Coverage of emergency medical services shall not be subject to prior authorization by the MCC but may include a requirement that notice be given to the MCC of use of out-of-plan emergency services. However, such requirements shall provide at least a twenty-four (24) hour time frame after the emergency for notice to be given to the MCC.

(Rule 1200-13-14-.01, continued)

- (5) APPLICATION PERIOD shall mean a specific period of time determined by the Bureau of TennCare during which the Bureau will accept applications for the TennCare Standard Spend Down category as described in the Bureau's rules at 1200-13-14-.02.
- (6) BENEFITS shall mean the health care package of services developed by the Bureau of TennCare and which define the covered services available to TennCare enrollees. Additional benefits are available through the TennCare CHOICES program, as described in Rule 1200-13-01-.05. CHOICES benefits are available only to persons who qualify for and are enrolled in the CHOICES program.
- (7) BUREAU OF TENNCARE (BUREAU) shall mean the administrative unit of TennCare which is responsible for the administration of TennCare as defined elsewhere in these rules.
- (8) CALL-IN LINE shall mean the toll-free telephone line used as the single point of entry during an open application period to accept new applications for the Standard Spend Down Program.
- (9) CAPITATION PAYMENT shall mean the fee which is paid by the State to a managed care contractor operating under a risk-based contract for each enrollee covered by the plan for the provision of medical services, whether or not the enrollee utilizes services or without regard to the amount of services utilized during the payment period.
- (10) CAPITATION RATE shall mean the amount established by the State for the purpose of providing payment to participating managed care contractors operating under a risk-based contract.
- (11) CARETAKER RELATIVE shall mean that individual as defined at Tennessee Code Annotated § 71-3-153.
- (12) CATEGORICALLY NEEDY shall mean that category of TennCare Medicaid-eligibles as defined at 1240-03-02-.02 of the rules of the Tennessee Department of Human Services - Division of Medical Services.
- (13) CHOICES. See "TennCare CHOICES in Long-Term Care."
- (14) CHOICES 217-Like Group. See definition in Rule 1200-13-01-.02.
- (15) CHOICES Group 1. See definition in Rule 1200-13-01-.02.
- (16) CHOICES Group 2. See definition in Rule 1200-13-01-.02.
- (17) CMS (CENTERS FOR MEDICARE AND MEDICAID SERVICES) (formerly known as HCFA) shall mean the agency within the United States Department of Health and Human Services that is responsible for administering Title XVIII, Title XIX, and Title XXI of the Social Security Act.
- (18) COBRA shall mean health insurance coverage provided pursuant to the Consolidated Omnibus Budget Reconciliation Act.
- (19) CODE OF FEDERAL REGULATIONS (C.F.R.) shall mean Federal regulations promulgated to explain specific requirements of Federal law.
- (20) COMMENCEMENT OF SERVICES shall mean the time at which the first covered service(s) is/are rendered to a TennCare member for each individual medical condition.

(Rule 1200-13-14-.01, continued)

- (21) COMMISSIONER shall mean the chief administrative officer of the Tennessee Department where the TennCare Bureau is administratively located, or the Commissioner's designee.
- (22) COMPLETED APPLICATION is an application where:
- (a) All required fields have been completed;
 - (b) It is signed and dated by the applicant or the applicant's parent or guardian;
 - (c) It includes all supporting documentation required by the TDHS or the Bureau to determine TennCare eligibility, technical and financial requirements as set out in these rules; and
 - (d) It includes all supporting documentation required to prove TennCare Standard medical eligibility as set out in these rules.
- (23) CONTINUATION OR REINSTATEMENT shall mean that the following services or benefits are subject to continuation or reinstatement pursuant to an appeal of an adverse decision affecting a TennCare service(s) or benefit(s), unless the services or benefits are otherwise exempt from this requirement as described in rule 1200-13-14-.11, if the enrollee appeals within ten (10) days of the date of the notice of action or prior to the date of the adverse action, whichever is later.
- (a) For services on appeal under *Grier Revised Consent Decree*:
 - 1. Those services currently or in the case of reinstatement, most recently provided to an enrollee; or
 - 2. Those services provided to an enrollee in an inpatient psychiatric facility or residential treatment facility where the discharge plan has not been accepted by the enrollee or appropriate step-down services are not available; or
 - 3. Those services provided to treat an enrollee's chronic condition across a continuum of services when the next appropriate level of covered services is not available; or
 - 4. Those services prescribed by the enrollee's provider on an open-ended basis or with no specific ending date where the MCC has not reissued prior authorization; or
 - 5. A different level of covered services, offered by the MCC and accepted by the enrollee, for the same illness or medical condition for which the disputed service has previously been provided.
 - (b) For eligibility terminations, coverage will be continued or reinstated for an enrollee currently enrolled in TennCare who has received notice of termination of eligibility and who appeals within ten (10) days of the date of the notice or prior to the date of termination, whichever is later.
- (24) CONTINUOUS ENROLLMENT shall refer to the ability of certain individuals determined eligible for the TennCare Program to enroll at any time during the year. Continuous enrollment is limited to persons in the following two groups:
- (a) TennCare Medicaid enrollees as defined in rule 1200-13-13-.02.

(Rule 1200-13-14-.01, continued)

- (b) Individuals who are losing their Medicaid, who are uninsured, who are under nineteen (19) years of age, and who meet the qualification for TennCare Standard as "Medicaid Rollovers," in accordance with the provisions of Rule 1200-13-14-.02.
- (25) CONTRACT PROVIDER shall have the same meaning as Participating Provider.
- (26) CONTRACTOR shall mean an organization approved by the Tennessee Department of Finance and Administration to provide TennCare-covered benefits to eligible enrollees in the TennCare Medicaid and TennCare Standard programs.
- (27) CONTRACTOR RISK AGREEMENT (CRA) shall mean the document delineating the terms of the agreement entered into by the Bureau of TennCare and the Managed Care Contractors.
- (28) CORE MEDICAID POPULATION shall mean individuals eligible under Title XIX of the Social Security Act, 42 U.S.C. §§1396, et seq., with the exception of the following groups: individuals receiving SSI benefits as determined by the Social Security Administration; individuals eligible under a Refugee status; individuals eligible for emergency services as an illegal or undocumented alien; individuals receiving interim Medicaid benefits with a pending Medicaid disability determination; individuals with forty-five (45) days of presumptive eligibility; and children in DCS custody.
- (29) COST-EFFECTIVE ALTERNATIVE SERVICE shall mean a service that is not a covered service but that is approved by TennCare and CMS and provided at an MCC's discretion. TennCare enrollees are not entitled to receive these services. Cost-effective alternative services may be provided because they are either (1) alternatives to covered Medicaid services that, in the MCC's judgment, are cost-effective or (2) preventative in nature and offered to avoid the development of conditions that, in the MCC's judgment, would require more costly treatment in the future. Cost-effective alternative services need not be determined medically necessary except to the extent that they are provided as an alternative to covered Medicaid services. Even if medically necessary, cost effective alternative services are not covered services and are provided only at an MCC's discretion.
- (30) COST SHARING shall mean the amounts that certain enrollees in TennCare are required to pay for their TennCare coverage and covered services. Cost sharing includes copayments.
- (31) Covered Services shall mean the services and benefits that:
 - (a) TennCare contracted MCCs cover, as set out elsewhere in this Chapter and in Rule 1200-13-01-.05; or
 - (b) In the instance of enrollees who are eligible for and enrolled in federal Medicaid waivers under Section 1915(c) of the Social Security Act, the services and benefits that are covered under the terms and conditions of such waivers.
- (32) CPT4 CODES are descriptive terms contained in the Physician's Current Procedural Terminology, used to identify medical services and procedures performed by physicians or other licensed health professionals.
- (33) DBM (DENTAL BENEFITS MANAGER) shall mean a contractor approved by the Tennessee Department of Finance and Administration to provide dental benefits to enrollees in the TennCare Program to the extent such services are covered by TennCare.
- (34) DELAY shall mean, but is not limited to:

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Finance and Administration

DIVISION: Bureau of TennCare

SUBJECT: TennCare Medicaid Covered Services

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 71-5-105

EFFECTIVE DATES: August 29, 2012 through June 30, 2013

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: This rule is being promulgated to update and correct an internal reference in the rules.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

(Insert statement here)

The rule is not projected to have an impact on local governments.

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)

The rule has no effect on small businesses.

Department of State
Division of Publications
 312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
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For Department of State Use Only

Sequence Number: 04-20-12
 Rule ID(s): 5196
 File Date: 04/25/2012
 Effective Date: 09/28/2012

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §§ 4-5-202, 4-5-207 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Agency/Board/Commission:	Tennessee Department of Finance and Administration
Division:	Bureau of TennCare
Contact Person:	George Woods
Address:	310 Great Circle Road
Zip:	37243
Phone:	(615)507-6446
Email:	George.woods@tn.gov

Revision Type (check all that apply):

- Amendment
- New
- Repeal

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

Chapter Number	Chapter Title
1200-13-13	TennCare Medicaid
Rule Number	Rule Title
1200-13-13-.04	Covered Services

(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>)

Subparagraph (d) of Paragraph (1) of Rule 1200-13-13-.04 Covered Services is amended by deleting the reference to paragraph (25) in the first sentence and replacing it with a reference to paragraph (29) so as amended Subparagraph (d) shall read as follows:

- (d) The MCC shall be allowed to provide cost effective alternative services as defined in paragraph 1200-13-13-.01(29). Cost effective alternative services are not reimbursable in any circumstances other than those described in that paragraph.

Statutory Authority: T.C.A. §§ 4-5-202 and 71-5-105.

(Rule 1200-13-13-.01, continued)

- (b) Individuals who are losing their Medicaid, who are uninsured, who are under nineteen (19) years of age, and who meet the qualification for TennCare Standard as "Medicaid Rollovers," in accordance with the provisions of Rule 1200-13-14-.02.
- (25) CONTRACT PROVIDER shall have the same meaning as Participating Provider.
- (26) CONTRACTOR shall mean an organization approved by the Tennessee Department of Finance and Administration to provide TennCare-covered benefits to eligible enrollees in the TennCare Medicaid and TennCare Standard programs.
- (27) CONTRACTOR RISK AGREEMENT (CRA) shall mean the document delineating the terms of the agreement entered into by the Bureau of TennCare and the Managed Care Contractors.
- (28) CORE MEDICAID POPULATION shall mean individuals eligible under Title XIX of the Social Security Act, 42 U.S.C. §§ 1396, et seq., with the exception of the following groups: individuals receiving SSI benefits as determined by the Social Security Administration; individuals eligible under a Refugee status; individuals eligible for emergency services as an illegal or undocumented alien; individuals receiving interim Medicaid benefits with a pending Medicaid disability determination; individuals with forty-five (45) days of presumptive or immediate eligibility; and children in DCS custody.
- (29) COST-EFFECTIVE ALTERNATIVE SERVICE shall mean a service that is not a covered service but that is approved by TennCare and CMS and provided at an MCC's discretion. TennCare enrollees are not entitled to receive these services. Cost-effective alternative services may be provided because they are either (1) alternatives to covered Medicaid services that, in the MCC's judgment, are cost-effective or (2) preventative in nature and offered to avoid the development of conditions that, in the MCC's judgment, would require more costly treatment in the future. Cost-effective alternative services need not be determined medically necessary except to the extent that they are provided as an alternative to covered Medicaid services. Even if medically necessary, cost effective alternative services are not covered services and are provided only at an MCC's discretion.
- (30) COST SHARING shall mean the amounts that certain enrollees in TennCare are required to pay for their TennCare coverage and covered services. Cost sharing includes copayments.
- (31) COVERED SERVICES shall mean the services and benefits that:
 - (a) TennCare contracted MCCs cover, as set out elsewhere in this Chapter and in Rule 1200-13-01-.05; or
 - (b) In the instance of enrollees who are eligible for and enrolled in federal Medicaid waivers under Section 1915(c) of the Social Security Act, the services and benefits that are covered under the terms and conditions of such waivers.
- (32) CPT4 CODES are descriptive terms contained in the Physician's Current Procedural Terminology, used to identify medical services and procedures performed by physicians or other licensed health professionals.
- (33) DBM (DENTAL BENEFITS MANAGER) shall mean a contractor approved by the Tennessee Department of Finance and Administration to provide dental benefits to enrollees in the TennCare Program to the extent such services are covered by TennCare.
- (34) DELAY shall mean, but is not limited to:

(Rule 1200-13-13-.03, continued)

- (a) When it has been determined that an individual no longer meets the criteria for TennCare eligibility, that individual shall be disenrolled from the TennCare Program. Services provided by the TennCare MCO in which the individual has been placed, as well as the PBM and DBM, if applicable, shall be terminated upon disenrollment. Such disenrollment action will be accompanied by appropriate due process procedures as described elsewhere in this Chapter. Disenrollment from the CHOICES program shall proceed as described in Rule 1200-13-01-.05.
- (b) Coverage shall cease at 12:00 midnight, local time, on the date that an individual is disenrolled from TennCare.
- (c) TennCare may reassign individuals from a designated MCO and place them in another MCO as described elsewhere in these rules. A TennCare MCO may not reassign an enrollee without the permission of TennCare. A TennCare MCO shall not request the reassignment of a TennCare enrollee for any of the following reasons:
 1. Adverse changes in the enrollee's health;
 2. Pre-existing medical conditions; or
 3. High cost medical bills.

Coverage by a particular MCO shall cease at 12:00 midnight local time on the date that an individual has been reassigned by TennCare from one MCO and placed in another plan. Coverage by the new MCO will begin when coverage by the old MCO ends.

Authority: T.C.A. §§4-5-202, 4-5-203, 4-5-208, 4-5-209, 71-5-105, 71-5-109, Executive Order No. 23.
Administrative History: Public necessity rule filed July 1, 2002; effective through December 13, 2002. Original rule filed September 30, 2002; to be effective December 14, 2002; however, on December 9, 2002, the House Government Operations Committee of the General Assembly stayed rule 1200-13-13-.03; new effective date February 12, 2003. Emergency rule filed December 13, 2002; effective through May 27, 2003. Public necessity rule filed April 29, 2005; effective through October 11, 2005. Amendments filed July 28, 2005; effective October 11, 2005. Public necessity rule filed December 29, 2005; effective through June 12, 2006. Public necessity rule filed December 29, 2005, expired June 12, 2006. On June 13, 2006, affected rules reverted to status on December 28, 2005. Amendment filed March 31, 2006; effective June 14, 2006. Amendment filed August 14, 2006; effective October 28, 2006. Public necessity rule filed February 8, 2008; effective through July 22, 2008. Repeal and new rule filed May 7, 2008; effective July 21, 2008. Amendments filed September 25, 2009; effective December 24, 2009. Amendment filed November 30, 2009; effective February 28, 2010. Emergency rule filed March 1, 2010; effective through August 28, 2010. Amendments filed May 27, 2010; effective August 25, 2010. Amendments filed October 26, 2010; effective January 24, 2011.

1200-13-13-.04 COVERED SERVICES.

- (1) Benefits covered under the managed care program
 - (a) TennCare MCCs shall cover the following services and benefits subject to any applicable limitations described herein. TennCare MCCs shall cover TennCare CHOICES services and benefits in accordance with Rule 1200-13-01-.05.
 - 1 Any and all medically necessary services may require prior authorization or approval by the MCC, except where prohibited by law.
 - 2 An MCC shall not refuse to pay for a service solely because of a lack of prior authorization as follows:

(Rule 1200-13-13-.04, continued)

1. Agents for weight loss or weight gain.
 2. Agents to promote fertility or for the treatment of impotence or infertility or for the reversal of sterilization.
 3. Agents for cosmetic purposes or hair growth.
 4. Agents for symptomatic relief of coughs and colds.
 5. Agents which are benzodiazepines or barbiturates.
 6. Prescription vitamins and mineral products, except prenatal vitamins and fluoride preparations.
 7. Nonprescription drugs.
 8. Covered outpatient drugs, which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or his designee.
 9. TennCare shall not cover drugs considered by the FDA to be Less Than Effective (LTE) and DESI drugs, or drugs considered to be Identical, Related and Similar (IRS) to DESI and LTE drugs or any other pharmacy services for which federal financial participation (FFP) is not available. The exclusion of drugs for which no FFP is available extends to all TennCare enrollees regardless of the enrollee's age. TennCare shall not cover experimental or investigational drugs which have not received final approval from the FDA.
 10. Buprenorphine and buprenorphine/naloxone products and sedative hypnotics for persons aged 21 and older are restricted to the quantity limits specified below:
 - (i) Generic buprenorphine, Subutex (buprenorphine), and Suboxone (buprenorphine/naloxone) products shall not exceed sixteen milligrams (16 mg) per day for a period of up to six (6) months from the initiation of therapy. For enrollees who are pregnant while receiving this dosage, the six-month period does not begin until the enrollee is no longer pregnant. At the end of either six month period, the covered dosage amount shall not exceed eight milligrams (8 mg) per day.
 - (ii) Sedative hypnotic medications shall not exceed fourteen (14) pills per month for sedative hypnotic formulations in pill form such as Ambien and Lunesta, one hundred forty milliliters (140 ml) per month of chloral hydrate, or one (1) bottle every sixty (60) days of Zolpimist.
- (d) The MCC shall be allowed to provide cost effective alternative services as defined in paragraph 1200-13-13-.01(25). Cost effective alternative services are not reimbursable in any circumstances other than those described in that paragraph.
- (2) Use of Cost Effective Alternative Services.
- (a) MCCs shall be allowed, but are not required, to use cost effective alternative services if and only if:
1. These services are listed in the MCC contract and/or in Policy BEN 08-001; or

(Rule 1720-5-1-.02, continued)

- (4) ~~FAIR DISCIPLINARY HEARING. Students have the right to a fair hearing and an opportunity for appeal when charged with violations of the standards of conduct that have been established for University students.~~
- (5) ~~FREEDOM FOR UNWARRANTED SEARCH.~~
- (a) ~~Entry by University authorities into occupied rooms in residence halls or University apartments will be divided into two categories: inspection and search. Inspection is defined as entry into a room to ascertain health and safety conditions, to make repairs, or to perform cleaning and janitorial operations. Search is defined as entry into a room by campus authorities for the purpose of investigating suspected violation of campus regulations and/or local, state, or federal laws.~~
- (b) ~~On-campus authorities will not enter a room for purposes of search without the permission of the resident unless they have a campus authorization to search, authorized by the Vice Chancellor for Student Affairs or his designee which specifies the reasons for the search and the objects or information sought or unless they enter in compliance with state law. If possible, the student should be present during the search. Normally these searches will not be made unless the Vice Chancellor for Student Affairs or his designee is present.~~
- (c) ~~In case the search reveals objects the possession of which violates a law or a University regulation, the University may take appropriate disciplinary action even though the objects were not listed on the search authorization.~~
- (6) ~~FREEDOM FROM ABUSE OR HARASSMENT DURING AN INTERROGATION. No form of intimidation will be used by University authorities to coerce admissions of guilt.~~

Authority: Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64. Administrative History: Original rule filed September 15, 1976. Repeal and new rule filed May 27, 1986; effective August 12, 1986. Amendment filed October 31, 1990; effective January 29, 1991. Amendment filed January 13, 1999; effective May 31, 1999.

~~1720-5-1-.03 STANDARDS OF CONDUCT.~~

- (1) ~~When persons enroll in The University of Tennessee at Martin, they retain the rights and duties of a citizen. Additionally, they must assume the duties and observe the regulations imposed by the University community.~~
- (2) ~~Failure or refusal to comply with the rules and policies established by the University may subject the offender to disciplinary action up to and including permanent dismissal from the University.~~
- (3) ~~The policies and procedures described below have been established to insure the rights and privileges of all members of the University community, to communicate the expectations of the community to its members and to provide a basis for orderly conduct of the affairs of the University.~~
- (4) ~~Misconduct for which students are subject to discipline include the following categories:~~
- (a) ~~Plagiarism, cheating, knowingly furnishing false information to the University or other similar forms of dishonesty in University-related affairs.~~
- (b) ~~Forgery, alteration, destruction or misuse of University documents, records, or identification.~~

(Rule 1720-2-5-.04, continued)

Authority: TCA §49-9-209(e). *Administrative History:* Original rule filed September 15, 1976; effective October 15, 1976. Repealed filed August 22, 1980; effective December 1, 1980. Repealed by Public Chapter 575; effective July 1, 1986. New rule filed May 27, 1986; effective August 12, 1986. Amendment filed June 22, 2006; effective October 27, 2006.

~~1720-2-5-.05 STUDENT CONDUCT HEARING PROCEDURES.~~

(1) ~~Complaints.~~

- (a) ~~Any member of the University community may present a complaint to the Dean of Students office against a student for violations of the Student Code. Any complaint should be submitted as soon as possible after the event takes place. Any charge(s) shall be prepared in writing by the Dean of Students office.~~
- (b) ~~All charges shall be presented to the accused student in written form.~~

(2) ~~Hearing Options.~~

- (a) ~~An accused student desiring to contest the charge(s) against him or her must do so by requesting a hearing within five (5) days of his or her receipt of written notice of the charge(s).~~
- (b) ~~The accused student(s) may, at his or her option, request a hearing before a panel of individuals (Student Conduct Board) or by a University Hearing Officer selected by the Vice Chancellor for Student Development (or his or her designee). A hearing before a Student Conduct Board will be chaired by a University Hearing Officer similarly selected. Board members and hearing officers shall be impartial and anyone lacking such impartiality shall recuse him/herself or may be removed by the Vice Chancellor for Student Development upon request of any party to a University hearing.~~
- (c) ~~A requested hearing shall be scheduled promptly after receipt of the request.~~
- (d) ~~In the absence of a voluntary written waiver of the accused student's right to a hearing under the provisions of the Tennessee Uniform Administrative Procedures Act (T.C.A. § 4-5-108 et seq.), a requested hearing will be conducted in accordance with the University's APA hearing procedures and these procedures shall not apply.~~

(3) ~~Hearing Procedures—The Student Conduct Board or University Hearing Officer sitting alone will conduct the hearing within the following general guidelines:~~

- (a) ~~All University hearings shall be closed to the public.~~
- (b) ~~The accused student (and certain "victims" where permitted by law) and his or her advisor, if any, shall be allowed to attend the entire portion of the University Hearing at which information is received (excluding deliberations).~~
- (c) ~~Each party will be afforded a full and fair opportunity to present all evidence, including witnesses, reasonably relating to the charge or action at issue; evidence which is irrelevant, immaterial, repetitious or voluminous may be limited.~~
- (d) ~~All procedural questions are determined by the University Hearing Officer.~~
- (e) ~~The Student Conduct Board or University Hearing Officer sitting alone will consider all evidence presented, giving due consideration to the credibility or weight of each item presented; technical rules of evidence will not apply.~~

10. Be accompanied by an advisor of his/her choosing during the University's investigation or a disciplinary hearing, but the advisor shall not be permitted to speak for the victim during a disciplinary hearing;
 11. The same opportunity as the accused student to be present during the hearing, present witnesses and other evidence, challenge the admissibility of evidence, and cross-examine adverse witnesses during the disciplinary hearing;
 12. Testify or remain silent at his/her option; however, choosing to remain silent may result in the University dismissing the charges against the accused student or the hearing panel or examiner finding that there is insufficient evidence to find the accused student guilty of the charges against him/her;
 13. Not to be questioned personally by the accused student during the disciplinary hearing;
 14. Submit a written impact statement to the hearing panel or examiner for consideration during the sanctioning phase of the disciplinary hearing, if the accused student is found guilty of the charges against him/her;
 15. Notice of the decision of the hearing panel or examiner within three (3) business days of the disciplinary hearing; and
 16. Appeal the decision of the hearing panel or examiner to the Chancellor and the President.
- (2) The decision of any board or administrative officer of The University of Tennessee is subject to review by the Chancellor and the President.
 - (3) For purposes of this rule, the term "student" shall mean a student or a student organization.
 - (4) When, in the judgment of the Chancellor of the University of Tennessee, Health Science Center, conditions are such that an emergency exists which makes it impossible for the system of judicial boards to function, he/she may suspend the procedural regulations described in this Chapter. If the procedures are suspended, he may substitute for them arrangements for handling disciplinary matters that will ensure the orderly functioning of the University and at the same time safeguard the basic rights of the students.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-03-03-.09 Student Identification Cards.

- (1) All currently registered students are required to have a UT Health Science Center Student Identification Card. Lost and found I.D. cards should be reported to the Office of Campus Safety and Security. Replacement for lost cards may be obtained from the Office of Campus Safety and Security. A replacement charge will be assessed.
- (2) In order to determine the identity of students, all students are required to present their University identification cards promptly on request of a University police officer or member of the administration or faculty of the University. Identification cards will not ordinarily be retained; however, a card may be retained if an emergency situation exists or if the card may be needed as evidence. The retained card, if valid, will be returned to the student as soon as possible.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

1720-03-03-.10 Student Health Insurance. All students are required to obtain basic health care and medical care insurance to protect themselves, their families, their professional health care associates and providers. The