

## 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.*

|                                 |  |
|---------------------------------|--|
| <b>Agency/Board/Commission:</b> | State Board of Education   |
| <b>Division:</b>                |  |
| <b>Contact Person:</b>          | Dannelle F. Walker   |
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Revision Type (check all that apply):

- Amendment  
 New  
 Repeal

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

| Chapter Number | Chapter Title   |
|----------------|---|
| 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 L. Nixon*

Name of Officer: Dr. Gary L. Nixon

Title of Officer: Executive Director



MY COMMISSION EXPIRES:  
January 9, 2018

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 Schools ~~Records 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**

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.

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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.*

|                                 |   |
|---------------------------------|---|
| <b>Agency/Board/Commission:</b> | State Department of Education                   |
| <b>Division:</b>                | Charter Schools                                 |
| <b>Contact Person:</b>          | Rich Haglund                                    |
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| <b>Email:</b>                   | 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.

### 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.

### **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.

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For Department of State Use Only

Sequence Number: 03-69-12  
 Rule ID(s): 5767-5768  
 File Date: 03/12/2012  
 Effective Date: 06/10/2012

## 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: 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](mailto: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                    |

|                       |  |
|-----------------------|--|
| <b>Chapter Number</b> | <b>Chapter Title</b>                               |
| 0800-02-19            | In-patient Hospital Fee Schedule                   |
| <b>Rule Number</b>    | <b>Rule Title</b>                                  |
| 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<br>(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                        | 40500 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(17~~8~~) (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~~

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

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<br/>(Including evaluation &amp; 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-

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.

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

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.....\$22,000.00  
(if this amount is \$15,000 or less, then stop-loss is not applicable)

Difference over and above \$15,000 Stop-loss  
 is.....\$7,000.00  
 Payable under Stop-loss (80% of  
 7,000.00).....\$5,600.00

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: 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)(o): 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.  
SS-7039 (October 2009) 42 RDA 1693  
.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.

### **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.

## 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

### **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.

**RULES  
OF  
TENNESSEE MASSAGE LICENSURE BOARD**

**CHAPTER 0870-01  
GENERAL RULES GOVERNING LICENSED MASSAGE 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.~~

- ~~(4) 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 massage 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-.06 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 of 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 1<sup>st</sup> of one year through December 31<sup>st</sup> 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 31<sup>st</sup> 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:~~

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

(Rule 0870-01-.12, continued)

|                     |               |                     |              |
|---------------------|---------------|---------------------|--------------|
| <del>November</del> | <del>15</del> | <del>November</del> | <del>4</del> |
| <del>December</del> | <del>14</del> | <del>December</del> | <del>4</del> |

~~(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)

- ~~(e) 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)

| 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              |
| 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.

Form

~~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.~~

(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.~~

(c) ~~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)

- (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 the Office of General Counsel, if impossibility of compliance with the provisions of the previous order is not proven and notify the petitioner of what proof of impossibility of compliance was either not sufficient or not submitted.
  3. If the petition is 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.
  4. 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 request, in writing, to appear before the Board not less than thirty (30) days before the next regularly scheduled meeting of the Board.
- (3) Civil Penalties - 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.

(a) Schedule and Amount of Civil Penalties

1. A Type A civil penalty may be imposed whenever the Board finds the person who is required to be licensed by the Board is guilty of a violation of T.C.A. § 63-18-101, et seq. or regulations promulgated pursuant thereto, to such an extent that there is, or is likely to be a substantial threat to the health, safety and welfare of an individual client or the public. For purposes of this section, a type A penalty shall include, but not be limited to, a person who is or was practicing massage therapy without a license from the Board. Type A civil penalties shall be assessed in the amount of not less than \$500 and not more than \$1,000.
2. A Type B civil penalty may be imposed whenever the Board finds the person required to be licensed by the Board is guilty of a violation of T.C.A. § 63-18-101, et seq. or regulations promulgated pursuant thereto in such manner as to impact directly on the care of clients or the public. Type B civil penalties may be assessed in the amount of not less than \$100 and not more than \$500.
3. A Type C civil penalty may be imposed whenever the Board finds the person required to be licensed, permitted, or authorized by the Board is guilty of a violation of T.C.A. § 63-18-101, et seq. or regulations promulgated pursuant thereto, which is neither directly detrimental to the clients or public, nor directly impacts their care, but has only an indirect relationship to client care or the public. Type C civil penalties may be assessed in the amount of not less than \$50 and not more than \$100.

(b) Procedures for Assessing Civil Penalties

(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 excised 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.

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- (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:

(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 MASSAGE 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 (1<sup>st</sup>) 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   |

GENERAL RULES GOVERNING MASSAGE THERAPY  
EDUCATIONAL PROGRAMS

CHAPTER 0870-02

(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

RECEIVED  
 2012 APR -9 AM 11:43  
 SECRETARY OF STATE  
 PUBLIC AFFAIRS

Date: 9/13/11

Signature: *Marc Guilford*

Name of Officer: Marc Guilford

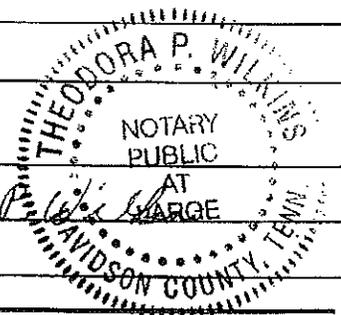
Assistant General Counsel

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: 09/09/2012

Effective on: 07/08/2010

*Tre Hargett*  
 Tre Hargett  
 Secretary of State

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Wildlife Resources Agency

DIVISION: Boating and Law Enforcement

SUBJECT: Chronic Wasting Disease

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

EFFECTIVE DATES: August 1, 2012 through June 30, 2013

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: This rule prohibits the unauthorized importation of any cervid carcasses or parts that originate from areas where Chronic Wasting Disease has been identified. The agency reports that this rule is being promulgated to prevent the introduction of Chronic Wasting Disease into Tennessee's wild white-tailed deer and elk populations, as well as captive non-native deer and elk populations

**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: 1660-01-15-.02

|           |              |
|-----------|--------------|
| New       | _____        |
| Amendment | <u>  X  </u> |
| Repeal    | _____        |

---

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

Attached hereto are the responses to public comments.

## 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.

(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;

None

(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;

None. The only record would be a citation in the event a violation of this rule was found.

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

Less than 10 meat processors and/or taxidermists would not be able to provide service on one out of hundreds of animals they handle each year.

(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;

None at this time.

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

None

(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.

None

### **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? No

Please describe the increase in expenditures or decrease in revenues: n/a

**Department of State  
Division of Publications**

312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower  
Nashville, TN 37243  
Phone: 615-741-2650  
Fax: 615-741-5133  
Email: [register.information@tn.gov](mailto:register.information@tn.gov)

**For Department of State Use Only**

Sequence Number: 05-04-12  
Rule ID(s): 5202  
File Date: 05/03/12  
Effective Date: 08/01/12

# 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*

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

**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  |
|----------------|--|
| 1660-01-15     | Rules and Regulations for Animal Importation           |
| Rule Number    | Rule Title   |
| 1660-01-15-.02 | Importation of Wildlife Carcasses, Parts, and Products |

Rulemaking Hearing Rules  
Of  
Tennessee Wildlife Resources Agency  
Wildlife Resources

Chapter 1660-01-15  
Rules and Regulations for Animal Importation

1660-01-15-.02, Importation of Wildlife Carcasses, Parts, and Products, is amended by deleting the current language in its entirety and substituting the following language so that, as amended, the rule shall read as follows:

~~1660-01-15-.02 IMPORTATION OF WILDLIFE CARCASSES, PARTS, AND PRODUCTS~~

(1) — No person may import, transport, or possess in Tennessee a cervid carcass or carcass part from any area, as proclaimed by the Tennessee Wildlife Resources Commission, that has a known case of chronic wasting disease (CWD) except as provided herein:

(a) — ~~Meat that has bones removed.~~

(b) — ~~Antlers, antlers attached to cleaned skull plates, or cleaned skulls (where no meat or tissues are attached to the skull.)~~

- ~~(c) — Cleaned teeth.~~
- ~~(d) — Finished taxidermy and antler products.~~
- ~~(e) — Hides and tanned products.~~

(1) No person may import, transport, or possess in Tennessee a cervid carcass or carcass part from any area that has a known case of chronic wasting disease (CWD) except as provided herein:

- (a) Meat that has bones removed.
- (b) Antlers, antlers attached to cleaned skull plates, or cleaned skulls (where no meat or tissues are attached to the skull).
- (c) Cleaned teeth.
- (d) Finished taxidermy and antler products.
- (e) Hides and tanned products.

(2) The Tennessee Wildlife Resources Commission will annually compile a list of these areas and make such list available to the public.

Authority: T.C.A. §§70-1-206 and 70-4-107. Administrative History: Original rule filed July 12, 2005; effective September 25, 2005. Amendment filed January 5, 2009; effective March 21, 2009.

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

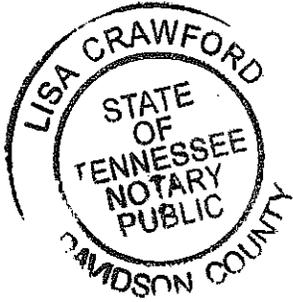
| Board Member      | Aye | No | Abstain | Absent |
|-------------------|-----|----|---------|--------|
| William L. Brown  | ✓   |    |         |        |
| Jim Bledsoe       | ✓   |    |         |        |
| Harold Cannon     | ✓   |    |         |        |
| Jeffrey H. Griggs | ✓   |    |         |        |
| Julius Johnson    |     |    |         | ✓      |
| Robert Martineau  |     |    |         | ✓      |
| 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 T.C.A. § 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: 3-20-12

Signature: Ed Carter

Name of Officer: Ed Carter

Title of Officer: Executive Director

Subscribed and sworn to before me on: 3-20-12

Notary Public Signature: Lisa Crawford

My commission expires on: 5-5-15

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

Robert E. Cooper, Jr.

Robert E. Cooper, Jr.  
Attorney General and Reporter

4-25-12

Date

**Department of State Use Only**

Filed with the Department of State on: 05/03/2012

Effective on: 08/01/2012

Tre Hargett by Amy Hart, PCA

Tre Hargett  
Secretary of State

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SECRETARY OF STATE  
PUBLICATIONS

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: State

DIVISION: Publications

SUBJECT: Rule Filings by State Agencies

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 4-5-202

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

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: This rule reduces the number of copies of rule filings that state agencies must submit to the Department of State from five to three. This reduction applies to rule filings and notices of withdrawal of rules, stays of effective dates, and withdrawal of stay of effective date. The agency reports that this reduction to three copies filed is consistent with the filing requirements for notices of rulemaking hearings.

**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.

This rule has no impact 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)

This rule is not projected to have an impact on local government.

**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: 05-10-12  
Rule ID(s): 5203-5204  
File Date: 05/09/12  
Effective Date: 10/29/12

## 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.*

|                                 |   |
|---------------------------------|---|
| <b>Agency/Board/Commission:</b> | Department of State   |
| <b>Division:</b>                | Publications  |
| <b>Contact Person:</b>          | Cody Ryan York  |
| <b>Address:</b>                 | 312 Rosa L. Parks Avenue, Snodgrass Tower, 8 <sup>th</sup> Floor, Nashville, TN |
| <b>Zip:</b>                     | 37243   |
| <b>Phone:</b>                   | 615-741-2819  |
| <b>Email:</b>                   | Cody.york@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           |
|----------------|-------------------------|
| 1360-01-02     | Filing of Rules         |
| Rule Number    | Rule Title              |
| 1360-01-02-.05 | Additional Requirements |

| Chapter Number | Chapter Title   |
|----------------|---|
| 1360-01-03     | Withdrawal of Rules, Stays of Effective Dates, and Withdrawal of Stay of Effective Date |
| Rule Number    | Rule Title  |
| 1360-01-03-.02 | Forms and the Completion of Forms   |

(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 1360-01-02  
Filing of Rules

Rule 1360-01-02-.05 Additional Requirements is amended by deleting the language "five (5)" and by substituting instead the language "three (3)" so that, as amended, subdivision (4) (a) shall read as follows:

1360-01-02-.05 Additional Requirements.

(4) "Redline" Copy of Rule Filing

- (a) Pursuant to Public Chapter 741 of the 105<sup>th</sup> General Assembly, all agencies shall submit a "redline" version of the filing in addition to the three (3) ~~five (5)~~ copies required by the Secretary of State. This copy will be forwarded to the General Assembly by the Secretary of State for review by the appropriate committees.

Authority: T.C.A. §4-5-202.

Chapter 1360-01-03  
Withdrawal of Rules, Stays of Effective Dates, and Withdrawal of Stay of Effective Date

Rule 1360-01-03-.02 Forms and the Completion of Forms is amended by deleting the language "Five (5)" and by substituting instead the language "Three (3)" so that, as amended, subdivision (1) (a) shall read as follows:

1360-01-02-.05 Forms and the Completion of Forms. The forms supplied by the Secretary of State through the website ([www.state.tn.us/sos](http://www.state.tn.us/sos)) shall be completed by the rule filer and the following guidelines are to be followed.

- (1) A Notice of Withdrawal of Rules, Notice of Stay of Effective Dates, or Notice of Withdrawal of Stay of Effective Date (Form number 7041) shall require the following:
- (a) ~~Five (5)~~ Three (3) entire forms completed with original signatures.
1. The following guidelines apply to the document:
    - (i) The documents must be clean and legible.
    - (ii) Use of capitals and lower case in all text. No "all caps."
    - (iii) No bold, underline or italic fonts.
    - (iv) Do not use auto-numbering on paragraphs in the text of rule.
    - (v) Do not use the MS Word function "track changes."
    - (vi) Do not use unneeded punctuation: Example: No comma between the rule number and rule title or apostrophe after agency name in main heading.
    - (vii) Use T.C.A. for Tennessee Code Annotated.
    - (viii) No hard return at the end of lines within a paragraph. Use at the end of a paragraph.
    - (ix) Use the enter key to put space between paragraphs. Do not use paragraph formatting to add space before or after the paragraph. This function does not work well with style pallets.
    - (x) Use hyphens on keyboard with no space between hyphen and rule numbers. Variations can cause search options to overlook target.

- (xi) No single digits on rule and chapter numbers. Place "0" with single numbers. Example: 1200-5-5 = 1200-05-05.
- (xii) Font style for all submissions shall be Arial and point size 10.

Authority: T.C.A. §4-5-202.

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Department of State on 04/24/2012, 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: 4/24/12

Signature: *Tre Hargett*

Name of Officer: TRE HARGETT

Title of Officer: SECRETARY OF STATE



Subscribed and sworn to before me on: 4/24/12

Notary Public Signature: *Mona Lee Hart*

My commission expires on: NOV. 7, 2012

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

5-6-12

Date

**Department of State Use Only**

Filed with the Department of State on: 5/9/12

Effective on: 10/29/12

*Tre Hargett*

Tre Hargett  
Secretary of State

RECEIVED  
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SECRETARY OF STATE  
PROMULGATIONS

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Board of Nursing

DIVISION:

SUBJECT: Medication Administration by Medication Aides Certified

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 63-7-127

EFFECTIVE DATES: August 13, 2012 through June 30, 2013

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: These rules implement the licensure program and corresponding rules for medication aides certified as set forth in Tennessee Code Annotated, § 63-7-127. These rules change the Board of Nursing's policy and practice by allowing licensed nurses to provide delegation of medication administration in a nursing home or assisted living facility to medication aides certified.

## 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

#### RULEMAKING HEARING- MEDICATION AIDES CERTIFIED RULE 1000-05

#### TENNESSEE BOARD OF NURSING

The rulemaking hearing for the Tennessee Board of Nursing was held on October 7, 2010, in the Department of Health Conference Center's Iris Room on the First Floor of the Heritage Place Building in MetroCenter, Nashville, Tennessee. E. Ashley Carter, Deputy General Counsel presided over the hearing.<sup>1</sup>

Comments were received at the hearing as follows:

1. A letter was received and comments were made requesting less restrictive rules for the program instructors.

Board's Response: The Board voted to revise the language in the proposed rule 1000-05-.07(3)(e) by deleting the requirement for instructors to have experience in medication administration in a nursing home, assisted care living facility or gerontological experience and changing the requirement to only require medication experience with knowledge of the regulations and competency to administer medication in a long-term care setting.

2. A request was made for an increase of the instructor to student ratio of one to six for didactic hours.

Board's Response: The board expressed concern with the short timeframe of training and the amount of information to be learned in that timeframe and felt a larger ratio would not be beneficial. The board voted to keep rule 1000-05-.07(3)(f) as proposed in the Notice and not change it.

3. A comment was made that there appears to be a contradiction with rules 1000-05-.02(9) and 1000-05-.10(1)(f) in the supervisory and assessment requirements. In reference to rule 1000-05-.10(5)(a), it was further stated that it is thought a resident assessment does not need to be made every time an "as needed (PRN)" medication is requested by a resident of an ACLF.

Board's Response: The board voted to clarify the language. The board made no decision to change rule 1000-05-.10(5)(a).

4. A comment was made that there may be some conflict with the proposed rules for MACs and the current rules for assisted care living facilities.

Board's Response: After consultation with the legal counsel for the Board of Nursing and Health Care Facilities from the Office of General Counsel, it was determined no substantive conflict exists.

5. A request was made concerning the language of the peer assistance rule to add the words "referral to" in rule 1000-05-.08(1)(c), and the addition of a new subparagraph (e) to add "ongoing monitoring of recovering professionals."

<sup>1</sup> An earlier rulemaking hearing was held on January 21, 2010, pursuant to T.C.A. § 63-7-127(l)(1). Subsequently, the statute was amended to include subsection (m), effective May 26, 2010. The October 7, 2010, rulemaking hearing implements the provisions of T.C.A. § 63-7-127 as amended.

Board's Response: The board voted to add the suggested language.

6. A written request to include the Prohibited List of Medications and Prohibited Means of Administration in the rules was received.

Board's Response: The board voted to include the Prohibited List of Medications and Prohibited Means of Administration in the rules as specified in T.C.A. § 63-7-127.

7. A letter was received with two requests:

1. A request that a second alternative to schools be considered and included by the board in the rules to allow licensed nursing home and assisted living facilities to establish their own educational courses for the training of Certified Medication Aides;

2. A request that a grandfather clause be considered to enable currently certified CNAs to take only the coursework that was not part of their prior CNA/CNT training; suggesting that the prior CNA training (pursuant to rule 1200-08-06-.15) overlaps with the current education requirements and therefore would be duplicative.

(Also included with the letter was a handout with the language of rule 1200-08-06-.15 and another handout with some examples of "common tasks and education" of CNAs.)

Board's Response: The board voted to keep the rules as proposed.

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At a subsequent meeting of the board on October 5, 2011, the board voted to approve the following rule revisions:

Rule 1000-05-.02(2) was revised to delete the word "drug" in the sentence and replace it with "oral or topical medication for a specified condition." Paragraph (9) was revised by deleting the language "the delegating licensed nurse is to be on site and immediately available to the MAC, unless otherwise specified in these rules" and adding new language to newly renumbered paragraph (23): "The delegating licensed nurse shall be on-site and immediately available where required by law. If not required to be on-site, the delegating nurse shall be immediately available for a two-way telephone conversation." Original paragraph (23) was deleted.

Rule 1000-05-.03(2)(b)7 was deleted and paragraphs 8 and 9 were renumbered.

Rule 1000-05-.06 was revised by adding the words "disciplinary actions and" to the title, new paragraph (1) was added, and paragraphs (2), (3) and (4) were renumbered.

Rule 1000-05-.07(3)(b) was revised by expanding the wording of the subparagraph to be more explicit. Subparagraph (f) was revised by changing "program instructor" to "supervising licensed nurse." Subparagraph (10) was revised by adding the words "denied approval" and "denial" in reference to program approval.

Rule 1000-05-.10 was revised by switching the positions of paragraphs (1) and (2). The words "upon admission, and after any change in status or acuity, or any change in medication" were added to the end of paragraph (3) for clarification. Subparagraph (5)(a) was moved to be part of paragraph (5) and subparagraph (5)(b) was moved to subparagraph (3)(b) and reworded to read "The licensed nurse has determined that it is appropriate for the resident to receive medication from the MAC."

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Upon subsequent review, subparagraph (7)(f) of rule 1200-05-.11 was clarified by adding "or via a two-way telephone conversation" to be consistent with paragraph (23) of rule 1200-05-.02.

### **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.

### **REGULATORY FLEXIBILITY ANALYSIS**

Tennessee Board of Nursing; Rule No. 1000-05

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

Tennessee Board of Nursing; Rule No. 1000-05

1. **Name of Board, Committee or Council:** Board of Nursing
2. **Rulemaking hearing date:** October 7, 2010
3. **Type or types of small businesses that will be directly affected by the proposed rules:**
  - (a) Nursing homes and assisted care living facilities who choose to use Medication Aides Certified will be directly affected by the proposed rules.
4. **Types of small businesses that will bear the cost of the proposed rules:**
  - (a) Nursing homes and assisted care living facilities who choose to have a training program for Medication Aides Certified will bear the cost of the proposed rules; and
  - (b) Nurse Aides who choose to become a Medication Aide Certified will bear the cost of the proposed rules.
5. **Types of small businesses that will directly benefit from the proposed rules:**

Nursing homes and assisted care living facilities who choose to use Medication Aides Certified will be directly affected by the proposed rules.
6. **Description of how small business will be adversely impacted by the proposed rules:**

Nursing homes and assisted care living facilities will not be adversely impacted by the proposed rule as hiring personnel from this category of certification could lessen the overall cost of care of residents of these facilities.
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 means to accomplish the purpose of this new rule.
8. **Comparison of the proposed rule with any federal or state counterparts:**
  - (a) **Federal:** The Board is not aware of any federal counterparts.
  - (b) **State:** The Board's proposed new rule is consistent with the qualifications for licensure in other states regulating the practice of nursing.

### **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 new rules for Medication Aides Certified are not expected to have an impact on local government.

**Department of State  
Division of Publications**

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**For Department of State Use Only**

Sequence Number: 0511112  
Rule ID(s): 5205  
File Date: 5/15/12  
Effective Date: 8/13/12

# Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. TCA Section 4-5-205*

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

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

- Amendment  
 New  
 Repeal

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

| Chapter Number | Chapter Title                            |
|----------------|--|
| 1000-05        | Medication Aides Certified               |
| Rule Number    | Rule Title                               |
| 1000-05-.01    | Purpose                                  |
| 1000-05-.02    | Definitions                              |
| 1000-05-.03    | Application, Certification and Renewal   |
| 1000-05-.04    | Reinstatement                            |
| 1000-05-.05    | Fees                                     |
| 1000-05-.06    | Disciplinary Actions and Civil Penalties |
| 1000-05-.07    | Training Programs                        |
| 1000-05-.08    | Peer Assistance Program                  |
| 1000-05-.09    | Continuing Education                     |
| 1000-05-.10    | Supervision and Delegation               |
| 1000-05-.11    | Standards of Practice                    |

(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 1000-05  
Medication Aides Certified

New Rules

|             |   |
|-------------|---|
| 1000-05-.01 | Purpose.                                  |
| 1000-05-.02 | Definitions.                              |
| 1000-05-.03 | Application, Certification and Renewal.   |
| 1000-05-.04 | Reinstatement.                            |
| 1000-05-.05 | Fees.                                     |
| 1000-05-.06 | Disciplinary Actions and Civil Penalties. |
| 1000-05-.07 | Training Programs.                        |
| 1000-05-.08 | Peer Assistance Program.                  |
| 1000-05-.09 | Continuing Education.                     |
| 1000-05-.10 | Supervision and Delegation.               |
| 1000-05-.11 | Standards of Practice.                    |

1000-05-.01 Purpose.

The rules in this chapter implement the certification program for medication aides certified, T.C.A. § 63-7-127.

Authority: T.C.A. §§ 63-7-127 and 63-7-207.

1000-05-.02 Definitions.

In addition to the definitions contained in T.C.A. § 63-7-127(a), the following definitions are applicable to this chapter:

- (1) "Applicant" means a person filing an application for a certificate as a MAC.
- (2) "As Needed Medication" means any oral or topical medication for a specified condition that is not scheduled to be administered to a resident at a routine time but is given in response to a resident's complaint or expression of discomfort.
- (3) "Assisted Care Living Facility" shall have the same meaning as set forth in T.C.A. § 68-11-201.
- (4) "Board" means the Tennessee Board of Nursing.
- (5) "Certified Nurse Aide" means an individual who has successfully completed an approved nursing assistant training program and is registered with the department.
- (6) "Clinical Practice Component" means tasks or activities planned as part of a medication aide certified training program to provide MAC students with the opportunity to administer medications in a nursing home or an assisted care living facility setting.
- (7) "Clock Hour or Contact Hour" means fifty (50) to sixty (60) minutes of qualifying or continuing education.
- (8) "Controlled Substances" shall have the same meaning as set forth in T.C.A. § 63-10-204(7).
- (9) "Delegation" means the transfer of responsibility, but not the accountability, for the administration of medication from the delegating licensed nurse to a MAC.
- (10) "Department" means the Tennessee Department of Health.
- (11) "Drug" shall have the same meaning as set forth in T.C.A. § 63-10-204(16).

- (12) "Licensed Nurse" means a registered nurse or licensed practical nurse licensed under T.C.A. § 63-7-101 et. seq., including an advanced practice nurse.
- (13) "Medication Administration" means giving a drug to a resident to be orally ingested by the resident or topically applied to the resident's body.
- (14) "Medication Administration Record" (MAR) means a written or electronic record of the medication ordered for and administered to a patient or resident of a nursing home or assisted care living facility.
- (15) "Medication Aide Certified" (MAC) means a certified nurse aide who holds a current, valid certificate as a medication aide certified issued by the Board and who administers medications (pursuant to T.C.A. § 63-7-127) under the general supervision of a licensed nurse.
- (16) "Medication Aide Certified Training Program" means a formal program of study approved by the Board and required for certification as a medication aide certified.
- (17) "Nursing Home" shall have the same meaning as set forth in T.C.A. § 68-11-201.
- (18) "Patient" or "Resident" means a person receiving the services of a medication aide certified in a nursing home or assisted care living facility.
- (19) "Peer Support Program" means a program that provides monitoring of rehabilitation services to health care professionals who may be impaired by substance abuse or a psychological condition.
- (20) "Person" is defined as an individual, natural person.
- (21) "PHI" means individually identifiable health information (IIHI) created, received, or maintained by a covered entity and transmitted or maintained in any form or medium. 45 C.F.R. Part 160.103; 42 U.S.C. §§ 1320d – 1320d-8 (HIPAA).
- (22) "Qualified Educational Institution" means an institution accredited by the Southern Association of Colleges and Schools (or equivalent regional accredited agency) or the Council on Occupational Education that currently or in the future operates as a fully approved Tennessee School of Registered or Practical Nursing.
- (23) "General Supervision" means a licensed nurse overseeing with authority a MAC who is performing medication administration in a nursing home or assisted care living facility. The delegating licensed nurse shall be on-site and immediately available where required by law. If not required to be on-site, the delegating nurse shall be immediately available for a two-way telephone conversation.

Authority: T.C.A. §§ 63-7-127 and 63-7-207.

1000-05-.03 Application, Certification and Renewal.

- (1) Application.
  - (a) An applicant for certification as a MAC shall complete an application on a form prescribed by the Board. The training program shall submit the application for certification by examination to the Board office.
  - (b) Any application submitted which lacks the required information or fails to meet any requirement for certification will be returned to the applicant with written notification of deficiency and will be held in "pending" status for a reasonable period of time, not to exceed ninety (90) days from the date of application, so that the applicant may cure any deficiency, if possible.
  - (c) An application may be withdrawn unless it has been denied.

- (d) Application fees are not refundable.
- (2) Certification.
- (a) An applicant for certification as a MAC shall submit an application to the Board office along with the required information and application and certification fees.
  - (b) An applicant shall furnish evidence to the Board office, along with a completed application and applicable fees, that the applicant:
    1. Is at least eighteen (18) years of age;
    2. Has completed the twelfth (12<sup>th</sup>) grade or its equivalent or has successfully passed the test for and has received a general equivalency diploma;
    3. Is a certified nurse aide;
    4. Has worked as a certified nurse aide in a nursing home or assisted care living facility for at least 365 days of continuous, uninterrupted, full-time work at no more than two (2) different facilities, at the time the applicant submits an application;
    5. Has successfully completed a course of instruction provided by a training program approved by the Board under rule 1000-05-.07 and in compliance with T.C.A. § 63-7-127(i);
    6. Has passed a medication aide certification examination approved by the Board;
    7. Has caused the results of a criminal background check to be submitted to the Board's administrative office directly from one of the vendors identified in the Board's licensure application materials; and
    8. Does not have an encumbrance on any professional license or certificate.
  - (c) An applicant must take the approved MAC examination.
    1. An applicant must become eligible for certification by examination by applying to the board within thirty (30) days after completing a training program;
    2. An applicant must then take the examination within ninety (90) days of being made eligible by the board;
    3. An applicant taking the examination a second time must re-take the examination and complete the certification process no later than 365 days after filing the initial application; and
    4. An applicant not successful after two (2) examination attempts must repeat the training program and reapply.
- (3) Renewal.
- (a) Certification is valid for two (2) years from the date of its issuance and shall become invalid on such date unless renewed, unless earlier suspended or revoked.
  - (b) A MAC may renew a current, valid certification by submitting a renewal form approved by the Board, the required renewal fee and regulatory fee, and attestation of having completed six (6) contact hours of Board-approved continuing education each year prior to the expiration date of the certificate.

- (c) A renewal form and the fees must be actually received by the Board office on or before the due date, whether submitted in person, by the U.S. Mail, or other delivery service.

Authority: T.C.A. §§ 63-7-127 and 63-7-207.

1000-05-.04 Reinstatement.

- (1) Any person seeking reinstatement of a certification after the expiration date of the certification is required to reapply for certification, fulfill all of the requirements of initial certification, show proof of having completed all past due continuing education, and may be required to submit proof of additional education or testing to show continued competency.

Authority: T.C.A. §§ 63-7-127 and 63-7-207.

1000-05-.05 Fees.

- (1) Application and Initial Certification Fee by Examination.....\$ 150.00
- (2) An applicant shall pay the examination fee set by the test service directly to the test service designated by the State to administer the examination.
- (3) Renewal Fee.....\$ 125.00
- (4) Replacement/Duplicate Certificate Fee..... \$ 25.00
- (5) State Regulatory Fee..... \$ 10.00
- (6) Training Program Initial Application Fee to offset the cost of two or more survey visits to evaluate the program for board review, consultation by a registered nurse, preparation of reports and other responsibilities as the board may require..... \$ 2,500.00
- (7) Training Program Annual Survey Fee to offset the cost of survey visits, compilation of annual reports and statistics and other duties as required by the Board of Nursing..... \$ 1,500.00
- (8) Peer Assistance Program Fee to offset the added cost of adding medication aides certified to contract for professional assistance..... \$ 15.00
- (9) Name Change Fee..... \$ 25.00
- (10) Reinstatement Fee..... \$ 100.00

Authority: T.C.A. §§ 63-7-127 and 63-7-207.

1000-05-.06 Disciplinary Actions and Civil Penalties

- (1) The Board has the power to discipline medication aides certified based on the grounds set forth in T.C.A. § 63-7-127 and may deny, revoke or suspend any certificate to practice as a medication aide certified, or otherwise discipline a certificate holder, including but not limited to the imposition of civil penalties as are specified below.
- (2) Schedule of Civil Penalties
  - (a) A Type A Civil Penalty may be imposed whenever the Board finds a person who is required to be licensed, certified, permitted, or authorized by the Board, guilty of a violation of Tenn. Code Ann. § 63-7-127 or the regulations pursuant thereto, to such an extent that there is, or likely to be, an imminent, substantial threat to health, safety and welfare of an individual patient or the public. For the purpose of this section, practicing

as a MAC without a certification from the Board is one of the violations of the statute for which a Type A Civil Penalty is assessable.

- (b) A Type B Civil Penalty may be imposed whenever the Board finds a person who is required to be licensed, certified, permitted, or authorized by the Board, guilty of a violation of Tenn. Code Ann. § 63-7-127 or the regulations pursuant thereto in such manner as to impact directly the care of patients of the public.
  - (c) A Type C Civil Penalty may be imposed whenever the Board finds a person who is required to be certified, permitted or authorized by the Board, guilty of a violation of Tenn. Code Ann. § 63-7-127 or the regulations pursuant thereto, which are neither directly detrimental to the patients or public, nor directly impact their care, but have only an indirect relationship to patient care or the public.
- (3) Amount of Civil Penalties
- (a) A Type A Civil Penalty may be assessed in an amount of not less than \$500 or more than \$1,000.
  - (b) A Type B Civil Penalty may be assessed in an amount of not less than \$100 or more than \$750.
  - (c) A Type C Civil Penalty may be assessed in an amount of not less than \$50 or more than \$500.
- (4) In assessing the Civil Penalties pursuant to these rules the Board may consider the following factors:
- (a) Whether the amount imposed will be a substantial economic deterrent to the violator;
  - (b) The circumstances leading to the violation;
  - (c) The severity of the violation and the risk of harm to the public;
  - (d) The economic benefits gained by the violator as a result of non-compliance;
  - (e) The interest of the public; and
  - (f) Willfulness of the violation.

Authority: T.C.A. §§ 63-1-134, 63-7-127 and 63-7-207.

1000-05-07 Training Programs.

- (1) Any qualified educational institution seeking to conduct a MAC training program shall make application with a letter of intent and submit to the Board any documents, statements and forms as the Board may require and pay a training program application fee and annual fee. The complete application shall be submitted to the Board no later than forty-five (45) days prior to a scheduled Board of Nursing meeting. A representative of the Board shall conduct a site visit to survey the educational and clinical facilities prior to the program presenting a letter of intent to the Board. At a minimum, the institution seeking approval to conduct a training program shall provide the following in the letter of intent:
- (a) Name and address of qualified educational institution;
  - (b) Contact person with address, telephone number, fax number and email address;
  - (c) The name and address of principal clinical facilities;
  - (d) The location(s) of the courses or programs;

- (e) Letters of support;
  - (f) Documentation of need for the program; and
  - (g) Demonstration of the financial ability to support the program.
- (2) After the Board approves the letter of intent and prior to the acceptance of students, the institution shall submit documentation no later than forty-five (45) days prior to a scheduled Board meeting in order to obtain initial approval:
- (a) The number and type of education clock hours requested for each course;
  - (b) The name(s), license number(s), educational credentials and teaching and nursing experience of the director and all instructors;
  - (c) The program catalog;
  - (d) The topic outlines, which list the summarized topics covered in each course and upon request, a copy of any course materials;
  - (e) A summarization of any changes to the curriculum, should the prior approved program be substantially changed. A summarization of any changes should be submitted to the Board office at least forty-five (45) days prior to a scheduled Board meeting; and
  - (f) The submission of any other such information that the Board may deem necessary.
- (3) The qualified educational institution providing the training program shall:
- (a) Provide sufficient numbers of qualified faculty to implement the curriculum;
  - (b) Provide sufficient numbers of qualified faculty to assure that the students receive appropriate training from supervising licensed nurses in the nursing home or assisted care living facility:
    1. with which the training program has a written agreement to provide licensed nurse supervision in the supervised clinical practice component of the training program; and
    2. so that the students are prepared to administer medications as a MAC in a safe and effective manner.
  - (c) Provide financial support and resources adequate to teach the students the curriculum established in T.C.A. § 63-7-127, including, but not limited to classrooms, laboratories, equipment, supplies, and qualified administrative, instructional, and support personnel and services;
  - (d) Employ or contract with a registered nurse with an unencumbered Tennessee license who may teach a course or courses within the scope of practice and areas of competency;
  - (e) Ensure that the training program instructors have an unencumbered license to engage in the practice of nursing as a registered nurse with at least two (2) years of nursing experience and with medication administration experience and knowledge of the regulations and competence to administer medication in the long term care setting.
  - (f) Ensure that for the didactic hours, a ratio of no more than six (6) students for one (1) program instructor must be maintained; however, the ratio while engaged in clinical medication administration shall be one (1) student to one (1) supervising licensed nurse;
  - (g) Inform each student of the requirements for certification;

- (h) Provide a written program grading system policy which reflects a numerical grading system or scaled grading system. Students must make a passing grade in both didactic and clinical courses;
  - (i) Provide a written protocol or policy on the mechanism to evaluate a student's performance. At least one (1) written evaluation is required within the first half of the program;
  - (j) Provide a written policy on the dismissal of students;
  - (k) Provide a copy of a student's transcript to the student upon the student's written request and upon the student's completion of or withdrawal from the program; and
  - (l) Engage in program evaluation that includes, but is not limited to, obtaining feedback from students, instructors, and employers of individuals who have successfully completed the MAC training program.
- (4) The program shall not advertise that it is approved by the Board prior to or after a loss of Board approval.
  - (5) The program shall retain records of attendees of each course and the Board may at any time examine the records.
  - (6) The program shall ensure a first time test taker examination pass rate minimum of eighty-five per cent (85%). The Board will evaluate the program's examination pass rate on a quarterly and annual basis.
  - (7) The program shall file with the Board office an annual report containing, at a minimum, the following information:
    - (a) The number of students currently enrolled;
    - (b) The total enrollment for the year;
    - (c) The attrition and retention rate of students and faculty;
    - (d) The employment placement data;
    - (e) The number of students graduated;
    - (f) The number of students dismissed or withdrawn for the year;
    - (g) The number of students taking the certification examination; and
    - (h) The percentage of students taking the test for the first (1st) time and passing the certification examination.
  - (8) The program shall obtain approval by the Board on an annual basis thirty (30) days before the program commences each year.
  - (9) A representative of the Board shall inspect the institution that provides the program on an annual basis or as directed by the Board or Board's representative and shall submit a written report to the Board. If any deficiencies are noted, the Board may grant the institution a conditional approval of the training program until all deficiencies are corrected. The institution shall have thirty (30) days from the date the conditional approval is granted by the Board to correct the deficiencies. Upon correction of the deficiencies, the Board may grant full approval.
  - (10) If deficiencies are not corrected within the Board's prescribed time frame, the program will be denied approval or removed from approved status and must reapply for approval. Notice will be sent to the program upon denial or removal of approved status.

- (11) In addition to the minimum standard curriculum provided in T.C.A. § 63-7-127(i)(2), the qualified educational institution shall provide courses relative to the following topics:
- (a) Role of the MAC;
  - (b) Federal and state laws and rules relative to nursing homes and assisted care living facilities relative to medication aides certified;
  - (c) Confidentiality of protected health information;
  - (d) Drug mathematics, weights, and measures;
  - (e) Drug side effects;
  - (f) Drug administration requirements;
  - (g) Drug packaging systems;
  - (h) Drug storage, destruction, or return of medication;
  - (i) Documentation of medication administration; and
  - (j) Drug interactions.

Authority: T.C.A. §§ 63-7-127 and 63-7-207.

1000-05-.08 Peer Assistance Program.

- (1) A peer assistance program (approved by the Board) must provide at a minimum the following services to a MAC:
- (a) Referral for assessment of dependency and addiction;
  - (b) Referral to treatment centers and programs;
  - (c) Referral to aftercare treatment and counseling;
  - (d) Referral for psychological issues; and
  - (e) Ongoing monitoring of recovering professionals.

Authority: T.C.A. §§ 63-1-138, 63-7-127 and 63-7-207.

1000-05-.09 Continuing Education.

- (1) As a prerequisite to renewal, all certificate holders shall complete the following continuing education requirements:
- (a) Complete any and all continuing education or continued competency requirements, or both, necessary to maintain nurse aide certification under T.C.A. § 68-11-209(e), and the rules promulgated pursuant thereto; and
  - (b) A total of six (6) contact hours per year of continuing education; five (5) of which shall be in pharmacology provided by a licensed pharmacist or registered nurse and one (1) of which shall be relative to medication administration consistent with the functions of a MAC.
- (2) Each MAC shall attest to the timely attendance and completion of the required continuing education hours on the biennial certificate renewal form.

- (3) Each MAC shall retain independent documentation of attendance and completion of all continuing education courses for a period of two (2) years from the date of attendance. This documentation shall be produced for inspection and verification, if requested in writing by the Board.

Authority: T.C.A. §§ 63-7-127 and 63-7-207.

1000-05-.10 Supervision and Delegation.

- (1) A licensed nurse who provides care to nursing home or assisted care living facility residents may delegate the task of medication administration to a MAC in accordance with T.C.A. § 63-7-127(k)(1)(B) and these rules.
- (2) A licensed nurse who delegates medication administration to a MAC shall supervise the MAC by:
  - (a) Reviewing the medication delivery process to assure that there have been no errors in the stocking or preparing the medications;
  - (b) Accepting, transcribing, and reviewing resident medication orders;
  - (c) Monitoring residents to whom medications are administered for side effects or changes in health status;
  - (d) Reviewing documentation completed by the MAC, including, but not limited to the medication administration record;
  - (e) Providing on-site supervision and availability for immediate direction while in a nursing home setting;
  - (f) Providing on-site supervision or immediate and continuous availability through telecommunication while in an assisted care living facility setting; and,
  - (g) Delegating the administration of medication for each resident in writing to the MAC.
- (3) Prior to delegating medication administration to a MAC, a licensed nurse shall evaluate the following upon admission, and after any change in status or acuity, or any change in medication:
  - (a) The patient and the medication needs of the patient, including:
    1. The patient's mental and physical stability;
    2. The medication to be administered;
    3. The time frame during which the medication is to be administered;
    4. The route or method by which the medication is to be administered; and
  - (b) The licensed nurse has determined that it is appropriate for the resident to receive medication from the MAC.
- (4) When delegating the task of medication administration to a MAC, the licensed nurse shall communicate, in writing, the following to the MAC:
  - (a) The patient to whom the MAC shall administer medications;
  - (b) The medications the MAC shall administer;
  - (c) The time frames during which the medications are to be administered; and
  - (d) Any special instructions concerning the administration of medications to specific patients.

- (5) A licensed nurse who is on site at the nursing home or assisted care living facility may delegate the administration of as-needed medications to a MAC provided the licensed nurse completes a nursing assessment of the resident to whom the as-needed medication is to be administered immediately prior to the medication being administered.

Authority: T.C.A. §§ 63-7-127 and 63-7-207.

1000-05-.11 Standards of Practice.

- (1) A MAC shall demonstrate competence and responsibility in the task of medication administration.
- (2) A MAC shall ensure and promote a safe environment for nursing home or assisted care living facility residents.
- (3) A MAC shall accurately document in the patient's or resident's record the following information immediately after the administration of a medication:
  - (a) The name of the medication and the dosage administered;
  - (b) The route of the administration;
  - (c) The date and time of the administration;
  - (d) The name and credentials of the MAC who administered the medication;
  - (e) The name of the licensed nurse who delegated the administration of the medication;
  - (f) The resident's refusal or inability to ingest the medication or comply with the administration of the medication; and
  - (g) Any complaints by the resident about the medication administration or medication administered.
- (4) A MAC shall report the following to the delegating nurse or the delegating nurse's supervisor in a timely manner:
  - (a) The resident's request for an as-needed medication;
  - (b) The resident's refusal or inability to ingest the medication or comply with the administration of the medication;
  - (c) Any deviation from the delegated medication administration; and
  - (d) Any observations or information about the resident's condition that causes concern.
- (5) A MAC shall store drugs in accordance with the pharmacist's instructions.
- (6) A MAC shall remove drugs only from a properly labeled container or packaging that has been dispensed by a licensed pharmacist that contains the drug name; dosage; strength; name of the resident to whom it is to be dispensed; and drug expiration date.
- (7) A MAC shall complete all necessary tasks to ensure safe medication administration to a resident, including, but not limited to the following:
  - (a) Verifying the identify of the resident to whom the medication is to be administered;
  - (b) Ensuring that medication administration for the resident has been delegated and documented by the delegating licensed nurse prior to the administration of the medication;

- (c) Ensuring that the medication is being administered to the resident in accordance with the delegation and prescriber instructions;
  - (d) Ensuring that the correct medication in the correct dosage is administered to the resident;
  - (e) Witnessing the resident swallowing a drug that is to be ingested orally; and
  - (f) Documenting and reporting a medication error to the delegating licensed nurse who is on-site at the nursing home or assisted care living facility, or via a two-way telephone conversation.
- (8) A MAC shall maintain the confidentiality of protected health information obtained in the course of the MAC's duties and responsibilities.
  - (9) A MAC shall not delegate the task of medication administration to any other person.
  - (10) A MAC shall not falsify any resident record or any other document prepared or utilized in the course of, or in conjunction with, the administration of medication.
  - (11) A certified MAC shall maintain professional boundaries with each resident.
  - (12) A MAC shall not:
    - (a) Administer medications containing a controlled substance, as defined in T.C.A § 63-10-201 et seq.;
    - (b) Administer medications when such administration would require a dosage calculation by the medication aide;
    - (c) Directly receive orders from a physician or other medication prescriber;
    - (d) Administer barium or other contrast media;
    - (e) Administer chemotherapeutic agents;
    - (f) Administer medications administered as drops to the eye, ear or nose;
    - (g) Administer rectal and vaginal medications;
    - (h) Administer medications delivered by metered hand-held inhalers;
    - (i) Administer medications delivered by aerosol/nebulizer;
    - (j) Apply topical medications ordered for the treatment of pressure ulcers or skin grafts; or
    - (k) Change a dosage amount to adhere to a change in a physician's order.
  - (13) A MAC shall not, under any circumstances, administer medications by certain methods or routes, or both. These include, but are not necessarily limited to, the following:
    - (a) Injection;
    - (b) Intravenous;
    - (c) Central lines;
    - (d) Intrathecal;
    - (e) Colostomy;
    - (f) A surgically placed feeding tube, e.g., gastrostomy, jejunostomy;

- (g) Nasogastric;
- (h) Non-metered inhaler;
- (i) Intradermal;
- (j) Urethral;
- (k) Epidural;
- (l) Endotracheal;
- (m) Intramuscular; or
- (n) Subcutaneous.

Authority: T.C.A. §§ 63-7-127, 63-7-207 and 63-10-201.

\* 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) |
|--------------------------|-----|----|---------|--------|-------------------------|
| Donald Bell, APN         | X   |    |         |        |                         |
| Terri Bowman, LPN        |     |    |         | X      |                         |
| Barbara Brennan, RN      | X   |    |         |        |                         |
| Marilyn A. Dubree, RN    | X   |    |         |        |                         |
| Kathleen Harkey          |     |    |         | X      |                         |
| Deborah Holliday, LPN    | X   |    |         |        |                         |
| Cheryl Stegbauer, RN     | X   |    |         |        |                         |
| Marian Steward, RN       | X   |    |         |        |                         |
| Arthur Thompson, LPN     | X   |    |         |        |                         |
| Betty J. Thompson, RN    | X   |    |         |        |                         |
| Carol Lynn Thompson, APN | X   |    |         |        |                         |

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Nursing on 10/07/2010, 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: 08/13/10

Rulemaking Hearing(s) Conducted on: (add more dates). 10/07/10

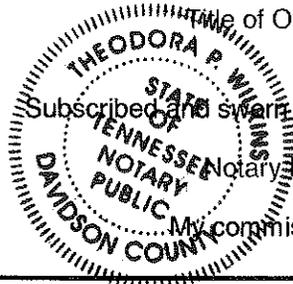
Date: 1/3/12

Signature: Mark S. Waters

Name of Officer: Mark S. Waters

Deputy General Counsel

Name of Officer: Department of Health



Subscribed and sworn to before me on: 1/3/12

Notary Public Signature: Theodora P. Williams

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.

REC Cooper  
 Robert E. Cooper, Jr.  
 Attorney General and Reporter  
2-17-12

Date

**Department of State Use Only**

Filed with the Department of State on: 5/15/12

Effective on: 8/13/12  
Tre Hargett  
Tre Hargett  
Secretary of State

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