G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Labor and Workforce Development
DIVISION:	Occupational Safety and Health
SUBJECT:	Occupational Safety and Health Standards for General Industry, Construction, and Agriculture
STATUTORY AUTHORITY:	Tennessee Code Annotated, Sections 4-3-1411, 50-3-103, 50-3-201
EFFECTIVE DATES:	September 28, 2014 through June 30, 2015
FISCAL IMPACT:	None.
STAFF RULE ABSTRACT:	The proposed amendments to rules 0800-01-01-.06, 0800-01-06-.02, 0800-01-07-.01, and 0800-01-07-.02, would adopt and reference the latest occupational safety and health standards and exceptions in the applicable parts of Title 29, Code of Federal Regulations when published in the Federal Register.

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

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

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 does not have a projected impact on local governments.

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

For Department of State Use Only

Sequence Number: 04-04-14
Rule ID(s): 5685-5687
File Date: 4/2/14
Effective Date: 9/28/14

Proposed Rule(s) Filing Form

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

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

Revision Type (check all that apply):
X Amendment
___ New
___ Repeal

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

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

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

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

Proposed Amendments with Changes Red-Lined

Chapter 0800-01-01

Rule 0800-01-01-.06 Amended

Paragraph (2) of Rule 0800-01-01-.06 Adoption and Citation of Federal Standards is amended by changing the date from "January 1, 2014" to "July 1, 2014".

Existing Rule:

(2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1910, as of ~~January 1, 2014~~ except as provided in Rule 0800-01-01-.07 of this chapter.

Proposed Amended Rule:

(2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1910, as of July 1, 2014 except as provided in Rule 0800-01-01-.07 of this chapter.

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

Chapter 0800-01-06

Rule 0800-01-006-.02 Amended

Paragraph (2) of Rule 0800-01-06-.02 Adoption and Citation of Federal Standards is amended by changing the date from "January 1, 2014" to "July 1, 2014".

Existing Rule:

(2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1926, as of ~~January 1, 2014~~ except as provided in Rule 0800-01-06-.03 of this chapter.

Proposed Amended Rule:

(2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1926, as of July 1, 2014 except as provided in Rule 0800-01-06-.03 of this chapter.

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

Chapter 0800-01-07

Rule 0800-01-07-.01 Amended

Paragraph (2) of Rule 0800-01-07-.01 Adoption and Citation of Federal Standards is amended by changing the date from "January 1, 2014" to "July 1, 2014".

Existing Rule:

(2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1928, as of ~~January 1, 2014~~ except as provided in Rule 0800-01-07-.02 of this chapter.

Proposed Amended Rule:

(2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1928, as of July 1, 2014 except as provided in Rule 0800-01-07-.02 of this chapter.

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

Rule 0800-01-07-.02 Amended

Paragraph (1) of Rule 0800-01-07-.02 Exceptions to Adoption of Federal Standards in 29 CFR Part 1928 is amended by changing the date from "January 1, 2014" to "July 1, 2014".

Existing Rule:

(1) As of ~~January 1, 2014~~, there are no exceptions.

Proposed Amended Rule:

(1) As of July 1, 2014, there are no exceptions.

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

* 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)

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the (*board/commission/other authority*) on 02/27/2014 (*date as mm/dd/yyyy*), 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.

SHERYL MESSENGER
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY, TENN

Date: 2-27-14

Signature: Burns P. Phillips

Name of Officer: Burns Phillips

Title of Officer: Commissioner of Labor and Workforce Development

Subscribed and sworn to before me on: February 27, 2014

Notary Public Signature: Sheryl Messenger

My commission expires on: January 9, 2016

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.

R E Cooper Jr.

Robert E. Cooper, Jr.
Attorney General and Reporter

3-24-14
Date

Department of State Use Only

Filed with the Department of State on: 4/2/14

Effective on: 9/28/14

Tre Hargett
Secretary of State

RECEIVED
2014 APR -2 PM 12: 15
OFFICE OF SECRETARY OF STATE

G.O.C. STAFF RULE ABSTRACT

AGENCY/BOARD/COMMISSION:	Board of Medical Examiners
SUBJECT:	Medical Records
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 63-2-103
EFFECTIVE DATES:	July 9, 2014 through June 30, 2015
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	This rule amendment corrects a statutory reference within Rule 0880-02-.15(4)(d). This rule amendment also changes the medical record retention requirement for mammography records from 20 years to 10 years as required by Chapter 113 of the Public Acts of 2013.

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

TENNESSEE DEPARTMENT OF HEALTH

BOARD OF MEDICAL EXAMINERS

The rulemaking hearing for the Tennessee Department of Health, Board of Medical Examiners was held on July 23, 2013 in the Department of Health Conference Center's Iris Room on the First Floor of the Heritage Place Building in MetroCenter, Nashville, Tennessee. Andrea Huddleston, Deputy General Counsel, presided over the hearing.

There were no comments, either written or oral, received.

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

   These rules do not overlap, duplicate, or conflict with other state or local governmental rules. Federal regulations (CMS) contain some record retention requirements. These rule amendments do not conflict with or shorten those retention requirements.

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

   These rules exhibit clarity, conciseness, and lack of ambiguity.

3. **The establishment of flexible compliance and/or reporting requirements for small business.**

   The compliance requirements contained in the rules are the same for large or small businesses. The rule amendments do not establish new reporting requirements.

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

   These rule amendments do not contain any reporting requirements. Compliance requirements contained in the rules are the same for large or small businesses.

5. **The consolidation or simplification of compliance or reporting requirements for large or small businesses.**

   Compliance requirements contained in the rules are the same for large or small businesses. The rule amendments do not create any reporting requirements.

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

   These rules do not establish performance, design, or operational standards.

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

   These rules do not create unnecessary barriers or stifle entrepreneurial activity or innovation.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

Name of Board, Committee or Council: *Board of Medical Examiners*

1. **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:**

   Medical doctors will be positively affected by the proposed rules amendments due to the decrease of retention time for mammography records. There are approximately 20,000 licensed medical doctors in Tennessee.

2. **Projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:**

   The rule amendments do not contain any reporting requirements and decrease the current record-keeping retention period, therefore, reducing administrative costs on businesses.

3. **Statement of the probable effect on impacted small businesses and consumers:**

   If a small business is affected, these rule amendments should have a positive effect by decreasing the retention time for mammography records.

4. **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:**

   These rule amendments are not burdensome, intrusive, or costly. On the contrary, these rule amendments will positively impact business.

5. **Comparison of the proposed rule with any federal or state counterparts:**

   Federal: Federal regulations (CMS) contain some record retention requirements. The retention period varies from five (5) to (10) years.

   State: Other Boards have records retention requirements similar to the Board of Medical Examiners. Both the Boards of Osteopathic Examination and the Chiropractic Examiners have identical language: "records shall be retained for a period of not less than ten years ...." The proposed rule amendment removes mammography records as an exception, which currently requires a 20 year retention period.

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.**

   These rule amendments are expected to have a positive impact and, therefore, an exemption for small businesses is unnecessary.

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 proposed rule amendments should not have an impact on local governments.

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

For Department of State Use Only

Sequence Number: 04-12-14
Rule ID(s): 5695
File Date: 4/10/14
Effective Date: 7/9/14

Rulemaking Hearing Rule(s) Filing Form

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

Agency/Board/Commission:	Tennessee Board of Medical Examiners
Division:	
Contact Person:	Andrea Huddleston, Deputy General Counsel
Address:	665 Mainstream Drive, Nashville, Tennessee
Zip:	37243
Phone:	615-741-1611
Email:	Andrea.Huddleston@tn.gov

Revision Type (check all that apply):

X Amendment
___ New
___ Repeal

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

Chapter Number	**Chapter Title**
0880-02	General Rules and Regulations Governing the Practice of Medicine
Rule Number	**Rule Title**
0880-02-.15	Medical Records

(Rule 0880-02-.14, continued)

1, 2006. Amendment filed December 29, 2006; effective March 14, 2007. Amendment filed February 13, 2008; effective April 28, 2008.

0880-02-.15 MEDICAL RECORDS.

(1) Purposes - The purposes of these rules are:

(a) To recognize that medical records are an integral part of the practice of medicine as defined in T.C.A. § 63-6-204.

(b) To give physicians, their professional and non-professional staff, and the public direction about the content, transfer, retention, and destruction of those records.

(c) To recognize that a distinction exists between a physician's medical records for a patient receiving services in the physician's office and those records created by the physician for that patient for purposes of services provided in a hospital as defined by T.C.A. § 68-11-302 (4) and that the distinction exists regardless of the fact that the physician may also be an employee of the hospital or of a medical group employed or owned by the hospital.

(2) Conflicts - As to medical records, these rules should be read in conjunction with the provisions of T.C.A. §§ 63-2-101 and 102, and are not intended to conflict with those statutes in any way. Those statutes, along with these rules, govern the subjects that they cover in the absence of other controlling state or federal statutes or rules to the contrary.

(3) Applicability - These rules regarding medical records shall apply only to those records, the information for which was obtained by physicians or their professionally licensed employees, or those over whom they exercise supervision, for purposes of services provided in any clinical setting other than those provided in a hospital as defined by T.C.A. § 68-11-302 (4), a hospital emergency room or hospital outpatient facility.

(4) Medical Records -

(a) Duty to Create and Maintain Medical Records - As a component of the standard of care and of minimal competency a physician must cause to be created and cause to be maintained a medical record for every patient for whom he or she, and/or any of his or her professionally licensed supervisees, performs services or provides professional consultation.

(b) Notice - Anywhere in these rules where notice is required to be given to patients of any physician that notice shall be required to be issued within thirty (30) days of the date of the event that triggers the notice requirement, and may be accomplished by public notice.

(Rule 0880-02-.15, continued)

(c) Distinguished from Hospital Medical Records - The medical records covered by these rules are separate and distinct from those records generated for the patient by the physician during the course of providing medical services for the patient in a hospital as defined by T.C.A. § 68-11-302 (4) regardless of the fact that the physician may also be an employee of the hospital or of a medical group employed or owned by the hospital.

1. The provisions of T.C.A. Title 68, Part 11, Chapter 3 govern medical records generated in a hospital as defined by T.C.A. § 68-11-302 (4).

2. The medical records covered by these rules are those:

(i) That are created prior to the time of the patient's admission to or confinement and/or receipt of services in a hospital as defined by T.C.A. § 68-11-302 (4), hospital emergency room and/or hospital outpatient facility, and/or

(ii) That are created after the patient's discharge from a hospital as defined by T.C.A. § 68-11-302 (4), hospital emergency room or hospital outpatient facility.

(iii) That are created during the practice of medicine as defined by T.C.A.. § 63-6-204 outside of a hospital as defined by T.C.A. § 68-11-302 (4), hospital emergency room or hospital outpatient facility.

3. Even though the records covered by these rules may, of necessity, reference provision of services in the hospital setting and the necessary initial work-up and/or follow-up to those services, that does not make them "hospital records" that are regulated by or obtainable pursuant to T.C.A. Title 68, Part 11, Chapter 3.

~~(d) Content - All medical records, or summaries thereof, produced in the course of the practice of medicine for all patients shall include all information and documentation listed in T.C.A. § 63-2-101 (c) (2) and such additional information that is necessary to insure that a subsequent reviewing or treating physician can both ascertain the basis for the diagnosis, treatment plan and outcomes, and provide continuity of care for the patient.~~

(d) Content – All medical records, or summaries thereof, produced in the course of the practice of medicine for all patients shall include all information and documentation listed in T.C.A. § 63-2 101(c)(4) and such additional information that is necessary to insure that a subsequent reviewing or treating physician can both ascertain the basis for the diagnosis, treatment plan and outcomes, and provide continuity of care for the patient.

(e) Transfer -

1. Records of Physicians upon Death or Retirement - When a physician retires or dies while in practice, patients seen by the physician in his/her office during the immediately preceding thirty-six (36) months shall be notified by the physician, or his/her authorized representative and urged to find a new physician and be

(Rule 0880-02-.15, continued)

informed that upon authorization, copies of the records will be sent to the new physician. This notification requirement shall not apply to a patient when there have been fewer than two (2) office patient encounters within the immediately preceding eighteen (18) months.

2. Records of Physicians upon Departure from a Group - The responsibility for notifying patients of a physician who leaves a group practice whether by death, retirement or departure shall be governed by the physician's employment contract.

   (i) Whomever is responsible for that notification must notify patients seen by the physician in his/her office during the immediately preceding thirty-six (36) months of his/her departure, except that this notification requirement shall not apply to a patient when there have been fewer than two (2) office patient encounters within the immediately preceding eighteen (18) months.

   (ii) Except where otherwise governed by provisions of the physician's contract, those patients shall also be notified of the physician's new address and offered the opportunity to have copies of their medical records forwarded to the departing physician at his or her new practice. Provided however, a group shall not withhold the medical records of any patient who has authorized their transfer to the departing physician or any other physician.

   (iii) The choice of physicians in every case should be left to the patient, and the patient should be informed that upon authorization his/her records will be sent to the physician of the patient's choice.

3. Sale of a Medical Practice - A physician or the estate of a deceased physician may sell the elements that comprise his/her practice, one of which is its goodwill, i.e., the opportunity to take over the patients of the seller by purchasing the physician's medical records. Therefore, the transfer of records of patients is subject to the following:

   (i) The physician (or the estate) must ensure that all medical records are transferred to another physician or entity that is held to the same standards of confidentiality as provided in these rules.

   (ii) Patients seen by the physician in his/her office during the immediately preceding thirty-six (36) months shall be notified that the physician (or the estate) is transferring the practice to another physician or entity who will retain custody of their records and that at their written request the copies of their records will be sent to another physician or entity of their choice. This notification requirement shall not apply to a patient when there have been fewer than two (2) office patient encounters within the immediately preceding eighteen (18) months.

4. Abandonment of Records - For purposes of this section of the rules death of a physician shall not be considered as abandonment.

(Rule 0880-02-.15, continued)

(i) It shall be a prima facie violation of T.C.A. § 63-6-214 (b) (1) for a physician to abandon his practice without making provision for the security, or transfer, or otherwise establish a secure method of patient access to their records.

(ii) Upon notification that a physician in a practice has abandoned his practice and not made provision for the security, or transfer, or otherwise established a secure method of patient access to their records patients should take all reasonable steps to obtain their medical records by whatever lawful means available and should immediately seek the services of another physician.

(f) Retention of Medical Records - Medical records shall be retained for a period of not less than ten (10) years from the physician's or his supervisees' last professional contact with the patient except for the following:

1. Immunization records shall be retained indefinitely.

2. Medical records for incompetent patients shall be retained indefinitely.

~~3 Mammography records shall be retained for at least twenty (20) years.~~

3.~~4.~~ X-rays, radiographs and other imaging products shall be retained for at least four (4) years after which if there exist separate interpretive records thereof they may be destroyed. However, mammography imaging and reports shall be maintained for ten (10) years.

4.~~5.~~ Medical records of minors shall be retained for a period of not less than one (1) year after the minor reaches the age of majority or ten (10) years from the date of the physician's or his supervisees' last professional contact with the patient, whichever is longer.

5.~~6.~~ Notwithstanding the foregoing, no medical record involving services which are currently under dispute shall be destroyed until the dispute is resolved.

(g) Destruction of Medical Records -

1. No medical record shall be singled out for destruction other than in accordance with established office operating procedures.

2. Records shall be destroyed only in the ordinary course of business according to established office operating procedures that are consistent with these rules.

3. Records may be destroyed by burning, shredding, or other effective methods in keeping with the confidential nature of the records.

4. When records are destroyed, the time, date and circumstances of the destruction shall be recorded and maintained for future reference. The record of destruction need not list the individual patient medical records that were destroyed but shall

(Rule 0880-02-.15, continued)

be sufficient to identify which group of destroyed records contained a particular patient's medical records.

(5) Violations - Violation of any provision of these rules is grounds for disciplinary action pursuant to T.C.A. §§ 63-6-214 (b) (1), and/or (2).

Authority: *T.C.A. §§4-5-202, 4-5-204, 63-2-101, 63-2-102, 63-6-101, 63-6-204, and 63-6-214.* ***Administrative History:*** *Original rule filed April 29, 2003; effective July 13, 2003. Amendment filed October 12, 2004; effective December 26, 2004.*

0880-02-.16 TELEMEDICINE LICENSURE. No person shall engage in the practice of medicine across state lines in this State, hold himself out as qualified to do the same, or use any title, word, or abbreviation to indicate to or induce others to believe that he is licensed to practice medicine across state lines in this State unless he is actually so licensed in accordance with the provisions of this rule.

(1) Definitions - As used in this rule, the practice of medicine across state lines (telemedicine) means:

(a) The rendering of a written or otherwise documented medical opinion concerning diagnosis or treatment of a patient within this State by a physician located outside this State as a result of transmission of individual patient data by electronic or other means from within this State to such physician or his agent; or

(b) The rendering of treatment to a patient within this State by a physician located outside this State as a result of transmission of individual patient data by electronic or other means from within this State to such physician or his agent.

(2) Issuance of License - An applicant who has an unrestricted license in good standing in another state and maintains an unencumbered certification in a recognized specialty area; or is eligible for such certification and indicates a residence and a practice outside the State of Tennessee but proposes to practice medicine across state lines on patients within the physical boundaries of the State of Tennessee, shall in the discretion of the Board be issued a telemedicine license.

(a) To obtain a license, an applicant shall compile the following and when completed, submit them to the Board Administrative Office:

1. A Board approved application form; and

* 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)
Michael D. Zanolli, M.D.	X				
Subhi D. Ali, M.D.	X				
Dennis Higdon, MD	X				
Michael John Baron, M.D	X				
Jeff P. Lawrence, MD	X				
Neal Beckford, M.D.				X	
Keith Lovelady, M.D				X	
Clinton A. Musil, Jr., MD	X				
Patricia Eller	X				
Barbara Outhier	X				
Nina Yeiser	X				
W. Reeves Johnson, Jr. MD	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Board of Medical Examiners (board/commission/ other authority) on 07/23/2013 (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: *05/30/13*

Rulemaking Hearing(s) Conducted on: *07/23/13*

Date: 8-7-13

Signature:

Name of Officer: Andrea Huddleston

Title of Officer: Deputy General Counsel
Tennessee Department of Health

SUZANNE MECHKOWSKI
STATE OF TENNESSEE NOTARY PUBLIC
SUMNER COUNTY

Subscribed and sworn to before me on: 8-7-13

Notary Public Signature: Suzanne Mechkowski

My commission expires on: MY COMMISSION EXPIRES APRIL 19, 2017

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

Robert E. Cooper, Jr.
Attorney General and Reporter

4-8-14
Date

Department of State Use Only

Filed with the Department of State on: 4/10/14

Effective on: 7/9/14

Tre Hargett
Secretary of State

RECEIVED
2014 APR 10 PM 4:23
OFFICE OF
SECRETARY OF STATE

G.O.C. STAFF RULE ABSTRACT

AGENCY/BOARD/COMMISSION:	Board of Communications Disorders and Sciences
SUBJECT:	Speech Pathology Clinical Fellowships: Supervision Limitations
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 63-17-105
EFFECTIVE DATES:	July 16, 2014 through June 30, 2015
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	This rule amendment affects Tennessee-licensed speech language pathologists by ensuring that supervisors of clinical fellows have adequate experience by requiring all supervisors of clinical fellows be at least two years removed from the supervisor's clinical fellowship completion.

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.

There were no comments on the rules, either written or oral.

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

The Board must consider whether the rules or rule amendments being proposed are such that in relation to small businesses (businesses with 50 or fewer full time employees) the proposed language of the rules or amendments and/or the procedures contained therein meet all of the following requirements:

(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.

(4) The compliance requirements throughout the proposed rules are as user-friendly as possible while still allowing the Board to achieve its mandated mission in regulating audiologists and speech language pathologists. 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 and simplified for small businesses in the proposed rules for the protection of the health, safety and welfare of Tennesseans.

(6) The standards of care required in the proposed rules are the same as existing standards for the delivery of audiology and speech language pathology and do not necessitate the establishment of performance standards for small businesses.

(7) 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

Name of Board, Committee or Council: Board of Communication Disorders and Sciences

Rulemaking hearing date: November 5, 2013

1. **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:**

   Tennessee Licensed Speech Language Pathologists who are seeking to complete their clinical fellowship and Speech Language Pathologists who supervise clinical fellows would be subject to the proposed rule amendment.

2. **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:**

   Reporting, recordkeeping and other administrative costs required for compliance with this proposed rule would not significantly differ from the status quo.

3. **Statement of the probable effect on impacted small businesses and consumers:**

   This proposed rule should have little adverse impact on small business as the rule will primarily affects licensed speech language pathologists. The proposed rule amendment will likely provide additional safeguards that Tennessee consumers are receiving safe, appropriate and effective speech language pathology services.

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

   The Tennessee Board of Communications Disorders and Sciences does not believe there are any less burdensome alternatives to the proposed rule amendments.

5. **Comparison of the proposed rule with any federal or state counterparts:**

   Federal: No known comparable federal law.

   State: State law currently has no restriction.

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

   The vast majority of speech language pathologists operate out of small businesses. Thus, exempting small businesses would largely render this proposed rule moot.

Impact on Local Governments

Pursuant to T.C.A. § 4-5-228(a), "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 financial impact on local governments."

(Insert statement here)

The proposed rule will likely not have a major impact on local governments.

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

For Department of State Use Only

Sequence Number: 04-19-14
Rule ID(s): 5701
File Date: 4/17/14
Effective Date: 7/16/14

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:	Communication Disorders and Sciences
Division:	
Contact Person:	Andrea Huddleston, Interim Chief Deputy General Counsel
Address:	665 Mainstream Drive, Nashville, Tennessee
Zip:	37234
Phone:	(615) 741-1611
Email:	Andrea.Huddleston@tn.gov

Revision Type (check all that apply):

X 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**
1370-01	Rules for Speech Pathology and Audiology
Rule Number	**Rule Title**
1370-01-.10	Clinical Fellowships, Clinical Externs, and Supervision

(Rule 1370-01-.09, continued)

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-17-105, 63-17-116, 63-17-116(e) and 63-17-128* ***Administrative History:*** *Original rule filed September 18, 1991; effective November 2, 1991. Repeal and new rule filed January 31, 2000; effective April 15, 2000. Amendment filed April 26, 2002; effective July 10, 2002. Amendment filed July 22, 2003; effective October 5, 2003. Amendment filed September 11, 2006; effective November 25, 2006. Amendment filed June 28, 2013; effective September 26, 2013.*

1370-01-.10 CLINICAL FELLOWSHIPS, CLINICAL EXTERNS, AND SUPERVISION.

(1) Clinical Fellows must work under the supervision of a licensed or ASHA certified Speech Language Pathologist ("supervising licensee").

(a) The clinical fellowship experience shall include no less than thirty-six (36) supervisory activities in the following combination:

1. Eighteen (18) direct (on-site) observations, with one (1) hour equaling one (1) on-site observation.

2. Eighteen (18) monitored activities which may, for example, include telephone conferences, tape reviews, and record reviews.

(b) Each month of the clinical fellowship shall include two (2) on-site observations and two (2) other monitored activities.

(2) Clinical Fellows: Procedures for Registration

(a) An applicant for registration as a Clinical Fellow shall cause a graduate transcript to be submitted directly from the educational institution to the Board's Administrative Office. The transcript must show that graduation with at least a master's or doctorate level degree has been completed and must carry the official seal of the institution.

(b) An applicant for registration as a Clinical Fellow shall have successfully completed a minimum of four hundred (400) clock hours of supervised clinical experience (practicum) with individuals having a variety of communications disorders, as required by ASHA. The experience shall have been obtained through an accredited institution. The applicant shall have a letter transmitted directly from the authorized individual at the accredited institution to the Board's Administrative office attesting to the standards of the practicum and the applicant's successful completion.

(c) All supervising licensees must register any and all Clinical Fellows working under their supervision with the Board on a Registration form to be provided by the Board at the request of the supervising licensee. Registration must be made by the supervising licensee before or within ten (10) days of retaining each Clinical Fellow.

(3) Clinical Fellows: Period of Effectiveness

(a) Persons with doctoral degrees or doctoral degree candidates - Clinical fellowships are effective for a period of no less than nine (9) months and no more than four (4) years.

(b) Persons with master's degrees - Clinical fellowships are effective for a period of no less than nine (9) months and no more than one (1) year.

1. Notwithstanding the provisions of subparagraph (b), the clinical fellowship's period of effectiveness for applicants for licensure who are awaiting national certification and subsequent Board review of their application may be extended for a period not to exceed three (3) additional months. Such extension will cease

(Rule 1370-01-.10, continued)

to be effective if national certification or Board licensure is denied. At all times while awaiting national certification results and until licensure is received, clinical fellows shall practice only under supervision as set forth in this rule.

2. Application for licensure or re-registration by the supervising licensee for an additional clinical fellowship should be made thirty (30) days before the expiration of the clinical fellowship.

(c) In the case of extenuating circumstances, a supervising licensee may request an application for re-registration to extend the clinical fellowship registration. The Board or its designee will determine if an extension will be granted.

(4) Clinical Fellows: Supervision Limitations.

(a) Supervising licensees shall supervise no more than three (3) individuals concurrently.

(b) Supervising licensees shall supervise no more than two (2) Speech Language Pathology Assistants concurrently.

(c) Supervising licensees shall supervise no more than three (3) Clinical Fellows concurrently.

(d) Supervising licensees shall be at least two (2) years removed from the completion of their Clinical Fellowship work.

(5) Clinical Externs must work under the supervision of a licensed, ASHA certified or ABA certified Audiologist (supervising licensee).

(6) Clinical Externs: Procedures for Registration

(a) An applicant for registration as a Clinical Extern shall have a letter transmitted directly from the authorized individual at the accredited institution to the board administrator verifying that he or she has successfully completed sufficient academic course work to engage in outside supervised clinical practice.

(b) An applicant for registration as a Clinical Extern shall have successfully completed a minimum of four hundred (400) clock hours of supervised clinical experience (practicum) with individuals having a variety of communications disorders. The experience shall have been obtained through an accredited institution. The applicant shall have a letter transmitted directly from the authorized individual at the accredited institution to the Board's Administrative office attesting to the standards of the practicum and the applicant's successful completion.

(c) All supervising licensees must register any and all Clinical Externs working under their supervision with the Board on a registration form to be provided by the Board at the request of the supervising licensee. Registration must be made by the supervising licensee prior to the start of the externship.

(7) Clinical Externs: Period of effectiveness

(a) Registration of a Clinical Extern is effective for a period of fifteen (15) continuous months, beginning with the month after the month in which the registration is made.

(b) The length of the externship is set by the accredited institution.

(Rule 1370-01-.10, continued)

(c) Notwithstanding the provisions of subparagraph (a), the clinical externship's period of effectiveness may be extended for a period not to exceed four (4) additional months for applicants for licensure who are awaiting national certification and subsequent Board review of their application. Such extension will cease to be effective if national certification or Board licensure is denied. At all times while awaiting national certification results and until licensure is received, clinical externs shall practice only under supervision as set forth in this rule.

(d) In the case of extenuating circumstances, a supervising licensee may request an application for re-registration to extend the clinical externship registration. The Board or its designee will determine if an extension will be granted.

(8) Clinical Externs: Supervision Limitations. Supervising licensees shall concurrently supervise no more than two (2) Clinical Externs.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-17-103, 63-17-105, 63-17-110, and 63-17-114.* ***Administrative History:*** *Original rule filed December 18, 1995; effective March 1, 1996. Repeal and new rule filed January 31, 2000; effective April 15, 2000. Amendment filed January 31, 2003; effective April 16, 2003. Amendment filed June 22, 2004; effective September 5, 2004. Amendment filed August 3, 2005; effective October 17, 2005.Amendment filed September 11, 2006; effective November 25, 2006. Amendment filed April 6, 2010; effective July 5, 2010. Amendment filed September 14, 2010; effective December 13, 2010. Amendment filed June 28, 2013; effective September 26, 2013.*

1370-01-.11 RETIREMENT AND REACTIVATION OF LICENSE OR REGISTRATION.

(1) (a) A licensee who holds a current license and does not intend to practice as a Speech Language Pathologist or Audiologist or intends to obtain an Inactive-Pro Bono Services license may apply to convert an active license to an Inactive-Retired status. Such licensee who holds a retired license may not practice and will not be required to pay the renewal fee

(b) A registrant who holds a current registration and does not intend to practice as a Speech Language Pathology Assistant may apply to convert and active registration to an Inactive-Retired status. Such registrant who holds a retired registration may not practice and will not be required to pay the renewal fee.

(2) A person who holds an active license or registration may apply for retired status in the following manner:

(a) Obtain, complete and submit to the Board's Administrative Office an Affidavit of Retirement form; and

(b) Submit any documentation which may be required by the form to the Board's Administrative Office.

(3) A licensee or registrant who holds a retired license may apply to reactivate his license in the following manner:

(a) Submit a written request for licensure or registration reactivation to the Board's Administrative Office;

(b) Pay the licensure or registration renewal fee and state regulatory fee as provided in Rule 1370-01-.06; and

(c) Provide documentation of successfully completing continuing education requirements pursuant to Rule 1370-01-.12.

* 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)
Lynne Harmon Burgess	X				
Valeria Matlock	X				
Terri Philpot Flynn	X				
Mary Velvet Burhler	X				
Julie Ann Crosby	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Communications and Sciences Disorders (board/commission/ other authority) on 11/05/2013 (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: *09/05/13 (mm/dd/yy)*

Rulemaking Hearing(s) Conducted on: (add more dates). *11/05/13 (mm/dd/yy)*

Date: 4-3-14

Signature:

Name of Officer: Andrea Huddleston

Title of Officer: Interim Chief Deputy General Counsel
Department of Health

STATE OF TENNESSEE NOTARY PUBLIC SUZANNE MECHKOWSKY SUMNER COUNTY

Subscribed and sworn to before me on: 4-3-14

Notary Public Signature: Suzanne Mechkowsky

My commission expires on: MY COMMISSION EXPIRES APRIL 19, 2017

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

Robert E. Cooper, Jr.
Attorney General and Reporter

4-14-14
Date

Department of State Use Only

RECEIVED 2014 APR 17 PM 3:31 OFFICE OF SECRETARY OF STATE

Filed with the Department of State on: 4/17/14

Effective on: 7/16/14

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

AGENCY/BOARD/COMMISSION:	Board of Osteopathic Examination
SUBJECT:	Continuing Education Requirements and Interventional Pain Management Practice
STATUTORY AUTHORITY:	Tennessee Code Annotated, Sections 63-9-107(a) and 63-9-121(c)
EFFECTIVE DATES:	July 16, 2014 through June 30, 2015
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	This rule amendment deletes the reference to the American Osteopathic Association (AOA) Yearbook and Directory from Rule 1050-02-.12(1)(a), concerning approved courses for continuing medical education. According to the board, the yearbook and directory are no longer readily available in print. This rule amendment also defines the scope and length of the practice relationship between the recent medical training graduate (not yet eligible for board-certification) and the physician who does qualify to practice interventional pain management, as specifically authorized pursuant to Tennessee Code Annotated, Section 63-9-121(c). Additionally, this rule amendment defines what constitutes a board-approved post-graduate training program, the completion of which would allow a licensee who is board-certified in a different American Osteopathic Association specialty to engage in the practice of interventional pain management.

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.

There were no comments, either written or oral, received.

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)

Pursuant to the Regulatory Flexibility Act of 2007, T.C.A. §§ 4-5-401, et seq., the Department of Health submits the following regulatory flexibility analysis:

(1) The extent to which the rule or rules 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 and/or reporting requirements throughout the proposed rules are as "user-friendly" as possible while still complying with the statute and allowing the Board to achieve its mission of protecting Tennesseans.

(5) The consolidation or simplification of compliance and/or reporting requirements for small businesses.

The compliance requirements throughout the proposed rules are not consolidated or simplified for small businesses, but are written with a goal of avoiding unduly onerous regulations.

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

The proposed rules do not create design, operational, or performance standards.

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

The proposed rules do not create unnecessary entry barriers or other effects that would stifle entrepreneurial activity or curb innovation. The proposed rules clarify the continuing medical education requirement for licensees and create pathways for individuals to engage in interventional pain management that would otherwise be unqualified to do so pursuant to T.C.A. §63-9-121.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

1. Types of small businesses that will be directly affected by the proposed rules:

Entities that pay the continuing medical education fee for its licensed physicians; entities that employ certain recent medical training graduates who have completed training in the necessary area of medical specialty but are not yet eligible to sit for board certification and, thus, are otherwise unable to practice interventional pain management; and entities that employ licensed physicians who are board-certified in areas not listed in T.C.A. §63-9-121, but who may practice interventional pain management upon completion of the specified training.

2. Types of small businesses that will bear the cost of the proposed rules:

Entities that pay the continuing medical education fee for its licensed physicians; entities that employ certain recent medical training graduates who have completed training in the necessary area of medical specialty but are not yet eligible to sit for board certification and, thus, are otherwise unable to practice interventional pain management; and entities that employ licensed physicians who are board-certified in areas not listed in T.C.A. §63-9-121, but who may practice interventional pain management upon completion of the specified training.

3. Types of small businesses that will directly benefit from the proposed rules:

Entities that pay the continuing medical education fee for its licensed physicians; entities that employ certain recent medical training graduates who have completed training in the necessary area of medical specialty but are not yet eligible to sit for board certification and, thus, are otherwise unable to practice interventional pain management; and entities that employ licensed physicians who are board-certified in areas not listed in T.C.A. §63-9-121, but who may practice interventional pain management upon completion of the specified training.

6. Description of how small business will be adversely impacted by the proposed rules:

Small businesses should not be adversely impacted by the proposed rule amendments.

7. Alternatives to the proposed rule that will accomplish the same objectives but are less burdensome, and why they are not being proposed:

Small businesses should not be burdened by the proposed rule amendments.

8. Comparison with Federal and State Counterparts:

There does not appear to be a federal counterpart to the proposed rule amendments. The proposed rule amendments are not inconsistent with similar state requirements.

Impact on Local Governments

Pursuant to T.C.A. § 4-5-228(a), "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 financial impact on local governments."

The proposed rule amendments should not have a financial impact on local governments.

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

For Department of State Use Only

Sequence Number: 04-18-14
Rule ID(s): 5700
File Date: 4/17/14
Effective Date: 7/16/14

Rulemaking Hearing Rule(s) Filing Form

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

Agency/Board/Commission: Tennessee Board of Osteopathic Examination
Division:
Contact Person: Devin Wells, Deputy General Counsel
Address: 665 Mainstream Drive, Nashville, Tennessee
Zip: 37243
Phone: 615-741-1611
Email: Devin.Wells@tn.gov

Revision Type (check all that apply):
X 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**
1050-02	General Rules and Regulations Governing the Practice of Osteopathy
Rule Number	**Rule Title**
1050-02-.12	Continuing Education Requirements
1050-02-.13	Specifically Regulated Areas and Aspects of Medical Practice

(Rule 1050-02-.11, continued)

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 instance shall not be taken to affect or prejudice in any way its applicability or validity in any other instance.

Authority: *T.C.A. §§4-5-202, 4-5-204, 63-9-101, and 63-9-111.* ***Administrative History:*** *Original rule filed April 10, 2000; effective June 24, 2000.*

1050-02-.12 CONTINUING EDUCATION REQUIREMENTS.

(1) Hours Required, Waiver, and Exemptions

~~(a) During the two (2) calendar years that precede licensure renewal, all licensees must complete forty (40) hours of courses approved by the Board in Category I-A, II-A and/or I-B continuing medical education as defined in the most current annual American Osteopathic Association Yearbook and Directory.~~

(a) During the two (2) calendar years that precede licensure renewal, all licensees must complete forty (40) hours of courses approved by the Board in Category I-A, II-A and/or I-B continuing medical education as defined by the American Osteopathic Association.

(b) At least one (1) of the forty (40) required hours shall be a course designed specifically to address prescribing practices. The course should include, but not be limited to, instruction on controlled substance prescribing practices.

(c) Osteopathic physicians serving as preceptors in any AOA approved osteopathic medical education program may be granted one (1) Category I-B credit for each hour of preceptor work actually performed, up to a maximum of fifty percent (50%) of the total biennially required continuing medical education.

(d) The Board approves a course for only the number of hours contained in the course. The approved hours of any individual course will not be counted more than once in a calendar year toward the required hourly total regardless of the number of times the course is attended or completed by any individual.

(e) Waiver - The Board may waive the requirements of these rules in cases where illness, disability, or other undue hardship beyond the control of the licensee prevents a licensee from complying. Requests for waivers must be sent in writing to the Board prior to the expiration of the calendar year in which the continuing medical education is due.

(f) Exemptions:

1. Anyone whose license is in the retired status pursuant to rule 1050-02-.08 is exempt from the requirements of these continuing medical education rules.

2. Anyone who obtains licensure in the same calendar year as successful completion of the NBOME, COMLEX, or the USMLE Step 3 is exempt from the provisions of these continuing medical education rules but only for the calendar year in which licensure is issued.

(2) Proof of Compliance - All licensees must retain independent documentation of completion of all continuing medical education hours and compliance with the provisions of these rules.

(a) This documentation must be retained for a period of four (4) years from the end of the calendar year in which the continuing medical education was acquired.

(Rule 1050-02-.12, continued)

(b) This documentation must be produced for inspection and verification, if requested in writing by the Division during its verification process.

(c) Documentation verifying the licensee's completion of the continuing medical education hours may consist of any one (1) or more of the following:

1. Original certificates verifying the individual's attendance at the continuing education programs described above.

2. Original letters on official institution stationary or photocopies of original letters on official institution stationary from the instructor of the graduate level course verifying that the course was completed and listing the number of credit hours of attendance completed by the individual; or

3. Documentation from the American Academy of Family Physicians (hereafter AAFP) indicating acquired continuing medical education hours; or

4. Official transcript verifying credit hours earned. One (1) semester academic credit hour is equivalent to fifteen (15) clock hours for the purpose of licensure renewal. Credit for auditing will be for the actual clock hours in attendance, not to exceed the academic credit.

(3) Acceptable Continuing Education - To be utilized for satisfaction of the continuing education requirements of this rule, the continuing education hours must comply with the following:

(a) They must be approved in content, structure and/or format by the A.O.A., or by the Accreditation Council for Continuing Medical Education (A.C.C.M.E.) or by a state medical association recognized by the A.C.C.M.E. as an intrastate accreditor of sponsors of continuing medical education; or

(b) They must be designated by the AAFP as meeting the criteria of the AAFP's prescribed credit.

(4) Violations and Disciplinary Orders

(a) Any licensee who fails to obtain the required continuing medical education hours or otherwise comply with the provisions of these rules will be subject to disciplinary action.

(b) Continuing medical education hours obtained as a result of compliance with the terms of Board Orders in any disciplinary action or obtained pursuant to licensure or renewal restriction/conditions mandated by the Board shall not be credited toward the continuing medical education hours required to be obtained in any calendar year.

Authority: *T.C.A. §§4-5-202, 4-5-204, 63-9-101, and 63-9-107.* ***Administrative History:*** *Original rule filed April 10, 2000; effective June 24, 2000. Amendment filed October 2, 2002; effective December 16, 2002. Amendment filed April 17, 2007; effective July 1, 2007. Amendments filed August 27, 2009; effective November 25, 2009.*

1050-02-.13 SPECIFICALLY REGULATED AREAS AND ASPECTS OF MEDICAL PRACTICE.

(1) The scope of practice of osteopathic physicians in Tennessee is broadly defined in the Osteopathic Medical Act and promulgated rules and includes many aspects which if not particularly regulated could lead to serious ramifications for the consuming public. This rule

(Rule 1050-02-.13, continued)

is to designate specific areas in the practice of osteopathic medicine for regulation the violation of which may result in disciplinary action pursuant to T.C.A. § 63-9-111.

(2) Pharmaceutical Dispensing - Osteopathic physicians who elect to dispense medication for remuneration must comply with the following:

(a) All Federal Regulations (21 CFR 1304 through 1308) for the dispensing of controlled substances.

(b) Requirements for dispensing of non-controlled drugs are as follows:

1. Drugs are to be dispensed in an appropriate container labeled with at least, the following:

(i) Patient's name.

(ii) Date.

(iii) Complete directions for usage.

(iv) The physician's name and address.

(v) A unique number, or the name and strength of the medication.

2. Physicians may dispense only to individuals with whom they have established a physician/patient relationship. It shall be a violation of this rule for a physician to dispense medication at the order of any other physician not registered to practice at the same location.

3. Whenever dispensing takes place, appropriate records shall be maintained. A separate log must be maintained for controlled substances dispensing.

(c) It is not the intention of the rule to interfere with the individual physician's appropriate use of professional samples, nor to interfere in any way with the physician's right to directly administer drugs or medicines to any patient.

(d) Dispensing or prescribing controlled substances in amounts or for durations not medically necessary, advisable or justified is considered to be practicing beyond the scope of the professional practice.

(3) Prescription writing shall be governed by Tennessee Code Annotated, Section 63-9-116 and Title 53, Chapter 10, Part 2.

(4) Supervision - See Rule 1050-02-.15 The Utilization and Supervision of a Certified Nurse Practitioner or Licensed Physician Assistant.

(5) Guidelines for the Use of Controlled Substances for the Treatment of Pain -

(a) Purposes and Intent

1. The Board recognizes that principles of quality medical practice dictate that the people of the State of Tennessee have access to appropriate and effective pain relief. The appropriate application of up-to-date knowledge and treatment modalities can serve to improve the quality of life for those patients who suffer from pain as well as reduce the morbidity and costs associated with untreated or

(Rule 1050-02-.13, continued)

inappropriately treated pain. The Board encourages physicians to view effective pain management as a part of quality medical practice for all patients with pain, acute or chronic, and it is especially important for patients who experience pain as a result of terminal illness. All physicians should become knowledgeable about effective methods of pain treatment as well as statutory requirements for prescribing controlled substances.

2. Inadequate pain control may result from physicians' lack of knowledge about pain management or an inadequate understanding of addiction. Fears of investigation or sanction by federal, state and local regulatory agencies may also result in inappropriate or inadequate treatment of chronic pain patients. Accordingly, these guidelines have been developed pursuant to the Tennessee Intractable Pain Treatment Act to clarify the Board's position on pain control, specifically as related to the use of controlled substances, to alleviate physician uncertainty and to encourage better pain management.

3. The Board recognizes that controlled substances, including opioid analgesics, may be essential in the treatment of acute pain due to trauma or surgery and chronic pain, whether due to cancer or non-cancer origins. Physicians are referred to the U.S. Agency for Health Care and Research Clinical Practice Guidelines for a sound approach to the management of acute and cancer-related pain. The medical management of pain should be based on current knowledge and research and include the use of both pharmacologic and non-pharmacologic modalities. Pain should be assessed and treated promptly, and the quantity and frequency of doses should be adjusted according to the intensity and duration of the pain. Physicians should recognize that tolerance and physical dependence are normal consequences of sustained use of opioid analgesics and are not synonymous with addiction.

4. The Board is obligated under the laws of the State of Tennessee to protect the public health and safety. The Board recognizes that inappropriate prescribing of controlled substances, including opioid analgesics, may lead to drug diversion and abuse by individuals who seek them for other than legitimate medical use. Physicians should be diligent in preventing the diversion of drugs for illegitimate purposes.

5. Physicians should not fear disciplinary action from the Board for prescribing, dispensing or administering controlled substances, including opioid analgesics, for a legitimate medical purpose and in the usual course of professional practice. The Board will consider prescribing, ordering, administering or dispensing controlled substances for pain to be for a legitimate medical purpose if based on accepted scientific knowledge of the treatment of pain or if based on sound clinical grounds. All such prescribing must be based on clear documentation of unrelieved pain and in compliance with applicable state and federal law.

6. Each case of prescribing for pain will be evaluated on an individual basis. The board will not take disciplinary action against a physician for failing to adhere strictly to the provisions of these guidelines, if good cause is shown for such deviation. The physician's conduct will be evaluated to a great extent by the treatment outcome, taking into account whether the drug used is medically and/or pharmacologically recognized to be appropriate for the diagnosis, the patient's individual needs-including any improvement in functioning-and recognizing that some types of pain cannot be completely relieved.

(Rule 1050-02-.13, continued)

7. The Board will judge the validity of prescribing based on the physician's treatment of the patient and on available documentation, rather than on the quantity and chronicity of prescribing. The goal is to control the patient's pain for its duration while effectively addressing other aspects of the patient's functioning, including physical, psychological, social and work-related factors. The following guidelines are not intended to define complete or best practice, but rather to communicate what the Board considers to be within the boundaries of professional practice.

(b) Guidelines - The Board adopts the following guidelines when evaluating the use of controlled substances for pain control:

1. Evaluation of the Patient - A complete medical history and physical examination must be conducted and documented in the medical record. The medical record should document the nature and intensity of the pain, current and past treatments for pain, underlying or coexisting diseases or conditions, the effect of the pain on physical and psychological function, and history of substance abuse. The medical record also should document the presence of one or more recognized medical indications for the use of a controlled substance.

2. Treatment Plan - The written treatment plan should state objectives that will be used to determine treatment success, such as pain relief and improved physical and psychosocial function, and should indicate if any further diagnostic evaluations or other treatments are planned. After treatment begins, the physician should adjust drug therapy to the individual medical needs of each patient. Other treatment modalities or a rehabilitation program may be necessary depending on the etiology of the pain and the extent to which the pain is associated with physical and psychosocial impairment.

3. Informed Consent and Agreement for Treatment - The physician should discuss the risks and benefits of the use of controlled substances with the patient, persons designated by the patient or with the patient's surrogate or guardian if the patient is incompetent. The patient should receive prescriptions from one physician and one pharmacy where possible.

4. Periodic Review - At reasonable intervals based on the individual circumstances of the patient, the physician should review the course of treatment and any new information about the etiology of the pain. Continuation or modification of therapy should depend on the physician's evaluation of progress toward stated treatment objectives, such as improvement in patient's pain intensity and improved physical and/or psychosocial function, i.e., ability to work, need of health care resources, activities of daily living and quality of social life. If treatment goals are not being achieved, despite medication adjustments, the physician should reevaluate the appropriateness of continued treatment. The physician should monitor patient compliance in medication usage and related treatment plans.

5. Consultation - The physician should be willing to refer the patient as necessary for additional evaluation and treatment in order to achieve treatment objectives. The management of pain in patients with a comorbid psychiatric disorder may require extra care, monitoring, documentation and consultation with or referral to an expert in the management of such patients.

6. Medical Records - The physician should keep accurate and complete records to include the medical history and physical examination; diagnostic, therapeutic and laboratory results; evaluations and consultations; treatment objectives;

(Rule 1050-02-.13, continued)

discussion of risks and benefits; treatments; medications (including date, type, dosage and quantity prescribed); instructions and agreements; and periodic reviews. Records should remain current and be maintained in an accessible manner and readily available for review.

(c) No physician is required to provide treatment to patients with intractable pain with opiate medications but when refusing to do so shall inform the patient that there are physicians whose primary practice is in the treatment of severe, chronic, intractable pain with methods including the use of opiates. If the patient requests a referral to such a physician, and the physician makes such a referral that referral shall be noted in the patient's medical records.

(d) If a physician provides medical care for persons with intractable pain, with or without the use of opiate medications, to the extent that those patients become the focus of the physician's practice the physician must be prepared to document specialized medical education in pain management sufficient to bring the physician within the current standard of care in that field which shall include education on the causes, different and recommended modalities for treatment, chemical dependency and the psycho/social aspects of severe, chronic intractable pain.

(e) The treatment of persons with an acute or chronic painful medical condition who also require treatment for chemical dependency by a physician shall be governed by subsections T.C.A. § 63-6-1107 (c) and (d).

(6) Prerequisites to Issuing Prescriptions or Dispensing Medications - In Person, Electronically, and Over the Internet

(a) Except as provided in subparagraph (b), it shall be a prima facie violation of T.C.A. § 63-9-111 (b) (1), (4), and (11) for a physician to prescribe or dispense any drug to any individual, whether in person or by electronic means or over the Internet or over telephone lines, unless the physician, or his/her licensed supervisee pursuant to appropriate protocols or medical orders, has first done and appropriately documented, for the person to whom a prescription is to be issued or drugs dispensed, all of the following:

1. Performed an appropriate history and physical examination; and

2. Made a diagnosis based upon the examinations and all diagnostic and laboratory tests consistent with good medical care; and

3. Formulated a therapeutic plan, and discussed it, along with the basis for it and the risks and benefits of various treatments options, a part of which might be the prescription or dispensed drug, with the patient; and

4. Insured availability of the physician or coverage for the patient for appropriate follow-up care.

(b) A physician, or his/her licensed supervisee pursuant to appropriate protocols or medical orders, may prescribe or dispense drugs for a person not in compliance with subparagraph (a) in circumstances consistent with sound medical practice, examples of which are as follows:

1. In admission orders for a newly hospitalized patient; or

(Rule 1050-02-.13, continued)

2. For a patient of another physician for whom the prescriber is taking calls or for whom the prescriber has verified the appropriateness of the medication; or

3. For continuation medications on a short-term basis for a new patient prior to the patient's first appointment; or

4. For established patients who, based on sound medical practices, the physician feels do not require a new physical examination before issuing new prescriptions; or

5. In compliance with paragraph (9) of this rule.

(c) It shall be a prima facie violation of T.C.A. § 63-9-111 (b) (1), (4), and (11) for a physician, or his/her licensed supervisee pursuant to appropriate protocols or medical orders, to prescribe or dispense any drug to any individual for whom the physician, or his/her licensed supervisee pursuant to appropriate protocols or medical orders, has not complied with the provisions of this rule based solely on answers to a set of questions regardless of whether the prescription is issued directly to the person or electronically over the Internet or telephone lines.

(7) Amphetamines, Amphetamine-Like Substances, and Central Nervous System Stimulants.

(a) It shall be a prima facie violation of T.C.A. §§ 63-9-111 (b)(1) and 63-9-111 (b)(11) to prescribe, order, administer, sell or otherwise distribute any amphetamine drug except:

1. For treatment of the following:

(i) attention deficit disorder;

(ii) drug-induced brain dysfunction;

(iii) narcolepsy;

(iv) dementia or organic brain syndrome with severe psychomotor retardation;

(v) Chronic depression refractory to other drugs. Such diagnosis must be included on the prescription.

2. When the licensee has applied for and received from the Board of Osteopathic Examination a written approval for the clinical investigation of such drugs under a protocol satisfactory to the Board. Any such approval by the Board of Osteopathic Examination will be filed with the Board of Pharmacy and disseminated by the Board of Pharmacy to any pharmacy which would fill prescriptions written during the research.

(b) The list of amphetamine drugs governed by this rule includes the following controlled substances:

1. Amphetamine, its salts, optical isomers and salts of its optical isomers; (examples are Biphetamine, Dexadrine, Benzedrine and others).

2. Methamphetamine, its salts, isomers and salts of isomers; (an example is Desoxyn).

(Rule 1050-02-.13, continued)

3. Any salt, any type of isomer and salts of such isomers, or any chemical element or any mixture, compound, material or preparation, containing any quantity of any of the substances listed above or their salts, any type of isomers and salts of such isomers, or chemical elements are also governed by this rule.

(c) It shall be a prima facie violation of T.C.A. §§ 63-9-111 (b)(1) and 63-9-111 (b)(11) to prescribe, order, administer, sell or otherwise distribute any amphetamine-like substance listed below, except when the licensee has applied for and received from the Board of Osteopathic Examination a written approval for the clinical investigation of such drugs under a protocol satisfactory to the Board. Any such approval by the Board of Osteopathic Examination will be filed with the Board of Pharmacy and disseminated by the Board of Pharmacy to any pharmacy which would fill prescriptions written during the research.

1. The list of amphetamine-like substances governed by this rule are the following controlled substances:

(i) Phenmetrazine and its salts; (an example is Preludin)

(ii) Benzphetamine; (an example is Didrex)

(iii) Chlorphentermine; (an example is Pre Sate)

(iv) Phendimetrazine; (examples are Plegine, Bontril, Meltiat, Prelu-2, dipost, Wehles, and others)

(v) Diethylproprion; (examples are Tenuate and Tepanil)

(vi) Mazindol; (examples are Mazandor and Sanorex)

(vii) Phentermine; (examples Ionamin, Fastin, Adipex and others), except as authorized pursuant to T.C.A. § 63-6-214;

(viii) Fenfluramine HS; (an example Pondimin), except as authorized pursuant to T.C.A. § 63-6-214.

2. Any salt, any type of isomer and salts of such isomers, or any chemical element or any mixture, compound, material or preparation, containing any quantity of any of the substances listed above or their salts, any type of isomers and salts of such isomers, or chemical elements, except as authorized pursuant to T.C.A. § 63-6-214, are also governed by this rule.

(d) It shall be a prima facie violation of T.C.A. §§ 63-9-111 (b)(1) and 63-9-111 (b)(11) to prescribe, order, administer, sell or otherwise distribute any central nervous system stimulant listed below except:

1. For treatment of any of the following:

(i) attention deficit disorder;

(ii) drug-induced brain dysfunction;

(iii) narcolepsy;

(iv) dementia or organic brain syndrome with severe psychomotor retardation;

(Rule 1050-02-.13, continued)

(v) Chronic depression refractory to other drugs. Such diagnosis must be included on the prescription.

2. When the licensee has applied for and received from the Board of Osteopathic Examination a written approval for the clinical investigation of such drugs under a protocol satisfactory to the Board. Any such approval by the Board of Osteopathic Examination will be filed with the Board of Pharmacy and disseminated by the Board of Pharmacy to any pharmacy which would fill prescriptions written during the research.

(e) The list of central nervous system stimulants governed by this rule are the following controlled substances:

1. methylphenidate; (an example is Ritalin);

2. pemoline (including organometallic complexes and chelates thereof; an example is Cylert);

3. Any salt, any type of isomer and salts of such isomers, or any chemical element or any mixture, compound, material or preparation, containing any quantity of any of the substances listed above or their salts, any type of isomers and salts of such isomers, or chemical elements are also governed by this rule.

(8) Code of Ethics - The Board adopts, as if fully set out herein and to the extent that it does not conflict with state law, rules or Board Position Statements, as its code of medical ethics the "Code of Ethics" published by the A.O.A. as it may, from time to time, be amended.

(a) In the case of a conflict the state law, rules or position statements shall govern. Violation of the Board's code of ethics shall be grounds for disciplinary action pursuant to T.C.A. § 63-9-111 (b) (1).

(b) A copy of the A.O.A. "Code of Ethics" may be obtained from the American Osteopathic Association, 142 E. Ontario Street, Chicago, IL 60611 or by phone at (312) 202-8138.

(9) Treatment of Chlamydia trachomatis

(a) Purpose - This rule provides an acceptable deviation from the normal standard of care in the treatment of Chlamydia trachomatis (hereafter Ct) and provides a means for physicians to help reduce Tennessee's rate of Ct infection which currently exceeds the national rate by over ten percent (10%), and which, if left untreated, can cause serious health problems including pelvic inflammatory disease, ectopic pregnancies, infertility, cervical cancer and an increased risk of HIV infection. This rule will allow physicians and those over whom they exercise responsibility and control to provide an effective and safe treatment to the partners of patients infected with Ct who for various reasons may not otherwise receive appropriate treatment.

(b) For purpose of this rule "partner(s)" shall mean any person who comes into sexual contact with the infected patient during the sixty (60) days prior to the onset of patient's symptoms or positive diagnostic test results.

(c) Prerequisites - Physicians and those who provide medical services under their responsibility and control who have first documented all of the following in the medical records for patients may provide partner treatment pursuant to subparagraph (d) of this rule:

(Rule 1050-02-.13, continued)

1. A laboratory-confirmed Ct infection without evidence of co-infection with gonorrhea or other complications suggestive of a relationship to Ct infection; and

2. Provision of treatment of the patient for Ct; and

3. An attempt to persuade the infected patient to have all partners evaluated and treated and the patient indicated that partners would not comply; and

4. Provision of a copy of reproducible, department-provided Ct educational fact sheet or substantially similar Ct-related literature available from other professional sources to the patient with copies for all partners; and

5. Counseling the patient on sexual abstinence until seven (7) days after treatment and until seven (7) days after partners have been treated; and

(d) Partner Treatment - Upon documentation in the patient's medical records of all prerequisites in subparagraph (c) physicians or those who provide medical services under their responsibility and control may either:

1. Provide to the treated patient non-named signed prescriptions for, or dispense to the patient, the appropriate quantity and strength of azithromycin sufficient to provide curative treatment for the total number of unnamed "partners" as defined in subparagraph (b) and indicated by the patient.

2. Provide to the treated patient signed, name-specific prescriptions for, or dispense to the patient, the appropriate quantity and strength of azithromycin sufficient to provide curative treatment for the total number of known partners as defined in subparagraph (b) and named by the patient.

(10) Use of Laser Equipment - Any procedure encompassed within the definition of the practice of osteopathic medicine contained in T.C.A. § 63-9-106 that is to be performed by use of a laser shall be considered, except as provided in T.C.A. §§ 63-26-102 (5) and 63-6-204, to be the practice of osteopathic medicine.

(11) 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 "Osteopathic Physician," "Osteopathic Physician and Surgeon," "Doctor of Osteopathic Medicine," "Doctor of Osteopathy," or "D.O." and to practice osteopathic medicine, as defined in T.C.A. §§ 63-9-106. Any person licensed by the Board to whom this rule applies must use one of the titles authorized by this rule in every "advertisement" [as that term is defined in rule 1050-02-.11 (2) (a)] he or she publishes or the failure to do so will constitute an omission of a material fact which makes the advertisement misleading and deceptive and subjects the physician to disciplinary action pursuant to T.C.A. § 63-9-111(b) (1), (b) (3), (b) (10) and (b) (19).

(12) Practice of Interventional Pain Management as Defined and Restricted Pursuant to T.C.A. §63-9-121.

(a) For purposes of T.C.A. § 63-9-121(a)(2), a recent graduate who is not yet eligible to sit for board-certification by one of the boards listed in § 63-9-121(a)(1) may engage in interventional pain management provided the recent graduate is in a practice relationship with a supervising physician who does meet the qualifications of § 63-9-121(a)(1), as long as such practice relationship meets the following standards:

(Rule 1050-02-.13, continued)

1. The recent graduate must be an employee, associate or partner of the supervising physician;

2. During the first six months, the supervising physician must directly supervise the non-eligible, recent graduate in the performance of at least twenty-four interventional pain management procedures; and

3. The supervising physician shall make a personal review of no less than 10% of the recent graduate's procedures notes/charts on a quarterly basis and shall so certify by signature on the chart.

(b) The exemption provided under T.C.A. § 63-9-121(a)(2) and this rule for a recent graduate not yet eligible for board certification expires five years from the date of completion of the recent graduate's post-graduate medical training, at which time the non-eligible recent graduate must cease and desist such practice if board-certification pursuant to T.C.A. § 63-9-121(a)(1) has not been achieved and such practice may not be re-instituted until such board-certification is achieved.

(c) For purposes of T.C.A. § 63-9-121(a)(3), a physician who is board-certified in a different AOA, ABMS or ABPS/AAPS specialty than those listed in (a)(1) may practice interventional pain management upon successful completion of an ACGME pain fellowship or becoming board-certified through the American Board of Interventional Pain Physicians.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 53-10-201, et seq., 63-1-145, 63-1-146, 63-9-101, 63-9-106, 63-9-109, 63-9-111, ~~and~~ 63-9-116, and 63-9-121.* ***Administrative History:*** *Original rule filed April 10, 2000; effective June 24, 2000. Amendment filed April 10, 2000; effective June 24, 2000. Amendment filed January 28, 2002; effective April 13, 2002. Amendment filed October 2, 2002; effective December 16, 2002. Amendment filed October 23, 2002; effective January 6, 2003. Amendment filed May 28, 2003; effective August 11, 2003. Amendment filed October 6, 2005; effective December 20, 2005. Amendment filed March 22, 2007; effective June 5, 2007. Amendment filed October 21, 2008; effective January 4, 2009.*

1050-02-.14 UNIVERSAL PRECAUTIONS FOR THE PREVENTION OF HIV TRANSMISSION. The Board adopts, as if fully set out herein, rules 1200-14-03-.01 through 1200-14-03-.03 inclusive, of the Department of Health and as they may from time to time be amended, as its rule governing the process for implementing universal precautions for the prevention of HIV transmission for health care workers under its jurisdiction.

Authority: *T.C.A. §§4-5-202, 4-5-204, and 68-11-222.* ***Administrative History:*** *Original rule filed April 10, 2000; effective June 24, 2000.*

1050-02-.15 THE UTILIZATION AND SUPERVISION OF A CERTIFIED NURSE PRACTITIONER OR LICENSED PHYSICIAN ASSISTANT.

(1) Physician Assistants - The Tennessee Board of Osteopathic Examination adopts, as if fully set out herein, paragraph (30) of rule 0880-03-.01, rule 0880-03-.02 and rule 0880-03-.10 of the Board of Medical Examiners, and as they may from time to time be amended, as its rules governing an osteopathic physician's supervision of a licensed physician assistant.

(2) Nurse Practitioners - The Tennessee Board of Osteopathic Examination adopts, as if fully set out herein, rule 0880-06-.01 and rule 0880-06-.02 of the Board of Medical Examiners, and as they may from time to time be amended, as its rules governing an osteopathic physician's supervision of a certified nurse practitioner.

* 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)
Jill Robinson, DO	X				
Jeffrey Hamre, DO	X				
Donald H. Polk, DO	X				
Robert Fletcher Lance	X				
Karen R. Shepherd, DO	X				
Jack G. Pettigrew, DO	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Board of Osteopathic Examination (board/commission/ other authority) on 08/14/2013 (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: 05/24/13

Rulemaking Hearing(s) Conducted on: (add more dates). 08/14/13

Date: 3-4-14

Signature:

Name of Officer: Devin Wells

Title of Officer: Deputy General Counsel
Department of Health

Subscribed and sworn to before me on: 3-4-14

Notary Public Signature: Suzanne Mechkowski

My commission expires on: MY COMMISSION EXPIRES APRIL 19, 2017

SUMNER COUNTY TENNESSEE NOTARY PUBLIC SUZANNE MECHKOWSKI

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

Robert E. Cooper, Jr.
Attorney General and Reporter

4-14-14
Date

Department of State Use Only

RECEIVED 2014 APR 17 PM 3:31 OFFICE OF SECRETARY OF STATE

Filed with the Department of State on: 4/17/14

Effective on: 7/16/14

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Health
DIVISION:	Emergency Medical Services Board
SUBJECT:	Procedures for administering immunizations during declared disasters and emergencies.
STATUTORY AUTHORITY:	Tennessee Code Annotated, Title 68, Chapter 140, Part 3
EFFECTIVE DATES:	July 9, 2014 through June 30, 2015
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	The rule amendment renames Rule 1200-12-02: Disasters, Emergencies and Mass Casualty Events. The rule amendment adds authorization for emergency medical technician IVs (EMT-IVs), advance emergency medical technicians (AEMTs), paramedics and critical care paramedics (CCPs) to administer immunizations during emergency situations in vaccination clinics operated by state and local health departments in areas affected by the emergency so long as the designated health department provides training to the emergency personnel as well as direction and control.

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.

There were no public comments, either written or oral.

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 extent to which the rule or rule may overlap, duplicate, or conflict with other federal, state, and local governmental rules.

These rules do not overlap, duplicate, or conflict with other federal, state, or local governmental rules.

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

These rules exhibit clarity, conciseness, and lack of ambiguity.

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

These rules do not create flexible compliance and/or reporting requirements for small businesses.

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

These rules do not involve schedules or deadlines for compliance or reporting requirements for small businesses.

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

These rules do not consolidate or simplify compliance reporting requirements for small businesses.

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

These rules do not establish performance, design, or operational standards.

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

These rules do not create unnecessary barriers or stifle entrepreneurial activity or innovation.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

Name of Board, Committee or Council: Tennessee Emergency Medical Services Board

Rulemaking hearing date: 12/04/2013

1. **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:**

   Providers of emergency services, including EMT-IVs, AEMTs, and CCPs, along with state and local governmental health departments, will be subject to the proposed rule amendments. The providers will not be directly burdened with any costs as the designated health departments will be responsible for providing training, medical direction, and control.

2. **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:**

   Reporting, recordkeeping and other administrative costs will not be borne by providers. The designated health departments will be responsible for such costs associated with these rule amendments.

3. **Statement of the probable effect on impacted small businesses and consumers:**

   These rule amendments should not impact small businesses. Consumers of health department services, the residents of Tennessee, will be positively impacted by these rule amendments due to an increased number of emergency medical providers that will be able to administer immunizations during disasters, emergencies, and mass casualty events.

4. **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:**

   There are no less burdensome, less intrusive or less costly alternative methods of achieving the purpose of these rule amendments.

5. **Comparison of the proposed rule with any federal or state counterparts:**

   Federal: None

   State: 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.**

   The proposed amendments do not impose any requirements from which small businesses could be made exempt.

Impact on Local Governments

Pursuant to T.C.A. § 4-5-228(a), "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 financial impact on local governments."

The proposed rule amendments should not have a financial impact on local governments.

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

For Department of State Use Only

Sequence Number: 04-13-14
Rule ID(s): 5696
File Date: 4/10/14
Effective Date: 7/9/14

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 Health
Division:	Emergency Medical Services
Contact Person:	Keith D. Hodges
Address:	665 Mainstream Drive, Nashville, Tennessee
Zip:	37234
Phone:	(615) 741-8218
Email:	Keith.D.Hodges@tn.gov

Revision Type (check all that apply):

X Amendment
X New
___ Repeal

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

Chapter Number	**Chapter Title**
1200-12-02	Procedures for Administering Chemical Agent Antidotes in Emergency Situations
Rule Number	**Rule Title**
1200-12-02-.06	Immunizations During Declared Disasters and Emergencies

RULES
OF
THE TENNESSEE DEPARTMENT OF HEALTH
BUREAU OF HEALTH LICENSURE AND REGULATION
DIVFISION OF EMERGENCY MEDICAL SERVICES

Formatted

CHAPTER 1200-12-02
~~PROCEDURES FOR ADMINISTERING CHEMICAL AGENT ANTIDOTES IN EMERGENCY SITUATIONS~~

DISASTERS, EMERGENCIES AND MASS CASUALTY EVENTS

TABLE OF CONTENTS

1200-12-02-.01 Introduction
1200-12-02-.02 Definitions
1200-12-02-.03 Procedures
1200-12-02-.04 Reports
1200-12-02-.05 Notification
1200-12-02-.06 Immunizations During Declared Disasters and Emergencies

Formatted: Font color: Blue

Formatted Table

1200-12-2-.01 INTRODUCTION.

(1) During the response to emergency situations such as those precipitated by a terrorist event, emergency responders or persons may encounter patients or suffer self-exposure to toxic chemical agents requiring the immediate administration of antidotes or medications to preserve and sustain life and vital functions. Upon the exposure to a significant risk, this rule authorizes emergency treatment by use of autoinjection or intramuscular injection of such antidotes or medications as shall be approved by the Board or the State Medical Officer.

Authority: *T.C.A. §4-5-202, 4-5-203, 4-5-204, 68-140-503, 68-140-504, 68-140-509, and 68-140-510.* ***Administrative History:*** *Original rule filed January 4, 2005; effective March 20, 2005.*

1200-12-2-.02 DEFINITIONS. Within the meaning of this rule:

(1) "Emergency responder" – Emergency responder means emergency medical technicians, paramedics, fire fighters, emergency medical first response workers, law enforcement and other public safety officials or volunteers making an authorized response or rendering emergency care at the scene of an emergency.

(2) "Exposure" – Exposure means the presence of an injurious agent in such circumstances that life threatening symptoms may reasonably be anticipated, and that such situations impose an immediate threat to life.

Authority: *T.C.A. §4-5-202, 4-5-203, 4-5-204, 68-140-503, 68-140-504, 68-140-509, and 68-140-510.* ***Administrative History:*** *Original rule filed January 4, 2005; effective March 20, 2005.*

1200-12-2-.03 PROCEDURES.

(1) EMS personnel or emergency responders may utilize or administer the antidotes or medications upon the availability of antidote kits or means to administer antidotes or other medications approved for intramuscular injection or autoinjection by the Board or the Commissioner of Health.

Authority: *T.C.A. §4-5-202, 4-5-203, 4-5-204, 68-140-503, 68-140-504, 68-140-509, and 68-140-510.* ***Administrative History:*** *Original rule filed January 4, 2005; effective March 20, 2005.*

1200-12-2-.04 REPORTS.

(1) Upon the administration of such antidotes or medication by autoinjection or intramuscular injection during an emergency situation, the time and use of such antidotes or medications shall be reported to the appropriate medical personnel assuming care for the patient.

Authority: *T.C.A. §4-5-202, 4-5-203, 4-5-204, 68-140-503, 68-140-504, 68-140-509, and 68-140-510.* ***Administrative History:*** *Original rule filed January 4, 2005; effective March 20, 2005.*

1200-12-2-.05 NOTIFICATION

(1) Upon a situation or event involving suspected chemical agents or other toxic substances responding personnel shall immediately notify an emergency dispatch center and inform appropriate public safety and health officials.

Authority: *T.C.A. §4-5-202, 4-5-203, 4-5-204, 68-140-503, 68-140-504, 68-140-509, and 68-140-510.* ***Administrative History:*** *Original rule filed January 4, 2005; effective March 20, 2005.*

1200-12-02-.06 Immunizations During Declared Disasters and Emergencies.

(1) Notwithstanding any rule to the contrary, during declared disasters and emergencies under T.C.A. § 58-2-101, et. seq., emergency medical technician-IVs (EMT-IVs), advanced emergency medical technicians (AEMTs), paramedics and critical care paramedics (CCPs) may administer immunizations to the public in vaccination clinics operated by State or local health departments in areas covered by the order(s) declaring the disaster or emergency, subject to the following conditions:

Formatted: Justified

(a) Public health departments shall provide required, "just-in-time" training for vaccination clinics and document successful completion by EMT-IVs, AEMTs, paramedics or CCPs prior to their administering immunizations in the vaccination clinic.

(b) Public health departments shall provide medical direction and control for EMT-IVs, AEMTs, paramedics and CCPs at clinics.

Authority: T.C.A. §§ 68-140-303, 68-140-304, 68-140-309, and 68-140-310.

* 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)
Sullivan K. Smith, MD	✓				
Timothy Bell	✓				
Ralph Brooks, MD	✓				
Jeffrey L. Davis	✓				
Richard Holliday	✓				
Larry Hutsell				✓	
Kevin Mitchell	✓				
James E. Ross	✓				
Stephen Sutton	✓				
Robert W. Thurman, Jr.	✓				
Robert A. Webb	✓				
Tyler White	✓				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Emergency Medical Services Board on 12/04/2013, 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: 10/11/13

Rulemaking Hearing(s) Conducted on: (add more dates). 12/04/13

Date: 1-28-14

Signature:

Name of Officer: Keith D. Hodges

Title of Officer: Assistant General Counsel
Department of Health

Subscribed and sworn to before me on: 1-28-14

Notary Public Signature: Suzanne Mechkowski

My commission expires on: MY COMMISSION EXPIRES APRIL 19, 2017

SUZANNE MECHKOWSKI
STATE OF TENNESSEE NOTARY PUBLIC
SUMNER COUNTY

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

Robert E. Cooper, Jr.
Attorney General and Reporter

4-8-14
Date

Department of State Use Only

Filed with the Department of State on: 4/10/14

Effective on: 7/9/14

Tre Hargett
Secretary of State

RECEIVED
2014 APR 10 PM 4:18
OFFICE OF
SECRETARY OF STATE

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Board of Trustees of the Baccalaureate Education System
SUBJECT:	Educational Savings Plan
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 49-7-805
EFFECTIVE DATES:	September 28, 2014 through June 30, 2015
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	Current rules on Account Maintenance (1700-05-04-.05) and Withdrawals (1700-05-04-.06) are amended to change the waiting period for withdrawals from an eligible college savings plan account or an account established pursuant to §529 for the Internal Revenue Code. Current rules provide that before funds may be withdrawn for a new beneficiary or for a non-qualified higher education expense to an account purchaser, the funds must be on deposit in the account for at least 60 calendar days in order to ensure that the money transfer from the purchase to the § 529 college savings account is complete. The proposed rules shorten the period, in which the funds must be on deposit in the account from 60 days to 21 days, resulting in purchasers being able to withdraw funds within a shorter period of time. Current rules also provide that a purchaser may withdraw funds from his or her § 529 college savings account in the event that the redemption value of the account is $100 or less and contributions have not been deposited into the beneficiary's account for a period of at least 60 consecutive days. The proposed rules change the 60 day period to 21 days.

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)

It is not anticipated that the rule amendments will impact local governments.

Additional Information Required by Joint Government Operations Committee

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

For Department of State Use Only

Sequence Number: 04-16-14
Rule ID(s): 5699
File Date: 4/11/14
Effective Date: 9/28/14

Proposed Rule(s) Filing Form

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

Agency/Board/Commission:	Board of Trustees of the Baccalaureate Education System
Division:	
Contact Person:	LaKesha Page, Board Administrator
Address:	502 Deaderick Street, Andrew Jackson Building, 15th Floor, Nashville, Tennessee
Zip:	37243
Phone:	(615) 532-5888
Email:	LaKesha.Page @tn.gov

Revision Type (check all that apply):
x 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**
1700-05-04	Educational Savings Plan
Rule Number	**Rule Title**
1700-05-04-.05	Account Maintenance
1700-05-04-.06	Withdrawals

Chapter Number	**Chapter Title**
Rule Number	**Rule Title**

RULES
OF
THE TREASURY DEPARTMENT
TENNESSEE BACCALAUREATE EDUCATION SYSTEM TRUST BOARD

CHAPTER 1700-05-04
EDUCATIONAL SAVINGS PLAN

TABLE OF CONTENTS

1700-05-04-.01	In General	1700-05-04-.06	Withdrawals
1700-05-04-.02	Board Operations	1700-05-04-.07	Reporting and Notice
1700-05-04-.03	Enrollment	1700-05-04-.08	Contract Designations May Not be Defeated by Will
1700-05-04-.04	Contributions		
1700-05-04-.05	Account Maintenance	1700-05-04-.09	Plan Termination

1700-05-04-.01 IN GENERAL.

(1) Purpose. T.C.A., Title 49, Chapter 7, Part 8 created the Tennessee Baccalaureate Education System Trust Act. The Act creates a tuition program, as an agency and instrumentality of the State of Tennessee, under which parents and other interested persons may assist students in saving for the tuition cost of attending colleges and universities. The tuition program is comprised of two (2) types of tuition plans: the Educational Savings Plan and the Educational Services Plan. The purpose of these rules is to establish requirements for participation, and administration of the Educational Savings Plan as required by and consistent with the Act. The requirements for participation, and administration of the Educational Services Plan are set forth in Chapter 1700-05-01 of the Official Compilation of the Rules and Regulations of the State of Tennessee.

(2) Definitions. For purposes of these rules:

(a) "Academic Term" means the school segment consisting of a single semester, quarter, term or equivalent.

(b) "Account" means the record that contains the amount of contributions maintained on behalf of a Beneficiary under a Contract, plus the earnings or losses incurred thereon, including any Withdrawals made from the Account.

(c) "Beneficiary" means an individual designated under a Contract as the individual entitled to apply contributions and earnings accrued under the Contract to the payment of that individual's undergraduate, graduate and professional Qualified Higher Education Expenses as defined in 1700-05-04-.01(2)(p) below.

(d) "Board" has the same meaning as given in T.C.A. § 49-7-802(2), which is comprised of the members described in T.C.A. § 49-7-804(a).

(e) "Contract" means an Educational Savings Plan tuition contract entered into under T.C.A. § 49-7-808 by the Board and a Purchaser to provide for the payment of Qualified Higher Education Expenses, as such term is defined in Rule 1700-05-04-.01(2)(p), below.

(f) "Educational Savings Plan" means a plan which permits individuals, associations, corporations, trusts and other organized entities to make contributions to an Account that is established by a Purchaser for a designated Beneficiary.

(g) "Educational Services Plan" means a plan which permits individuals, associations, corporations, trusts and other organized entities to purchase a tuition unit or units

(Rule 1700-05-04-.01, continued)

under a tuition contract entered into between a purchaser and the Board on behalf of a designated beneficiary that entitles the beneficiary to apply such units to the payment of that beneficiary's tuition and other educational costs as set forth in Chapter 1700-05-01 of the Official Compilation of the Rules and Regulations of the State of Tennessee. The requirements for participation, and administration of the Educational Services Plan are set forth in Chapter 1700-05-01 of the Official Compilation of the Rules and Regulations of the State of Tennessee.

(h) "Institution of Higher Education" has the same meaning as "eligible educational institution" under Section 529 of the Internal Revenue Code.

(i) "Legally Incompetent" means that an individual has been declared incompetent by a court of law. An individual shall not be considered to be Legally Incompetent unless proof thereof is furnished in such form and manner as the Board may require.

(j) "Member of the Family" has the same meaning as "member of the family" under the sections of the Internal Revenue Code which are applicable to the Program.

(k) "New Beneficiary" means an individual to whom rights under the Contract have been transferred pursuant to Rule 1700-05-04-.05.

(l) "Permanent Disability" means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration. An individual shall not be considered to have a Permanent Disability unless proof is furnished of the existence thereof from a health care professional in such form and manner as the Board may require. The Board must approve any finding of a Permanent Disability.

(m) "Program" means the two (2) types of tuition plans authorized under the Act (the Educational Savings Plan and the Educational Services Plan), and the statutes, rules and policies of the Board that outline the requirements for participation in the Tennessee Baccalaureate Education System Trust Program, as all such materials may be revised or amended from time to time.

(n) "Purchaser" means an individual, association, corporation, trust or other organized entity who enters into a Contract for the creation and deposit of contributions to an Account on behalf of a Beneficiary and who controls all aspects of the Account, or in the case of the Purchaser's death or Legal Incompetence, the Purchaser's Appointee. Only one (1) individual, association, corporation, trust or other organized entity may be named as the Contract Purchaser.

(o) "Purchaser's Appointee" means the person who is named in the Contract by the Purchaser to exercise the rights of the Purchaser under the Contract if the Purchaser dies or becomes Legally Incompetent. The Purchaser's Appointee may be the Beneficiary. The Purchaser may change the designation at any time in writing to the Board. If the Purchaser dies or becomes Legally Incompetent, the Purchaser's Appointee shall automatically become the Purchaser for purposes of these Rules and the Contract, including, but not limited to, Rule 1700-05-04-.01(2)(r).

(p) "Qualified Higher Education Expenses" has the same meaning as given under Section 529 of the Internal Revenue Code and the regulations promulgated thereunder.

(q) "Redemption Value" means the current cash value of an Account attributable to the sum of the principal invested, and the earnings or losses incurred thereon.

(Rule 1700-05-04-.01, continued)

(r) "Refund Recipient" means the person entitled to terminate the Contract and to receive refunds arising out of the Contract. The Refund Recipient may only be the Purchaser.

(s) "Termination" means a discontinuance of the right to receive tuition payments or other benefits under a Contract.

(t) "Withdrawal" means a disbursement of funds from the Account that is directed by the Purchaser to be paid to the Purchaser, an Institution of Higher Education, or the Beneficiary.

Authority: *T.C.A. §§ 49-7-805, 49-7-802, 49-7-803, 49-7-807, 49-7-808, 49-7-809, 49-7-811, and 49-7-812.* ***Administrative History:*** *Emergency rule filed December 29, 2011; effective through June 26, 2012. New rule filed December 29, 2011; effective May 30, 2012.*

1700-05-04-.02 BOARD OPERATIONS.

(1) Meetings.

(a) How Called. The Board shall meet at the call of the Chair or upon written request to the Chair by four (4) members of the Board. Unless circumstances prevent, the Secretary shall notify members of the date, time and location of each meeting at least two (2) days prior to the date of the meeting. Notice of the Board meetings shall be posted in the Legislative Plaza by the Board Secretary at least forty-eight (48) hours prior to any Board meeting.

(b) Telephone Conference. The Board may meet by telephone conference call upon a determination by the Board that the matters to be considered at that meeting require timely action by the Board, that physical presence by a quorum of the members is not practical within the period of time requiring action, and that participation by a quorum of the members by telephone is, therefore, necessary. Such determination, and a recitation of the facts and circumstances on which it is based, must be included in the minutes of the meeting and filed with the Office of the Secretary of State as prescribed in T.C.A. § 8-44-108. Unless circumstances prevent, the Board Secretary shall notify members of the date, time and location of any telephone conference meeting at least two (2) hours prior to the time of the telephone conference call. Notice of any meeting by telephone conference call shall be posted in the Legislative Plaza at least two (2) hours prior to any such meeting and shall state that the meeting will be conducted with some members participating by telephone. Any meeting held by telephonic means must comply with the provisions of T.C.A. § 8-44-108. Any member of the Board participating in a meeting by telephone shall be deemed present at the meeting for purposes of quorum requirements and voting, but not for purposes of determining travel expense reimbursement eligibility.

(c) Quorum. Five (5) members of the Board shall constitute a quorum for the transaction of business at a meeting of the Board. Voting upon action taken by the Board shall be conducted by a majority vote of the members present at the meeting of the Board; provided five (5) Board members are present at the meeting.

(2) Board Officers.

(a) Chair. The State Treasurer shall serve as Chair of the Board. The Chair shall preside at meetings of the Board and, together with the Board Secretary, set the agenda for each meeting. If the Chair is unable to attend a meeting of the Board, the Chair shall designate another member of the Board to preside at the meeting. The Chair shall have other duties and powers as may be assigned by the Board by majority vote.

(Rule 1700-05-04-.02, continued)

(b) Secretary. The Manager of the Tennessee Baccalaureate Education System Trust Division of the Treasury Department shall be the Board Secretary. The Secretary shall keep an accurate record of the proceedings and actions of the Board. Together with the Chair, the Secretary shall set the agenda for each meeting, notify Board members and the public of meetings and distribute appropriate materials to Board members.

(3) Delegation to State Treasurer. The Board hereby delegates to the State Treasurer the duty to carry out the day-to-day operations and responsibilities of the Educational Savings Plan, including, but not limited to, the duty to prescribe and approve the terms and conditions of any payroll deduction agreement authorized pursuant to T.C.A. § 49-7-805. In exercising such delegation, the State Treasurer shall be authorized to exercise such powers as are vested in the Board which are necessary to fulfill the delegated duties and responsibilities, and may assign any such duties and responsibilities to his staff as he deems necessary and proper. The State Treasurer may also contract for the provision of all or any part of the services necessary for the management and operation of the Plan, provided the State Treasurer or his staff is actively involved on an ongoing basis in the administration of the Plan.

Authority: *T.C.A. §§ 49-7-805 and 49-7-804.* ***Administrative History:*** *Emergency rule filed December 29, 2011; effective through June 26, 2012. New rule filed December 29, 2011; effective May 30, 2012.*

1700-05-04-.03 ENROLLMENT.

(1) Requirements. The Purchaser must fully complete the Contract, including all required signatures, and return the signed Contract to the Board to open an Account in the Educational Savings Plan. A Contract shall not become binding upon the Board and the Purchaser unless it is complete and until all of the following occur:

(a) Investment Selection. The Purchaser must select at least one investment option. If more than one investment option is chosen, the Purchaser must allocate the contribution among the chosen investment options. The Board may limit the number of investment options that a Purchaser may choose under any one single Contract;

(b) Initial Contribution. Receipt by the Board of an initial contribution of at least twenty-five dollars ($25.00) for each investment option chosen by the Purchaser. All contributions to an Account hereunder may be made only in cash and not in property. For purposes of these Rules, "cash" means United States dollars in the form of negotiable checks (other than travelers checks, cashiers checks, starter checks and credit card convenience checks), and payments made through payroll deductions or other similar methods acceptable to the Board;

(c) Board Acceptance. Acceptance of the signed Contract by the Board; and

(d) To enable the Board to comply with the record keeping and reporting requirements of the Internal Revenue Code, disclosure of the Social Security numbers requested in the Contract is mandatory. In the case of newborns who do not yet have a Social Security number, the Board will accept the Contract conditionally for thirty (30) calendar days of receipt of the proposed Contract.

(2) Confirmation. Upon acceptance of the Contract, the Board will send a confirmation of acceptance to the Purchaser and will credit the Account of the named Beneficiary with the amount of the initial contribution made.

(3) Rejection. If a Purchaser fails to provide all the information required in Paragraph (1) of this Rule within thirty (30) calendar days of the Board's receipt of the proposed Contract, the Board may reject the proposed Contract and refund to the Purchaser all amounts paid

(Rule 1700-05-04-.03, continued)

thereunder, less any applicable fees. Rejection of a Contract shall not preclude the Purchaser from enrolling in the Program in the future.

(4) Fraud. The Board may, at its sole discretion, terminate the Contract if the Beneficiary, the Purchaser, or the Purchaser's Appointee knowingly makes any false statement, or falsifies or permits to be falsified any record or records of the Program. The amount of the refund to which the Purchaser is entitled under this Paragraph (4) shall be equal to the Redemption Value of the Account at the time the refund is made, minus any applicable fee charged by the Board.

(5) Inactivity. If a period of ten (10) consecutive years passes with no contributions having been made to the Beneficiary's Account or with no correspondence from the Beneficiary, Purchaser or the Purchaser's Appointee, the Board shall report and deliver the amount of any refund payable under the Contract to the State Treasurer pursuant to T.C.A., Title 66, Chapter 29, Part 1. Prior to delivering the refund to the State Treasurer, the Board will make reasonable efforts to locate the Purchaser, Beneficiary, and the Purchaser's Appointee. The refund shall be equal to the Redemption Value of the Account at the time the refund is delivered, minus any applicable fee charged by the Board. The ten-year period shall not commence any earlier than the year the Beneficiary becomes eighteen (18) years of age, or the year the Account was established, whichever is later. Upon payment of the refund to the State Treasurer, the Board's obligations under the Contract shall cease.

(6) Fees. The Board may charge fees to the Purchaser and/or collect fees from each Account for administration of the Program or for transactions under the Educational Savings Plan.

(7) Separate Accounting. The Board will maintain a separate individual account for each Contract, showing the name of the Beneficiary and the Redemption Value of the Account, including any Withdrawals made from the Account.

Authority: *T.C.A. §§ 49-7-805, 49-7-802, 49-7-806, 49-7-808, 49-7-809 and 49-7-812.* ***Administrative History:*** *Emergency rule filed December 29, 2011; effective through June 26, 2012. New rule filed December 29, 2011; effective May 30, 2012.*

1700-05-04-.04 CONTRIBUTIONS.

(1) Who May Make Contributions. Contributions may be made for an existing Account by individuals or sources other than the Purchaser thereof as provided under Section 529 of the Internal Revenue Code. However, all contributions once made to an individual Account are pooled and are subject to the terms and conditions of the applicable Contract.

(2) How Contributions May be Made. Contributions may be made only in cash and not in property. For purposes of these Rules, "cash" has the meaning given in Rule 1700-05-04-.03(1)(b) above. Contributions may also be made by rollover of funds from another qualified tuition program established under Section 529 of the Internal Revenue Code by making a written rollover request to the Board on such forms as may be prescribed by the Board.

(3) Limit on Amount of Contributions. Subject to Section 529 of the Internal Revenue Code and the regulations promulgated thereunder, an individual may have both an Educational Savings Plan tuition contract as described in these Rules and an Educational Services Plan tuition contract as described in Chapter 1700-05-01 of the Official Compilation of the Rules and Regulations of the State of Tennessee on behalf of the same Beneficiary. In addition, more than one individual may have an Educational Savings Plan tuition contract, an Educational Services Plan tuition contract, or both, on behalf of the same Beneficiary. Provided, however, that no additional contributions can be made to any contract on behalf of the same Beneficiary if at the time of the proposed contribution the total account balance of all contracts on behalf of the same Beneficiary total a certain dollar amount as determined by

(Rule 1700-05-04-.04, continued)

majority vote of the Board pursuant to Rule 1700-05-04-.02(1)(c). Such dollar amount will be set by the Board on an annual basis and shall not exceed the amount determined by actuarial estimates to be necessary to pay Qualified Higher Education Expenses for seven (7) years of undergraduate enrollment at the highest cost Institution of Higher Education.

(4) No Guarantee of Acceptance nor Residency Status. Contributions to an Account hereunder do not guarantee that the Beneficiary will be accepted into an Institution of Higher Education, that the Beneficiary will graduate from an Institution of Higher Education, nor do contributions to an Account guarantee status as a resident for determining the rate of tuition charged by an Institution of Higher Education.

Authority: *T.C.A. §§ 49-7-805, 49-7-806, 49-7-808, 49-7-809, and 49-7-810.* ***Administrative History:*** *Emergency rule filed December 29, 2011; effective through June 26, 2012. New rule filed December 29, 2011; effective May 30, 2012.*

1700-05-04-.05 ACCOUNT MAINTENANCE.

(1) Update Account Information. The Purchaser may make changes and updates to the Account information as needed. These changes include, but are not limited to, addresses, legal name changes, phone numbers, e-mail addresses, and changes to the designation of the Purchaser's Appointee. The changes must be provided in writing or via electronic means acceptable to the Board.

(2) Change of Beneficiary. Subject to the conditions set forth in Paragraph (5) below, the Purchaser shall have the right to change the Beneficiary of the Account at any time provided the New Beneficiary is a "Member of the Family" of the original Beneficiary, as such term is defined in Rule 1700-05-04-.01(2)(j). If the Board has chosen to charge an application fee pursuant to Rule 1700-05-04-.03(6), then an application fee must be paid to change the Beneficiary of the Account.

(3) Reallocation of Funds Among Investment Options. Subject to the conditions set forth in Paragraph (5) below, the Purchaser shall have the right at any time to reallocate funds among investment options under a Contract held for a single Beneficiary provided there is at least twenty-five dollars ($25.00) in each surviving investment option at the conclusion of the reallocation.

(4) Transfer of Account Funds. Subject to the conditions set forth in Paragraph (5) below, the Purchaser shall have the right at any time to transfer all or a portion of the funds in the Beneficiary's Account to an Account for a different Beneficiary provided the New Beneficiary is a "Member of the Family" of the original Beneficiary, as such term is defined in Rule 1700-05-04-.01(2)(j). If the transfer is for a portion of funds in the original Account, the transfer will be permitted so long as at the time the transfer is completed by the Board the existing Beneficiary and the new Beneficiary will each have at least twenty- five dollars ($25.00) in their respective accounts. If the New Beneficiary does not have an existing Account and if the Board has chosen to charge an application fee pursuant to Rule 1700-05-04-.03(6), then an application fee must also be paid to open the new Account for the New Beneficiary. In addition and subject to the conditions set forth in Paragraph (5) below, the Purchaser shall have the right to transfer all or a portion of the funds in the Beneficiary's Account to another account held for the same Beneficiary. If the Board has chosen to charge a transfer fee pursuant to Rule 1700-05-04-.03(6), then a transfer fee must be paid to transfer the funds.

(5) Conditions. Any change of Beneficiary, reallocation of funds among investment options, or transfer of funds under this Rule is subject to the following conditions:

(a) The request must be made in writing, signed by the Purchaser and, if applicable, must state the name and Social Security number of the proposed New Beneficiary. If the

(Rule 1700-05-04-.05, continued)

request is for the reallocation of funds among investment options, the written request must specify the dollar amount to be reallocated and the selected investment option(s). If the request is for a transfer of funds to an existing Account, the written request must state the Account number to which the transfer is to be made;

(b) Payment of any applicable fees charged by the Board pursuant to Rule 1700-05-04-.03(6);

(c) The Purchaser certifies in writing that no payment other than the above fees paid to the Board has been or will be made to anyone for a change of beneficiary or transfer of funds; and

(d) Transfers or changes in Beneficiaries under this Rule shall not be permitted to the extent that they would constitute excess contributions under Rule 1700-05-04-.04(3).

(6) Eligibility for Use. Any funds in the Account of a New Beneficiary may be used immediately, provided the funds have been on deposit in the original Beneficiary's Account for the ~~sixty-day~~twenty-one (21) day period prescribed in Rule 1700-05-04-.06(1) below.

(7) Limit on Reallocation of Funds Among Investment Options. The Purchaser may reallocate funds among investment options once per calendar year or at such other times as permitted under Section 529 of the Internal Revenue Code and the regulations promulgated thereunder.

Authority: *T.C.A. §§ 49-7-805, 49-7-808, and 49-7-809.* ***Administrative History:*** *Emergency rule filed December 29, 2011; effective through June 26, 2012. New rule filed December 29, 2011; effective May 30, 2012.*

1700-05-04-.06 WITHDRAWALS.

(1) Eligibility. Once a Beneficiary has been accepted for enrollment in an Institution of Higher Education, the Purchaser may begin using funds on deposit in the Account for the payment of Qualified Higher Education Expenses of the Beneficiary. For purposes of these Rules, including for any payments or refunds provided for in Rule 1700-05-04-.06(4) below, funds shall not be deemed on deposit in the Account until the ~~sixtieth-day~~twenty-first (21st) day following receipt of the respective funds by the Board. If the Purchaser desires the Board to send payment directly to the Institution of Higher Education where the Beneficiary is enrolled, the notification must include the name and address of the Institution and the amount of funds needed to pay the Qualified Higher Education Expenses. Failure to provide sufficient notice prior to the start of the Academic Term in which the funds would be used may result in an untimely payment being made to the Institution.

(2) Written Request. Any Withdrawal requests must be made in writing by the Purchaser or via other means acceptable to the Board, including electronic means.

(3) Amount and Timing of Withdrawal. Subject to Rules 1700-05-04-.06(4) and 1700-05-04-.09 below, the Withdrawal amount will equal the amount requested, not to exceed the Redemption Value of the Beneficiary's Account at the time the Withdrawal is processed. The Withdrawal amount will be paid within sixty (60) calendar days of receipt by the Board of the request required in Subparagraph (2) of this Rule above.

(4) Types of Withdrawals.

(a) Withdrawals for Qualified Higher Education Expenses. The Purchaser may direct payment to the Purchaser, the Beneficiary, or an Institution of Higher Education as an advance payment or as reimbursement for Qualified Higher Education Expenses.

(Rule 1700-05-04-.06, continued)

Third party documentation to substantiate the request shall not be required unless otherwise provided for in Section 529 of the Internal Revenue Code or the regulations promulgated thereunder.

(b) Withdrawals for Non-Qualified Higher Education Expenses. The Purchaser may direct a Withdrawal from the Account for the payment of non-Qualified Higher Education Expenses provided the funds have been on deposit in the Account for at least ~~sixty (60)~~twenty-one (21) calendar days and provided there is at least one hundred dollars ($100.00) in the Account once the Withdrawal is made. Such a Withdrawal may be made without causing termination of the Contract and without requiring the Refund Recipient to establish that the Withdrawal will be used for Qualified Higher Education Expenses. The earnings portion of Withdrawals made for non-Qualified Higher Education Expenses could be subject to federal taxation as prescribed under the sections of the Internal Revenue Code and the regulations promulgated thereunder which are applicable to the Program.

(c) Scholarship Refund. If a Beneficiary is the recipient of a scholarship, allowance or payment described in Section 25A(g)(2) of the Internal Revenue Code that the Board determines cannot be converted into money by the Beneficiary, the Purchaser may request a Withdrawal of all or a portion of the funds in the Account. The Purchaser must furnish information about the scholarship, allowance or payment to the Board. If the scholarship, allowance or payment has a duration that extends beyond one (1) Academic Term, the Purchaser may request a refund in advance of the scholarship payment. The amount of the refund payable to the Purchaser will be equal to the Redemption Value of the Beneficiary's Account that is not needed to cover the future Qualified Higher Education Expenses on account of the scholarship, allowance or payment minus any applicable fee(s) charged by the Board.

(d) Contract Termination and Refund. Except as provided in Paragraph 4 (c) of this Rule above, a Contract may not be terminated for any reason except under one of the following circumstances: (i) the Beneficiary has died or suffers from a Permanent Disability; (ii) the Beneficiary is age eighteen (18) or older and has decided not to attend an Institution of Higher Education; (iii) the Beneficiary has completed the requirements for a degree that is less than a bachelor's degree at an Institution of Higher Education and the Beneficiary does not plan to pursue further education; (iv) the Beneficiary has completed the bachelor's degree requirements at an Institution of Higher Education; or (v) the Redemption Value of the Account equals one hundred dollars ($100.00) or less and no contributions have been deposited to the Beneficiary's Account for a period of at least ~~sixty (60)~~twenty-one (21) consecutive days. The Contract termination request must be accompanied with documentation acceptable to the Board to substantiate the reason for Contract termination. In the event a Contract is terminated due to the Permanent Disability or death of the Beneficiary, the amount of the refund paid to the Purchaser shall be equal to the Redemption Value of the Account at the time the refund is made. In the event a Contract is terminated under any of the conditions described in items (ii) – (v) above, the amount of the refund paid to the Refund Recipient shall be equal to the Redemption Value of the Account at the time the refund is made, minus any applicable fee charged by the Board. The Actual termination of the Contract will not occur until all funds in the Beneficiary's Account have been refunded.

(e) Rollovers out of the Program. The Purchaser may rollover all or a portion of the funds in the Beneficiary's Account to an account established for the same Beneficiary or another Beneficiary under another qualified tuition program established under Section 529 of the Internal Revenue Code by making a rollover request to the Board on such forms as may be prescribed by the Board. If the rollover is for the benefit of another Beneficiary, the Beneficiary to whose Account the funds are being transferred must be

(Rule 1700-05-04-.06, continued)

a "Member of the Family" of the original Beneficiary, as such term is defined in Rule 1700-05-04-.01(2)(j). Any rollover under this Rule shall be administered in accordance with the applicable rollover provisions of the Internal Revenue Code. Any rollover made under this Paragraph shall be equal to the amount requested, not to exceed the Redemption Value of the Beneficiary's Account, minus any applicable fees charged by the Board pursuant to Rule 1700-05-04-.03(6) above. The Redemption Value of the Account shall be determined as of the date the rollover is made.

Authority: *T.C.A. §§ 49-7-805, 49-7-809, 49-7-811, and 49-7-812.* ***Administrative History:*** *Emergency rule filed December 29, 2011; effective through June 26, 2012. New rule filed December 29, 2011; effective May 30, 2012.*

1700-05-04-.07 REPORTING AND NOTICE.

(1) Reporting. A statement listing the activity, selected investment options, and Redemption Value of the Account will be sent to the Purchaser periodically. The frequency of such statements will be set by the Board. If a payment has been made from an Account, the Board will report to the Beneficiary or the Purchaser, whichever is applicable, information about such payments to assist in determining that person's tax liability. The report will be furnished by no later than January 31st of the calendar year following the calendar year in which the payment was made. Disclosure documents will also be prepared by the Program and made available to the Purchaser prior to the Purchaser opening an Account.

(2) Notice. Notice from the Program or Board, including but not limited to, Account statements, tax forms, and information about the Program, a Contract or an Account, may be in any form acceptable to the Board, which may include, but may not limited to, notice and reporting by electronic means.

Authority: *T.C.A. §§ 49-7-805, and 49-7-809.* ***Administrative History:*** *Emergency rule filed December 29, 2011; effective through June 26, 2012. New rule filed December 29, 2011; effective May 30, 2012.*

1700-05-04-.08 CONTRACT DESIGNATIONS MAY NOT BE DEFEATED BY WILL.

(1) The right of a Beneficiary or Purchaser to receive benefits in accordance with a Contract shall not be defeated or impaired by any statute or rule of law governing the transfer of property by will or by intestate succession.

Authority: *T.C.A. § 49-7-805(16).* ***Administrative History:*** *Emergency rule filed December 29, 2011; effective through June 26, 2012. New rule filed December 29, 2011; effective May 29, 2012.*

1700-05-04-.09 PLAN TERMINATION.

(1) If the Board determines that the Educational Savings Plan is, for any reason, financially unfeasible, or is not beneficial to the citizens of Tennessee or to the State itself, then the Board, pursuant to T.C.A. § 49-7-823, may terminate the Contracts. Subject to Paragraphs (2) and (3) of this Rule below, the amount of the refund to which the Purchaser is entitled shall be equal to the Redemption Value of the Account at the time the refund is made.

(2) Notwithstanding any other provision to the contrary, refunds and other benefits payable under a Contract shall be deemed to be due and payable only to the extent that moneys are available therefore to the credit of the Educational Savings Plan, and neither the State nor the Board shall be liable for any amount in excess of such sums.

(3) Should the Educational Savings Plan be terminated by the Board and the assets of the fund prove to be less than would be required to fully pay all obligations of the Plan in full, the Board shall first defray all administrative expenses of the Plan. The Board shall then reduce

(Rule 1700-05-04-.09, continued)

payments owed pursuant to a Contract, pro rata, to the degree necessary to bring the total disbursement of the Educational Savings Plan within the amount of the remaining funds.

Authority: *T.C.A. §§ 49-7-805, 49-7-823 and 49-7-824.* ***Administrative History:*** *Emergency rule filed December 29, 2011; effective through June 26, 2012. New rule filed December 29, 2011; effective May 30, 2012.*

* 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)
David H. Lillard, Jr.	x				
Justin Wilson	x				
Tre Hargett	x				
Richard Rhoda	x				
Larry Martin	x				
John Morgan	x				
Joseph DiPietro	x				
Peter Abernathy	x				
Betty Sue McGarvey				x	

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the (*board/commission/other authority*) on 12/19/2013 (*date as mm/dd/yyyy*), 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: December 27, 2013

Signature: Alison G. Cleaves

Name of Officer: Alison Cleaves

Title of Officer: Assistant General Counsel

Subscribed and sworn to before me on: 12.27.13

Notary Public Signature: [illegible]

My commission expires on: 11.3.15

DAVIDSON COUNTY NOTARY PUBLIC STATE OF TENNESSEE

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.

RE Cooper Jr.

Robert E. Cooper, Jr.
Attorney General and Reporter

4-8-14
Date

Department of State Use Only

RECEIVED 2014 APR 11 PM 3:46 OFFICE OF SECRETARY OF STATE

Filed with the Department of State on: 4/11/14

Effective on: 9/28/14

[illegible]

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Board of Communications Disorders and Sciences
SUBJECT:	Use of Telecommunication Technology
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 63-17-105
EFFECTIVE DATES:	July 9, 2014 through June 30, 2015
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	Clarifies how audiologists and speech language pathologists may use telecommunication technology to deliver services to certain clients in this state.

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 from February 12, 2013
(Original Rulemaking Hearing Date)

John Williams, a representative of the Tennessee Association of Audiologists and Speech-Language Pathologists (TAASLP), asked that rule 1370-01-.21(5) be amended to read: "a licensed audiologist or speech language pathologist must always be physically present at the hub site while interactive telecommunication technology is being utilized to deliver services to a client who is physically present at the distant (remote) site. No asynchronous use of telecommunication technology is permitted by this rule." Mr. Williams also asked the Board to leave the hearing open for public comment until the next Board meeting.

This comment was addressed at the June 3, 2013 meeting.

Devin McCaslin, a representative of Vanderbilt University, asked the Board to consider adding language to the definition of the "face to face" requirement. Additionally, he asked the Board to table these rules to give practitioners more time to comment. Vanderbilt partnered with the Department of Health to provide services to Union County in order to expand services and treat and fit children more quickly for hearing aids. These services are provided by a local technician who is operating under the supervision of an audiologist at Vanderbilt. Vanderbilt fears that some of the rules would prevent this practice and require an audiologist to be onsite.

The Board felt that the comments by Dr. McCaslin should be addressed at a later time. The Board did not further address his comments and concerns. The Board voted to table the rulemaking hearing to allow more time for comments to be submitted. The rulemaking hearing was reset for June 3, 2013.

Public Hearing Comments from June 3, 2013
(Continued from Rulemaking Hearing on February 12, 2013: held over for public comments)

The Rulemaking Hearing that was delayed at the previous Board meeting on February 12, 2013 was continued, in order to allow additional public comments regarding Rule 1370-01-.21 (Use of Telecommunication Technology).

On June 3, 2013, the Board voted to continue the Rulemaking Hearing, previously delayed at the February 12, 2013 meeting, in order to allow additional public comments regarding Rule 1370-01-.21 (Use of Telecommunication Technology).

John Williams, a representative of TAASLP, submitted a written comment, listed below, seeking to have the Board include language to paragraph (5). He supported the Board's effort and the remaining rule amendments.

Ann Marie Thorpe commented on asynchronous.

Holly Christopher, a representative of Stellar Therapy Services, commented on supervision. Stellar Therapy Services is a contract company that provides services to school systems in Chattanooga. The company is concerned that SLPAs in the school systems are not being correctly supervised. The company asked the Board to consider allowing the contract company to provide such supervision.

The Board reviewed the comment from Holly Christopher and decided to address the comment at the next Board meeting as there was a task force reviewing concerns over SLPA supervision.

After reviewing the comment from Holly Christopher, the Board decided to address the comment at the next

Board meeting as there was a task force reviewing concerns over SLPA supervision.

The comments made by John Williams and Ann Marie Thorpe were accepted and incorporated into the amendments in the following language of 1370-01-.21 (5), "[a] licensed audiologist or speech language pathologist must always be physically present at the hub site while interactive telecommunication technology is being utilized to deliver services to a client who is physically present at the distant (remote) site. No asynchronous use of telecommunication technology is permitted by this rule."

After all comments and discussion were heard, a motion was made by Dr. Matlock, seconded by Dr. Ashford, to approve the proposed rule with the additional wording suggested by TAASLP in paragraph 5 of the proposed rule. This additional wording is regarding physical presence of the licensed Speech Pathologist or Audiologist when interactive telecommunication technology is being utilized to provide therapy service. A roll call vote was held and the motion carried.

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
OF RULES BEING CONSIDERED FOR AUTHORIZATION
TO HAVE A RULEMAKING HEARING

The Board must consider whether the rules or rule amendments being proposed are such that in relation to small businesses (businesses with 50 or fewer full time employees) the proposed language of the rules or amendments and/or the procedures contained therein meet all of the following requirements:

(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.

(4) The compliance requirements throughout the proposed rules are as user-friendly as possible while still allowing the Board to achieve its mandated mission in regulating audiologists and speech language pathologists. 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 and simplified for small businesses in the proposed rules for the protection of the health, safety and welfare of Tennesseans.

(6) The standards of care required in the proposed rules are the same as existing standards for the delivery of audiology and speech language pathology and do not necessitate the establishment of performance standards for small businesses.

(7) 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

Name of Board, Committee or Council: Board of Communication Disorders and Sciences

Rulemaking hearing date: June 3, 2013

1. **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:**

   Tennessee Licensed Audiologists and Speech Language Pathologists who currently deliver or plan to deliver audiology and speech language pathology services via telecommunication.

2. **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:**

   Reporting, recordkeeping and other administrative costs required for compliance with this proposed rule would not significantly differ from the requirements of delivering traditional face-to-face audiology and speech language pathology services.

3. **Statement of the probable effect on impacted small businesses and consumers:**

   This proposed rule should have little adverse impact on small business as the rule will primarily affect licensed audiologists and speech language pathologists. The proposed rule will likely provide additional safe guards that Tennessee consumers are receiving safe, appropriate and effective audiology and speech language pathology services.

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

   The Tennessee Board of Communications Disorders and Sciences does not believe there are less burdensome alternatives to the proposed rule amendments.

5. **Comparison of the proposed rule with any federal or state counterparts:**

   Federal: No known comparable federal law.

   State: No known existing state law.

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

   The vast majority of audiologists and speech language pathologists operate out of small businesses. Thus, exempting small businesses would largely render this proposed rule moot.

Impact on Local Governments

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

(Insert statement here)

The proposed rule will likely not have a major impact on local governments.

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

For Department of State Use Only

Sequence Number: 04-14-14
Rule ID(s): 5697
File Date: 4/10/14
Effective Date: 7/9/14

Rulemaking Hearing Rule(s) Filing Form

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

Agency/Board/Commission: Board of Communications Disorders and Sciences
Division:
Contact Person: Andrea Huddleston, Interim Chief Deputy General Counsel
Address: Office of General Counsel
665 Mainstream Drive, Nashville, Tennessee
Zip: 37243
Phone: (615)741-1611
Email: Andrea.Huddleston@tn.gov

Revision Type (check all that apply):
___ Amendment
_X_ 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**
1370-01	Rules for Speech Pathology and Audiology
Rule Number	**Rule Title**
1370-01-.21	Use of Telecommunication Technology

(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 1370-01
Rules for Speech Pathology and Audiology

New Rule

1370-01-.21 Use of Telecommunication Technology

(1) Policy Statement. Audiologists and Speech Language Pathologists often use telecommunication technology to deliver services to clients in Tennessee who are physically present at a different location in the state at the time they receive the services. Such use of telecommunication technology by Audiologists and Speech Language Pathologists is in the public interest provided the practitioners comply with the requirements of this rule.

(2) Audiologists and Speech Language Pathologists licensed in Tennessee may deliver services to clients in Tennessee through the use of telecommunication technology, including but not limited to dedicated video systems, computers, and other similar devices linked via hardwired or internet connections.

(3) The services delivered through the use of telecommunication technology shall be equivalent in quality to services delivered face-to-face.

(4) Audiologists and Speech Language Pathologists using telecommunication technology to deliver services must have the necessary knowledge and skills, obtained through education, training, and experience, to utilize such technology in a competent manner.

(5) The use of telecommunication technology, including but not limited to the equipment, connectivity, software, hardware, and network compatibility, must be appropriate for the particular service being delivered and must be able to address the unique needs of the client. A licensed audiologist or speech language pathologist must always be physically present at the hub site while interactive telecommunication technology is being utilized to deliver services to a client who is physically present at the distant (remote) site. No asynchronous use of telecommunication technology is permitted by this rule.

(6) An Audiologist or Speech Language Pathologist utilizing telecommunication technology to deliver services to a client is responsible for:

(a) Assessment of the ability of the client to participate meaningfully in the services delivered in this manner, including but not limited to the client's physical, cognitive, and behavioral abilities; and

(b) Proper calibration of the clinical instruments utilized to deliver services in accordance with standard operating procedures and manufacturer's specifications.

(7) The client and/or the client's family members or caregivers shall be informed of the available service delivery options and shall give consent to the use of telecommunication technology for the delivery of services before that method of service delivery is utilized.

(8) When delivering services through the use of telecommunication technology, the Audiologist or Speech Language Pathologist shall:

(a) Comply with all laws and rules governing the maintenance of client records, including but not limited to client confidentiality requirements; and

(b) Comply with all professional standards governing the delivery of services by Audiologists and Speech Language Pathologists, including but not limited to the applicable Code of Ethics and other relevant professional policy documents.

(9) An Audiologist or Speech Language Pathologist shall not deliver services to a client solely through the use of regular mail, facsimile, or electronic mail, although these methods of communication may be used

to supplement the delivery of services face-to-face or through the use of telecommunication technology.

(10) This rule applies only to the delivery of services through the use of telecommunication technology within the state of Tennessee. It does not apply to the delivery of services when either the client or the Audiologist or Speech Language Pathologist is physically located outside the state of Tennessee.

Authority: T.C.A. §§ 63-17-103 and 63-17-105

* 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)
Lynne Harmon Burgess	X				
Valeria Matlock	X				
John Ashford	X				
Terri Philpot Flynn	X				
Whitney Mauldin				X	
Ronald Eavey				X	
O.H. "Shorty" Freeland				X	

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Communication Disorders and Sciences (board/commission/ other authority) on 02/12/2013 and 06/03/2013 (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: 12/13/12

Rulemaking Hearing(s) Conducted on: (add more dates). 02/12/13 and 06/03/13

Date: 4-3-14

Signature:

Name of Officer: Andrea Huddleston

Title of Officer: Interim Chief Deputy General Counsel, Department of Health

Subscribed and sworn to before me on: 4-2-14

Notary Public Signature: Suzanne Mechkowski

My commission expires on: MY COMMISSION EXPIRES APRIL 19, 2017

SUZANNE MECHKOWSKI NOTARY PUBLIC STATE OF TENNESSEE SUMNER COUNTY

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

Robert E. Cooper, Jr.
Attorney General and Reporter

4-7-14
Date

Department of State Use Only

RECEIVED 2014 APR 10 PM 4:16 OFFICE OF SECRETARY OF STATE

Filed with the Department of State on: 4/10/14

Effective on: 7/9/14

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

AGENCY/BOARD/COMMISSION: Board of Medical Examiners

SUBJECT: Practice of Interventional Pain Management

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 63-6-244

EFFECTIVE DATES: July 3, 2014 through June 30, 2015

FISCAL IMPACT: None

STAFF RULE ABSTRACT: Tennessee Code Annotated, Section 63-6-244 limits the practice and supervision of interventional pain management. The statute only allows five categories of physicians to engage in this practice, including recent medical training graduates from the delineated programs who are not yet eligible to sit for board-certification but who are in a practice relationship with a physician who does qualify.

These proposed rules define the scope and length of the practice relationship between the recent medical training graduate who is not yet eligible for board-certification and the physician who does qualify to practice interventional pain management, as specifically authorized pursuant to Tennessee Code Annotated, Section 63-6-244(c). These rules also define what constitutes a board-approved post graduate training program, the completion of which would allow a licensee who is board-certified in a different ABMS specialty to engage in this practice.

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.

Board of Medical Examiners

July 23, 2013 Rulemaking Hearing regarding Interventional Pain Management Rules

Responses to Public Comments

There was one written comment received in advance from the Tennessee Medical Association. This comment was supportive and required no response.

There was one written comment received the day of the meeting from State Senator Joey Hensley.

There were two oral comments provided during the rulemaking hearing. One comment was from Dakasha Wintor of Blue Cross/ Blue Shield of Tennessee. Ms. Wintor's comment was supportive and required no response.

The other oral comment was from Scott McDearmon, Esquire. Mr. McDearmon commented on behalf of Dr. John Faccia, on whose behalf State Senator Hensley had also made the written comment referenced above. In response to both Senator Hensley and Mr. McDearmon on behalf of Dr. John Faccia, the board pointed out that the enacting legislation (T.C.A. § 63-6-244) does not give the board authority to grandfather in practitioners or to waive or make exceptions to any provisions of the statute. Indeed, the legislation only gives the board two small areas of authority—(1) to approve post-graduate training programs in interventional pain management for licensees who are board-certified in a different specialty other than those provided in T.C.A. § 63-6-244(a)(1); and (2) to define through rulemaking the scope and length of the practice relationship established in T.C.A. § 63-6-244(a)(2). Further, given that the legislation provides that recent graduates in approved specialties who are not yet eligible for board certification may only practice in a practice relationship with a qualifying physician while those who are board-certified in other specialties may only practice after completing an approved post-graduate training program, there is nothing to suggest that the legislature intended for individuals such as Dr. Faccia to be able to practice under supervision.

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.

Tennessee Board of Medical Examiners; Rule No. 0880-02-.14

(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 complying with the statute and allowing the Board to achieve its mission of protecting Tennesseans.

(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.

The proposed rules create neither design nor operational nor performance standards.

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

The proposed rules do not create unnecessary entry barriers or other effects that would stifle entrepreneurial activity or curb innovation. The proposed rules create pathways for individuals to engage in interventional pain management that would otherwise be unqualified to do so pursuant to T.C.A. §63-6-244.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

Name of Board, Committee or Council: *Board of Medical Examiners*

1. **Type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rule:**

   The proposed rules will affect only those small businesses which engage in or may wish to engage in interventional pain management. The proposed rules do not create any unnecessary costs or other barriers that would affect small businesses. The rules create pathways for individuals to engage in interventional pain management that would otherwise be unqualified to do so pursuant to T.C.A. §63-6-244.

2. **Projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:**

   The reporting, recording, and administrative costs required for compliance with the proposed rule would be minimal.

3. **Statement of the probable effect on impacted small businesses and consumers:**

   Small businesses that elect to engage in the practice of interventional pain management would be positively affected by the proposed rules as the rules would make it easier for providers within the businesses to become qualified to practice interventional pain management. Consumers would be positively affected as well by the addition of the practice of interventional pain management because consumers would be able to obtain such services in the same office visit thereby reducing the number of visits required to multiple providers and reducing insurance filing burdens.

4. **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:**

   There are no less burdensome alternatives to the proposed rules.

5. **Comparison of the proposed rule with any federal or state counterparts:**

   Federal: None

   State: 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.**

   These rule amendments are expected to have a positive impact and, therefore, an exemption for small businesses is unnecessary.

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 expected to have any impact on local governments.

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

For Department of State Use Only

Sequence Number: 04-06-14
Rule ID(s): 5692
File Date: 4/4/14
Effective Date: 4/3/14

Rulemaking Hearing Rule(s) Filing Form

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

Agency/Board/Commission:	Tennessee Board of Medical Examiners
Division:	
Contact Person:	Andrea Huddleston, Deputy General Counsel
Address:	665 Mainstream Drive, Nashville, TN
Zip:	37243
Phone:	615-741-1611
Email:	Andrea.Huddleston@tn.gov

Revision Type (check all that apply):

X Amendment
___ New
___ Repeal

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

Chapter Number	**Chapter Title**
0880-02	General Rules and Regulations Governing the Practice of Medicine
Rule Number	**Rule Title**
0880-02-.14	Specially Regulated Areas and Aspects of Medical Practice

(Rule 0880-02-.13, continued)

the remaining provisions thereof, but shall be confined in its operation to the specific provision or provisions so held unconstitutional or invalid, and the in applicability or invalidity of any section, clause, sentence or part in any one or more instance shall not be taken to affect or prejudice in any way its applicability or validity in any other instance.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-1-145, 63-6-101, 63-6-204, 63-6-214 and 63-6-215.* ***Administrative History:*** *Original rule filed February 26, 1991; effective April 12, 1991. Amendment filed November 27, 1991; effective February 26, 1992. Amendment filed December 29, 2006; effective March 14, 2007. Amendment filed July 1, 2008; effective September 14, 2008.*

0880-02-.14 SPECIALLY REGULATED AREAS AND ASPECTS OF MEDICAL PRACTICE.

(1) Policy Statement - The scope of practice of physicians in Tennessee is broadly defined and includes many aspects which if not particularly regulated could lead to serious ramifications for the consuming public. This Rule is to designate specific areas in the practice of medicine for regulation the violation of which may result in disciplinary action pursuant to either T.C.A. §§63-6-214(b)(1) or 63-6-214(b)(4) or 63-6-214(b)(12).

(2) Pharmaceutical Dispensing - Physicians who elect to dispense medication for remuneration must comply with the following:

(a) All Federal Regulations (21 CFR 1304 through 1308) for the dispensing of controlled substances.

(b) Requirements for dispensing of non-controlled drugs are as follows:

1. Drugs are to be dispensed in an appropriate container labeled with at least, the following:

(i) Patient's name.

(ii) Date.

(iii) Complete directions for usage.

(iv) The physician's name and address.

(Rule 0880-02-.14, continued)

(v) A unique number, or the name and strength of the medication.

2. Physicians may dispense only to individuals with whom they have established a physician/patient relationship. It shall be a violation of this rule for a physician to dispense medication at the order of any other physician not registered to practice at the same location.

3. Whenever dispensing takes place, appropriate records shall be maintained. A separate log must be maintained for controlled substances dispensing.

(c) It is not the intention of this Rule to interfere with the individual physician's appropriate use of professional samples, nor to interfere in any way with the physician's right to directly administer drugs or medicines to any patient.

(d) Dispensing or prescribing controlled substances in amounts or for durations not medically necessary, advisable or justified is considered to be practicing beyond the scope of the professional practice.

(3) Amphetamines, Amphetamine-Like Substances, and Central Nervous System Stimulants.

(a) It shall be a prima facie violation of T.C.A. §§63-6-214 (b)(1) and 63-6-214 (b)(12) to prescribe, order, administer, sell or otherwise distribute any amphetamine drug except:

1. For treatment of the following:

(i) attention deficit disorder;

(ii) drug-induced brain dysfunction;

(iii) narcolepsy;

(iv) dementia or organic brain syndrome with severe psychomotor retardation;

(Rule 0880-02-.14, continued)

(v) Chronic depression refractory to other drugs. Such diagnosis must be included on the prescription.

2. When the licensee has applied for and received from the Board of Medical Examiners a written approval for the clinical investigation of such drugs under a protocol satisfactory to the Board. Any such approval by the Board of Medical Examiners will be filed with the Board of Pharmacy and disseminated by the Board of Pharmacy to any pharmacy which would fill prescriptions written during the research.

(b) The list of amphetamine drugs governed by subparagraph (3)(a) of this Rule includes the following controlled substances:

1. Amphetamine, its salts, optical isomers and salts of its optical isomers; (examples are Biphetamine, Dexadrine, Benzedrine and others).

2. Methamphetamine, its salts, isomers and salts of isomers; (an example is Desoxyn).

3. Any salt, any type of isomer and salts of such isomers, or any chemical element or any mixture, compound, material or preparation, containing any quantity of any of the substances listed above or their salts, any type of isomers and salts of such isomers, or chemical elements are also governed by this rule.

(c) It shall be a prima facie violation of T.C.A. §§63-6-214 (b)(1) and 63-6-214 (b)(12) to prescribe, order, administer, sell or otherwise distribute any amphetamine-like substance listed below, except when the licensee has applied for and received from the Board of Medical Examiners a written approval for the clinical investigation of such drugs under a protocol satisfactory to the Board. Any such approval by the Board of Medical Examiners will be filed with the Board of Pharmacy and disseminated by the Board of Pharmacy to any pharmacy which would fill prescriptions written during the research.

1. The list of amphetamine-like substances governed by this rule are the following controlled substances:

(i) Phenmetrazine and its salts; (an example is Preludin)

(ii) Benzphetamine; (an example is Didrex)

(Rule 0880-02-.14, continued)

(iii) Chlorphentermine; (an example is Pre Sate)

(iv) Phendimetrazine; (examples are Plegine, Bontril, Meltiat, Prelu-2, Adipost, Wehles, and others)

(v) Diethylproprion; (examples are Tenuate and Tepanil)

(vi) Mazindol; (examples are Mazandor and Sanorex)

(vii) Phentermine; (examples Ionamin, Fastin, Adipex and others), except as authorized pursuant to T.C.A. §63-6-214;

(viii) Fenfluramine HS; (an example Pondimin), except as authorized pursuant to T.C.A. §63-6-214.

2. Any salt, any type of isomer and salts of such isomers, or any chemical element or any mixture, compound, material or preparation, containing any quantity of any of the substances listed above or their salts, any type of isomers and salts of such isomers, or chemical elements, except as authorized pursuant to T.C.A. §63-6-214, are also governed by this rule.

(d) It shall be a prima facie violation of T.C.A. §§63-6-214 (b)(1) and 63-6-214 (b)(12) to prescribe, order, administer, sell or otherwise distribute any central nervous system stimulant listed below except:

1. For treatment of any of the following:

(i) attention deficit disorder;

(ii) drug-induced brain dysfunction;

(iii) narcolepsy;

(iv) dementia or organic brain syndrome with severe psychomotor retardation;

(Rule 0880-02-.14, continued)

(v) Chronic depression refractory to other drugs. Such diagnosis must be included on the prescription.

2. When the licensee has applied for and received from the Board of Medical Examiners a written approval for the clinical investigation of such drugs under a protocol satisfactory to the Board. Any such approval by the Board of Medical Examiners will be filed with the Board of Pharmacy and disseminated by the Board of Pharmacy to any pharmacy which would fill prescriptions written during the research.

(e) The list of central nervous system stimulants governed by subparagraph (3)(d) of this rule are the following controlled substances:

1. methylphenidate; (an example is Ritalin)

2. pemoline (including organometallic complexes and chelates thereof; an example is Cylert)

3. Any salt, any type of isomer and salts of such isomers, or any chemical element or any mixture, compound, material or preparation, containing any quantity of any of the substances listed above or their salts, any type of isomers and salts of such isomers, or chemical elements are also governed by this rule.

(4) Prescription writing shall be governed by Tennessee Code Annotated, Section 63-6-236 and Title 53, Chapter 10, Part 2.

(5) Universal Precautions For The Prevention Of HIV Transmission - The Board adopts, as if fully set out herein, rules 1200-14-03-.01 through 1200-14-03-.03 inclusive, of the Department of Health and as they may from time to time be amended, as its rule governing the process for implementing universal precautions for the prevention of HIV transmission for health care workers under its jurisdiction.

(6) Authority of Physician to Prescribe for the Treatment of Pain - Purpose - The purpose of this chapter is to recognize that some dangerous drugs and controlled substances are indispensable for the treatment of pain, and are useful for relieving and controlling many other related symptoms that patients may suffer. It is the position of the board that these drugs may be prescribed for the treatment of pain and other related symptoms after a reasonably based medical diagnosis has been made, in adequate doses, and for appropriate lengths of time, which in some cases may be as long as the pain or related symptoms persist. The board recognizes that pain, including intractable pain, and many other related symptoms are subjective complaints and that the appropriateness and the adequacy of drug and dose will vary from individual to individual. The practitioner is expected to exercise sound

(Rule 0880-02-.14, continued)

medical judgment in treating pain and related symptoms with dangerous drugs and controlled substances.

(a) Definitions. The following words and terms, as used in this rule shall have the following meanings in the context of providing medications for pain and related symptoms.

1. Abuser of narcotic drugs, controlled substances and dangerous drugs - A person who takes a drug or drugs for other than legitimate medical purposes.

2. Intractable pain - A pain state in which the cause of the pain cannot be removed or otherwise treated and which in the generally accepted course of medical practice no relief or cure of the cause of the pain is possible or none has been found after reasonable efforts.

3. Non-therapeutic in nature or manner - A medical use or purpose that is not legitimate.

4. Prescribing pharmaceuticals or practicing consistent with the public health and welfare - Prescribing pharmaceuticals and practicing medicine for a legitimate medical purpose in the usual course of professional practice.

(b) No physician is required to provide treatment to patients with intractable pain with opiate medications but when refusing to do so shall inform the patient that there are physicians whose primary practice is in the treatment of severe, chronic, intractable pain with methods including the use of opiates. If the patient requests a referral to such a physician, and the physician makes such a referral that referral shall be noted in the patient's medical records.

(c) If a physician provides medical care for persons with intractable pain, with or without the use of opiate medications, to the extent that those patients become the focus of the physician's practice the physician must be prepared to document specialized medical education in pain management sufficient to bring the physician within the current standard of care in that field which shall include education on the causes, different and recommended modalities for treatment, chemical dependency and the psycho/social aspects of severe, chronic intractable pain.

(d) The treatment of persons with an acute or chronic painful medical condition who also require treatment for chemical dependency by a physician shall be governed by T.C.A. § 63-6-1107 (c) and (d).

(e) Guidelines - The Tennessee Board of Medical Examiners will use the following guidelines to determine whether a physician's conduct violates T.C.A. §63-6-214 (b) (12) through (14) in regard to the prescribing, administering, ordering, or dispensing of pain medications and other drugs necessary to address their side effects.

(Rule 0880-02-.14, continued)

1. The treatment of pain, including intractable pain, with dangerous drugs and controlled substances is a legitimate medical purpose when done in the usual course of professional practice.

2. A physician or surgeon duly authorized to practice medicine in Tennessee and to prescribe controlled substances and dangerous drugs in this state shall not be subject to disciplinary action by the board for prescribing, ordering, administering, or dispensing dangerous drugs or controlled substances for the treatment and relief of pain, including intractable pain, in the usual course of professional practice for a legitimate medical purpose in compliance with applicable state and federal law.

3. Prescribing, ordering, administering, or dispensing dangerous drugs or controlled substances for pain will be considered to be for a legitimate medical purpose if based upon accepted scientific knowledge of the treatment of pain, including intractable pain, not in contravention of applicable state or federal law, and if prescribed, ordered, administered, or dispensed in compliance with the following guidelines where appropriate and as is necessary to meet the individual needs of the patient:

   (i) After a documented medical history, which may be provided orally or in writing by the patient, and physical examination by the physician providing the medication including an assessment and consideration of the pain, physical and psychological function, any history and potential for substance abuse, coexisting diseases and conditions, and the presence of a recognized medical indication for the use of a dangerous drug or controlled substance;

   (ii) Pursuant to a written treatment plan tailored for the individual needs of the patient by which treatment progress and success can be evaluated with stated objectives such as pain relief and/or improved physical and psychosocial function. Such a written treatment plan shall consider pertinent medical history and physical examination as well as the need for further testing, consultations, referrals, or use of other treatment modalities;

   (iii) The physician should discuss the risks and benefits of the use of controlled substances with the patient or guardian;

   (iv) Subject to documented periodic review of the care by the physician at reasonable intervals in view of the individual circumstances of the patient

(Rule 0880-02-.14, continued)

in regard to progress toward reaching treatment objectives which takes into consideration the course of medications prescribed, ordered, administered, or dispensed as well as any new information about the etiology of the pain;

(v) Complete and accurate records of the care provided as set forth in parts (i)-(iv) of this paragraph should be kept. When controlled substances are prescribed, names, quantities prescribed, dosages, and number of authorized refills of the drugs should be recorded, keeping in mind that pain patients with a history of substance abuse or who live in an environment posing a risk for medication misuse or diversion require special consideration. Management of these patients may require closer monitoring by the physician managing the pain and consultation with appropriate health care professionals.

4. A decision by a physician not to strictly adhere to the provisions of paragraph 3 of this section will, for good cause shown, be grounds for the board to take no disciplinary action in regard to the physician. Each case of prescribing for pain will be evaluated on an individual basis. The physician's conduct will be evaluated to a great extent by the treatment outcome, taking into account whether the drug used is medically and/or pharmacologically recognized to be appropriate for the diagnosis, the patient's individual needs including any improvement in functioning, and recognizing that some types of pain cannot be completely relieved.

5. If the provisions as set out in subparagraphs (1)-(4) of this section are met, and if all drug treatment is properly documented, the board will consider such practices as prescribing in a therapeutic manner, and prescribing and practicing medicine in a manner consistent with public health and welfare.

6. Quantity of pharmaceutical and chronicity of prescribing will be evaluated on the basis of the documented appropriate diagnosis and treatment of the recognized medical indication, documented persistence of the recognized medical indication, and properly documented follow-up evaluation with appropriate continuing care as set out in this rule.

7. A physician may use any number of treatment modalities for the treatment of pain, including intractable pain, which are consistent with legitimate medical purposes.

8. These rules shall not be construed so as to apply to the treatment of acute pain with dangerous drugs or controlled substances for purposes of short-term care.

(7) Prerequisites to Issuing Prescriptions or Dispensing Medications - In Person, Electronically, and Over the Internet

(Rule 0880-02-.14, continued)

(a) Except as provided in subparagraph (b), it shall be a prima facie violation of T.C.A. § 63-6-214 (b) (1), (4), and (12) for a physician to prescribe or dispense any drug to any individual, whether in person or by electronic means or over the Internet or over telephone lines, unless the physician, or his/her licensed supervisee pursuant to appropriate protocols or medical orders, has first done and appropriately documented, for the person to whom a prescription is to be issued or drugs dispensed, all of the following:

1. Performed an appropriate history and physical examination; and

2. Made a diagnosis based upon the examinations and all diagnostic and laboratory tests consistent with good medical care; and

3. Formulated a therapeutic plan, and discussed it, along with the basis for it and the risks and benefits of various treatments options, a part of which might be the prescription or dispensed drug, with the patient; and

4. Insured availability of the physician or coverage for the patient for appropriate follow-up care.

(b) A physician, or his/her licensed supervisee pursuant to appropriate protocols or medical orders, may prescribe or dispense drugs for a person not in compliance with subparagraph (a) consistent with sound medical practice, examples of which are as follows:

1. In admission orders for a newly hospitalized patient; or

2. For a patient of another physician for whom the prescriber is taking calls or for whom the prescriber has verified the appropriateness of the medication; or

3. For continuation medications on a short-term basis for a new patient prior to the patient's first appointment; or

4. For established patients who, based on sound medical practices, the physician feels do not require a new physical examination before issuing new prescriptions; or

5. In compliance with paragraph (9) of this rule.

(c) It shall be a prima facie violation of T.C.A. § 63-6-214 (b) (1), (4), and (12) for a physician, or his/her licensed supervisee pursuant to appropriate protocols or medical orders, to prescribe or dispense any drug to any individual for whom the physician, or his/her licensed supervisee pursuant to appropriate protocols or medical orders, has not complied with the provisions of this rule based solely on answers to a set of

(Rule 0880-02-.14, continued)

questions regardless of whether the prescription is issued directly to the person or electronically over the Internet or telephone lines.

(8) Code of Ethics - The Board adopts, as if fully set out herein and to the extent that it does not conflict with state law, rules or Board Position Statements, as its code of medical ethics the "Code of Medical Ethics" published by the A.M.A. Council on Ethical and Judicial Affairs as it may, from time to time, be amended.

(a) In the case of a conflict the state law, rules or position statements shall govern. Violation of the Board's code of ethics shall be grounds for disciplinary action pursuant to T.C.A. § 63-6-214 (b) (1).

(b) A copy of the A.M.A. "Code of Medical Ethics" may be obtained from the Order Department of the A.M.A. at 515 N. State Street, Chicago, IL 60610 or by phone at 1-800-621-8335, or on the Internet at http://www.ama-assn.org.

(9) Treatment of Chlamydia trachomatis

(a) Purpose - This rule provides an acceptable deviation from the normal standard of care in the treatment of Chlamydia trachomatis (hereafter Ct) and provides a means for physicians to help reduce Tennessee's rate of Ct infection which currently exceeds the national rate by over ten percent (10%), and which, if left untreated, can cause serious health problems including pelvic inflammatory disease, ectopic pregnancies, infertility, cervical cancer and an increased risk of HIV infection. This rule will allow physicians and those over whom they exercise responsibility and control to provide an effective and safe treatment to the partners of patients infected with Ct who for various reasons may not otherwise receive appropriate treatment.

(b) For purpose of this rule "partner(s)" shall mean any person who comes into sexual contact with the infected patient during the sixty (60) days prior to the onset of patient's symptoms or positive diagnostic test results.

(c) Prerequisites - Physicians and those who provide medical services under their responsibility and control who have first documented all of the following in the medical records for patients may provide partner treatment pursuant to subparagraph (d) of this rule:

1. A laboratory-confirmed Ct infection without evidence of co-infection with gonorrhea or other complications suggestive of a relationship to Ct infection; and

2. Provision of treatment of the patient for Ct; and

3. An attempt to persuade the infected patient to have all partners evaluated and treated and the patient indicated that partners would not comply; and

4. Provision of a copy of reproducible, department-provided Ct educational fact sheet or substantially similar Ct-related literature available from other professional sources to the patient with copies for all partners; and

(Rule 0880-02-.14, continued)

5. Counseling the patient on sexual abstinence until seven (7) days after treatment and until seven (7) days after partners have been treated; and

(d) Partner Treatment - Upon documentation in the patient's medical records of all prerequisites in subparagraph (c) physicians or those who provide medical services under their responsibility and control may either:

1. Provide to the treated patient non-named signed prescriptions for, or dispense to the patient, the appropriate quantity and strength of azithromycin sufficient to provide curative treatment for the total number of unnamed "partners" as defined in subparagraph (b) and indicated by the patient.

2. Provide to the treated patient signed, name-specific prescriptions for, or dispense to the patient, the appropriate quantity and strength of azithromycin sufficient to provide curative treatment for the total number of known partners as defined in subparagraph (b) and named by the patient.

(10) Use of Laser Equipment - Any procedure encompassed within the definition of the practice of medicine contained in T.C.A. § 63-6-204 that is to be performed by use of a laser shall be considered, except as provided in T.C.A. §§ 63-26-102 (5) and 63-9-106, to be the practice of medicine and any person performing such procedure must be under the supervision of a licensed physician.

(11) 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 title "Medical Doctor" or "M.D." and to practice medicine, as defined in T.C.A. §§ 63-6-204. Any person licensed by the Board to whom this rule applies must use one of the titles authorized by this rule in every "advertisement" [as that term is defined in rule 0880-02-.13(2)(a)] he or she publishes or the failure to do so will constitute an omission of a material fact which makes the advertisement misleading and deceptive and subjects the physician to disciplinary action pursuant to T.C.A. § 63-6-214(b)(1), (b)(3), (b)(8) and (b)(9).

(12) Any physician who, pursuant to T.C.A. § 63-6-204 (b), is required to have control over and responsibility for medical services being provided by any allied health professional regardless of where those services are being provided must have an unencumbered license just as is currently required for physicians who supervise physician assistants pursuant to rule 0880-02-.18 (1) and certified nurse practitioner prescription writers pursuant to rule 0880-06-.02 (1).

(13) Medical certification on death certificates - Any physician who is required to and refuses to or consistently fails to comply with the provisions of T.C.A. § 68-3-502 regarding medical certification on death certificates shall be subject to disciplinary action pursuant to T.C.A. § 63-6-214(b)(1).

(14) Practice of Interventional Pain Management as Defined and Restricted Pursuant to T.C.A. § 63-6-244

(a) For purposes of T.C.A. § 63-6-244(a)(2), a recent graduate who is not yet eligible to sit for board-certification by one of the boards listed in § 63-6-244(a)(1) may engage in interventional pain management provided the recent graduate is in a practice relationship

(Rule 0880-02-.14, continued)

with a supervising physician who does meet the qualifications of § 63-6-244(a)(1), as long as such practice relationship meets the following standards:

1. The recent graduate must be an employee, associate or partner of the supervising physician;

2. During the first six months of the practice relationship, the supervising physician must directly supervise the non-eligible, recent graduate in the performance of at least twenty-four interventional pain management procedures; and

3. The supervising physician shall make a personal review of no less than 10% of the recent graduate's procedure notes/ charts on a quarterly basis and shall so certify by signature on the chart.

(b) The exemption provided under T.C.A. § 63-6-244(a)(2) and this rule for a recent graduate not yet eligible for board-certification expires five years from the date of completion of the recent graduate's post-graduate medical training, at which time the non-eligible recent graduate must cease and desist such practice if board-certification pursuant to T.C.A. § 63-6-244(a)(1) has not been achieved and such practice may not be re-instituted until such board-certification is achieved.

(c) For purposes of T.C.A. § 63-6-244(a)(3), a physician who is board-certified in a different ABMS or ABPS/ AAPS specialty than those listed in (a)(1) may practice interventional pain management upon successful completion of an ACGME pain fellowship or becoming board-certified through the American Board of Interventional Pain Physicians.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, 63-1-145, 63-6-204, 63-6-214, 63-6-244 and 68-3-502.* ***Administrative History:*** *Original Rule filed February 26, 1991; effective April 12, 1991. Amendment filed September 17, 1991; effective November 1, 1991. Amendment filed November 27, 1991; effective February 26, 1992. Amendment filed April 20, 1994; effective July 4, 1994. Amendment filed May 18, 1994; effective August 1, 1994. Amendment filed May 19, 1994; effective August 2, 1994. Emergency Rule filed and effective March 27, 1997, expired September 6, 1997. Amendment filed September 24, 1997; effective December 8, 1997. Amendment filed April 16, 1999; effective June 30, 1999. Amendment filed March 9, 2001; effective May 23, 2001. Amendment filed September 5, 2002; effective November 19, 2002. Amendment filed September 26, 2002; effective December 10, 2002. Notice of withdrawal of rule 0880-02-.14(10)(c) to be effective on December 18, 2002 was filed and effective November 6, 2002. Amendment filed October 4, 2002; effective December 18, 2002. Amendment filed April 21, 2003; effective July 5, 2003. Amendment filed August 23, 2005; effective November 6, 2005. Amendment filed March 22, 2006; effective June 5, 2006. Amendment filed April 17, 2006; effective July 1, 2006. Amendment filed December 29, 2006; effective March 14, 2007. Amendment filed February 13, 2008; effective April 28, 2008.*

0880-02-.15 MEDICAL RECORDS.

* 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)
Michael D. Zanolli, M.D.	X				
Subhi D. Ali, M.D.	X				
Dennis Higdon, MD	X				
Michael John Baron, M.D	X				
Jeff P. Lawrence, MD	X				
Neal Beckford, M.D.				X	
Keith Lovelady, M.D				X	
Clinton A. Musil, Jr., MD	X				
Patricia Eller	X				
Barbara Outhier	X				
Nina Yeiser	X				
W. Reeves Johnson, Jr. MD	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Board of Medical Examiners (board/commission/ other authority) on 07/23/2013 (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: *05/09/13*

Rulemaking Hearing(s) Conducted on: (add more dates). *07/23/13*

Date: 8-7-13

Signature:

Name of Officer: Andrea Huddleston

Title of Officer: Deputy General Counsel
Tennessee Department of Health

Subscribed and sworn to before me on: 8-7-13

Notary Public Signature: Suzanne Mechkowski

My commission expires on: MY COMMISSION EXPIRES APRIL 19, 2017

SUZANNE MECHKOWSKI STATE OF TENNESSEE NOTARY PUBLIC SUMNER COUNTY

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.-AH
Robert E. Cooper, Jr.
Attorney General and Reporter

4-2-14
Date

Department of State Use Only

Filed with the Department of State on: 4/4/14

Effective on: 7/3/14

Tre Hargett
Secretary of State

RECEIVED
2014 APR -4 PM 3:56
OFFICE OF
SECRETARY OF STATE

G.O.C. STAFF RULE ABSTRACT

AGENCY/BOARD/COMMISSION: Board of Examiners in Psychology

SUBJECT: General Rules Governing the Practice of Psychologists

STATUTORY AUTHORITY: Tennessee Code Annotated, Title 63, Chapter 11

EFFECTIVE DATES: July 3, 2014 through June 30, 2015

FISCAL IMPACT: None

STAFF RULE ABSTRACT:

Rule 1180-01-06; Patient Records: This rule is rewritten to clarify what information should and should not be included in patient records.

Rule 1180-01-03-.08; Continuing Education: The Board requires forty (40) hours of continuing education every two (2) years. Nine (9) of the forty (40) must be from a Type I CE program. The rule amendments will allow Type I CE to be fulfilled via internet, but no more than twenty (20) hours shall be obtained from an internet source. Twenty-two (22) of the forty (40) must be from Type I, II or III programs. The rule amendments will require three (3) hours of the twenty-two (22) CE hours pertain to cultural diversity and three (3) hours pertain to ethics and jurisprudence.

Rule 1180-01-.13; Mandatory Release of Patient Records: The rule amendments will require that a licensee shall be entitled to charge a reasonable cost for the reproduction of records to a third party not to exceed twenty dollars ($20.00) for reports or records five (5) pages or less in length and to charge fifty cents ($0.50) per page for each page copy after the first five (5) pages.

Rule 1180-02-01; Scope of Practice: The rule amendments will remove the words "Senior Psychological Examiner" and "Certified Psychological Assistant" when discussing the scope of practice of Psychologists in order to clarify

who may supervise under the scope of practice. The rule amendments will allow specific case monitoring to be conducted via face-to-face video with face-to-face meaning you can see one's face and occurring in real time. No more than seventy-five (75) percent of supervision can be obtained through video conferencing. The rule amendments will require supervision of Certified Psychological Assistants by a Psychologist to be direct and frequent supervision to take place at the site of the service, considering the number of hours worked per week and the experience level of the Certified Psychological Assistant.

Rule 1180-03-01; Scope of Practice: The rule amendments will remove "Psychologist" from the scope of practice for Senior Psychological Examiners and Psychological Examiners to clarify who may supervise under the scope of practice. The rule amendments will allow specific case monitoring to be conducted via face-to-face video with face-to-face meaning you can see on one's face and occurring in real time. No more than seventy-five (75) percent of supervision can be obtained through video conferencing. The rule amendments will require the description of newly supervised to mean examiners supervised less than five (5) years and the description of supervision for experienced examiners to mean supervised for at least five (5) years.

Rule 1180-04-01; Scope of Practice: The rule amendments will require the addition of what the supervised practice of a Certified Psychological Assistant may include but may not be limited to. The rule amendments will require the addition of Senior Psychological Examiners to the Certified Psychological Assistants. The rule amendments will allow specific case monitoring to be conducted via face-to-face video with face-to-face meaning you can see one's face and occurring in real time. No more than seventy-five (75) percent of supervision can be obtained through video conferencing.

Rule 1180-04-03; Procedures for Certification: The rule amendments will require one (1) of the required three (3) letters for licensure to be from a licensed Psychologist with HSP designation, or if the endorser is from another jurisdiction, HSP licensed equivalent Psychologist.

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 Board of Examiners in Psychology

September 5, 2013

The rulemaking hearing for the Tennessee Board of Examiners in Psychology was held on September 5, 2013 in the Department of Health Conference Center's Iris Room on the first floor of the Heritage Place Building in MetroCenter, Nashville, Tennessee.

Written comments were received from Teresa Cutts, Ph.D. representing the Tennessee Psychological Association ("TPA"). These written comments were addressed to the Board by Dr. N.L. Stephenson, representative for the Tennessee Psychological Association.

1. Dr. Stephenson requested the following on behalf of TPA:

    a. TPA suggested that language be added to rule 1180-01-.08(1)(c) that would require the nine (9) CE hours of the forty (40) hours required in subparagraph (b) be received face to face. The Board understood the basis for TPA's suggestion and has had several discussions to determine if the nine (9) hours should be required to be face to face. However, the Board noted that currently, there are not enough outlets to meet the standards of obtaining face-to-face hours and believed the requirement would be prohibitive in terms of access and affordability, therefore being too restrictive on the licensees. The Board did not approve this suggestion.

    b. TPA suggested that language be added to rule 1180-01-.08(1)(g) that would require three (3) hours of Type I or Type II be face to face. Again, the Board noted that it believed the requirement would be prohibitive in terms of access and affordability, therefore being too restrictive on the licensees. The Board did not approve this suggestion.

    c. TPA suggested rule 1180-01-.08(2)(f) be revised to allowed no more than twenty (20) hours of CE to be obtained from an internet source as opposed to the Board's original proposal of twenty-eight (28) hours. The Board approved this suggestion.

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 Act Analysis of Impact on Small Businesses

(1) The proposed rule amendments do not overlap, duplicate, or conflict with other federal, state, and local governmental rules.

(2) The language of the proposed rule amendments is clear, concise, and lacks ambiguity.

(3) The proposed rule amendments do not affect small businesses. As such, the rule amendments do not address compliance and/or reporting requirements for small businesses.

(4) The proposed rule amendments do not affect small businesses. As such, the rule amendments do not create any new compliance or reporting requirement.

(5) The proposed rule amendments do not affect small businesses. As such, the rule amendments do not consolidate or simplify compliance and/or reporting requirements for small businesses.

(6) The proposed rule amendments do not affect small businesses. As such, the rule amendments do not establish performance standards for small businesses and do not establish design or operational standards.

(7) The proposed rule amendments do not create unnecessary entry barriers or other effects that stifle entrepreneurial activity.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

Name of Board, Committee or Council: Tennessee Board of Examiners in Psychology

Rulemaking hearing date: September 5, 2013

1. **Type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rule:**

   The proposed rule amendments affect licensed psychologists, psychological examiners and psychological assistants. The proposed rules only clarify existing requirements and, as such, there are no additional costs or direct benefit to any small businesses.

2. **Projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:**

   The proposed rules only clarify existing requirements and as such, do not require reporting, recordkeeping or other administrative costs in order to comply with the proposed rule.

3. **Statement of the probable effect on impacted small businesses and consumers:**

   The proposed rule amendments only affect licensed psychologists, psychological examiners and psychological assistants. These rules do not impact small businesses or consumers.

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

   The Board of Examiners in Psychology does not believe there are less burdensome alternatives to the proposed rule amendments, as rules are designed to protect the health, safety and welfare of psychology patients of the state of Tennessee. The proposed rule only clarifies existing requirements.

5. **Comparison of the proposed rule with any federal or state counterparts:**

   Federal: The Board of Examiners in Psychology is not aware of any federal entity that regulates the practice of Psychology.

   State: After reviewing the rules for other states in the southeastern region of the United States, it has been determined that other states either have rules that are consistent with the proposed rule amendments or do not address the specific topics covered by the proposed rule amendments.

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.**

   An exemption of small businesses is not applicable as the proposed rules only clarify existing requirements and, as such, do not impact small businesses

Impact on Local Governments

Pursuant to T.C.A. § 4-5-228(a), "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 financial impact on local governments."

These rule amendments are not expected to have an impact on local governments.

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

For Department of State Use Only

Sequence Number: 04-05-14
Rule ID(s): 5686-5691
File Date: 4/4/14
Effective Date: 7/3/14

Rulemaking Hearing Rule(s) Filing Form

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

Agency/Board/Commission: Board of Examiners in Psychology
Division:
Contact Person: Jennifer Putnam
Address: 665 Mainstream Drive, Nashville, Tennessee
Zip: 37234
Phone: (615) 741-1611
Email: Jennifer.Putnam@tn.gov

Revision Type (check all that apply):
X 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**
1180-01	General Rules Governing the Practice of Psychologists, Senior Psychological Examiners, Psychological Examiners, and Certified Psychological Assistants
Rule Number	**Rule Title**
1180-01-.06	Patient Records
1180-01-.08	Continuing Education
1180-01-.13	Mandatory Release of Patient Records

Chapter Number	**Chapter Title**
1180-02	Rules Governing Psychologists
Rule Number	**Rule Title**
1180-02-.01	Scope of Practice

Chapter Number	**Chapter Title**
1180-03	Rules Governing Psychological Examiners and Senior Psychological Examiners
Rule Number	**Rule Title**
1180-03-.01	Scope of Practice

Chapter Number	**Chapter Title**
1180-04	Rules Governing Certified Psychological Assistants
Rule Number	**Rule Title**
1180-04-.01	Scope of Practice
1180-04-.03	Procedures for Certification

www.tennesseeanytime.org

2. Paper Renewals - Licensee and certificate holders who have not renewed their authorization online via the Internet will have a renewal application form mailed to them at the last address provided by them to the Board. Failure to receive such notification does not relieve the individual of the responsibility of timely meeting all requirements for renewal.

(c) A license issued pursuant to these rules is renewable by the expiration date. To be eligible for renewal the licensee must submit the following to the Division on or before the expiration date of the license:

1. A completed and signed renewal application form.

2. The renewal and state regulatory fees as provided in rule 1180-1-.03.

(d) Licensees or certificate holders who fail to comply with the renewal rules or notification received by them concerning failure to timely renew shall have their licenses or certificates processed pursuant to rule 1200-10-1-.10.

(2) Reinstatement of an Expired License or Certificate.

(a) Licenses or certificates that have expired may be reinstated upon meeting the following conditions:

1. Payment of all past due renewal fees;

2. Payment of the late renewal fee provided in rule 1180-1-.03;

3. Compliance with continuing education requirements in rule 1180-1-.08; and

4. If the license has been expired for more than five (5) years, successfully pass the jurisprudence and ethics examination, pay the jurisprudence and ethics examination exam fee as provided in rule 1180-1-.03, and obtain six (6) months of supervision.

(b) Renewal issuance decisions pursuant to this rule may be made administratively, upon review by the Board Administrator.

(c) Anyone submitting a signed renewal form or letter which is found to be false may be subjected to disciplinary action as provided in T.C.A. § 63-11-215 and rule 1180-1-.10.

Authority: *T.C.A. §§4-5-202, 4-5-204, 63-1-107, 63-11-104, 63-11-201, 63-11-206, 63-11-207, 63-11-208, 63-11-209, 63-11-210, 63-11-215, and 63-11-218.* ***Administrative History:*** *Original rule filed September 12, 1974; effective October 12, 1974. Repeal and new rule filed June 6, 1978; effective September 28, 1978. Repeal and new rule filed September 29, 1995; effective December 13, 1995. Repeal and new rule filed August 29, 2000; effective November 12, 2000. Amendment filed August 29, 2000; effective November 12, 2000. Amendment filed June 18, 2002; effective September 1, 2002. Amendment filed May 15, 2003; effective July 29, 2003. Amendment filed November 9, 2005; effective January 23, 2006. However, Stay of Effective Date filed by the Board of Examiners in Psychology on January 20, 2006; new effective date March 23, 2006.*

1180-1-.06 PATIENT RECORDS.

(1) Purposes – The purposes of these rules are:

(Rule 1180-1-.06, continued)

(a) To recognize that patient records are an integral part of the practice of psychologists, senior psychological examiners, and psychological examiners as defined in T.C.A. §§ 63-11-202 and 63-11-203.

(b) To give psychologists, senior psychological examiners and psychological examiners, their professional and non-professional staff, and the public direction about the content, transfer, retention, and destruction of those records.

(2) Conflicts – As to patient records, these rules should be read in conjunction with the provisions of T.C.A. §§ 63-2-101 and 63-2-102, and are not intended to conflict with those statutes in any way. Those statutes, along with these rules, govern the subjects that they cover in the absence of other controlling state or federal statutes or rules to the contrary.

(3) Applicability – These rules regarding patient records shall apply only to those records, the information for which was obtained by psychologists, senior psychological examiners and psychological examiners or their professionally certified employees, or those over whom they exercise supervision, for purposes of services provided in any clinical setting other than those provided in a hospital as defined by T.C.A. § 68-11-302 (4), a hospital emergency room or hospital outpatient facility.

(4) Patient Records –

(a) Duty to Create and Maintain Patient Records – As a component of the standard of care and of minimal competency a psychologist, senior psychological examiner or psychological examiner must cause to be created and cause to be maintained a record for every patient for whom he or she, and/or any of his or her professionally certified supervisees, performs services or provides professional consultation.

(b) Notice – Anywhere in these rules where notice is required to be given to patients of any psychologist, senior psychological examiner or psychological examiner, that notice shall be required to be issued within thirty (30) days of the date of the event that triggers the notice requirement, and may be accomplished by public notice including, but not limited to:

1. publication of the required information in a newspaper of general circulation in the area in which the licensee practices; or

2. posting of the required information at the practice location.

(c) Content – All patient records, or summaries thereof, produced in the course of the practice of psychology for all patients shall include all information and documentation listed in T.C.A. § 63-2-101 (c) (2) and such additional information that is necessary to insure that a subsequent reviewing or treating psychologist, senior psychological examiner or psychological examiner can both ascertain the basis for the diagnosis, treatment plan and outcomes, and provide continuity of care for the patient.

~~1. Patient records include, but are not limited to:~~

~~(i) modalities and frequencies of treatment furnished~~

~~(ii) results of clinical tests~~

~~(iii) counseling session start and stop times~~

(Rule 1180-1-.06, continued)

~~(iv) summaries of:~~

~~(I) diagnosis~~

~~(II) functional status~~

~~(III) treatment plan~~

~~(IV) symptoms~~

~~(V) prognosis~~

~~(VI) progress to date~~

1. Patient records include, but are not limited to:

(i) the name of the patient and other identifying information;

(ii) the presenting problem(s) or purpose of diagnosis;

(iii) the fee arrangement;

(iv) the date and substance of each billed or service-count contact or service;

(v) any test results or other evaluative results obtained in any basic test data from which they were derived (not including protocols);

(vi) notation and results of formal consults with other providers;

(vii) a copy of all test and other evaluative reports prepared as a component of the professional relationship; and

(viii) any releases executed by the patient

~~2. Not included in patient records are:~~

~~(i) test data – raw and scaled scores, client/patient responses to test questions or stimuli, and notes and recordings concerning client/patient statements and behavior during an examination.~~

~~(ii) test materials – manuals, instruments, protocols, and test questions or stimuli.~~

~~(iii) psychotherapy notes – notes recorded (in any medium) by a psychologist, senior psychological examiner or psychological examiner, who is designated as a health service provider as defined in Rule 1180-1-.01, that document or analyze the contents of conversation during a private counseling session or a group, joint, or family counseling session and that are separated from the rest of the individual's patient record.~~

2. Not included in patient records are test materials, such as manuals, instruments, protocols, and test questions or stimuli. Although not included in patient records, test materials such as manuals, instruments, protocols, and test questions or stimuli must be retained in accordance with the "Ethical Principles of

(Rule 1180-1-.06, continued)

Psychologists and Code of Conduct" published by the American Psychological Association

(d) Transfer -

1. Records of Psychologists, Senior Psychological Examiners and Psychological Examiners Upon Death or Retirement - When a psychologist, senior psychological examiner or psychological examiner retires or dies while in practice, patients seen by the psychologist, senior psychological examiner or psychological examiner in his/her office during the immediately preceding eighteen (18) months shall be notified, as provided in subparagraph (b), by the psychologist, senior psychological examiner, psychological examiner or his/her authorized representative and be informed that upon authorization, copies of the records will be sent to the new psychologist, senior psychological examiner or psychological examiner. This notification requirement shall not apply to a patient when there have been fewer than two (2) office patient encounters within the immediately preceding eighteen (18) months.

2. Records of Psychologists, Senior Psychological Examiners and Psychological Examiners upon Departure from a Group - The responsibility for notifying patients of a psychologist, senior psychological examiner or psychological examiner who leaves a group practice whether by death, retirement or departure shall be governed by the employment contract of the psychologist, senior psychological examiner or psychological examiner.

   (i) Whomever is responsible for that notification must notify patients seen by the psychologist, senior psychological examiner or psychological examiner in his/her office during the immediately preceding eighteen (18) months of his/her departure, except that this notification requirement shall not apply to a patient when there have been fewer than two (2) office patient encounters within the immediately preceding eighteen (18) months.

   (ii) Except where otherwise governed by provisions of the employment contract, those patients shall also be notified of the practitioner's new address and offered the opportunity to have copies of their records forwarded to the departing psychologist, senior psychological examiner or psychological examiner at his or her new practice. Provided however, a group shall not withhold the records of any patient who has authorized their transfer to the departing psychologist, senior psychological examiner or psychological examiner or any other practitioner.

   (iii) The choice of practitioner in every case should be left to the patient, and the patient should be informed that upon authorization his/her records will be sent to the psychologist, senior psychological examiner or psychological examiner of the patient's choice.

3. Sale of a Psychology Practice - A psychologist, senior psychological examiner or psychological examiner or the estate of a deceased psychologist, senior psychological examiner or psychological examiner may sell the elements that comprise his/her practice, one of which is its goodwill, i.e., the opportunity to take over the patients of the seller by purchasing the patient records. Therefore, the transfer of records of patients is subject to the following:

   (i) The psychologist, senior psychological examiner or psychological examiner (or the estate) must ensure that all patient records are transferred to another

psychologist, senior psychological examiner or psychological examiner or entity that is held to the same standards of confidentiality as provided in these rules.

(ii) Patients seen by the psychologist, senior psychological examiner or psychological examiner in his/her office during the immediately preceding eighteen (18) months shall be notified that the psychologist, senior psychological examiner or psychological examiner (or the estate) is transferring the practice to another practitioner or entity who will retain custody of their records and that at their written request the copies of their records will be sent to another practitioner or entity of their choice. This notification requirement shall not apply to a patient when there have been fewer than two (2) office patient encounters within the immediately preceding eighteen (18) months.

4. Abandonment of Records – For purposes of this section of the rules death of a psychologist, senior psychological examiner or psychological examiner shall not be considered as abandonment.

(i) It shall be a prima facie violation of T.C.A. § 63-11-215 (b) (1) for a psychologist, senior psychological examiner or psychological examiner to abandon his practice without making provision for the security, or transfer, or otherwise establish a secure method of patient access to their records.

(ii) Upon notification that a psychologist, senior psychological examiner or psychological examiner in a practice has abandoned his practice and not made provision for the security, or transfer, or otherwise established a secure method of patient access to their records patients should take all reasonable steps to obtain their records by whatever lawful means available and should immediately seek the services of another psychologist, senior psychological examiner or psychological examiner.

(e) Retention of Patient Records – Patient records shall be retained for a period of not less than seven (7) years from the last clinical contact between the patient and the psychologist, senior psychological examiner or psychological examiner, or their professionally certified supervisees except for the following:

1. Records for incompetent patients shall be retained indefinitely.

2. Records of minors shall be retained for a period of not less than one (1) year after the minor reaches the age of majority or seven (7) years from the date of the last clinical contact with the patient, whichever is longer.

3. Notwithstanding the foregoing, no patient record involving services which are currently under dispute shall be destroyed until the dispute is resolved.

(f) Destruction of Patient Records -

1. No patient record shall be singled out for destruction other than in accordance with established office operating procedures.

2. Records shall be destroyed only in the ordinary course of business according to established office operating procedures that are consistent with these rules.

3. Records may be destroyed by burning, shredding, or other effective methods in keeping with the confidential nature of the records.

(Rule 1180-1-.06, continued)

4. When records are destroyed, the time, date and circumstances of the destruction shall be recorded and maintained for future reference.

(5) Violations – Violation of any provision of these rules is grounds for disciplinary action pursuant to T.C.A. §§ 63-11-215 (b) (1), and/or (2).

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-2-101, 63-2-102, 63-11-104, 63-11-201, 63-11-202, 63-11-203, 63-11-213, and 63-11-215.* ***Administrative History:*** *Original rule filed September 12, 1974; effective October 12, 1974. Repeal and new rule filed June 6, 1978; effective September 28, 1978. Repeal and new rule filed September 29, 1995; effective December 13, 1995. Repeal and new rule filed August 29, 2000; effective November 12, 2000. Repeal and new rule filed March 21, 2005; effective June 4, 2005.*

1180-1-.07 RETIREMENT AND REACTIVATION OF LICENSE OR CERTIFICATE.

(1) A person who holds a current license or certificate and does not intend to practice as a licensed Psychologist, Senior Psychological Examiner, Psychological Examiner, or Certified Psychological Assistant may apply to convert an active license or certificate to retired status. An individual who holds a retired license or certificate is not required to pay the renewal fee.

(2) A licensee may apply for retired status by filing a completed affidavit of retirement form and any required documentation with the Board's administrative office.

(3) A person whose license has been retired and who has not practiced for up to two (2) years, or a person whose Tennessee license has been retired and who has been licensed in good standing and in continuous practice in another state, may re-enter active status provided there are no criminal or practice act violations which would prohibit initial licensure, by submitting to the Board administrative office a written request for licensure reactivation, the license renewal fee, the state regulatory fee and the late renewal fee.

(4) A person whose license has been retired and who has not practiced for two years up to five (5) years may re-enter active status provided there are no criminal or practice act violations which would prohibit initial licensure, by submitting to the Board administrative office a written request for licensure reactivation, the license renewal fee, the state regulatory fee, the late renewal fee, and proof of successful completion of forty (40) hours of continuing education as provided in rule 1180-1-.08.

(5) A person whose license or certificate has been retired and who has not practiced for over five (5) years may re-enter active status provided there are no criminal or practice act violations which would prohibit initial licensure or certification, by submitting to the Board administrative office a written request for licensure or certification reactivation, the license or certificate renewal fee, the state regulatory fee, the late renewal fee, proof of successful completion of forty (40) hours of continuing education as provided in rule 1180-1-.08, and by passing the jurisprudence and ethics examination if required, paying the jurisprudence and ethics examination exam fee as provided in rule 1180-1-.03, and obtaining six (6) months of supervision.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-1-111, 63-11-104, 63-11-201, 63-11-206, 63-11-207, 63-11-208, 63-11-209, 63-11-210, and 63-11-218.* ***Administrative History:*** *Original rule filed September 12, 1974; effective October 12, 1974. Repeal and new rule filed June 6, 1978; effective September 28, 1978. Repeal and new rule filed September 29, 1995; effective December 13, 1995. Repeal and new rule filed August 29, 2000; effective November 12, 2000. Amendment filed August 29, 2000; effective November 12, 2000. Amendment filed June 18, 2002; effective September 1, 2002. Amendment filed November 9, 2005; effective January 23, 2006. However, Stay of Effective Date filed by the Board of Examiners in Psychology on January 20, 2006; new effective date March 23, 2006.*

(Rule 1180-1-.07, continued)

1180-1-.08 CONTINUING EDUCATION.

(1) Hours required for Psychologists, Senior Psychological Examiners, and Psychological Examiners:

(a) Certified Psychological Assistants are required to pursue continuing education activities as directed by the supervising psychologist, as provided in Rule 1180-4-.01 (4) (f).

(b) Psychologists, Senior Psychological Examiners, and Psychological Examiners are required to obtain forty (40) hours of continuing education (CE) credit every two (2) years. This CE is to be acquired in the two (2) calendar years (January 1 - December 31) prior to the licensure renewal year.

~~(c) Nine (9) CE hours of the forty (40) hours required in subparagraph (b) must be received from a Type I CE program as provided by this rule.~~

(c) Nine (9) CE hours of the forty (40) hours required in subparagraph (b) must be received from a Type I CE program as provided by this rule. All continuing education hours obtained via the internet must be from a Type I CE program.

(d) Nine (9) CE hours of the forty (40) hours required in subparagraph (b) must be received from Type I or Type II CE programs as provided by this rule.

~~(e) Twenty-two (22) CE hours of the forty (40) hours required in subparagraph (b) may be received from Type I, II, or III programs as provided by this rule. Three (3) hours of the twenty-two (22) hours required in this subparagraph shall pertain to:~~

~~1. Tennessee Code Annotated, Title 63, Chapter 11; and~~

~~2. Official Compilation, Rules and Regulations of the State of Tennessee, Chapters 1180-1, 1180-2, 1180-3, and 1180-4; and~~

~~3. The version of the "Ethical Standards" which are part of the "Ethical Principles of Psychologists and Code of Conduct" published by the American Psychological Association (A.P.A.), and approved by the A.P.A.'s Council of Representatives on August 21, 2002 to become effective on June 1, 2003.~~

(e) Twenty-two (22) CE hours of the forty (40) hours required in subparagraph (b) must be received from Type I, II, or III programs as provided by this rule.

~~(f) Experiences unacceptable as continuing education include, but are not limited to, administrative activities, psychotherapy, personal growth or enrichment.~~

(f) Three (3) CE hours shall pertain to cultural diversity as specifically noted in the title, description of objectives, or curriculum of the presentation, symposium, workshop, seminar, course or activity. Cultural diversity includes aspects of identity stemming from age, disability, gender, race/ethnicity, religious/spiritual orientation, sexual orientation, socioeconomic status, and other cultural dimensions. The topic of the presentation, symposium, workshop, seminar, course or activity need not be on cultural diversity, but one of the objectives or descriptions of the topics covered, shall clearly indicate attention to cultural diversity. These hours shall be Type I or Type II.

(g) Three (3) CE hours of Type I or Type II shall pertain to:

(Rule 1180-1-.08, continued)

1. Tennessee Code Annotated, Title 63, Chapter 11; and

2. Official Compilation, Rules and Regulations of the State of Tennessee, Chapters 1180-01, 1180-02, 1180-03 and 1180-04; and

3. The current version of the "Ethical Standards" which are part of the "Ethical Principles of Psychologists and Code of Conduct" published by the American Psychological Association (A.P.A.).

(h) Experiences unacceptable as continuing education include, but are not limited to, administrative activities, psychotherapy, personal growth or enrichment.

(2) Type I continuing education

(a) Type I continuing education is offered by APA-approved providers of educational programs.

(b) Type I CE learning activities and related skills and knowledge are postdoctoral in nature.

(c) Type I CE includes formal learning objectives and evaluation of learning activities.

(d) Type I CE is primarily psychological in nature or is relevant to the science and practice of psychology.

(e) Type I CE offerings must have a pre-assigned number of CE credit hours and provide documentation indicating the course was APA-approved.

(f) Type I CE may be fulfilled via internet. No more than twenty (20) hours shall be obtained from an internet source.

(3) Type II continuing education

(a) Type II CE is primarily psychological in nature or is relevant to the science and practice of psychology.

(b) Type II CE offerings must provide documentation of attendance and must have a pre-assigned number of CE credit hours under the auspices of any of the following:

1. A regional psychological association

2. A state psychological association

3. Any recognized and relevant credentialing national, regional or state professional body

4. An institution housing an APA-approved internship program.

5. A nationally recognized accredited college or university with a health-related professional training program.

6. Graduate courses in an APA-approved graduate psychology program. (To be assigned fifteen [15] Type II CE units per semester hour)

7. Passing the ABPP exam. (To be assigned twenty [20] hours of Type II CE credit)

(Rule 1180-1-.08, continued)

(4) Type III continuing education

(a) Type III CE consists of learning experiences that are less structured than Type I or Type II CE and provide information that is primarily psychological in nature or is relevant to the science and practice of psychology.

(b) Type III CE may consist of

1. clinical peer consultation groups; or

2. research presentations and convention workshops that incorporate multiple, brief presentations with many different learning objectives that are less amenable to a single evaluation; or

3. clinical supervision provided to students, interns, and post-doctoral fellows in accredited programs on a basis that is voluntary, uncompensated, and external to that program. A maximum of ten (10) CE hours per two (2) calendar years (January 1 - December 31) is allowed.

(c) Sources of Type III continuing education

1. Meetings - Registration and attendance at meetings of recognized professional psychology organizations (local, state, regional, national or international). Acceptable documentation will consist of a copy of the licensee's registration receipt from the meeting. One (1) clock hour equals one (1) CE hour.

2. Teaching and presentations.

(i) Psychology presentations at relevant professional meetings. Acceptable documentation will consist of a copy of the program or agenda and the number of clock hours. A maximum of three (3) CE hours per presentation is allowed.

(ii) Preparation and delivery of guest lectures to academic or public groups. Acceptable documentation will consist of a copy of a printed agenda, program or class syllabus. A maximum of one (1) CE hour per lecture is allowed.

(iii) Developing and teaching an academic psychology course in an institution accredited by a regional accrediting association. For the initial development of the course and its teaching, one semester length three (3) credit hour course equals twenty-two (22) CE hours; one quarter length three (3) credit hour course equals twenty-two (22) CE hours. Acceptable documentation will consist of a letter from the department head or dean of the institution stating that the licensee taught the course for the first time and the number of credits, units or hours assigned for the course.

3. Publications

(i) Writing or editing a published book, or writing a book chapter or a refereed journal article shall be assigned twenty-two (22) hours of Type III CE credit. Acceptable documentation will consist of a personal log detailing the published materials.

(ii) Developing for teaching purposes a videotape or interactive computer program shall be assigned twenty-two (22) hours of Type III CE credit. Acceptable

documentation will consist of a personal log detailing the videotape or computer program.

(iii) Being the principal editor of a journal or serving on the editorial board of a journal article shall be assigned twenty-two (22) hours of Type III CE credit. Acceptable documentation will consist of a personal log detailing the published materials.

(iv) Serving as a reviewer of a journal article shall be assigned one (1) hour of Type III CE credit per manuscript. Acceptable documentation will consist of a personal log detailing the published materials.

4. Workshops, seminars or courses - Relevant non-accredited psychology workshops, seminars or courses shall be assigned a maximum of ten (10) hours of Type III CE credit per year. Acceptable documentation will consist of certificates of attendance or registration receipts.

5. Serving as a member of the Board shall be assigned a maximum of ten (10) hours of Type III CE credit per year.

6. Serving as a member of an oral examining committee for the Board shall be assigned one (1) hour of Type III CE credit per exam.

(5) Continuing education courses may be presented in the traditional lecture and classroom formats or, with successful completion of a written post experience examination to evaluate material retention, in Multi-Media formats.

(a) Multi-Media courses may include courses utilizing:

1. The Internet

2. Closed circuit television

3. Satellite broadcasts

4. Correspondence courses

5. Videotapes

6. CD-ROM

7. DVD

8. Teleconferencing

9. Videoconferencing

10. Distance learning

(b) Licensees with disabilities or other hardships severely restricting travel away from home may petition the Board in writing to request exceptions to the manner in which they accumulate CE credits.

(6) Documentation. Each licensee shall maintain documentation of CE hours for five (5) years and should prepare a summary report with documentation yearly. Documentation of completed CE hours must be

(Rule 1180-1-.08, continued)

produced for inspection and verification if requested in writing by the Board. The Board shall not maintain CE files.

(7) Violations.

(a) Any licensee who falsely certifies attendance and completion of the required CE hours may be subject to disciplinary action pursuant to T.C.A. § 63-11-215.

(b) Any licensee who fails to obtain the required CE hours may be subject to disciplinary action pursuant to T.C.A. § 63-11-215.

Authority: *T.C.A. §§4-5-202, 4-5-204, 63-11-104, 63-11-201, 63-11-206, and 63-11-218.* ***Administrative History:*** *Original rule filed September 12, 1974; effective October 12, 1974. Repeal and new rule filed June 6, 1978; effective September 28, 1978. Repeal and new rule filed September 29, 1995; effective December 13, 1995. Repeal and new rule filed August 29, 2000; effective November 12, 2000. Amendment filed June 18, 2002; effective September 1, 2002. Amendment filed March 21, 2005; effective June 4, 2005. Amendment filed November 9, 2005; effective January 23, 2006.*

1180-1-.09 PROFESSIONAL ETHICS.

(1) The Board adopts, as if fully set out herein and to the extent that it does not conflict with state law, rules or Board Position Statements, as its ethical standards the specific "Ethical Standards" which are part of the "Ethical Principles of Psychologists and Code of Conduct" published by the American Psychological Association (A.P.A.). The version adopted by the Board was approved by the A.P.A.'s Council of Representatives on August 21, 2002 to become effective on June 1, 2003.

(2) In the case of a conflict the state law, rules or position statements shall govern. Violation of the Board's ethical standards shall be grounds for disciplinary action pursuant to T.C.A. § 63-11-215 (b) (1).

(3) A copy of the A.P.A. "Ethical Standards" which are part of the "Ethical Principles of Psychologists and Code of Conduct" may be obtained from the Order Department of the A.P.A. at 750 First Street, NE, Washington, DC 20002-4242 or by phone at (202) 336-5510, or on the Internet at http://www.apa.org/ethics.

(4) Applicability of the Ethical Standards. The activity of a licensee or certificate holder subject to the Ethical Standards may be reviewed only if the activity is part of his or her work-related functions or the activity is psychological in nature. Personal activities having no connection to or effect on psychological roles are not subject to the Ethical Standards.

Authority: *T.C.A. §§4-5-202, 4-5-204, 63-11-104, 63-11-201, 63-11-204, 63-11-206, 63-11-207, 63-11-208, 63-11-213, 63-11-214, and 63-11-215.* ***Administrative History:*** *Original rule filed August 29, 2000; effective November 12, 2000. Amendment filed June 18, 2002; effective September 1, 2002. Amendment filed May 29, 2003; effective August 12, 2003.*

1180-1-.10 DISCIPLINARY GROUNDS, ACTIONS, CIVIL PENALTIES, SETTLEMENTS, AND SCREENING PANELS.

(1) Grounds and authority for disciplinary actions. The Board shall have the power to deny an application for a license or certificate to any applicant. The Board shall have the authority to suspend or revoke a license or certificate, reprimand or otherwise discipline by a monetary fine any licensee or certificate holder. Formal disciplinary proceedings before the Board shall comply with the Administrative Procedures Act, T.C.A. §§ 4-5-301, et. seq. The grounds upon which the Board shall exercise such power include, but are not limited to, the following:

(Rule 1180-1-.10, continued)

(i) Approved by a majority of the members of the screening panel which issued them; and

(ii) Agreed to by both the Department of Health, by and through its attorney(s), and the licensee or certificate holder; and

(iii) Subsequently presented to and ratified by the Board or a duly constituted panel of the Board.

Authority: *T.C.A. §§4-5-105, 4-5-202, 4-5-204, 4-5-217, 4-5-223, 63-1-122, 63-1-134, 63-1-138, 63-11-104, 63-11-201, and 63-11-215 through 63-11-217.* ***Administrative History:*** *Original rule filed August 29, 2000; effective November 12, 2000. Amendment filed June 18, 2002; effective September 1, 2002. Amendment filed August 9, 2004; effective October 23, 2004.*

1180-1-.11 LICENSE OR CERTIFICATE.

(1) Display of License or Certificate. Every person licensed by the Board shall display the license or certificate in a conspicuous place in his or her office and, whenever required, exhibit such license or certificate to the Board or its authorized representatives.

(2) Replacement License or Certificate. A license or certificate holder whose "artistically designed" license or certificate has been lost or destroyed may be issued a replacement document upon receipt of a written request in the Board administrative office. Such request shall be accompanied by an affidavit (signed and notarized) stating the facts concerning the loss or destruction of the original document and a recent signed passport type photograph and the required replacement license or certificate fee.

Authority: *T.C.A. §§4-5-202, 4-5-204, 63-1-106, 63-1-109, 63-11-104, 63-11-201, and 63-11-212.* ***Administrative History:*** *Original rule filed August 29, 2000; effective November 12, 2000. Amendment filed June 18, 2002; effective September 1, 2002.*

1180-1-.12 CHANGE OF ADDRESS AND/OR NAME.

(1) Change of address. Each person holding a license or certificate who has had a change of address or place of employment shall file in writing with the Board his or her current address, giving both old and new addresses. Notifications shall be received in the Board's administrative office no later than thirty (30) days after the change is effective and must reference the individual's name, profession and license or certificate number.

(2) Change of name. An individual registered with the Board shall notify the Board in writing within thirty (30) days of a name change and will provide both the old and new names. A notice of name change must also include a copy of the legal document which implements the name change and reference the individual's profession, Board and license or certificate number.

Authority: *T.C.A. §§4-5-202, 4-5-204, 63-1-106, 63-1-108, 63-11-104, and 63-11-201.* ***Administrative History:*** *Original rule filed August 29, 2000; effective November 12, 2000. Amendment filed June 18, 2002; effective September 1, 2002.*

1180-1-.13 MANDATORY RELEASE OF PATIENT RECORDS.

(1) Within ten (10) working days of receipt of a written request from a patient or the patient's authorized representative, an individual licensed by this Board shall provide a complete copy of the patient's records, or summary of such records which were maintained by the provider.

~~(2) A licensee shall be entitled to charge reasonable costs not to exceed ten dollars ($10.00) for reports twenty (20) pages or less in length and twenty-five cents (25¢) per page for each page copied after the first twenty (20) pages for copying and mailing patient records.~~

(2) A licensee shall be entitled to charge reasonable costs, as outlined by T.C.A. § 63-2-102, for the reproduction of records to a third party not to exceed twenty dollars ($20.00) for reports or records five (5) pages or less in length and fifty cents ($.50) per page for each page copied after the first five (5) pages for copying and mailing patient records.

Authority: *T.C.A. §§4-5-202, 4-5-204, 63-2-101, 63-2-102, and 63-11-104.* ***Administrative History:*** *Original rule filed August 29, 2000; effective November 12, 2000.*

1180-1-.14 BOARD MEETINGS, OFFICERS, CONSULTANTS, RECORDS AND DECLARATORY ORDERS. The Board is charged with the responsibility of regulating the practice of psychology in order to protect the citizens of Tennessee. The Board, by formulating and administering examinations, credentials candidates for licensure and continues this credentialing process by approving educational seminars for licensees or certificate holders in appropriate subject material, or specific educational requirements for an individual licensee or certificate holder as the result of a censure, reprimand or action taken in a formal hearing conducted or ratified by the Board.

(1) Board meetings.

(a) The time, place and frequency of Board meetings shall be at the discretion of the Board, except at least one (1) meeting shall be held annually.

(b) Special meetings are called at the discretion of the Board chair or at the written request from two (2) members of the Board.

(c) All meetings of the Board shall be open to the public.

(2) The Board shall elect from its members the following officers:

(a) Chair. The member who shall preside at all Board meetings, appoint committees and correspond with other Board members when appropriate.

(b) Vice Chair. The member whose duties will be to preside at a Board meetings in the absence or unavailability of the Chair and who along with the Board administrator shall be responsible for correspondence from the Board and executing all official documents which require the seal of the Board to be affixed.

(3) Responsibilities of the Board include, but are not limited to:

(a) Adopt and revise rules as may be necessary to carry out its powers and duties.

(b) Adopt and/or administer examinations.

(c) Examine applications and deny, withhold or approve the licenses or certificates of applicants and renew licenses or certificates.

(d) Appoint designee(s) to assist in the performance of its duties, (i.e., examination proctors).

(e) Conduct hearings.

(4) Conflict of interest. Any Board member having an immediate personal, private or financial interest in any matter pending before the Board shall disclose the fact in writing or orally at a public meeting and shall not vote upon such matter.

RULES
OF
THE BOARD OF EXAMINERS IN PSYCHOLOGY

CHAPTER 1180-2
RULES GOVERNING PSYCHOLOGISTS

TABLE OF CONTENTS

1180-2-.01	Scope of Practice	1180-2-.07	Free Health Clinic and Volunteer Practice Requirements
1180-2-.02	Qualifications for Licensure		
1180-2-.03	Procedures for Licensure	1180-2-.08	
1180-2-.04	Examinations	through	
1180-2-.05	Temporary License	1180-2-.26	Repealed
1180-2-.06	Provisional License		

1180-2-.01 SCOPE OF PRACTICE.

(1) The scope of practice of a Psychologist is prescribed and limited by Tennessee Code Annotated, Title 63, Chapter 11 and the rules set forth in this chapter and chapter 1180-1.

(2) A license issued by the Board specifies licensure as a Psychologist. The Board may grant designation as a Health Service Provider to qualifying Psychologists. HSP designation will be displayed on the renewal certificate.

(3) Psychologists shall limit their practices to the use of those techniques, and to providing services to those populations, for which they have formal education, formal professional training and supervised experience, and for which they hold licensure.

(4) Health services may be provided only by Psychologists with HSP designation. The scope of practice of Psychologists with HSP designation is limited to those health services for which the licensee has obtained education and specific training to provide.

(5) The practice of a Psychologist includes, but is not limited to:

(a) Psychological testing and/or the evaluation or assessment of personal characteristics, such as intelligence, personality, mental status, psychopathology, abilities, achievement, interests, aptitudes and neuropsychological functioning;

(b) Behavioral analysis;

(c) Psychological evaluation or assessment or analysis of organizations and organizational functioning;

(d) Counseling, psychoanalysis, psychotherapy, group therapy, marital therapy, family therapy, hypnosis, hypnotherapy, biofeedback and behavior therapy;

(e) Psychological diagnosis and treatment of mental, emotional and nervous disorders or disabilities, developmental deviation or disability, alcoholism and substance abuse, disorders of habit or conduct, and the psychological aspect of physical illness, accident, injury or disability;

(f) Psychoeducational evaluation, psychoeducational therapy, developmental therapy, remediation and consultation; and

(g) Case management and utilization review of services and psychological consultations, program planning, and psychological research to industrial, business and corporate organizations.

(Rule 1180-2-.01, continued)

(6) A Psychologist's services may be rendered to individuals, families, groups, organizations and the public, without regard to whether payment is received for services rendered.

(7) ~~Standards for supervision of Psychologists, Psychological Examiners, and Certified Psychological Assistants~~

(7) Standards for supervision of Psychologists, Psychological Examiners and Certified Psychological Assistants by Psychologists

~~(a) Supervision must meet minimum standards and a supervisor of record must be made known to the Board. When a Psychologist renews his or her license he or she must list those Psychologists, Psychological Examiners, and Certified Psychological Assistants whom the Psychologist supervises and for whom he or she is the supervisor of record. When a Psychological Examiner or Certified Psychological Assistant renews his/her license or certificate, that individual must list his/her primary supervisor(s) if engaging in activities requiring supervision.~~

(a) Supervision must meet minimum standards and a supervisor of record must be made known to the Board. When a Psychologist renews his or her license he or she must list those Psychologists, Psychological Examiners, and Certified Psychological Assistants whom the Psychologist supervises and for whom he or she is the supervisor of record.

(b) Qualified supervision requires that a licensed Psychologist, qualified by experience and training to practice the overall supervised activity or activities, provide supervision on a regular and frequent basis. The supervising Psychologist for Psychological Examiners, Certified Psychological Assistants, and for Psychologists delivering health services must also be designated as a HSP.

(c) The supervising Psychologist shall limit the number of supervisees in order to assure an adequate ratio of supervision hours to practice hours consistent with professional standards and guidelines which insure the welfare of the supervisees and their clients.

~~(d) Specific case monitoring and skill training requires significant supervisory contact and must be in addition to overall administrative supervision.~~

(d) Specific case monitoring and skill training requires significant supervisory contact and must be in addition to overall administrative supervision. Supervision conducted via face-to-face video conferencing equipment and/or technology is acceptable, assuming compliance with subparagraphs (7)(a) through (7)(e) of this rule. "Face-to-face" means (a) can see one's face and (b) occurring in real time via video conferencing equipment and/or technology. No more than seventy-five (75) percent of supervision can be obtained through video conferencing.

1. Supervision is to be conducted primarily on a one-on-one basis and shall be in addition to any group seminar or group consultations which are also deemed appropriate. Thus, adequate supervision will require considerable one-on-one contact and time with respect to each client. Records of the supervision process must be maintained by the supervisor covering the number of hours of supervision activities, the number and duration of one-on-one supervisory meetings and documentation of clients discussed at each supervisory session.

2. A supervisor, at the time of supervision, must not be in a dual relationship with the supervisee, e.g., be a spouse, other close relative or therapist.

(e) In all cases the specific terms of the supervisory arrangement are the responsibility of the supervising Psychologist upon whom it is incumbent to assure supervisory time and service

(Rule 1180-2-.01, continued)

delivery. Likewise, it is the responsibility of the supervisee to obtain supervision. The education, training, experience, ongoing performance and level of licensure or certification of the supervisee must be considered by the supervisor. The arrangements for supervision must be agreed to by both the supervisor and the supervisee. In situations where supervision has been regular and frequent and one-on-one contact has occurred, the frequency and intensity of supervision may, at the discretion of the supervising Psychologist upon determination of the supervisee's competence and readiness, be modified. Ultimately, the supervising Psychologist of record must protect the welfare of the client and assure compliance with Tennessee law and professional ethics. (Requirements for Psychologists receiving supervision as part of the experience requirement for designation as a HSP are contained in 1180-2-.02(2)(d).)

1. The standard for supervision of newly licensed individuals with a provisional license as a Psychologist with HSP designation and for Psychological Examiners is one (1) hour per week.

2. The standard for supervision of experienced (licensed for at least five [5] years) Psychological Examiners is that it shall occur no less than monthly. If an experienced Psychological Examiner changes supervisors, the experienced Examiner may follow the monthly supervision standard if agreed to by both the Psychologist supervisor and the experienced Psychological Examiner in question.

~~3. The standard for supervision of Certified Psychological Assistants is direct and frequent (more than one [1] hour a week) supervision to take place at the site of the service.~~

3. The standard of supervision of Certified Psyhological Assistants is direct and frequent supervision to take place at the site of service, considering the number of hours worked per week and the experience level of the Certified Psychological Assistant.

(8) The Board shall consider that an individual, either licensed or unlicensed, is violating these limits of practice if his/her conduct includes, but is not limited to, the following:

(a) Claiming expertise or using techniques or procedures of assessment or treatment for which the practitioner has not completed appropriate academic course work or supervised training experience;

(b) Knowingly assigning, permitting or hiring any unqualified person(s) to perform functions of assessment or treatment or delegating the provisions of psychological services to unqualified person(s);

(c) Failing to adequately supervise any assigned trainee or employee who is providing psychological services;

(d) Aiding, abetting, assisting, or hiring any individual to violate or circumvent any law or duly promulgated rule intended to guide the conduct of psychological services; or

(e) Providing or claiming to provide health services as a Psychologist without a designation as a HSP.

Authority: *T.C.A. §§4-5-202, 4-5-204, 63-11-104, 63-11-201 through 63-11-208, 63-11-214, and 63-11-215.* ***Administrative History:*** *Original rule filed June 6, 1978; effective July 6, 1978. Repeal and new rule filed January*

RULES
OF
THE BOARD OF EXAMINERS IN PSYCHOLOGY

CHAPTER 1180-3
RULES GOVERNING PSYCHOLOGICAL EXAMINERS AND SENIOR PSYCHOLOGICAL EXAMINERS

TABLE OF CONTENTS

1180-3-.01	Scope of Practice	1180-3-.04	Repealed
1180-3-.02	Qualifications for Licensure	1180-3-.05	Repealed
1180-3-.03	Procedures for Licensure		

1180-3-.01 SCOPE OF PRACTICE.

(1) The scope of practice of Psychological Examiners and Senior Psychological Examiners is prescribed and limited by Tennessee Code Annotated, Title 63, Chapter 11 and the rules set forth in this chapter and Chapter 1180-1. A license issued by the Board specifies licensure as a Psychological Examiner or as a Senior Psychological Examiner.

(2) Psychological Examiners and Senior Psychological Examiners shall limit their practices to the use of those techniques, and to providing services to those populations, for which they have formal education, formal professional training and supervised experience, and for which they hold licensure.

(3) Psychological Examiners who have had appropriate education, training and supervised practica experience may provide the following psychological services without supervision:

(a) Interviewing or administering and interpreting tests of mental abilities, aptitudes, interests and personality characteristics for such purposes as psychological evaluation or for educational or vocational guidance, selection or placement, including establishment of intellectual level of functioning or learning deficit for school placement; or

(b) Psychological research services to industrial, business and corporate organizations.

(4) ~~Psychological Examiners who have had appropriate education, training, and supervised practica experience may provide the following psychological services only under the qualified supervision of a licensed Psychologist designated as a HSP:~~

(4) Psychological Examiners who have had appropriate education, training, and supervised practice experience may provide the following psychological services only under the qualified supervision of a licensed Psychologist designated as a HSP or Senior Psychological Examiner:

(a) Overall personality appraisal or classification, including assessment and diagnosis of psychopathology or mental illness; or

(b) Personality counseling, psychotherapy, behavior analysis, or personality readjustment techniques.

(5) Senior Psychological Examiners are Health Service Providers and may provide the following psychological services without supervision:

(a) Interviewing or administering and interpreting tests of mental abilities, aptitudes, interests and personality characteristics for such purposes as psychological evaluations, or for educational or vocational guidance, selection or placement, including establishment of intellectual level of functioning or learning deficit for school placement; or

(Rule 1180-3-.01, continued)

(b) Psychological research services to industrial, business and corporate organizations; or

(c) Overall personality appraisal or classification, including psychological testing, projective testing, evaluation for disability or vocational purposes, and diagnosis of nervous or mental disorders; or

(d) Personality counseling, psychotherapy, behavior analysis, or personality readjustment techniques, or

(e) Supervision of a Psychological Examiner and/or a Certified Psychological Assistant

~~(6) Standards for supervision of Psychological Examiners.~~

(6) Standards for supervision of Psychological Examiners and Certified Psychological Assistants by Senior Psychological Examiners.

(a) Supervision must meet minimum standards and a supervisor of record must be made known to the Board.

1. Before supervision of Psychological Examiners may occur, a Board-supplied form shall be submitted to the Board's administrative office. Such form shall be signed by both the supervisor and the supervisee, and shall list

~~(i) those Psychological Examiners whom the Psychologist supervises and for whom he or she is the supervisor of record; or~~

(i) A Senior Psychological Examiner must list the Psychological Examiners and/or Certified Psychological Assistants for whom he or she is the supervisor of record. When a Senior Psychological Examiner renews his or her license, he or she must list those Psychological Examiners and/or Certified Psychological Assistants whom the Senior Psychological Examiner supervises and for whom he or she is the supervisor of record.

~~(ii) a Psychological Examiner must list his/her primary supervising Psychologist(s) if engaging in activities requiring supervision~~

(ii) A Psychological Examiner must list his/her primary supervising Senior Psychological Examiner if engaging in activities requiring supervision. When a Psychological Examiner renews his/her license or certificate, that individual must list his/her primary supervisor(s) if engaging in activities requiring supervision

2. The Board-supplied form may be obtained by contacting the Board's administrative office, or by downloading it from the Board's web page on the Internet.

(b) ~~Qualified supervision requires that a licensed Psychologist, qualified by experience and training to practice the overall supervised activity or activities, provide supervision on a regular and frequent basis. The supervising Psychologist for Psychological Examiners delivering health services must also be designated as a HSP~~

(b) Qualified supervision requires that a licensed Senior Psychological Examiner, qualified by experience and training to practice the overall supervised activity or activities, provide supervision on a regular and frequent basis.

(Rule 1180-3-.01, continued)

(c) ~~The supervising Psychologist shall limit the number of supervisees in order to assure an adequate ratio of supervision hours to practice hours consistent with professional standards and guidelines which insure the welfare of the supervisees and their clients.~~

(c) The supervising Senior Psychological Examiner shall limit the number of supervisees in order to assure an adequate ratio of supervision hours to practice hours consistent with professional standards and guidelines which insure the welfare of the supervisees and their clients.

~~(d) Specific case monitoring and skill training requires significant supervisory contact and must be in addition to overall administrative supervision.~~

(d) Specific case monitoring and skill training requires significant supervisory contact and must be in addition to overall administrative supervision. Supervision conducted via face-to-face video conferencing equipment and/or technology is acceptable, assuming compliance with subparagraphs (6)(a) through (6)(e) of this rule. "Face-to-face" means (a) can see one's face and (b) occurring in real time via video conferencing equipment and/or technology. No more than seventy-five (75) percent of supervision can be obtained through video conferencing.

1. Supervision is to be conducted primarily on a one-on-one basis and shall be in addition to any group seminar or group consultations which are also deemed appropriate. Thus, adequate supervision will require considerable one-on-one contact and time with respect to each client. Records of the supervision process must be maintained by the supervisor covering the number of hours of supervision activities, the number and duration of one-on-one supervisory meetings and documentation of clients discussed at each supervisory session.

2. A supervisor, at the time of supervision, must not be in a dual relationship with the supervisee, e.g., be a spouse, other close relative or therapist.

~~(e) In all cases the specific terms of the supervisory arrangement are the responsibility of the supervising Psychologist upon whom it is incumbent to assure supervisory time and service delivery. Likewise, it is the responsibility of the supervisee to obtain supervision. The education, training, experience, ongoing performance and level of licensure of the supervisee must be considered by the supervisor. The arrangements for supervision must be agreed to by both the supervisor and the supervisee. In situations where supervision has been regular and frequent and one-on-one contact has occurred, the frequency and intensity of supervision may, at the discretion of the supervising Psychologist upon determination of the supervisee's competence and readiness, be modified. Normally such supervision will occur weekly. Ultimately, the supervising Psychologist of record must protect the welfare of the client and assure compliance with Tennessee law and professional ethics. (Requirements for Psychologists receiving supervision as part of the experience requirement for designation as a HSP are contained in 1180-2-.02(2)(d).)~~

(e) In all cases the specific terms of the supervisory arrangement are the responsibility of the supervising Senior Psychological Examiner upon whom it is incumbent to assure supervisory time and service delivery. Likewise, it is the responsibility of the supervisee to obtain supervision. The education, training, experience, ongoing performance and level of licensure of the supervisee must be considered by the supervisor. The arrangements for supervision must be agreed to by both the supervisor and the supervisee. In situations where supervision has been regular and frequent and one-on-one contact has occurred, the frequency and intensity of supervision may, at the discretion of the supervising Senior Psychological Examiner upon determination of the supervisee's competence and readiness, be modified. Normally such supervision will occur weekly. Ultimately, the supervising Senior Psychological Examiner of

(Rule 1180-3-.01, continued)

record must protect the welfare of the client and assure compliance with Tennessee law and professional ethics. (Requirements for Psychologists receiving supervision as part of the experience requirement for designation as a HSP are contained in 1180-02-.02(2)(d).)

1. ~~The standard for supervision of newly licensed Psychological Examiners is one (1) hour per week.~~

1. The standard for supervision of newly supervised (less than five [5] years) Psychological Examiners is one (1) hour per week.

~~2. The standard of supervision for experienced (licensed for at least five [5] years) Psychological Examiners is that it shall occur no less than monthly. If an experienced Psychological Examiner changes supervisors, the experienced Psychological Examiner may follow the monthly supervision standard if agreed to by both the Psychologist supervisor and the experienced Psychological Examiner in question.~~

2. The standard of supervision for experienced (supervised for at least five [5] years) Psychological Examiners is that it shall occur no less than monthly. If an experienced Psychological Examiner changes supervisors, the experienced Psychological Examiner may follow the monthly supervision standard if agreed to by the Senior Psychological Examiner supervisor and the experienced Psychological Examiner in question

(7) The Board shall consider that an individual, either licensed or unlicensed, is violating these limits of practice if his/her conduct includes, but is not limited to, the following:

(a) Claiming expertise or using techniques or procedures of assessment or treatment for which the practitioner has not completed appropriate academic course work or supervised training experience;

(b) Knowingly assigning, permitting or hiring any unqualified person(s) to perform functions of assessment or treatment or delegating the provisions of psychological services to unqualified person(s);

(c) Failing to adequately supervise any assigned trainee or employee who is providing psychological services;

(d) Aiding, abetting, assisting, or hiring any individual to violate or circumvent any law or duly promulgated rule intended to guide the conduct of psychological services; or

(e) Providing or claiming to provide the services listed in paragraph (4) without supervision, unless licensed as a Senior Psychological Examiner.

Authority: *T.C.A. §§4-5-202, 4-5-204, 63-11-104, 63-11-201 through 63-11-208, 63-11-214, 63-11-215, and Public Acts of 2001, Chapter 123.* ***Administrative History:*** *Original rule filed August 29, 2000; effective November 12, 2000. Amendment filed June 18, 2002; effective September 1, 2002. Amendment filed January 5, 2004; effective March 20, 2004.*

1180-3-.02 QUALIFICATIONS FOR UPGRADE. To become licensed as a Senior Psychological Examiner, completion of one (1) of the following requirements is necessary:

(1) Licensed as a Psychological Examiner prior to July 1, 1991, and rendering health-related clinical activities or services.

(2) Licensed as a Psychological Examiner after June 30, 1991, and rendering health-related clinical activities or services; and

RULES
OF
THE TENNESSEE STATE BOARD OF EXAMINERS IN PSYCHOLOGY

CHAPTER 1180-4
RULES GOVERNING CERTIFIED PSYCHOLOGICAL ASSISTANTS

TABLE OF CONTENTS

1180-4-.01 Scope of Practice
1180-4-.02 Qualifications for Certification
1180-4-.03 Procedures for Certification

1180-4-.01 SCOPE OF PRACTICE.

(1) The scope of practice of a Certified Psychological Assistant is prescribed and limited by Tennessee Code Annotated, Title 63, Chapter 11 and the rules set forth in this chapter and chapter 1180-1.

(2) A certificate issued by the Board specifies certification as a Certified Psychological Assistant.

~~(3) Certified Psychological Assistants shall limit their practices to the use of those techniques, and to providing services to those populations, for which they have formal education, formal professional training and supervised experience, and for which they hold certification. Because no education, professional training, supervised experience and practicum in psychotherapy or other intervention activities is prescribed in the statute, the scope of practice for certified psychological assistants is specifically restricted to psychological assessment, psychological testing, and related activities, with no certified psychological assistant allowed to engage in psychotherapy or any other form of therapeutic intervention.~~

(3) Certified Psychological Assistants shall limit their practices to the use of those techniques, and to providing services to those populations, for which they have formal education, formal professional training and supervised experience, and for which they hold certification. Because no education, professional training, supervised experience and practicum in psychotherapy or other therapeutic intervention activities is prescribed in the statute, the scope of practice for certified psychological assistants is specifically restricted to psychological assessment, psychological testing, and related activities, with no certified psychological assistant allowed to engage in psychotherapy or any other form of therapeutic intervention. The supervised practice of a Certified Psychological Assistant may include, but is not limited to:

(a) Participates in psychological evaluations and clinical assessments of patients/clients utilizing a wide variety of assessment techniques and instruments thereby providing psychological data;

(b) Administers psychological testing, monitors mental status of patients, and participates in treatment teams which evaluate, develop, implement, and document patient's treatment progress;

(c) Assists with classification information on patients and recommendations on service needs, identification and recommendation of services for the handicapped, and crisis intervention;

(d) Screens patients for appropriate treatments;

(e) Provides educational/information services for patients;

(Rule 1180-4-.01, continued)

(f) Participates in both basic and applied research endeavors and contributes to the basic fund of psychological knowledge;

(g) May assist in psychological screening of employees; and

(h) May supervise/direct the work of clerical/related staff in the performance of their duties as assigned.

(4) ~~Certified Psychological Assistants, who have had appropriate education, training and supervised practica experience, may render to individuals or to the public for remuneration any service involving the application of recognized principles, methods, and procedures of the science and profession of psychology and only under the direct employment and qualified supervision of a Psychologistor the employment of a community mental health center or state governmental agency and the qualified supervision of a Psychologist with HSP designation.~~

(4) Certified Psychological Assistants, who have had appropriate education, training and supervised practice experience, may render to individuals or to the public for remuneration any service involving the application of recognized principles, methods, and procedures of the science and profession of psychology as defined in paragraph three (3) above and only under the direct employment and qualified supervision of a Psychologist with HSP designation or a Senior Psychological Examiner; or the employment of a community mental health center or state governmental agency and the qualified supervision of a Psychologist with HSP designation or a Senior Psychological Examiner.

(a) ~~Supervision must meet minimum standards and a supervisor of record must be made known to the Board~~.

(a) Supervision must meet minimum standards and a supervisor of record must be made known to the Board. Supervision conducted via face-to-face video conferencing equipment and/or technology is acceptable, assuming compliance with subparagraphs (4)(a) through (4)(g) of this rule. "Face-to-face" means (a) can see one's face and (b) occurring in real time via video conferencing equipment and/or technology. No more than seventy-five (75) percent of supervision can be obtained through video conferencing.

1. Before supervision of Certified Psychological Assistants may occur, a Board-supplied form shall be submitted to the Board's administrative office. Such form shall be signed by both the supervisor and the supervisee, and shall list

(i) ~~those Certified Psychological Assistants whom the Psychologist supervises and for whom he or she is the supervisor of record; or~~

(i) those Certified Psychological Assistants whom the Psychologist or Senior Psychological Examiner supervises and for whom he or she is the supervisor of record; or

(ii) a Certified Psychological Assistant must list his/her primary supervisor(s) if engaging in activities requiring supervision.

2. The Board-supplied form may be obtained by contacting the Board's administrative office, or by downloading it from the Board's web page on the Internet.

(b) ~~Qualified supervision requires that a licensed Psychologist, qualified by experience and training to practice the overall supervised activity or activities, provide supervision on a regular and~~

(Rule 1180-4-.01, continued)

~~frequent basis. The supervising Psychologist for Certified Psychological Assistants delivering health services must also be designated as a HSP.~~

(b) Qualified supervision requires that a licensed Psychologist or Senior Psychological Examiner, qualified by experience and training to practice the overall supervised activity or activities, provide supervision on a regular and frequent basis. The supervising Psychologist for Certified Psychological Assistants delivering health services must also be designated as a HSP.

~~(c) The supervising Psychologist shall limit the number of supervisees in order to assure an adequate ratio of supervision hours to practice hours consistent with professional standards and guidelines which insure the welfare of the supervisees and their clients.~~

(c) The supervising Psychologist or Senior Psychological Examiner shall limit the number of supervisees in order to assure an adequate ratio of supervision hours to practice hours consistent with professional standards and guidelines which insure the welfare of the supervisees and their clients.

(d) The supervising Psychologist shall limit his/her supervision of Certified Psychological Assistants to psychological assessment activities. The supervising psychologist should not supervise the Certified Psychological Assistant for psychotherapy or other forms of intervention.

(e) Specific case monitoring and skill training requires significant supervisory contact and must be in addition to overall administrative supervision.

1. Supervision is to be conducted primarily on a one-on-one basis and shall be in addition to any group seminar or group consultations which are also deemed appropriate. Thus, supervision will require considerable one-on-one contact and time with respect to each client. Records of the supervision process must be maintained by the supervisor covering the number of hours of supervision activities, the number and duration of one-on-one supervisory meetings and documentation of clients discussed at each supervisory session.

2. A supervisor, at the time of supervision, must not be in a dual relationship with the supervisee, e.g., be a spouse, other close relative or therapist.

~~(f) The supervising Psychologist has responsibility to require that the Certified Psychologist Assistant complete continuing education to maintain continued competence.~~

(f) The supervising Psychologist or Senior Psychological Examiner has responsibility to require that the Certified Psychological Assistant complete continuing education to maintain continued competence.

~~(g) In all cases the specific terms of the supervisory arrangement are the responsibility of the supervising Psychologist upon whom it is incumbent to assure supervisory time and service delivery. Likewise, it is the responsibility of the supervisee to obtain supervision. The supervisor must consider the education, training, experience, ongoing performance and level of licensure of the supervisee. The arrangements for supervision must be agreed to by both the supervisor and the supervisee. The supervising Psychologist of record must protect the welfare of the client and assure compliance with Tennessee law and professional ethics. (Requirements~~

(Rule 1180-4-.01, continued)

~~for Psychologists receiving supervision as part of the experience requirement for designation as a HSP are contained in 1180-2-.02 (2) (d).)~~

(g) In all cases the specific terms of the supervisory arrangement are the responsibility of the supervising Psychologist or Senior Psychological Examiner upon whom it is incumbent to assure supervisory time and service delivery. Likewise, it is the responsibility of the supervisee to obtain supervision. The supervisor must consider the education, training, experience, ongoing performance and level of licensure of the supervisee. The arrangements for supervision must be agreed to by both the supervisor and the supervisee. The supervising Psychologist or Senior Psychological Examiner of record must protect the welfare of the client and assure compliance with Tennessee law and professional ethics. (Requirements for Psychologists receiving supervision as part of the experience requirement for designation as a HSP are contained in Rule 1180-02-.02 (2)(d).)

(5) The Board shall consider that an individual, either certified or uncertified, is violating these limits of practice if his/her conduct includes, but is not limited to, the following:

(a) Claiming expertise or using techniques or procedures of assessment or treatment for which the practitioner has not completed appropriate academic course work or supervised training experience;

(b) Knowingly assigning, permitting or hiring any unqualified person(s) to perform functions of assessment or treatment or delegating the provisions of psychological services to unqualified person(s);

(c) Aiding, abetting, assisting, or hiring any individual to violate or circumvent any law or duly promulgated rule intended to guide the conduct of psychological services; or

~~(d) Providing or claiming to provide the services listed in paragraph (4) without supervision by a Psychologist with HSP designation.~~

(d) Providing or claiming to provide the services listed in paragraph (4) without supervision by a Psychologist with HSP designation or Senior Psychological Examiner.

Authority: *T.C.A. §§4-5-202, 4-5-204, 63-11-104, 63-11-201, and 63-11-204 through 63-11-207.* ***Administrative History:*** *Original rule filed November 22, 1978; effective January 8, 1979. Repeal and new rule filed June 18, 2002; effective September 1, 2002.*

1180-4-.02 QUALIFICATIONS FOR CERTIFICATION. In evaluating the academic program and training of an applicant for certification as a Certified Psychological Assistant, the Board shall use the following criteria:

(1) Educational requirements as a Certified Psychological Assistant must be met programmatically, i.e., as a matriculated in-residence student in a formal graduate training program organized to provide graduate education and training in psychology, and whose stated purpose and design is to educate and train Psychologists, Senior Psychological Examiners, Psychological Examiners, and/or Certified Psychological Assistants.

(2) The degree-granting institution for applicants for certification as a Certified Psychological Assistant must be regionally accredited at the time of the applicant's graduation. Regional accreditation is defined as accreditation by one of the six regional agencies of the Council on Post Secondary

1180-4-.03 PROCEDURES FOR CERTIFICATION. To become certified as a Certified Psychological Assistant in Tennessee, a person must comply with the following procedures and requirements:

(1) An application packet shall be requested from the Board's administrative officeor downloaded from the Department of Health's website.

(2) An applicant shall respond truthfully and completely to every question or request for information contained in the application form. The completed application form and all fees required by the form and these rules shall be submitted to the Board's administrative office.

(3) Applications will be accepted throughout the year.

(4) An applicant shall submit with the application two (2) signed passport type photographs taken within the preceding twelve (12) months.

(5) An applicant shall submit with the application a certified copy or a notarized photocopy of his/her birth certificate.

(6) It is the applicant's responsibility to request that the institution(s) of higher education submit the transcript(s) of all graduate course work directly to the Board office. The transcript(s) must show the highest degree(s) earned and must carry the official seal of that institution.

(7) An applicant for certification as a Certified Psychological Assistant must submit completed worksheets for evaluation of graduate courses indicating the applicant's allocation of course credit to substantive psychology course work and to course work completed in psychological testing and measurement. The applicant must send copies of the course descriptions from the graduate catalog current at the time of his or her enrollment.

(8) An applicant must submit evidence of good moral character and of not being engaged in unethical practice. Such evidence shall be a minimum of three (3) letters of recommendation in addition to the practicum documentation. It is the applicant's responsibility to request references from individuals who have personal knowledge of, and can attest to, the applicant's education, training and performance at the specific level of licensure for which the applicant is applying. All letters of recommendation must contain a statement specifying that certification as a Certified Psychological Assistant for the applicant is being recommended. All letters shall be current, original letters written specifically for the certification application and mailed directly to the Board by the person providing the information on the signator's letterhead. Such letters are valid for one (1) year from date of receipt. Additional inquiries may be initiated by the Board as it may require.

~~(a) One (1) of the required three (3) letters must be from a Psychologist with HSP designation, or if the endorser is from another jurisdiction, HSP equivalent Psychologist. The other letters may be from Psychologists or licensed Senior Psychological Examiners.~~

(a) One (1) of the required three (3) letters must be from a licensed Psychologist with HSP designation, or if the endorser is from another jurisdiction, HSP equivalent licensed Psychologist. The other letters may be from licensed Psychologists or licensed Senior Psychological Examiners.

(b) Letter(s) from the practicum supervisor(s) shall be submitted. The letter(s) shall provide specific information about the types of clients and range of services provided as well as the nature of the internship or practicum site. An overall evaluation of the quality of services provided by the trainee must be included.

(c) If the applicant has received a Masters Degree in psychology and is a student in good standing in a doctoral degree from an APA approved or CNRHSPP/ASPPB designated training program in

(Rule 1180-4-.03, continued)

professional psychology, a letter of recommendation from the Director of Training of that doctoral degree program must be provided.

(Rule 1180-4-.03, continued)

(9) An applicant shall disclose the circumstances surrounding any of the following:

(a) Conviction of any criminal law violation of any country, state or municipality, except minor traffic violations.

(b) The denial of licensure or certification by any other state or the discipline of licensure or certification by any state.

(c) Loss or restriction of licensure or 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.

(10) An applicant shall cause to be submitted to the Board's administrative office directly from the vendor identified in the Board's certification application materials, the result of a criminal background check.

(11) If an applicant holds or has ever held a license or certificate to practice psychology in another state, regardless of the type or level of licensure or certification, the applicant shall cause to be submitted the equivalent of a Tennessee Certificate of Fitness (verification of license) from the authorizing regulatory agency which indicates the applicant holds or held an active license or certificate and whether it is in good standing presently or was at the time it became inactive.

(12) When necessary, all required documents shall be translated into English and the translation and original document certified as to authenticity by the issuing source. Both versions must be submitted to the Board's administrative office.

Authority: *T.C.A. §§4-5-202, 4-5-204, 63-11-104, 63-11-201 and 63-11-207.* ***Administrative History:*** *Original rule filed June 18, 2002; effective September 1, 2002. Amendment filed October 18, 2004; effective January 1, 2005. Amendment filed March 17, 2006; effective May 31, 2006. Amendment filed July 27, 2006; effective October 10, 2006.*

* 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)
Pamela M. Auble	X				
Anita A. Davis	X				
Trevor Milliron	X				
Mark Loftis	X				
George Bercaw	X				
Rodney Sullivan	X				
Melissa Clark Gray				X	

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Examiners in Psychology (board/commission/ other authority) on 09/05/2013 (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: *07/10/13*

Rulemaking Hearing(s) Conducted on: (add more dates). *09/05/13*

Date: 3/27/14

Signature: Jennifer L. Putnam

Name of Officer: Jennifer Putnam

Title of Officer: Assistant General Counsel
Department of Health

Subscribed and sworn to before me on: 3-27-14

Notary Public Signature: Suzanne Mechkowski

My commission expires on: MY COMMISSION EXPIRES APRIL 19, 2017

SUZANNE MECHKOWSKI NOTARY PUBLIC SUMNER COUNTY TENNESSEE

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. opt
Robert E. Cooper, Jr.
Attorney General and Reporter

4-2-14
Date

Department of State Use Only

RECEIVED 2014 APR -4 PM 3:57 OFFICE OF SECRETARY OF STATE

Filed with the Department of State on: 4/4/14

Effective on: 7/3/14

Tre Hargett

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Board of Trustees of the Baccalaureate Education System Trust Fund Program
SUBJECT:	College Savings Incentive Plan
STATUTORY AUTHORITY:	Tennessee Code Annotated, Sections 65-5-113 and 49-7-808
EFFECTIVE DATES:	September 28, 2014 through June 30, 2015
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	The rule amendments establish a matching grant incentive program for low income households to receive a matching money contribution from the Board when an individual from that household establishes an eligible college savings plan account or § 529 college savings account with the Board of Trustees of the Baccalaureate Education System Trust Fund Program. The proposed rule amendments do the following:

- Establishes defined terms that are used in the rules and also adds defined terms to the proposed rules that were already in the Educational Savings Plan for the establishment of the § 529 college savings account so that the defined terms are consistent;

- Establishes eligibility requirements for the matching grant incentive program, which are to establish a § 529 college savings account and to meet the income limits established by the Board in order to receive the matching grant amount;

- Amends the application for matching contribution to establish the types of income documentation that a purchaser of a § 529 college savings account would need to provide in order to participate in the matching grant incentive program and specifies that applicants to participate in the matching grant incentive program will be processed on a first come, first serve basis;

- Clarifies that if a purchaser fails to meet the eligibility requirements for the matching grant incentive program, the purchaser's application for participation will be rejected;

- Clarifies that during the first fiscal year in which the matching grant incentive program is in operation, neither a Tennessee Department of Treasury employee nor the Board members (or the immediate family member(s) of the employees or Board members) may participate in the matching grant incentive program;

- Establishes limitations on the number of beneficiaries that may be named on a single account and the number of accounts that may be established in a single beneficiary's name;

- Establishes the minimum and maximum amount of purchaser and matching grant contributions, such that the minimum purchaser contribution shall be $25.00 and the matching contribution shall be four times the minimum contribution, up to a maximum matching contribution of $500;

- Establishes how contributions and withdrawals may be made, which are consistent with the contributions and withdrawals for the eligible college savings program or § 529 college savings account; and

- Clarifies that individuals who participate in the matching grant incentive program are not guaranteed a matching contribution and that matching contribution amounts are available subject to appropriations made by the General Assembly.

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)

It is not anticipated that the rule amendments will impact local governments.

FDepartment 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

For Department of State Use Only

Sequence Number: 04-15-14
Rule ID(s): 5698
File Date: 4/11/14
Effective Date: 9/28/14

Proposed Rule(s) Filing Form

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

Agency/Board/Commission:	Board of Trustees of the Baccalaureate Education System Trust Fund Program
Division:	
Contact Person:	LaKesha Page
Address:	502 Deaderick Street, 15th Floor Andrew Jackson Building, Nashville, Tennessee
Zip:	37243
Phone:	(615) 532-5888
Email:	Lakesha.page@tn.gov

Revision Type (check all that apply):
x 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**
1700-05-03	College Savings Incentive Plan
Rule Number	**Rule Title**
1700-05-03-.01	In General
1700-05-03-.02	Eligibility Requirements
1700-05-03-.03	Application for Matching Contribution
1700-05-03-.04	Rejection of Application or Forfeiture of Matching Contribution
1700-05-03-.05	Ineligible Individuals
1700-05-03-.06	Single Beneficiaries with Multiple Accounts
1700-05-03-.07	Amount of Minimum and Matching Contribution
1700-05-03-.08	Deposit and Ownership of Matching Contributions
1700-05-03-.09	No Guarantee of a Matching Contribution

Chapter Number	**Chapter Title**
Rule Number	**Rule Title**

(Rule 1700-05-03-.1 continued)

RULE
S OF
THE TREASURY DEPARTMENT
BACCALAUREATE EDUCATION SYSTEM
TRUST

CHAPTER 1700-05-03
COLLEGE SAVINGS INCENTIVE PLAN

TABLE OF CONTENTS

1700-05-03-.01	In General	1700-05-03.07	Amount of Minimum and Matching Contributions
1700-05-03-.02	Eligibility Requirements	1700-05-03-.08	Deposit and Ownership of Matching Contributions
1700-05-03-.03	Application for Matching Contribution	1700-05-03-.09	No Guarantee of a Matching Contribution
1700-05-03-.04	Rejection of Application or Forfeiture of Matching Contribution	1700-05-03-.10	Extent of Available Funds
1700-05-03-.05	Ineligible Individuals		
1700-05-03-.06	Single Beneficiaries with Multiple Accounts		

1700-05-03-.01 IN GENERAL.

(1) Purpose. ~~Chapter 884 of the Tennessee Public Acts of 2010 authorized the Board of Trustees of the Baccalaureate Education System Trust Program to establish, or contract for the establishment of, an incentive plan or plans to encourage Tennessee residents to participate in any college savings program established pursuant to § 529 of the Internal Revenue Code with which the Board has contracted to provide similar benefits for Tennessee residents, or in any § 529 college savings program established by the state of Tennessee.~~ The purpose of these rules is to establish ~~the amount, terms and conditions of the incentive plan, including the requirements for participation and administration of the plan, as required by and consistent with the Act.~~and implement the college savings incentive plan or plans for the benefit of low-income individuals using funds from the Small and Minority-Owned Business Assistance Program pursuant to Chapter 359 of the 2013 Public Acts. The public act authorizes~~d~~ the Board of Trustees of the Baccalaureate Education System Trust Fund Program to promulgate rules relative to the implementation and administration of incentive plan or plans.

(2) Definitions. For purposes of these rules:

(a) "Academic term" means the school segment consisting of a single semester, quarter, term or equivalent.

~~(a)~~(b) "Account" means the record that contains the amount of contributions maintained on behalf of a Beneficiary under a Contract, plus the earnings or losses incurred thereon, including any W~~w~~ithdrawals made from the Account.

~~(b)~~(c) "Beneficiary" means an individual designated under a Contract as the individual entitled to apply contributions and earnings accrued under the Contract ~~to the payment of that individual's undergraduate, graduate and professional Tuition and Other educational costs as such terms are defined in Rules 1700-5-1-.01(2)(v) and1700-5-1-.01(2)(m), respectively, of the Official Compilation of the Rules and Regulations of the State of Tennessee.~~as well as Matching contributions to the payment of that individual's undergraduate, graduate and professional Qualified higher education expenses as defined in this chapter.

~~(c)~~(d) "Board" has the same meaning as given in T.C.A. § 49-7-802(2).

~~(d)~~(e) "Contract" means an Educational savings plan tuition contract entered into ~~by~~ pursuant to T.C.A. § 49-7-808 by the Board and a Purchaser with an Eligible college ~~Savings~~ savings ~~Program~~ program to provide for the payment of ~~Tuition and Other~~

Formatted: List Paragraph, Numbered + Level: 1 + Numbering Style: a, b, c, … + Start at: 1 + Alignment: Left + Aligned at: 0.86" + Indent at: 1.11"

Formatted: List Paragraph, Indent: Left: 1.11"

Formatted: Font: (Default) Arial, 10 pt

(Rule 1700-05-03-.2 continued)

~~educational costs.~~Qualified higher education expenses as defined in this chapter.

~~(e)~~(f) "Educational savings plan" means a plan which permits individuals, associations, contributions and trusts to make contributions to an account that is established by a Purchaser for a designated Beneficiary ~~that entitles the Beneficiary to apply such contributions and earnings thereon to the payment of that Beneficiary's Tuition and Other educational costs.~~.

~~(f)~~(g) "~~Eligible~~ Eligible~~educational~~ college savings program" means any college savings program established pursuant to § 529 of the Internal Revenue Code with which the Board has contracted to provide similar benefits for Tennessee residents, or ~~in~~ any § 529 college savings program established by the State of Tennessee, except for the educational services plan established in Chapter 1700-05-01 of the Official Compilation of the Rules and Regulations of the State of Tennessee.

Formatted: Indent: Left: 0"

(h) "Eligible educational institution" means an institution of postsecondary education as defined in § 529 of the Internal Revenue Code.

~~(g)~~(i) "Fiscal year" means the period beginning on July 1 of each year and ending on June 30 next following year.

(j) "Household" means a group of individuals who are related by birth, marriage, or adoption and who share a residence.

(k) "Legally incompetent" means that an individual has been declared incompetent by a court of law. An individual shall not be considered to be Legally incompetent unless proof thereof is furnished in such form and manner as the Board may require.

~~(h)~~(l) "Matching contribution" means the amount that is deposited by the Board into ~~an~~ the Board's ~~Account~~ account for each ~~of a~~ Beneficiary ~~as determined in Rule 1700-05-03-.07 below who satisfies the requirements specified in~~after all eligibility requirements for participation in the Matching grant incentive program have been satisfied pursuant to Rule 1700-05-03-.02.

(m) "Matching grant incentive program" means the educational incentive program established pursuant to T.C.A. § 49-7-808(d) in which matching funds are contributed by the Board to Purchasers on behalf of Beneficiaries based on income levels for the Purchaser's Household and the amount of the Purchaser's contributions for the payment of the Beneficiary's Qualified higher education expenses.

~~(i)~~(n) "Member of the family" means the mother, father or ancestor of either, stepmother, stepfather, siblings of either the mother or father of the Beneficiary, or such other person as may be defined as a "~~member~~ Member of the family" of the Beneficiary under the sections of the Internal Revenue Code ~~which~~ that are applicable to the ~~Eligible~~ eligible college savings program.

~~(j)~~(o) "Minimum contribution" means the amount that must have been contributed to the Account of a Beneficiary during the Qualifying period as determined pursuant to Rule 1700-05-03-.07 ~~below~~ in order to be eligible for the Matching contribution.~~;~~

(p) "Permanent disability" means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or is anticipated to last for a continued or indefinite duration. An individual shall not be considered to have a Permanent disability unless proof is furnished of the existence of the disability from a health care professional in such form and manner as the Board may require. The Board must approve any finding of a Permanent disability.

(Rule 1700-05-03-.3 continued)

~~(k)~~(q) "Purchaser" means an individual who enters into a Contract for the creation and deposit of contributions to a savings account on behalf of a Beneficiary, or in the case of the Purchaser's death or legal incompetence, the Purchaser's appointee.

~~(l)~~(r) "Purchaser's appointee" means the person who is named in the Contract by the Purchaser to exercise the rights of the Purchaser under the Contract if the Purchaser dies or becomes ~~legally~~ Legally incompetent.

(s) "Qualified higher education expenses" has the same meaning as given under § 529 of the Internal Revenue Code and the regulations promulgated thereunder.

~~(m)~~(t) "Qualifying period" means the time period as set by the Board each year during which a Purchaser must meet the conditions set forth in these ~~Rules~~ rules in order to be eligible for a Matching contribution, including the time period during which a Purchaser must file an application for the Matching contribution.

(u) "Redemption value" means the current cash value of an Account attributable to the sum of the principal invested through Purchaser contributions and the earnings or losses incurred thereon.

(v) "State" means the State of Tennessee.

~~(n)~~(w) "Tennessee resident" means a person who has a continuous physical presence and maintenance of a dwelling place within the State of Tennessee for at least twelve (12) months immediately prior to entering into a Contract, provided that absence from the State for short periods of time ~~shall~~ may not affect the establishment of a residence. The effect of absences from the State for short periods of time will be determined in a case-by-case basis. A minor child shall be deemed a Tennessee resident if the child's legal guardian~~,~~ or noncustodial parent is a resident of Tennessee. Military or diplomatic personnel whose home of record is Tennessee shall also be deemed Tennessee residents for purposes of these r~~R~~ules.

(x) "Withdrawal" means a disbursement of funds from the Account that is directed by the Purchaser to be paid to the Purchaser or an Eligible educational institution.

***Authority**: T.C.A. § § 49-7-805(16), and 49-7-805(4). **Administrative History:** Original rule filed October 1, 2010; effective March 31, 2011.*

1700-05-03-.02 ELIGIBILITY REQUIREMENTS. ~~To be eligible for a Matching contribution, the following requirements must be met:~~

(1) The Purchaser must file an application for the Matching contribution in accordance with Rule 1700-05-03-.03 ~~below~~ during the applicable Qualifying period~~, as such term is defined in Rule 1700-05-03-.01(2)(m)~~;.

Formatted: Line spacing: single

(2) The Purchaser must have an Account with the Eligible college savings program pursuant to the rules contained in Chapter 1700-05-04 Educational Savings Plan for the Beneficiary listed on the application on the date the application is filed with the Board and on the date the Matching contribution is deposited into the Account~~;~~.

(Rule 1700-05-03-.4 continued)

(3) An amount equal to or greater than the Minimum contribution established in Rule 1700-05-03-.07 ~~below~~ must have been contributed to the Account during the Qualifying period~~;~~.

(4) The Purchaser and the Beneficiary of the Account must be Tennessee residents~~, as defined in Rule 1700-05-03-.01(2)(n) above,~~ at the time the application is filed with the Board~~;~~.

(5) The Beneficiary must be less than age twenty-five (25) at the time the application is filed with the Board. ~~; and~~

(6) The Purchaser must be a Member of the family of the Beneficiary ~~as defined in Rule 1700-05-03-.01(2)(i) above.~~.

(7) In addition to the eligibility requirements contained in paragraphs (1) through (6) of this rule, Purchasers who are applying to participate in the Matching grant incentive program ~~in order to receive the Matching contribution~~ are required to meet the income limits established by the Board for the Purchaser's Household in order to receive the matching contribution. In addition, the Purchaser shall not be claimed as a dependent on someone else's income tax return. The Board shall establish the income limits based on income standards that may be amended from time to time, including, but not limited to the following:

(a) Federal poverty guidelines;

(b) Federal poverty thresholds;

(c) Federal Income Eligibility Guidelines for free and reduced meals; and/or

(d) Federal Department of Health and Human Services poverty guidelines.

(8) The Board shall consider factors in determining which standard will be used to establish the income limits for eligibility in the Matching grant incentive program, which include, but are not limited to, any or all of the following:

(a) The amount of fund appropriations;

(b) The number of program Purchasers; and/or

(c) The anticipated participation level in the program.

Formatted: Indent: Left: 0.33", First line: 0.5"

Formatted: Centered, Indent: Left: 0.43", Right: 0.05", Line spacing: single

Formatted: Indent: Left: 0.43", Right: 0.05", Line spacing: single

Formatted: Indent: Left: 0.43", Right: 0.05", Line spacing: single

Authority: *T.C.A. § § 49-7-805(16), and 49-7-805(4).* ***Administrative History:*** *Original rule filed October 1, 2010; effective March 31, 2011.*

1700-05-03-.03 APPLICATION FOR MATCHING CONTRIBUTION.

(1) A Purchaser must file an application for the Matching contribution on a form as prescribed by the Board. The application must include the following information:

(a) The name and address of the Beneficiary;

(b) The name and address of the Purchaser;

(c) The relationship of the Purchaser to the Beneficiary;

(d) The sex and date of birth of the Beneficiary;

(e) The Purchaser's Household income;~~The income of the Purchaser. Although such information is required, an income test is not a qualification for the Matching contribution;~~

(Rule 1700-05-03-.5 continued)

(f) Authorization from the Purchaser for the Board to verify with the Eligible college savings program that all the requirements set forth in these Rules have been met for purposes of qualifying for the Matching contribution; and

(g) Such other information as the Board may require.

(2) The application must be filed with the Board during the applicable Qualifying period and will be processed on a first come, first serve basis based on the amount of funds appropriated by the Ggeneral Aassembly. ~~as defined in Rule 1700-05-03-.01(2)(m) above.~~

(3) In addition to the application requirements contained in paragraphs (1) and (2) of this rule, a Purchaser who is applying to participate in the Matching grant incentive program and receive the Matching contribution shall provide the Board with the following:

(a) A copy of the federal income tax returns for the Purchaser and for each individual residing in the Purchaser's Household who is required to file an income tax return, for the tax year immediately preceding the year that the Beneficiary account is being established by the Purchaser;

(b) A copy of all W-2, W-4 and 1099 Forms that accompany each tax return in (a);

(c) A statement from the Purchaser or a member of the Purchaser's Household indicating why he/she is not required to file a federal tax return, in the event that the Purchaser or a member of the Purchaser's Household was not required to file a tax return for the tax year preceding the Purchaser's date of application;

(d) Authorizations executed by the Purchaser and the members of the Purchaser's Household allowing the Board to verify the federal adjusted gross income for the Purchaser and all individuals residing in that Household; and

(e) Such other and further documentation required by the Board.

(4) Subsequent to a Purchaser's initial application to participate in the Matching grant incentive program, and for each subsequent Qualifying period, the Purchaser shall reapply to participate in the Matching grant incentive program by submitting an application and providing the information requested in paragraph (3) of this rule to the Board to ensure the Purchaser's continued eligibility to participate in this program. In the event that the Purchaser becomes ineligible to continue participating~~ion~~ in the Matching grant incentive program and to continue receiving the Matching contribution for any Beneficiary accounts, the Purchaser shall be able to continue making contributions to the Purchaser's § 529 college savings account but will not receive the Matching contribution for that year or any other subsequent year that the Purchaser does not qualify.

Authority: *T.C.A. § § 49-7-805(16), and 49-7-805(4).* ***Administrative History:*** *Original rule filed October 1, 2010; effective March 31, 2011.*

1700-05-03-.04 REJECTION OF APPLICATION OR FORFEITURE OF MATCHING CONTRIBUTION.

(1) Rejection of Application. An application for a Matching contribution will be rejected by the Board if any of the following occurs:

(a) The Purchaser fails to provide all the information required in Rule1700-05-03-.03;

(b) The Purchaser fails to meet the eligibility requirements to participate in the Matching grant incentive program as provided in Rule 1700-05-03-.02.~~The requirements for the Matching contribution as set forth in these Rules have not been met;~~

(Rule 1700-05-03-.6 continued)

(c) The Purchaser makes a misrepresentation in the application for the Matching contributions; or

(Rule 1700-05-03-.04, continued)

(d) The requisite Minimum contribution was not made to the Account during the Qualifying period.

Formatted: Indent: Left: 0", First line: 0"

(2) Forfeiture of Matching Contribution. If, at any time, the Board determines that a Purchaser made a misrepresentation in an application for a Matching contribution that resulted in a Matching contribution being made to an Account, the Matching contribution will be forfeited and returned to the Board.

(3) Applications Made in Subsequent Qualifying Periods. Rejection of an application for a Matching contribution shall not preclude the Purchaser from reapplying for a Matching contribution in subsequent Qualifying periods, provided the Purchaser completes a new application and files the same with the Board during the applicable Qualifying period. Notwithstanding this Rule, the Board may, at its discretion, reject any application made by a Purchaser who was found to have made a misrepresentation on an application submitted by the Purchaser in a previous year.

Authority: *T.C.A. § § 49-7-805(16), and 49-7-805(4).* ***Administrative History:*** *Original rule filed October 1, 2010; effective March 31, 2011.*

1700-05-03-.05 INELIGIBLE INDIVIDUALS.

(1) For the first Ffiscal year that the Matching grant incentive program is in operation, the following individuals shall not be eligible to receive Matching contributions as either a Purchaser or a Beneficiary: Tennessee Department of Treasury employees; ~~a~~ members of the Board; or an immediate family member of any of the foregoing.~~For Fiscal year 2011, an employee of the Tennessee Treasury Department, an employee of the Eligible college savings program, a member of the Board, a member of the Eligible college savings program's board or an immediate family member of any of the foregoing shall not be eligible for matching contributions pursuant to these Rules as either a Purchaser or as a Beneficiary.~~ For purposes of this r~~R~~ule, an "immediate family member" means a parent, spouse, sibling, child, stepchild or grandchild. For each subsequent ~~Fiscal~~ Ffiscal year, the Board shall determine whether the total amount of money available for that ~~Fiscal~~ Ffiscal year will be sufficient to allow the individuals listed in this rule to receive a Matching contribution. ~~to pay the matching contribution to all potential qualified applicants. If the Board makes such a determination, then the provisions of this Rule shall not apply for that Fiscal year.~~

Authority: *T.C.A. § § 49-7-805(16), and 49-7-805(4).* ***Administrative History:*** *Original rule filed October 1, 2010; effective March 31, 2011.*

1700-05-03-.06 Purchasers and Beneficiaries. ~~**SINGLE BENEFICIARIES WITH MULTIPLE ACCOUNTS.**~~

Formatted: Font: Not Bold

(1) A Purchaser may only have one (1) Beneficiary on each Account.~~A Beneficiary who has been designated as Beneficiary on multiple Accounts shall only be eligible for one Matching contribution during each Qualifying period.~~

(2) A Purchaser may not have more than one (1) Account in the same Beneficiary's name.~~Any application for a Matching contribution that is rejected due to this requirement or for the failure to meet any other requirement shall not be carried forward to subsequent Qualifying periods. A new application must be completed and filed with the Board during each Qualifying period.~~

(3) A Beneficiary who has been designated as a Beneficiary on more than one (1) Account by two (2) or more different Purchasers shall only be eligible for one (1) Matching Contribution during each Qualifying period and shall not be eligible to receive another Beneficiary's Matching contributions through a change in Beneficiary.

(Rule 1700-05-03-.04, continued)

(4) A Purchaser may request that the Beneficiary for the Purchaser's account may be changed. A Purchaser may only change the Beneficiary on his or her account or accounts one (1) time. A Purchaser may change a beneficiary on an Account or Accounts by submitting the request for a change to the Board on a form prescribed by the Board. The new Beneficiary on an Account or Accounts will receive the Purchaser contributions and the Matching contributions from the accounts that were in a previous Beneficiary's name, unless the new Beneficiary already has an existing account with another Purchaser.

(5) A Purchaser may not remove his or her name from an Account and substitute it with another Purchaser's name; however, a Purchaser's name may be removed from an Account upon the Purchaser's death, divorce or Permanent disability.

Authority: *T.C.A. § § 49-7-805(16), and 49-7-805(4).* ***Administrative History:*** *Original rule filed October 1, 2010; effective March 31, 2011.*

1700-05-03-.07 AMOUNT OF MINIMUM AND MATCHING CONTRIBUTION.

~~(1)~~ For the first Ffiscal year that the Matching grant incentive program is in operation, the Minimum contribution for participation in the Matching grant incentive program made by the Purchaser shall be twenty-five dollars ($25.00), and the Matching contribution shall be four (4) times the Minimum contribution, up to a maximum Matching contribution of five hundred dollars ($500.00). The maximum contribution that can be made by a Purchaser in order to receive the maximum Matching contribution shall be one hundred twenty-five dollars ($125.00); however, the Purchaser is not prohibited from contributing more to his or her Eligible college savings plan Account without the expectation of receiving a higher Matching contribution. For each subsequent year or a portion of the year that the Matching grant incentive program is in operation, ~~either~~ the Board may either set the Minimum and Matching contribution or ~~the Board may~~ delegate the responsibility of establishing the Minimum and Matching contributions to the State Treasurer. The Minimum or Matching contributions may be established or amended at any time, and may be established for any duration of time deemed necessary by either the Board or the State Treasurer. The Matching contribution amount for the Matching grant incentive program shall be determined either by the Board or the State Treasurer based upon the amount appropriated in that year's general appropriations act for the purposes set forth in these Rules,; the number of program Participants, and the anticipated level of participation in the program. ~~For Fiscal year 2011, the Minimum contribution and Matching contribution will each equal fifty dollars ($50.00). For each subsequent Fiscal year, the Board shall set the Minimum contribution and Matching contribution. The Matching contribution amount shall be determined by the Board based upon the amount appropriated in that year's general appropriations act for the purposes set forth in these Rules.~~

Formatted: Indent: Left: 0.46", Hanging: 0.38", Right: 0.04", Line spacing: Multiple 1 li, Tab stops: 0.83", Left

(Rule 1700-05-03-.07, continued)
Authority: *T.C.A. § § 49-7-805(16), and 49-7-805(4).* ***Administrative History:*** *Original rule filed October 1, 2010; effective March 31, 2011.*

1700-05-03-.08 Contributions and Withdrawals.~~DEPOSIT AND OWNERSHIP OF MATCHING CONTRIBUTIONS.~~

Formatted: Font: Not Bold

(1) Contributions.~~The respective Matching contributions will be direct deposited by the Board into the Accounts of those Beneficiaries whose applications were approved. The Board will initially choose the investment product in which the Matching contributions will be invested. Except in the case of a forfeiture as provided in Rule 1700-05-03-.04(2) above, the Purchaser will thereafter have all ownership of the Matching contributions and the earnings thereon on behalf of the Beneficiary to the same extent as the other contributions credited to the Account. The decision to reallocate among investment options, rollover, disburse, and/or to make any transactions relative to the Matching contributions will be within the discretion of the Purchaser.~~

(a) Purchaser contributions to the Matching grant incentive program shall be made in accordance with R~~r~~ule 1700-05-04-.04 by those Purchasers who qualify for participation in the program for a Beneficiary or Beneficiaries. Purchaser contributions will be subject to the limitations established in R~~r~~ule 1700-05-04-.04.

(b) Matching contributions shall be made by the Board for each Beneficiary account established by a Purchaser but shall be maintained in an account separate from the account that contains the Purchaser's contributions.

(2) Withdrawals.

(a) Eligibility. Once a Beneficiary has been accepted for enrollment in an Eligible educational institution the Purchaser may begin using funds, including Purchaser contributions and Matching contributions, on deposit in the Account for the payment of Qualified higher education expenses of the Beneficiary by requesting a Withdrawal of funds. Funds shall not be deemed on deposit in the Account until the fifteenth (15th) day following receipt of the respective funds from the Board. If the Purchaser desires the Board to send payment directly to the Eligible educational institution where the Beneficiary is enrolled, the notification must include the name and address of the institution, ~~and~~ the amount of funds needed to pay the Qualified higher education expenses and ~~with~~ supporting documentation showing the Qualified higher education expenses to be paid. Failure to provide sufficient notice prior to the start of the Academic term in which the funds would be used may result in an untimely payment being made to the institution.

(b) Written Request. Any Withdrawal requests must be made in writing by the Purchaser or through other means acceptable to the Board, including electronic means.

(c) Amount and Timing of Withdrawal. Subject to any limitations on W~~w~~ithdrawals contained in these rules, the W~~w~~ithdrawal amount will equal the amount requested, not to exceed the Redemption value of the Beneficiary's Account at the time the Withdrawal is processed. The Withdrawal amount will be paid within sixty (60) calendar days of receipt by the Board of the request required by subparagraph (2)(b).

(d) Withdrawals for Qualified higher education expenses. The Purchaser may use either Purchaser contributions or the Matching contributions to pay for Qualified higher education expenses by directing payment to the Purchaser, the Beneficiary or an Eligible educational institution as an advance payment or as reimbursement for Qualified higher education expenses. Third party documentation to substantiate the request shall not be required unless otherwise provided for in § 529 of the Internal Revenue Code or the regulations promulgated thereunder.

(Rule 1700-05-03-.07, continued)

(e) Withdrawals for Non-Qualified Higher Education Expenses. The Purchaser may only use Purchaser contributions, and not Matching contributions, to pay for non-Qualified higher education expenses, provided that the Purchaser contributions have been on deposit in the Account for at least fifteen (15) calendar days and provided that there is at least one hundred dollars ($100.00) in the Account from Purchaser contributions once the Withdrawal is made. Such a Withdrawal may be made without causing termination of the Contract and without requiring the Purchaser to establish that the Withdrawal of the Purchaser contributions will be used for Qualified higher education expenses. The earnings portion of Withdrawals made for non-Qualified higher education expenses could be subject to federal taxation as prescribed under the sections of the Internal Revenue Code and the regulations promulgated thereunder that are applicable to the Program.

(f) Scholarship Refund. If a Beneficiary is the recipient of a scholarship, allowance or payment described in § 25A(g)(2) of the Internal Revenue Code that the Board determines cannot be converted into money by the Beneficiary, the Purchaser may request a Withdrawal of all or a portion of the Purchaser contributions; however, the Matching contributions will be refunded back to the Board. The Purchaser must furnish information about the scholarship, allowance or payment to the Board. If the scholarship, allowance or payment has a duration that extends beyond one (1) Academic term, the Purchaser may request a refund in advance of the scholarship payment. The amount of the refund payable to the Purchaser will be equal to the Redemption value of the Account that is not needed to cover the future Qualified higher education expenses on account of the scholarship, allowance or payment minus any applicable fee(s) charged by the Board and the Matching contributions.

(g) Contract Termination and Refund. Except as provided in subparagraph (2)(c) of this rule, a Contract may not be terminated by a Purchaser for any reason except one (1) of the following circumstances: (i) the Beneficiary has died or suffers from a Permanent disability; (ii) the Beneficiary is age eighteen (18) or older and has decided not to attend an Eligible educational institution; (iii) the Beneficiary has completed the requirements for a degree that is less than a bachelor's degree at an Eligible educational institution and the Beneficiary does not plan to pursue further education; (iv) the Beneficiary has completed the bachelor's degree requirements at an Eligible educational institution; or (v) the Redemption value of the Account equals one hundred dollars ($100.00) or less and no contributions have been deposited to the Account for a period of at least fifteen (15) consecutive days. The Contract termination request must be accompanied by documentation acceptable to the Board to substantiate the reason for the Contract termination. In the event that a Contract is terminated due to the Permanent disability or death of the Beneficiary, the amount of the refund paid to the Purchaser shall be equal to the Redemption value of the Account at the time the refund is made minus the Matching contributions, which will revert back to the Board. In the event that the Contract is terminated under any of the conditions described in items (ii) – (v) above, the amount of the refund paid to the Purchaser shall be equal to the Redemption value of the Account at the time the refund is made minus the Matching contributions and any applicable fee charged by the Board. The actual termination of the Contract will not occur until all funds in the Account have been refunded.

(e) Rollovers out of the Program. The Purchaser may rollover all or a portion of the Purchaser contributions in the Account to an account established for another Beneficiary under the qualified tuition program established under § 529 of the Internal Revenue Code by making a rollover request to the Board on such forms as may be prescribed by the Board. If the rollover is for the benefit of another Beneficiary, the Beneficiary to whose Account the funds are being transferred must be a Member of the family of the original Beneficiary. Any rollover under this Rule shall be administered in accordance with the applicable rollover provisions of the

(Rule 1700-05-03-.07, continued)

Internal Revenue Code. Any rollover made under this paragraph shall be equal to the amount requested, not to exceed the Redemption value of the Account plus Matching contributions, but minus any applicable fees charged by the Board. The Redemption value of the Account shall be determined as of the date the rollover is made. The rollover of the Matching contributions shall be subject to the limitations contained in rule 1700-05-03-.06.

Authority: *T.C.A. § § 49-7-805(16), and 49-7-805(4).* ***Administrative History:*** *Original rule filed October 1, 2010; effective March 31, 2011.*

1700-05-03-.09 NO GUARANTEE OF A MATCHING CONTRIBUTION.

(1) Notwithstanding any provision of these Rules to the contrary, neither the State, the Board, the Matching grant incentive program, nor the Eligible college savings program guarantees that any Beneficiary will receive a Matching contribution. The availability or the amount of the Matching contributions authorized by these Rules are subject to the appropriation of funds in each year's general appropriations act for the purposes set forth in these Rules.

Authority: *T.C.A. § § 49-7-805(16), and 49-7-805(4).* ***Administrative History:*** *Original rule filed October 1, 2010; effective March 31, 2011*

1700-05-03-.10 EXTENT OF AVAILABLE FUNDS.

(1) In the event the Board receives more eligible applications for the Matching contribution than the amount of money appropriated by the general assembly during a given Qualifying period, the Board will award the Matching contribution to the first eligible applicants to apply until the available funds have been exhausted.

(2) In the event excess appropriations remain in any given fiscal year after providing the Matching contributions to all eligible applicants, the excess funds will be transferred to the educational services plan established in Chapter 1700-05-01 of the Official Compilation of the Rules and Regulations of the State of Tennessee, unless the general assembly otherwise directs.

Authority: *T.C.A. § § 49-7-805(16), and 49-7-805(4).* ***Administrative History:*** *Original rule filed October 1, 2010; effective March 31, 2011.*

* 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)
David H. Lillard, Jr.	x				
Justin Wilson	x				
Tre Hargett	x				
Richard Rhoda	x				
Larry Martin	x				
John Morgan	x				
Joseph DiPietro	x				
Peter Abernathy	x				
Betty Sue McGarvey				x	

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Board of Trustees of the Baccalaureate Education System Trust Fund Program on 12/19/13 (*date as mm/dd/yyyy*), 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: 2/28/14

Signature: Alison G. Cleaves

Name of Officer: Alison G. Cleaves

Title of Officer: Assistant General Counsel

DELCINIA C. COSTA STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY

Subscribed and sworn to before me on: 2-28-2014

Notary Public Signature: Delcinia C. Costa

My commission expires on: 10-18-2016

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.

R E Cooper Jr

Robert E. Cooper, Jr.
Attorney General and Reporter

4-8-14
Date

Department of State Use Only

Filed with the Department of State on: 4/11/14

Effective on: 9/28/14

Tre Hargett
Secretary of State

RECEIVED
2014 APR 11 PM 3:35
OFFICE OF
SECRETARY OF STATE

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Labor and Workforce Development
DIVISION:	Workers' Compensation
SUBJECT:	Mediation, Hearings and Appeals Procedures
STATUTORY AUTHORITY:	Chapters 282 and 289 of the Public Acts of 2013, which are codified in Tennessee Code Annotated, Title 4, Chapter 3, Part 14; Title 9, Chapter 8, Parts 3 and 4; Title 29, Chapter 20, Part 4; and Title 50, Chapter 6
EFFECTIVE DATES:	June 30, 2014 through June 30, 2015
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	The rules provide procedures and practices for the mediation, filing and disposition of claims in the Tennessee Court of Workers' Compensation Claims and the Board of Workers' Compensation Appeals, which are two special administrative courts created in the executive branch by Chapters 282 and 289 of the Public Acts of 2013. As these are new rules, there is no change in existing regulations. However, Chapter 289 of the Public Acts of 2013 required that all workers' compensation claims occurring on or after July 1, 2014, be filed in the Tennessee Court of Workers' Compensation Claims instead of in a state trial court. The rules also include parameters for the authority of the workers' compensation ombudsman that were included in Chapter 837 of the Public Acts of 2014, which took effect for rulemaking purposes on April 28, 2014.

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 COMMENTS AND RESPONSES

Comment: There is no process provided for obtaining subpoenas.
Response: The Division agrees with the comment. The rules have been revised to include instructions on how to obtain subpoenas.

Comment: The requirement in the rules that a hearing be held within sixty days is not feasible.
Response: The Division disagrees with the comment. The rules do not require that a hearing be held within sixty days but only require that a hearing be requested within sixty days.

Comment: The requirement in rule 0800-02-21-.10 that parties exchange medical records on an ongoing basis within five (5) business days of receipt of the records is too burdensome.
Response: The Division agrees with the comment. Rule 0800-02-21-.10 has been revised to increase the time period for parties to provide copies of medical records on an ongoing basis to fourteen (14) calendar days arter receipt.

Comment: The requirement in rule 0800-02-21-.10 that the employer provide a wage statement within five (5) business days of the filing of a petition for benefit determination is too burdensome.
Response: The Division agrees with the comment. Rule 0800-02-21-.10 has been so that a wage statement must be provided to the employee, or employee's counsel, and filed with the Division no later than three (3) business days before the first scheduled alternative dispute resolution session.

Comment: Rule 0800-02-21-.11 paragraph five, which allows a party to object to the inclusion of disputed issues in a dispute certification notice should be removed. The requirement is unnecessary and provides an inappropriate amount of authority to mediator to narrow the areas of dispute.
Response: The Division agrees with the comment. Rule 0800-02-21-.11 has been revised so that any disputed issue which any party has advocated for inclusion in the dispute certification notice will be included.

Comment: The language is unclear on when a dispute certification notice is filed triggering the requirement that a party request a hearing within sixty days.
Response: The Division agrees with the comment. The rule has been revised to clarify the date when a dispute certification notice is filed with the court.

Comment: Rule 0800-02-21-.14 paragraph one should provide be entitled to a hearing when a motion for an expedited hearing is filed. These hearings are extremely important in that the decision of whether an employee is entitled to temporary disability or medical benefits often turn upon the credibility of the employee.
Response: The Division agrees with the comment. Rule 0800-02-21-.14 has been revised so that a judge assigned the motion shall have the discretion to convene a hearing if the judge believes a hearing is necessary to rule on the motion.

Comment: Rule 0800-02-21-.14 paragraph two allows a workers' compensation judge to enter a decision on the record without the consent of the parties. Giving this authority to the Division may result in a denial of due process.
Response: The Division agrees with the comment. Rule 0800-02-21-.14 has been revised to allow the workers' compensation judge issue a decision on the record, without a hearing, only upon the written agreement of the parties to the claim.

Comment: Rule 0800-02-21-.16 subparagraph four limits the number of interrogatories to twenty. The rules should allow for thirty interrogatories as provided by the rules of civil procedure.
Response: The Division disagrees. No changes will be to the rule in response to this comment.

Comment: Rule 0800-02-21-.17 provides for post-discovery litigation in all cases unless the presiding judge deems it unnecessary. Requiring the parties to participate in post-discovery mediation could be counter-productive and create an unneeded drain on human resources.
Response: The Division disagrees. No changes will be made to the rule in response to this comment.

Comment: Rule 0800-02-21-.15 should be revised to provide additional clarity as to which medical provider is required to provide medical records.
Response: The Division agrees with the comment. Rule 0800-02-21-.15 has been revised to clarify which medical providers bear the responsibility to provide records.

Comment: Rule 0800-02-21-.15 contains timeframes for the employer and employee to exchange medical records but does not indicate the deadline for medical providers to distribute records upon request from the parties. In order to expedite the claim, the rules should also address the amount of time in which a medical provider must distribute records.
Response: The Division agrees with the comment. The rule has been revised to clarify the number of days a medical provider has to distribute records when records are requested by a party to the claim.

Comment: The five-day timeframe for requesting an appeal of an interlocutory order, as provided in rule 0800-02-22-.01, is too short. Suggest increasing this timeframe to 10 or 14 days.
Response: The Division disagrees with this comment. The timeframe for filing an appeal of an interlocutory order is statutory and increasing the timeframe would violate the statute. No changes will be made to the rule in response to this comment.

Comment: The rules do not contain a definition of bad faith. Specifically, a rule stating that a party's refusal to make an offer of settlement in a case where the party maintains that it has no liability is not bad faith should be included.
Response: The Division neither agrees nor disagrees with this comment. However, any rulemaking related to a definition of the term bad faith will be addressed in future rules. No changes will be made to these rules in response to this comment.

Comment: The rules do not define the scope of physicians that may serve on a panel. Specifically, the statute provides for the inclusion of specialty practice groups on a panel but the definition of this phrase is not clear.
Response: The Division disagrees with this comment. While the Division understands that the meaning of this phrase will need to established, the Division has determined that these rules are not the appropriate document for addressing this issue. No changes will be made to these rules in response to this comment.

Comment: The rules do not provide an adequate explanation of what it means for a physician to "provide" notice of a referral to the employer/carrier. Recommend a revision to the rule requiring that the referral must be made on a form.
Response: This comment falls outside the purview of the rules presented. No changes will be made to these rules in response to this comment.

Comment: The three day time limit for an employer/carrier to provide an alternate panel of specialist upon receipt of a referral to a specialist by the authorized treating physician is too short. Suggest increasing the time period to seven business days.
Response: This comment falls outside the purview of the rules presented. Further, the law requires that the panel be provided within three (3) business days so any rule that extended this period would conflict with the statute. No changes will be made to these rules in response to this comment.

Comment: The scope of the initial mediation is not defined. It is impractical to require the parties to articulate all possible disputed issues before discovery has been completed.
Response: The Division agrees with this comment. Rule 0800-02-21-.17 has been revised so that the mediator will be required to submit a new dispute certification notice following post-discovery alternative dispute resolution.

Comment: The rules do not contain any method for recoupment of funds paid pursuant to an interlocutory order for temporary disability or medical benefits that is later overturned. There should be a section in the rules that addresses recoupment.
Response: The Division disagrees with this comment. Case law provides that an employer who pays temporary disability or medical benefits pursuant to an interlocutory order can seek recoupment from the party to whom the funds were paid. No changes will be made to these rules in response to this comment.

Comment: The rules are unclear as to whether the parties will be required to attend mediation in person.
Response: The Division disagrees with this comment. The rules provide that mediation may be accomplished in the manner chosen by the mediator including in-person, telephonic or video conferencing options. No changes will be made to these rules in response to this comment.

Comment: Rule 0800-02-21-.05 is unclear as to whether a corporation or other artificial person must be represented by counsel.
Response: The Division agrees with this comment. Rule 0800-02-21-.05 has been revised to clarify that an artificial person must be represented by counsel during all proceedings in the court of workers' compensation claims and in the board of workers' compensation appeals.

Comment: The rules state that an ombudsman can provide advice and assistance but prohibit the ombudsman from giving legal advice. Suggest that additional clarification on the limits of the activities of ombudsman is needed.
Response: The Division disagrees with this comment. The prohibition on the provision of legal advice is clearly stated and the meaning of what constitutes the unauthorized practice of law has been addressed by the Supreme Court. No changes will be made to these rules in response to this comment.

Comment: The rules do not provide an adequate explanation of what it means for a physician to "provide" notice of a referral to the employer/carrier so it is unclear when the three day period for providing an alternate panel begins to run. Recommend a revision to the rule to clarify this issue.
Response: This comment falls outside the purview of the rules presented. No changes will be made to these rules in response to this comment.

Comment: The reform law allows for the release of medical records related to the workers' compensation injury without the provision of a medial release and rule 0800-02-21-.15 governs the release and exchange of these records by the authorizing treating physician. The rule as drafted does not provide sufficient clarity concerning which physicians/entities are required to release records or the scope of the records that the physician/entity is required to release and the circumstances under which release is required.
Response: The Division agrees with this comment. Rule 0800-02-21-.15 has been revised to address the issues raised in this comment.

Comment: Rule 0800-02-21-.02(3) should remove the language "severe" as an adjective describing "paralysis" as the language is redundant. Any paralysis of a limb or trunk is catastrophic.
Response: The Division disagrees with the comment. There are some situations where paralysis of a limb or trunk can be very significant and in other cases the paralysis may be slight and effecting only a small portion of the area or may be temporary in nature. In any event, the question of degree of paralysis will factor into the decision on whether the claim should be given priority on the docket. No changes will be made to these rules in response to this comment.

Comment: Rule 0800-02-21-.02(15) "Initial Hearing" should include "hearing of medical benefit issues" and not just "hearing of temporary benefit issues," as the former may require an expedited hearing also.
Response: The Division agrees with this comment. Rule 0800-02-21-.02.02(15) has been revised to incorporate the change suggested by this comment.

Comment: Rule 0800-02-21-.04 (4) "Ombudsman cannot provide legal advice" should be omitted as inconsistent with .04 (3) providing for the ombudsman to provide information "to unrepresented parties about their rights and responsibilities under the law."
Response: The Division disagrees with this comment. No changes will be made to these rules in response to this comment.
Comment: Rule 0800-02-21-.10(3) regarding wage statement should include language that the wage statement must be "fully completed," as the common practice of employers has been to omit information about the number of days worked in a week. When numerous days have been lost, the AWW would need to be adjusted under the statute.
Response: The Division agrees with this comment. Rule 0800-02-21-.10(3) has been revised to incorporate the change suggested by this comment.

Comment: Rule 0800-02-21-.11(6) regarding dismissal for failure to appear at an alternative dispute resolution proceeding should include not only sanctions for the employee's absence but should also include sanctiona for the employer's failure to appear.

Response: The Division neither agrees nor disagrees. However, the Division will be addressing sanctions for an employer who fails to appear in a subsequent set of rules. No changes will be made to these rules in response to this comment.

Comment: Rule 0800-02-21-.14(3) states the following: "If the denial of temporary benefits is affirmed by the appeals board or if no appeal is taken, the employer may file a motion to dismiss with the assigned workers' compensation judge." This rule should state "denial of compensability" rather than denial of temporary benefits as grounds for dismissal, as many cases are compensable without temporary benefits.
Response: The Division agrees with this comment. Rule 0800-02-21-.14(3) has been revised to incorporate the change suggested by this comment.

Comment: Suggest removing the phrase "medical fee schedule" from rule 0800-02-21-.15(1) and replacing it with references to T.C.A. § 50-6-204 and rule 0800-02-17-.24 to clarify the differences between allowable charges for paper and non-paper medical records.
Response: The Division agrees with this comment. Rule 0800-02-21-.15(1) has been revised to incorporate the change suggested by this comment.

Comment: Suggest removing the phrase "medical fee schedule" in rule 0800-02-21-.15(2) and replacing it with a reference to rule 0800-02-17-.15(4) and removing the phrase "if the report requires significant research or preparation" from this same rule. Removing this phrase will improve efficiency by removing a possible point of dispute over the validity of a charge for this action.
Response: The Division agrees with this comment. Rule 0800-02-21-.15(2) has been revised to incorporate the change suggested by this comment.

Comment: Suggest replacing the term "physician" with the phrase "medical providers" in rule 0800-02-21-.16(6)(b). The change will reflect the real-world practice where medical records are sometimes prepared by persons other than the physician and the change is consistent with language used on rule 0800-02-21-.15.
Response: The Division agrees with this comment. Rule 0800-02-21-.16(6)(b) has been revised to incorporate the change suggested by this comment.

Comment: Suggest adding language to rule 0800-02-21-.16(6)(c) to clarify that physicians will not be required to complete the "chronological table of contents" required by this rule.
Response: The Division agrees with this comment. The rules have been revised to incorporate the change suggested by this comment. Additional language has also been added to exempt pro se parties from completing this task.

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 are largely procedural and administrative in nature, except for the filing fee, which is capped by statute at $150.00. However, the filing fee to be paid at the settlement or conclusion of a claim upon entry of a final order is less than the fees currently paid to state trial courts so the fee does result in a savings when compared to the current process and could be viewed as a benefit.

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: Generally, record keeping and administrative duties will be performed by employers' insurance carriers or third party administrators and the record keeping staff-persons in physicians' offices. The recordkeeping and distribution requirements will be similar to the requirements under current law. Accordingly, any administrative impact to small businesses should be minimal.

3. A statement of the probable effect on impacted small businesses and consumers: Since these rules are largely procedural, there would be no expected impact other than the assessment of the $150 filing fee. However, the impact of the fee would be minimal as the fee is capped at $150.00, and parties to a workers' compensation claim are currently paying approximately $200 to $350 in filing fees for claims adjudicated in state trial courts. Accordingly, the fees would be a reduction of those currently paid

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 these rules.

5. Comparison of the proposed rule with any federal or state counterparts: 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: It would be detrimental to small businesses that fall under the Tennessee Workers' Compensation Laws to be exempt from these rules because they are intended to provide speedier and more predictive outcomes in workers' compensation claims.

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 minimal.

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

For Department of State Use Only

Sequence Number: 03-08-14
Rule ID(s): 5673-5674
File Date: 4/7/14
Effective Date: 6/30/14

Rulemaking Hearing Rule(s) Filing Form

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

Agency/Board/Commission:	Tennessee Department of Labor and Workforce Development
Division:	Workers' Compensation
Contact Person:	Josh Baker
Address:	220 French Landing Drive, Nashville, Tennessee
Zip:	37243
Phone:	(615) 253-6909
Email:	Josh.baker@tn.gov

Revision Type (check all that apply):

___ Amendment
_x_ 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**
0800-02-21	Mediation and Hearing Procedures
Rule Number	**Rule Title**
0800-02-21-.01	Scope
0800-02-21-.02	Definitions
0800-02-02-.03	Computation of Time
0800-02-21-.04	Ombudsman
0800-02-21-.05	Representation by Counsel
0800-02-21-.06	Foreign Attorneys
0800-02-21-.07	Fees
0800-02-21-.08	Forms
0800-02-21-.09	Service of Documents
0800-02-21-.10	Commencement of Alternative Dispute Resolution
0800-02-21-.11	Alternative Dispute Resolution Proceedings
0800-02-21-.12	Request for Hearing and Docketing of Cases
0800-02-21-.13	Initial Hearing
0800-02-21-.14	Expedited Hearing and Decision on the Record
0800-02-21-.15	Copies of Medical Records
0800-02-21-.16	Discovery
0800-02-21-.17	Post-Discovery Alternative Dispute Resolution
0800-02-21-.18	Compensation Hearing Procedure
0800-02-21-.19	Settlement Approvals
0800-02-21-.20	Voluntary Dismissal – Nonsuit
0800-02-21-.21	State Employee Claims

Chapter Number	**Chapter Title**

0800-02-22	Board of Workers' Compensation Appeals
Rule Number	**Rule Title**
0800-02-22-.01	Filing the Request for Appeal
0800-02-22-.02	Docketing Appeal, Filing Briefs and Rendering Decision
0800-02-22-.03	Appeals of Workers' Compensation Cases Filed Against the State

(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 0800-02-21
Mediation and Hearing Procedures

New Rules

Rule 0800-02-21-.01 Scope

These rules govern the procedures for resolution of workers' compensation disputes, including informal resolution and practice before the court of workers' compensation claims. They are intended to provide for an efficient and expedient resolution of issues within the jurisdiction of the Division.

Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 106

Rule 0800-02-21-.02 Definitions

(1) Appeals Judge. A judge of the board of workers' compensation appeals.

(2) Appeals Board. Unless otherwise provided or clearly inapplicable in context, appeals board shall mean the board of workers' compensation appeals.

(3) Catastrophic Injury. For the purposes of this section only, any of the following injuries shall be catastrophic:

(a) Spinal cord injury involving severe paralysis of an arm, a leg, the trunk or any combination of these;

(b) Amputation of an arm, a hand, a foot, a leg or any combination of these involving the effective loss of use of that appendage;

(c) Severe brain or closed head injury as evidenced by:

1. Severe sensory or motor disturbances;
2. Severe communication disturbances;
3. Severe complex integrated disturbances of cerebral function;
4. Severe disturbances of consciousness; or
5. Severe episodic neurological disorders;

(d) Second or third degree burns to twenty-five percent (25%) or more of the body as a whole or third degree burns to five percent (5%) or more of the face or hands;

(e) Total or industrial blindness; or

(f) Total loss of hearing.

(4) Chief Judge. The chief judge is the supervisor and coordinator of all activities in the court of workers' compensation claims. The chief judge is responsible for administration of the day-to-day operations of the court and supervision of its judges. The chief judge may also preside over hearings of workers' compensation cases. The chief judge has the authority to issue orders in furtherance of these responsibilities.

(5) Claim. For the purposes of these rules, a claim shall refer to the assertion of the entitlement to a remedy

provided by the workers' compensation law as a result of an injury described therein.

(6) Clerk. Unless otherwise provided, clerk shall mean the clerk of the court of workers' compensation claims.

(7) Compensation Order. A compensation order is an order by a workers' compensation judge following conclusion of a full evidentiary hearing or a decision on the record and shall include a decision issued by a judge following a hearing related to an open medicals provision in a previously issued order or approved settlement. The parties may, by joint stipulation, request a compensation order resolving the issues in dispute without a hearing.

(8) Court. Unless otherwise provided, court shall mean the court of workers' compensation claims.

(9) Decision on the Record. After a Request for Hearing has been filed, the Division may select cases where no material fact is in dispute for determination on the record. The parties will be afforded an opportunity to submit written position statements regarding the law that support their respective positions as well as an opportunity to respond to the written position statement of the other party. The case shall be assigned to a judge for a decision on the record. Review of a decision on the record shall proceed as set forth in the Tennessee Workers' Compensation Law and these rules.

(10) Dispute Certification Notice. The notice filed by the mediator with the clerk following the completion of alternative dispute resolution proceedings stating that, following mediation, a dispute concerning the issues set forth in the notice still exists. Unless permission is granted by the court, no issue that is not contained within the dispute certification notice may be submitted to the judge for adjudication.

(11) Division. Unless otherwise provided, division shall mean the Division of Workers' Compensation.

(12) Electronic signature. A pleading, order, or other document that is transmitted by electronic mail or other means of electronic transmission to or from the Division may be signed or verified electronically in the manner approved by the Division for such transmissions.

(13) Expedited Hearing. A hearing to determine an issue of appropriateness of temporary disability or medical benefits prior to a hearing that results in a compensation order, conducted pursuant to these rules. A workers' compensation judge may issue an interlocutory order either awarding or denying temporary disability or medical benefits based on a review of the documents submitted and without convening a formal hearing. A workers' compensation judge shall have discretion to convene a hearing of a motion for temporary disability or medical benefits if the judge determines that convening a hearing is necessary to determine the issues presented.

(14) Filed. For purposes of this chapter, a pleading or other document required to be sent to the court shall be considered filed only on the date and time received by the clerk if delivered by hand to the clerk's offices in Nashville or any other office maintained by the Division during normal business hours; on the date posted to the clerk if sent by U.S. certified or registered mail, return receipt requested, or other equivalent manner as established by the Division; or when the material being transmitted reaches the Division or its designated agent, if transmitted by first-class mail, facsimile, electronic mail or other means of electronic transmission approved or required by the Division.

(15) Initial Hearing. With the exception of a hearing of temporary disability or medical benefit issues conducted on an expedited basis, an initial hearing shall be the first hearing before a workers' compensation judge where the judge will consider issues related to the efficient processing of the case.

(16) Interlocutory Order. An interlocutory order is an order by a workers' compensation judge that awards or denies temporary disability or medical benefits following a review of the submitted material, or a hearing if one is convened at the discretion of the workers' compensation judge, as a result of a motion for expedited hearing. An interlocutory order may be reviewed by the board of workers' compensation appeals upon timely request of a party. No other review of an interlocutory order is permitted.

(17) Judge or Workers' Compensation Judge. A judge of the court of workers' compensation claims.

(18) Motion for Expedited Hearing. A motion for an expedited hearing is a request filed with the clerk for a

workers' compensation judge to issue an interlocutory order for temporary disability or medical benefits. An employee may file a motion for expedited hearing with the clerk at any time after a dispute certification notice has been filed and the claim has been placed on the docket for an initial hearing.

(19) Petition for Benefit Determination. A petition for benefit determination is a request for the Division to provide assistance in the resolution of any disputed issues in a workers' compensation claim. Any party may file a petition for benefit determination, on a form approved by the Division, with the Division at any time after a dispute arises in a claim for workers' compensation benefits.

(20) Request for Hearing. A request to the clerk to schedule a hearing before a workers' compensation judge for the adjudication of a disputed issue that has been certified by a mediator on a dispute certification notice.

Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 76, 79, 82, 83, 106

Rule 0800-02-21-.03 Computation of Time

(1) Unless otherwise noted, the time required for completing any actions provided in these rules shall be calculated in the manner provided by Rule 6.01 of the Tennessee Rules of Civil Procedure.

(2) Except in regard to filing a petition for benefit determination pursuant to T.C.A. § 50-6-203 and a request for hearing pursuant to T.C.A. § 50-6-239(a), when an act is required to be done at or within a specified time, the workers' compensation judge or board of workers' compensation appeals board judge may, at any time:

(a) Order the period enlarged, without notice, if the request is made before the expiration of the period originally prescribed or extended by a previous order; or

(b) Order the period enlarged, thereby permitting the act to be done late, upon motion made after the expiration of the period originally prescribed if the failure to complete the act within the prescribed period was the result of excusable neglect.

(3) Nothing in this section shall be construed to allow any ex parte communications with a workers' compensation judge or workers' compensation appeals board judge concerning any issue in the proceeding that would be prohibited by T.C.A. § 4-5-304.

Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 79, 106

Rule 0800-02-21-.04 Ombudsman

(1) The workers' compensation ombudsman program provides assistance to employees, employers or any other party or participant in a workers' compensation claim that is not represented by legal counsel. The ombudsman can provide information on workers' compensation law and rules, inform participants of their rights and obligations under the law, assist participants in completing forms, obtaining medical records and scheduling appointments, and perform any other duties as required by the administrator.

(2) Any party that is not represented by counsel may request the services of a workers' compensation ombudsman by contacting the Division.

(3) An ombudsman shall have authority including, but not limited to:

(a) Meeting with and providing information to unrepresented parties about their rights and responsibilities under the law;

(b) Investigating claims and attempting to resolve disputes without resorting to alternative dispute resolution and court proceedings;

(c) Communicating with all parties and providers in the claim;

(d) Assisting the parties in the completion of forms; and

(e) Facilitating the exchange of medical records.

(4) An ombudsman cannot provide legal advice.

(5) An ombudsman cannot be called to testify in any proceeding and no statement or representation made to an ombudsman shall be considered by a workers' compensation judge for any purpose.

(6) Any unrepresented person or entity seeking the services of an ombudsman shall contact the Division. The Division shall assign an ombudsman to assist the person or entity qualified to receive the services of an ombudsman. Access to the services provided by an ombudsman is a privilege, not a right, and the Division has sole authority to determine whether a person or entity qualifies for ombudsman services and the nature of the services to be provided by the ombudsman.

(7) If a person or entity receiving the services of an ombudsman obtains legal counsel in the case or dispute for which the services of an ombudsman were sought, the person or entity shall immediately notify the Division of the representation and shall discontinue use of the services provided by an ombudsman.

Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 77

Rule 0800-02-21-.05 Representation by Counsel

(1) At any hearing or mediation proceeding:

(a) Any party may be represented by a Tennessee licensed attorney in good standing. An attorney licensed outside of Tennessee may apply for admission pro hac vice.

(b) Any party that is a natural person may represent himself or herself at any hearing or mediation proceeding.

(c) Any corporation or other artificial person may participate through a duly authorized representative such as an officer, director or appropriate employee, but must be represented by counsel in all proceedings occurring the in court of workers' compensation claims and the board of workers' compensation appeals.

(d) No party may be represented by a non-attorney.

(2) Immediately upon engaging in representation of a party, an attorney shall file a notice with the Division indicating their appearance. After a licensed attorney has appeared on behalf of any party, all pleadings, motions, notices and other documents shall be served upon the attorney. In lieu of filing formal notice, an attorney's signing of a petition for benefit determination, request for hearing, proposed initial hearing order, wage statement, pretrial statement or any other document that is filed with the clerk or the Division shall satisfy the notice of appearance requirement.

(3) Representation shall continue until the case is concluded, including any appeals to the board of workers' compensation appeals, or until withdrawal from representation has been approved by a judge. All withdrawals of an attorney following an appearance shall be upon motion with reasonable notice provided to the represented party. No motion to withdraw shall be granted unless the motion is accompanied by an affidavit from the attorney setting forth the last known address of the client and a statement declaring that the attorney has provided notice to the client of both the effects of the attorney's withdrawal from the case and of any scheduled proceedings.

(4) If a party is represented by an attorney, then all pleadings, motions, and other documents filed with the Division shall be signed by at least one attorney of record. If a party is not represented by an attorney, then the party must include his or her signature on the filing. Individuals signing a filing must include their address and an attorney signing a filing must also include the attorney's Tennessee board of professional responsibility number. Unless otherwise required by statute or regulation, signatures do not need to be accompanied by affidavit. The signature of an individual signifies that the individual has read the filing, the filing is well grounded in fact and is warranted by existing law or an extension or modification of existing law, and the filing is not made for any improper purpose.

Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 106

Rule 0800-02-21-.06 Foreign Attorneys

Unless permission has been granted by the court, only attorneys who have been admitted to practice law by the Tennessee Supreme Court may appear before judges of the court of workers' compensation claims. The Division may admit foreign attorneys to appear pro hac vice upon application on a form approved by the Division.

Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 79, 106

Rule 0800-02-21-.07 Fees

A filing fee of $150 shall be paid to the clerk by the employer at the time of settlement approval or at the conclusion of a case. The filing fee shall be submitted to the clerk before a scheduled settlement approval hearing or within five (5) business days after the fee has been assessed by the workers' compensation judge. Payment shall be made in a form, and submitted in a manner, approved by the Division.

Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013), Section 82

Rule 0800-02-21-.08 Forms

All documents filed with the Division, including those allowed or required to be filed electronically, shall be in the form approved by the Division.

Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 106

Rule 0800-02-21-.09 Service of Documents

Copies of a petition for benefit determination, request for hearing, request for appeal and any other documents filed with the Division, the court of workers' compensation appeals or the appeals board shall be served upon all parties to the dispute or upon their attorneys, if represented. Service must be accomplished either before filing with the Division or within a reasonable time thereafter. Service may be accomplished by hand delivery, mail or common carrier, facsimile, electronic mail in PDF format, or other electronic means approved by the Division. Unless otherwise required by the Division, proof of service shall be by certification of the sender on the document filed with the Division. Such certification shall include the name of the person served, the date, the manner of service and the address where service was made.

Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 106

Rule 0800-02-21-.10 Commencement of Alternative Dispute Resolution

(1) Resolution of a dispute over a claim for workers' compensation benefits shall commence by the filing of a petition for benefit determination, on a form approved by the Division, with the Division within the applicable time frames provided by T.C.A. § 50-6-203. If a petition for benefit determination is not filed within the applicable time frames provided by T.C.A. § 50-6-203, then the right to compensation under the Workers' Compensation Law relating to the dispute shall be forever barred.

(2) After a petition for benefit determination is filed, each party shall promptly provide the other parties with copies of any medical records in their possession. Further, each party shall provide copies of any medical reports received during the course of the proceeding, as they receive them, to all other parties within fourteen (14) calendar days of receipt. The mediator may refer any party that does not comply with the requirements of this rule for the assessment of a civil penalty.

(3) Within three (3) business days of the first scheduled alternative dispute resolution proceedings, the employer shall provide a wage statement, on a form approved by the Division, detailing the employee's wages over the fifty-two (52) week period preceding the injury. The form must be fully completed and signed by the employer or counsel. If the employee was employed by the employer for less than fifty-two (52) weeks, the employer shall provide a wage statement detailing the employee's wages over the entire

period of employment. The statement shall be filed with the Division and served upon the employee in the manner provided by these rules. The presiding mediator shall refer any employer who does not file a wage statement with the Division within the timeframe provided by this section for assessment of a civil penalty.

(4) After a petition for benefit determination is filed, the case shall be assigned to a mediator who will schedule alternative dispute resolution proceedings under the procedures provided by these rules.

Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 76, 106

Rule 0800-02-21-.11 Alternative Dispute Resolution Proceedings

(1) Once a case has been assigned to a mediator, the mediator shall conduct alternative dispute resolution proceedings in any manner that is practical for the effective resolution of the issues in dispute, including allowing for telephonic, electronic, or in-person interactions.

(2) The parties shall cooperate with the mediator and provide any information necessary for the resolution of the dispute. If the mediator determines that a party is not cooperating or is not negotiating in good faith, then the mediator shall refer the party for a penalty as provided by T.C.A. § 50-6-118. When a party is referred by the mediator for the assessment of civil penalty pursuant to this section, the referral shall be assigned to another employee of the Division who shall consider the referral and make a decision of whether assessment of a penalty is appropriate.

(3) If the parties are able to reach a resolution of all disputed issues, the mediator shall reduce the terms of the resolution to a settlement agreement, on a form approved by the Division, and file the agreement with the clerk. The clerk shall place the case on the docket and assign the case to a workers' compensation judge for a settlement approval hearing.

(4) If the parties are unable to reach a resolution of all disputed issues, the mediator shall issue a dispute certification notice to the parties. The mediator shall note any issues that the parties have agreed upon in the notice as well as the remaining issues that are still in dispute including all defenses to the claim that were raised during the mediation.

(5) If any party disagrees with the contents of the dispute certification notice issued pursuant to paragraph (4), then such party is required to file an objection with the mediator within five (5) business days of receipt. In the objection, the party shall provide a list of any additional disputed issues that it believes should be included in the dispute certification notice. The mediator shall issue an amended dispute certification notice and file the dispute certification notice with the clerk.

(6) If the employee fails to appear at any scheduled alternative dispute resolution proceeding, the mediator shall issue a dispute certification notice stating that the employee has failed to appear for a scheduled alternative dispute resolution proceeding. The clerk shall place the case on the dismissal calendar for a show cause hearing and send notice of the show cause hearing to the parties as provided in rule 0800-02-21-.12(1). If the case is dismissed following the show cause hearing, the employee may revive the case by attending alternative dispute resolution proceedings within sixty (60) days of the date of the order as provided in T.C.A. § 50-6-203(f).

Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 33, 73, 79, 106

Rule 0800-02-21-.12 Request for Hearing and Docketing of Cases

(1) Immediately after a dispute certification notice has been filed with the clerk, either party seeking further resolution of any disputed issues shall file a request for hearing with the clerk on a form approved by the Division and serve a copy of the request on the opposing party or their counsel, if any. If no request for hearing is filed within sixty (60) calendar days after the date of issuance of the dispute certification notice, the clerk shall docket the case and place the case on a separate dismissal calendar for a show cause hearing. The clerk shall send notice of the hearing to the parties, via regular or electronic mail, indicating the claim number, the time of the hearing and the judge assigned to the case. Either party may appear to show cause as to why the case should not be dismissed.

(2) Except in cases where an employee has suffered a catastrophic injury or for similar reasons as determined by the Division, all cases shall be placed on the docket by the clerk in the order that the request for hearing is received. If the dates are available, the clerk will assign a date for the hearing based upon available dates provided by the parties, in coordination with the mediator assigned to the case.

(3) The clerk shall consolidate all requests for hearing related to a single dispute certification notice into a single referral to the docket. If two or more filings that should be consolidated are not consolidated, then the cases shall be combined and assigned to the judge that was given the assignment for the first request that was filed, unless otherwise directed by the chief judge. Consolidation may occur upon the motion of a party or on a judge's own motion.

Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 79, 82, 106

Rule 0800-02-21-.13 Initial Hearing

(1) All parties to any case shall participate in an initial hearing with a workers' compensation judge no more than thirty (30) calendar days after a request for hearing is filed.

(2) After the initial hearing has been set, the clerk shall send a docketing notice to all parties, via regular or electronic mail, indicating the case number, the time of the initial hearing and the judge assigned to the case. The clerk shall also send information to the parties detailing the actions required to prepare for and participate in the initial hearing. Unless the judge determines that an in-person hearing is necessary, all initial hearings shall be conducted telephonically or through other electronic means as determined by the workers' compensation judge.

(3) At the initial hearing, the parties shall discuss and agree upon a discovery plan and a scheduling order designed to ensure timely and efficient resolution of the case. The parties shall jointly submit a proposed initial hearing order, in a format provided by the Division, to the judge for consideration. The proposed order shall be submitted via electronic mail, unless another method of delivery is required by the Division, within three (3) business days of the conclusion of the initial hearing

(4) At the conclusion of the initial hearing, the judge shall set dates for post-discovery alternative dispute resolution proceedings and the compensation hearing. Absent extraordinary circumstances as determined by the judge, the date of the compensation hearing shall not be modified.

Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 79, 82, 106

Rule 0800-02-21-.14 Expedited Hearing and Decision on the Record

(1) After a case is placed on the docket, if there is a dispute over temporary disability or medical benefits, either party may request an expediting hearing of the issue of temporary disability or medical benefits by indicating its desire for an expedited hearing on the request for hearing form or by a filing a separate motion. The indication of the desire for an expedited hearing on the request for hearing form shall serve as the motion for expedited hearing.

(a) All motions for expedited hearing must be accompanied by affidavits and any other information demonstrating that the employee is entitled to temporary disability or medical benefits.

(b) Immediately upon receiving the motion, but in no event later than five (5) business days after the motion is filed with the clerk, the opposing party shall submit all information in its possession demonstrating that the employee is not entitled to temporary disability or medical benefits. The party shall also indicate if it believes that the motion should be set for an evidentiary hearing and provide an explanation of why a hearing is necessary.

(c) Seven (7) business days after the motion is filed with the clerk, the clerk shall compile the file and the motion shall be assigned to a workers' compensation judge. Upon receipt of the file, the judge shall have discretion to either set the matter for a hearing or enter an interlocutory order based on a review of the file upon determining that no additional information is needed to

determine whether the employee is likely to prevail at a hearing on the merits of the claim.

(d) Any party aggrieved by an interlocutory order may appeal the interlocutory order to the board of appeals in the manner provided by the Tennessee Workers' Compensation Law and these rules.

(e) An interlocutory order awarding or denying temporary disability or medical benefits shall not be binding on the workers' compensation judge assigned to preside over the compensation hearing.

(2) The parties may request that a case be decided by a workers' compensation judge on the record and a compensation order issued based on a judge's review of the written materials and without the benefit of a hearing.

(a) All cases in which the parties have agreed that the case should be submitted to the judge for an on-the-record determination will be placed on a separate docket for a decision on the record. The assigned workers' compensation judge shall determine whether an on-the-record determination is appropriate under the circumstances and may decline to issue a decision on the record and order the parties to appear for a hearing.

(b) If a case is selected for an on-the-record determination, the clerk shall send a docketing notice to all parties, via regular or electronic mail, indicating the file number and the judge assigned to the request for hearing. The clerk shall also send information to the parties detailing the actions required to present the case to the judge for a decision on the record.

(3) If, as a result of the expedited hearing, the claim is denied on the grounds of compensability, the claim shall continue as provided in these rules. The aggrieved party may file an appeal pursuant to Rule 0800-02-22-.01(1)(a). If the denial on the grounds of compensability is affirmed by the appeals board or if no appeal is taken, the employer may file a motion to dismiss with the assigned workers' compensation judge. If a motion to dismiss pursuant to this paragraph is filed, the employer shall serve a copy on the employee, or the employee's counsel, and the employee shall have thirty (30) calendar days to file a written response. Thereafter, the motion shall be set for a hearing and the judge shall issue an appropriate order.

Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 79, 82, 106

Rule 0800-02-21-.15 Copies of Medical Records

(1) A medical care provider attending to an injured employee shall, upon request from an employer or an employee, furnish a copy of required records, at no cost except for a nominal copying charge that shall not exceed the charges allowed by T.C.A. § 50-6-204 for paper records and rule 0800-02-14-.24 for non-paper records. The medical care provider shall make the records available to both the employee and employer within thirty (30) days after admission or treatment as required by T.C.A. § 50-6-204(a)(2)(A). After the records have been made available, the medical care provider shall provide the requested records within ten (10) business days of receipt of a written request for records. The records may be sent by email, facsimile, regular mail or common carrier and may be provided in paper or electronic format.

(2) A medical care provider is entitled to a reasonable fee, not to exceed the maximum allowable charges provided by rule 0800-02-17-.15(4), for preparation of a narrative report written in response to a request from a party.

(3) For the purposes of paragraphs (1) and (2) of this rule, medical provider shall include the authorized treating physician, a hospital, and any other entity or person who has provided medical care to the injured employee for the work-related injury that is the subject of the claim for workers' compensation benefits at issue pursuant to the employer's obligation under T.C.A. § 50-6-204. Acceptance of care from a medical provider for the work-related injury shall be deemed consent for the release of these records and no further consent shall be necessary.

(4) Medical provider shall not include any physician, hospital or other person or entity that has provided treatment to the injured worker for injuries or conditions that was not provided pursuant to the employer's obligation under T.C.A. § 50-6-204 for treatment of the work-related injury that is the subject of the claim for workers' compensation benefits at issue.

(5) Records from a medical provider as defined in Paragraph (4) of this rule may be provided with the appropriate HIPAA compliant written authorization of the employee which the employee shall be required to provide if ordered to do so by the presiding workers' compensation judge.

Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 35, 73, 106

Rule 0800-02-21-.16 Discovery

(1) Parties are encouraged, where practicable, to attempt to achieve any necessary discovery informally, in order to avoid undue expense and delay. When such attempts have failed, or where the complexity of the case is such that informal discovery is not practicable, discovery shall be sought and effectuated in accordance with the Tennessee Rules of Civil Procedure unless these rules provide an alternative procedure.

(2) Discovery disputes. All discovery related motions shall be decided on the written materials provided by the parties unless the workers' compensation judge, in the judge's discretion, determines that argument is needed to resolve the dispute. Affidavits may be provided in support of any motion or response; live testimony is prohibited. Any motion to compel discovery, motion to quash, motion for protective order, or other discovery-related motion shall:

(a) Quote verbatim the interrogatory, request, question, or subpoena at issue, or be accompanied by a copy of the interrogatory, request, subpoena, or excerpt of a disposition which shows the question and objection or response if applicable;

(b) State the reason or reasons supporting the motion; and

(c) Be accompanied by a statement certifying that the moving party or his or her counsel has made a good faith effort to resolve, by agreement, the issues raised in the motion and that agreement has not been achieved. Details of the effort to resolve the dispute shall be set forth with particularity in the statement.

(3) Filing of Discovery Materials. Unless the subject of a discovery dispute, discovery materials shall not be filed with the court.

(4) Interrogatories. A party may serve interrogatories on any other party at any time after a case has been docketed by the clerk.

(a) All interrogatories must be answered under oath and the responding party shall be required to update its answers in a timely manner whenever additional information becomes available or the responses provided in a prior response have changed.

(b) Interrogatories shall be answered within the timeframe provided by the discovery plan in the initial hearing order and, unless ordered by a workers' compensation judge, no party shall be required to answer interrogatories before the initial hearing order has been entered.

(c) No party may serve more than twenty (20) interrogatories, including subparts, on any other party, but the presiding workers' compensation judge shall have discretion to increase the number of interrogatories that may be served.

(d) The workers' compensation judge shall have authority to increase or decrease the time allowed for answering interrogatories.

(e) Except as required when filing a discovery-related motion, no interrogatories or answers shall be filed with the court.

(5) Depositions. All depositions shall be taken within the timeframe provided by the discovery plan in the initial hearing order. Absent extraordinary circumstances to be determined at the discretion of the workers' compensation judge, no scheduled hearing may be continued to provide a party additional time to secure deposition testimony.

(a) The deposition may be taken on oral examination or upon written questions in the manner provided by the Tennessee Rules of Civil Procedure.

(b) Written notice shall be provided to all parties at least five (5) business days before any scheduled deposition when the deposition is to be taken in the employee's county of residence. When the locale of the deposition is in a county other than the employee's county of residence, written notice of the deposition shall be provided to all parties at least seven (7) business days before the scheduled deposition.

(c) No oral deposition shall continue for more than four (4) hours. Time used for breaks shall be excluded.

(6) Medical Records. All medical records shall be exchanged among the parties in the manner provided by these rules.

(a) All medical records designated by the parties to be presented as evidence at a scheduled hearing shall be filed with the Division no later than (10) business days before the scheduled hearing date. Except for good cause shown, failure to comply may result in the exclusion of any medical record that is not filed timely or the assessment of costs or sanctions against the party or the attorney of the party designating the medical record. Absent good cause as determined by a workers' compensation judge, no other medical records shall be filed with the Division.

(b) All medical records signed by a physician or accompanied by a certification that the records are true and accurate which has been signed by the medical provider or custodian of records shall be admissible. The Division shall provide a certification form for the parties' use. There is no requirement that the certification be accompanied by an affidavit.

(c) All medical records designated to be presented as evidence at a scheduled hearing that exceed ten (10) pages shall include a chronological table of contents. The medical records designated shall be filed with the Division and each of the records shall be identified by author and date and numbered as in the table of contents.

1. It shall be the duty of the parties, not the medical providers, to prepare the chronological table of contents required by part (c) of paragraph (6).

2. A party proceeding pro se may, but shall not be required, to provide the chronological table of contents required by part (c) of paragraph (6).

(7) Subpoenas compelling document production and deposition testimony. A workers' compensation judge at the request of any party shall issue signed subpoenas in blank in accordance with the Tennessee Rules of Civil Procedure.

(a) Parties shall complete and serve their own subpoenas.

(b) Service of subpoenas for records may be by certified return receipt mail in addition to means of service provided by the Tennessee Rules of Civil Procedure.

(c) Any party or person that fails to timely respond to a subpoena for documents or testimony may be assessed a civil penalty.

Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 79, 82, 106

Rule 0800-02-21-.17 Post-Discovery Alternative Dispute Resolution

(1) Unless the presiding judge determines that additional mediation is unnecessary, the parties reach an agreed settlement, or the petition for benefit determination is voluntarily non-suited, all parties shall participate in alternative dispute resolution proceedings with a workers' compensation mediator following the completion of the discovery plan provided in the initial hearing order.

(2) The judge shall include a date for post-discovery alternative dispute resolution proceedings in the initial hearing order.

(3) Alternative dispute resolution proceedings under this section shall be conducted in the manner provided by rule 0800-02-21-.11.

(4) If the parties do not reach settlement of all issues, the mediator shall file a new dispute certification notice setting forth all issues that the parties have agreed upon, all disputed issues and all defenses to the claim proffered by the parties. If any party disagrees with the contents of the dispute certification notice, the party may file objections and an amended notice will be issued under the process provided by rule 0800-02-21-.11(5). Thereafter, the parties shall appear before the court for a compensation hearing at the time provided in the initial hearing order. The parties shall not file a request for hearing.

Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 76, 82, 106

Rule 0800-02-21-.18 Compensation Hearing Procedure

(1) The compensation hearing shall be conducted at the time and place established in the initial hearing order. Absent extraordinary circumstances, no motion for a continuance shall be considered at the compensation hearing. If the parties reach a settlement of all issues prior to a scheduled compensation hearing, the parties shall immediately give written notice to the court and contact the clerk to schedule a settlement approval hearing.

(2) No more than ten (10) business days before the date of a scheduled compensation hearing or as otherwise directed by the judge, each party shall file, either jointly or separately, a prehearing statement on a form provided by the Division.

(3) Concurrently with the submission of the prehearing statement, each party shall file the following:

(a) A copy of each proposed exhibit except for those intended for impeachment or rebuttal purposes; and

(b) A copy of the transcript of the deposition of any medical expert that the party intends to present at the hearing.

(4) With the exception of witness testimony and exhibits intended for impeachment or rebuttal purposes, no witness whose name and address was not included in the prehearing statement may testify at the hearing and no exhibit that was not included in the list of proposed exhibits in the prehearing statement may be presented at the hearing unless permission to present the testimony or exhibit is granted by the presiding workers' compensation judge. Permission may be granted by the judge only upon finding that:

(a) The party seeking to present the witness or exhibit did not have knowledge of the witness or exhibit prior to submitting the prehearing statement and could not have discovered the witness or exhibit despite reasonable investigation; and

(b) Prohibiting the presentation of the witness or exhibit would result in prejudice.

(5) Absent good cause shown, a party failing to provide a prehearing statement as required by these rules may be sanctioned by the judge, up to and including prohibiting the party from introducing evidence or exhibits, or calling witnesses except for impeachment or rebuttal purposes.

(6) Subpoenas compelling witnesses' attendance at trial. A workers' compensation judge at the request of any party shall issue signed subpoenas in blank in accordance with the Tennessee Rules of Civil Procedure.

(a) Parties shall complete and serve their own subpoenas.

(b) Service of subpoenas compelling witness attendance to a trial or a hearing shall be made through

the means provided by the Tennessee Rules of Civil Procedure and a signed copy of the original must be filed with the clerk.

(c) All subpoenas compelling witness attendance to a trial or a hearing must served no later than five (5) days before the scheduled trial or hearing unless the presiding workers' compensation judge has given leave to extend this period.

(d) Any party or person that fails to appear at a scheduled trial or hearing pursuant to a properly served subpoena issued pursuant to paragraph (6) of this rule may be assessed a civil penalty.

Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 82, 106

Rule 0800-02-21-.19 Settlement Approval

(1) In any case where the parties reach a full and final settlement, the settlement shall not become effective until it has been signed by both parties and approved by a workers' compensation judge.

(2) Unless the settlement is of a disputed claim, as provided by T.C.A. § 50-6-240(e), the settlement agreement must contain language stating that the employee is receiving, substantially, the benefits provided by the Tennessee Workers' Compensation Law.

(3) If the settlement is of a disputed case pursuant to T.C.A. § 50-6-240(e), the settlement agreement must contain language stating that the settlement is in the best interest of the employee.

(4) If there is a settlement of future medicals, a workers' compensation judge shall advise the claimant of the consequences of the settlement, if any, with respect to Medicare and TennCare benefits and liabilities and all settlements shall contain a statement that the claimant has been so advised.

Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 84, 106

Rule 0800-02-21-.20 Voluntary Dismissal – Non-suit

(1) On no more than one occasion, a party may voluntarily non-suit a petition for benefit determination at any time after it has been filed unless the employee has been awarded temporary benefits through an interlocutory order.

(2) A notice of voluntary non-suit shall not become binding until an order of non-suit has been issued by a workers' compensation judge.

(3) If a claim is voluntarily non-suited, the party that has voluntarily non-suited the claim shall be required to pay a filing fee of $150. The fee shall be due and payable on the date the order of non-suit is entered.

Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 82, 106

Rule 0800-02-21-.21 Workers' compensation claims against the state.

The court of workers' compensation claims is without jurisdiction to consider a claim for workers' compensation benefits filed against the state by a state employee.

Authority: T.C.A. §§ 4-3-1409, 9-8-307, 9-8-402

Chapter 0800-02-22
Board of Workers' Compensation Appeals

New Rules

Rule 0800-02-22-.01 Filing the Request for Appeal

(1) Any party may appeal any order of a workers' compensation judge by filing a request for appeal, on a form approved by the Division, with the clerk. The request for appeal must be filed:

(a) Within seven (7) business days of the date the order was entered by the workers' compensation judge if the order appealed is interlocutory; or

(b) Within thirty (30) calendar days of the date the order was entered by the workers' compensation judge for appeal of a compensation order.

(2) A copy of the request for appeal must be served upon the opposing party.

(3) Upon receipt of a request for appeal of an interlocutory order, the clerk shall assemble the record from the judge and submit the appeal to the board of appeals for review. No transcript is required to be filed. Within seven (7) business days of the date the appeal is submitted to the board by the clerk, the board shall review the record and enter an opinion affirming or reversing the decision of the judge. The opinion of the appeals board shall not be subject to further appeal.

(4) For an appeal of a compensation order, within fifteen (15) calendar days after the request for appeal is filed, the party that filed the request for appeal shall file a copy of the transcript of the proceedings before the workers' compensation court or shall file notice that no transcript will be provided. A copy of this transcript or notice shall be served upon the opposing party. The party may file a statement of the evidence in lieu of a transcript. The following additional rules shall apply:

(a) Upon receipt of a request for appeal, the clerk shall forward a copy of the request for appeal and the transcript or statement of the evidence, if any, to the workers' compensation judge that issued the order.

(b) Within ten (10) business days after receiving a copy of the notice of appeal and the transcript or statement of the evidence, the judge shall review the information provided by the clerk and determine whether the transcript or statement of the evidence accurately reflects the proceedings at the hearing. Thereafter, the judge shall review the case record to ensure that it is complete, compile the contents of the record and forward the record to the clerk for submission to the board of appeals.

(c) If a transcript or statement of the evidence is not timely filed, the workers' compensation judge may certify the record of proceedings if the judge believes that the record provides an accurate reflection of the proceedings that occurred at trial. If the judge determines that the record cannot be certified, the workers' compensation judge may either deny the request for appeal or issue an order compelling the party who filed the appeal to provide a copy of the transcript or a statement of the evidence.

(5) Any request for appeal that is not received by the clerk within the time provided by paragraph (1) will be dismissed.

(6) A request for appeal that is not timely filed will not toll the statute of limitations for filing an appeal to the Supreme Court pursuant to T.C.A. § 50-6-225(a)(1).

Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 79, 80, 83, 106

Rule 0800-02-22-.02 Docketing Appeal, Filing Briefs and Rendering Decision

(1) The board of workers' compensation appeals will docket the appeal upon receipt of the record from the clerk of the court of workers' compensation claims.

(2) After the record is received by the board, the appeal shall be docketed and assigned to an appeals board judge for review. A docketing notice shall be sent to all parties.

(3) For appeals of compensation orders, the parties shall have fifteen (15) calendar days after the docketing notice provided in paragraph (2) is issued to submit briefs to the board for consideration. Review on

appeal of interlocutory orders shall be on the record and briefing shall not be required. However, any party opposing the appeal of an interlocutory order may submit a response, in accordance with rules provided by the board, for consideration.

(4) After the fifteen (15) calendar day period for the filing of briefs ends, or for appeals of interlocutory orders, after the appeal is filed, the board shall issue its decisions either certifying the order of the workers' compensation judge or remanding the case for further proceedings within:

(a) Seven (7) business days for an appeal of an interlocutory order awarding or denying temporary disability or medical benefits; or

(b) Forty-five (45) calendar days for an appeal of a compensation order issued pursuant to T.C.A. § 50-6-239(c)(2).

(5) In rendering its decision, the board shall base its decision on a review of the record and the briefs or responses of the parties, if any. No oral argument shall be allowed.

(6) Immediately upon issuing a decision on any appeal, the board shall forward a copy of the decision to the parties by regular or electronic mail.

(7) Interlocutory orders.

(a) If the board affirms an interlocutory order awarding temporary disability or medical benefits, the employer shall begin making payments of benefits within five (5) business days from the date the opinion affirming the order is issued by the appeals board. Failure to begin benefit payments within five (5) business days may result in the assessment of a civil penalty pursuant to T.C.A. § 50-6-118.

(b) Following the issuance of a decision either affirming or remanding an interlocutory order of temporary disability benefits, the claim shall continue in the manner provided by T.C.A. § 50-6-239 and by these rules.

(8) Compensation orders.

(a) If the board remands the case following an appeal of a compensation order, the clerk shall send a docketing notice to the parties, by regular or electronic mail, setting forth the procedure for preparing for and scheduling the hearing. The clerk shall also return the record to the previously assigned judge, unless otherwise directed by the Chief Judge.

(b) If the board certifies a compensation order as final, the time for filing an appeal to the supreme court pursuant to T.C.A. § 50-6-225 shall begin to run on the date the order is certified as final by the board. If no further appeal is filed, the compensation order shall become final and binding in thirty (30) calendar days and the benefits provided through the compensation order must be paid within five (5) business days after the order becomes final.

Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 79, 80, 83, 106

Rule 0800-02-22-.03 Appeal of Workers' Compensation Cases Filed Against the State

The board of workers' compensation appeals is without jurisdiction to consider an appeal of any decision of the claims commission either awarding or denying workers' compensation benefits to a state employee.

Authority: T.C.A. §§ 4-3-1409, 9-8-307, 9-8-402

* 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)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Division of Workers' Compensation (board/commission/ other authority) on January 10, 2014, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 08/23/13

Rulemaking Hearing(s) Conducted on: (add more dates). 10/15/13

Date: January 10, 2014

Signature: Abbie Hudgens

Name of Officer: Abbie Hudgens

Title of Officer: Administrator, Division of Workers' Compensation

DARLENE CARVER-MCDONALD STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY

Subscribed and sworn to before me on: January 10, 2014

Notary Public Signature: Darlene Carver-McDonald

My commission expires on: May 8, 2017

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.

R E Cooper Jr

Robert E. Cooper, Jr.
Attorney General and Reporter

3-18-14
Date

Department of State Use Only

RECEIVED 2014 MAR 21 PM 2:06 OFFICE OF SECRETARY OF STATE

Rejected 3/25/14

Filed with the Department of State on: 4/1/14

Effective on: 6/30/14

Tre Hargett
Secretary of State

RECEIVED 2014 APR -1 PM 12:41 OFFICE OF SECRETARY OF STATE

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Health
DIVISION:	Electrologists Registry
SUBJECT:	General rules governing electrology, electrologists, and electrology instructors. Fees.
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 63-26-108
EFFECTIVE DATES:	July 3, 2014 through June 30, 2015
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	The rule amendments generally do the following: (1) Changes the Board of Electrolysis Examiners to the Electrologists Registry and confers certain powers once held by the Board to the Commissioner of Health and accordingly changes any reference to the Board to either registry or Commissioner; (2) Decreases the electrologist renewal fee from $1,020 biennially to $420 biennially and decreases the electrologist instructor's fee from $1,120 biennially to $520 biennially; and (3) Deletes the practical examination requirement and requires a passing score of 85% or above on a written examination accepted by the American Electrology Association or Society of Clinical and Medical Electrologists.

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
ELECTROLOGISTS REGISTRY RULE MAKING HEARING
MARCH 13, 2013

The rulemaking hearing for the Tennessee Electrologists Registry was held on March 13, 2013 in the Department of Health's Conference Center in the Poplar Room on the First Floor of the Heritage Place Building in MetroCenter, Nashville, Tennessee.

Written comments were received from Yarnell Beatty and Lisle Soukup representing the Tennessee Medical Association and the American Society for Dermatological Surgery Association and Jennifer Lytle of the Tennessee Institute of Electrology. Verbal comments were made by Carole Warren, an electrologist and consultant for the Electrologists Registry, Stephanie Peek, of the Tennessee Electrologists Society, Yarnell Beatty of the Tennessee Medical Association, and Jennifer Lytle of the Tennessee Institute of Electrology.

Carole Warren, an electrologist and consultant for the Electrologist Registry, had requests for the following revisions as listed below:

a. Ms. Warren requested that the Registry decrease the electrologists' fees. Ms. Warren stated that since the Registry was no longer a Board that the fees should be decreased. This Commissioner's designee approved this request, as a fee decrease was already contemplated within the proposed rules. The fees were decreased from one thousand twenty dollars ($1020.00) to four hundred twenty dollars ($420.00). The Electrology instructor fee was decreased from one thousand one hundred twenty dollars ($1120.00) to five hundred twenty dollars ($520.00). Such a fee decrease will take place once the rules are effective within ninety (90) days after posting on the Secretary of State's Office.

b. Ms. Warren asked that the current provisions in the rule remain the same regarding electrologists' laser use.Ms. Warren stated that she had been an electrologist for thirty-one (31) years. Ms. Warren stated that doctors, nurses, and electrologists are qualified to use lasers. Practitioners who use lasers in a doctor's office do not receive the same training as electrologists. Ms. Warren also talked to her malpractice carrier regarding the rates of complaints against electrologists. Currently, there were no complaints as of 2012. The Commissioner's designee approved this suggestion.

Stephanie Peek of the Tennessee Electrologists' Society requested that the decrease to the electrologist's fees be made retroactively. Ms. Peek stated that the former director, Elizabeth Miller, had made a mistake in reading the financials and stated to her that the Registry was thirteen thousand dollars ($13,000) in deficit, when in fact, the Registry was four thousand ($4000) in surplus. At the time this statement was made it was in the summer of 2011. Ms. Peek requested that the fee decrease should be retroactively made to all electrologists' fees going back until 2011. The Commissioner's designee did not approve this request, as the rules cannot be implemented retroactively.

Yarnell Beatty of the Tennessee Medical Association submitted written comments and verbal comments and had requests for revisions as listed below:

a. Many dermatologists could possibly be affected by the "general supervision" definition as defined in Rule 0540-01-.01(23). The Tennessee Medical Association states that "general supervision" is a definition without reference to any activity in the rules or practice act stating exactly what a dermatologist must supervision. An objection was raised as this definition is not used in any other section of the rules, other than in the definitions section. The Commissioner's designee did not approve this request, as the definition of "general supervision" has been enshrined in the rule since 2003. The change to the definition was merely to separate the term "fee splitting" from "general supervision" and correct a typo under the previous rule.

b. The Tennessee Medical Association objected that if this rule were adopted by the Agency, the term "general supervision" would be a definition placed in the rule to instruct dermatologists to be available to their supervisee electrologists while such electrologists were engaged in unspecified activities. The Tennessee Medical Association and the American Society for Dermatologist Surgery requested that such term be withdrawn unless connected to an actual activity. The Commissioner's designee did not approve this request, as supervision of electrologists by dermatologists has been codified in statute since 1989. Specifically, according to the provisions of Tenn. Code Ann. §63-26-111(4)(c), there is even a limited licensure category for electrologists, wherein they are directly supervised by dermatologists for at least six hundred (600) hours of Electrology practice taught by the dermatologists. Moreover, the same statute also specified and imposes duties on dermatologists who supervise electrologists and is mirrored in rule 0540-01-.02(4) and in 0540-01-.10. The Registry also clarified that general supervision is implied in the rule and takes place when a dermatologist cannot directly supervise an electrologists.

c. The Tennessee Medical Association also noted that it was their position that the rules fail to address electrologists who use lasers, whether or not they are supervised by a dermatologist. The Tennessee Medical Association suggested that the rules be amended to directly address electrologist's use of lasers. Mr. Beatty read into the record an email from the Department of Health's Assistant General Counsel, Caroline R. Tippens, who addressed the Tennessee Medical Association's Concerns. The email stated that, "The rules, as currently written, do not currently address the practice of electrologists using lasers. Primarily, the proposed rules change the Board of Electrology to a Commissioner's Registry, rewrite the Electrology examination procedures, and reduce the electrologist's fees." The Commissioner's designee did not approve this suggestion.

d. The Tennessee Medical Association also urged the Registry to retroactively decrease the electrologist's fees. The Commissioner's designee did not approve this request.

Jennifer Lytle, an electrologist and electrology instructor with the Tennessee Institute for Electrology, submitted written comments and verbal comments and had requests for revisions as listed below:

a. The Registry should not remove the requirement for a practical examination from the Rule. Ms. Lytle stated that some students test well on paper, but the skill involved with the practice of electrolysis is critical. This request was denied by the Commissioner's designee. The Commissioner's designee had previously expressed a desire to go forward with a written examination only.

b. Ms. Lytle also asked that if the practical exam is eliminated, that the exam fee should be eliminated, as well. This request was denied by the Commissioner's designee. In order to become a licensed electrologist, an examination is required, and in order to take the examination, the applicant must pay a fee.

c. Ms. Lytle also expressed objection to the rule change that all applicants must pass the examination with a passage rate of eighty-five percent (85%) or better. Ms. Lytle stated that to raise the passing score puts the student applicant at an unfair advantage now that the college prerequisites have been removed from our law. The Commissioner's designee denied this suggestion.

d. Ms. Lytle also appealed again for the continued licensed use of lasers for hair removal by electrologists. Ms. Lytle contended that electrologists have been completely responsible with the use of lasers. Ms. Lytle also stated that most doctors' offices who use lasers do not receive as much training as electrologists do. Electrologists are trained in the growth cycle of hair and tailor make laser treatments for each client and their type of hair growth. Further, the right to perform laser hair removal has been part of our law for many years. Clients have been served with all due care and have received superior results due to the advanced knowledge the electrologist possesses in the disablement of the pilo sebaceous unit. The electrologists who have been performing laser in Tennessee have made substantial investments in their educations, not to mention the enormous cost of purchasing lasers for a sole practitioner. Removing the ability of those electrologists to utilize their lasers would be unduly punitive. The Commissioner's designee approved this request. The issue of electrologists utilizing lasers is not addressed within the scope of these rules. As such, electrologists may continue to use lasers.

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

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

Electrologists and schools of electrology.

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

The proposed rule changes would affect all electrologists. There are currently thirty-nine (39) active licensees.

(3) Projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:

The proposed amendments that have economic impact on small businesses have no increased or new reporting, recordkeeping, or other administrative costs that are required for compliance.

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

(a) The decrease in the renewal fee for electrologists and electrology instructors will directly benefit electrologists, and electrologist instructors.
(b) The remaining amendments that do not decrease fees will have no adverse affect on electrologists.

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

These rules are not burdensome, intrusive, or costly. On the contrary, these rule amendments will have a positive impact on business.

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

Federal: The Commissioner is not aware of any federal counterparts. Electrologists are not licensed by the federal government.

State: The Commissioner's proposed amendments are consistent with the qualifications for licensure in the T.C.A. §63-26-101 *et seq.*

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

The rule change does not provide for any exemptions.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

1. **Name of Board, Committee or Council:** Electrolysis Registry

2. **Rulemaking hearing date:** March 13, 2013

3. **Type or types of small businesses that will be directly affected by the proposed rules:**

   Electrologists and schools of Electrology.

4. **Types of small businesses that will bear the cost of the proposed rules:**

   The Commissioner does not anticipate that there will be costs to small businesses. In fact, these rules would decrease the costs for licensees.

5. **Types of small businesses that will directly benefit from the proposed rules:**

   Electrologists and schools of Electrology.

6. **Description of how small business will be adversely impacted by the proposed rules:**

   The Commissioner does not anticipate that there will be adverse impacts to small businesses. On the contrary, these rules amendments will have a positive impact on small businesses.

7. **Alternatives to the proposed rule that will accomplish the same objectives but are less burdensome, and why they are not being proposed:**

   These rules are not burdensome, intrusive, or costly. On the contrary, these rule amendments will have a positive impact on business.

8. **Comparison of the proposed rule with any federal or state counterparts**:

   (a) **Federal:** The Commissioner is not aware of any federal counterparts. Electrologists are not licensed by the federal government.

   (b) **State:** The Commissioner's proposed rule amendments are consistent with the qualifications for licensure in the T.C.A. §63-26-101 *et seq.*

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 rule amendments are not expected to have an impact on local governments.

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

For Department of State Use Only

Sequence Number: 04-07-14
Rule ID(s): 5693-5694
File Date: 4/4/14
Effective Date: 7/3/14

Rulemaking Hearing Rule(s) Filing Form

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

Agency/Board/Commission:	Tennessee Department of Health
Division:	Electrologists Registry
Contact Person:	Kyonzté Hughes-Toombs, Assistant General Counsel
Address:	Office of General Counsel 665 Mainstream Drive Nashville, Tennessee
Zip:	37243
Phone:	(615) 741-1611
Email:	Kyonzte.Hughes-Toombs @tn.gov

Revision Type (check all that apply):
X 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**
0540-01	General Rules Governing Electrology, Electrologists, and Electrology Instructors
Rule Number	**Rule Title**
0540-01-.01	Definitions
0540-01-.02	Scope of Practice
0540-01-.03	Necessity of License
0540-01-.04	Qualifications for Licensure
0540-01-.05	Procedures for Licensure
0540-01-.06	Fees
0540-01-.07	Application Review, Approval, and Denial
0540-01-.08	Examinations
0540-01-.09	Renewal of License
0540-01-.10	Supervision
0540-01-.11	Retirement and Reactivating of License
0540-01-.12	Continuing Education
0540-01-.13	Professional Ethics
0540-01-.15	Disciplinary Actions and Civil Penalties
0540-01-.16	License
0540-01-.17	Change of Name and/or Address
0540-01-.18	Mandatory Release of Client Records
0540-01-.19	Board Meetings, Officers, Consultants, Declaratory Orders, and Screening Panels
0540-01-.20	Advertising
0540-01-.21	Electrology Limited Licensure

Chapter Number	Chapter Title
0540-03	General Rules Governing Schools of Electrology
Rule Number	**Rule Title**
0540-03-.01	Definitions
0540-03-.02	Scope of Practice
0540-03-.03	Necessity of Licensure
0540-03-.04	Standards for License
0540-03-.05	Procedures for License
0540-03-.06	Fees
0540-03-.07	Application Review, Approval, and Denial
0540-03-.08	Examinations
0540-03-.09	Renewal of License
0540-03-.11	Retirement and Reactivation
0540-03-.13	Standards of Practice
0540-03-.15	Disciplinary Actions and Civil Penalties
0540-03-.16	License
0540-03-.17	Change of Name and/or Address
0540-03-.20	Limited Licensure Electrology Training Programs

RULES
OF
TENNESSEE DEPARTMENT OF HEALTH ~~BOARD OF ELECTROLYSIS EXAMINERS~~ELECTROLGISTS REGISTRY
~~DIVISION OF HEALTH RELATED BOARDS~~

CHAPTER 0540-01
GENERAL RULES GOVERNING
ELECTROLOGY, ELECTROLOGISTS, AND ELECTROLOGY INSTRUCTORS

TABLE OF CONTENTS

0540-01-.01 Definitions
0540-01-.02 Scope of Practice
0540-01-.03 Necessity of Licensure
0540-01-.04 Qualifications for Licensure
0540-01-.05 Procedures for Licensure
0540-01-.06 Fees
0540-01-.07 Application Review, Approval, and Denial
0540-01-.08 Examinations
0540-01-.09 Renewal of License
0540-01-.10 Supervision
0540-01-.11 Retirement and Reactivating of License
0540-01-.12 Continuing Education
0540-01-.13 Professional Ethics
0540-01-.14 Reserved
0540-01-.15 Disciplinary Actions and Civil Penalties
0540-01-.16 License
0540-01-.17 Change of Name and/or Address
0540-01-.18 Mandatory Release of Client Records
0540-01-.19 ~~Board Meetings, Officers, Consultants,~~Communication, Records, Complaints, Declaratory Orders, and Screening Panels
0540-01-.20 Advertising
0540-01-.21 Electrology Limited Licensure
0540-01-.22 Consumer Right-To-Know Requirements

0540-01-.01 DEFINITIONS. As used in these rules, the terms and acronyms shall have the following meanings ascribed to them.

(1) Advertisement - Informational communication to the public in any manner designed to attract public attention to the practice of electrology.

(2) Advertising - Includes, but is not limited to business solicitations, with or without limiting qualifications, in a card, sign, or device issued to a person; in a sign or marking in or on any building, or in any newspaper, magazine, directory, or other printed matter. Advertising also includes business solicitations communicated by individual(s), radio, video, or television broadcasting or any other means designed to secure public attention.

(3) Applicant - Any individual seeking licensure by the ~~Board~~ Commissioner who has submitted an official application and paid the application fee.

(4) 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 the advertised service or merchandise, in order to sell something else, usually for a higher fee or on a basis more advantageous to the advertiser.

~~(5) Board - The Tennessee Board of Examiners in Electrolysis.~~

(5~~6~~) Registry's administrative office - The office of the administrator assigned to the Tennessee Electrologists Registry located at 665 Mainstream Drive-Second Floor, Nashville, TN 37243. ~~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.~~

(6~~7~~) Closed File - An administrative action which renders an incomplete or denied file inactive.

(7) Commissioner – The Tennessee Department of Health Commissioner or his or her designee, including but not limited to, the Assistant Commissioner for the Bureau of Health Licensure and Regulation.

(Rule 0540-01-.01, continued)

(8) Contagious - That which can be transmitted by direct or indirect contact.

(9) Course of Instruction - The complete body of prescribed subjects or studies to prepare students for admission to an examination for electrology licensure.

(10) Department - Tennessee Department of Health.

(11) Direct Supervision - Personal~~-~~, on-site, and visual observation.

(12) Discounted fee - A fee offered or charged by a person or organization for any electrology 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."

(13) Disinfectant - An agent that destroys or neutralizes harmful microorganisms.

(14) Division - The Tennessee Department of Health, ~~-~~ Division of Health Related Boards, ~~-~~ from which the Commissioner~~Board~~ receives administrative support.

(15) Electrology - The art and practice relating to the removal of hair from the normal skin by the application of an electric current to the hair root by means of a needle or needles, whether the process employs direct electric current or short wave alternating electric current or combination of both, or by F.D.A. approved laser beam process designated for permanent hair removal. Electronic tweezers or non-needle methods are prohibited within the practice of electrology.

(16) Electrology Instructor - An electrologist who is licensed by the ~~Board~~ Commissioner to practice and teach electrology.

(17) Electrology-related - Means workshops, seminars, conferences, classes, or home study courses approved by a state, regional, or local electrology, professional association or institution of higher education.

(18) Electrologist - Any person practicing electrolysis for the permanent removal of hair.

(19) Electrolysis - The process by which the hair is removed from the normal skin by the application of an electric current to the hair root by means of a needle or needles, whether the process employs direct electric current or short wave alternating electric current or combination of both, or by F.D.A. approved laser beam process designated for permanent hair removal.

(20) Equivalent - Comparable but not identical, covering the same subject matter.

(21) Fee - Money, gifts, services, or anything of value offered or received as compensation in return for rendering services; also the required licensure fee(s).

(22) Fee Splitting - The practice of paying commissions to colleagues out of fees received from clients who have been referred by the colleague for rendering services.

(23) General Supervision - Means the availability of the dermatologist or electrology instructor within a time period of 60 minutes or less. General supervision may be provided in person or by telephone.

(Rule 0540-01-.01, continued)

(~~23~~24) He/she, Him/her - When "he" appears in the text of these rules, the word represents both the feminine and masculine genders.

(~~24~~25) HRB - When the acronym "HRB" appears in the text of these rules, it represents Health Related Boards.

(~~25~~26) Infectious - That which is capable of being transmitted without physical contact.

(27) License - Document issued to an applicant who successfully completes the licensure process. The license takes the form of an "artistically designed" license as well as other versions bearing an expiration date.

(28) Licensee - Any person who has been lawfully issued a license to practice electrology. Where applicable this shall include instructors or schools in the State of Tennessee.

(29) Limited - When used in reference to a credential, means to impose conditions and requirements upon the holder of the credential, and to restrict the scope of the holder's practice.

(30~~29~~)Official Transcript - Document certified by an approved school indicating hours and type of course work, examinations, and scores.

(3~~0~~1) 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 electrologists regarding the utilization of electrology services to serve his or her particular needs.

(3~~1~~2) Notification of Training Form - The form available from the ~~Board's~~ Registry's administrative office which must be completed by a limited license trainee and signed by the supervising dermatologist and received by the ~~Board's~~ Registry's administrative office at least ten days prior to beginning training.

(3~~2~~3) Person - Any individual, firm, corporation, partnership, organization, or body politic.

(3~~3~~4) Recognized education institution - Any educational institution that is accredited by a nationally or regionally recognized educational body.

(3~~4~~5) Registrant - Any person who has been lawfully issued a license.

(36) Registry – The Tennessee Electrologists Registry.

(3~~7~~5) School - An electrology school teaching the art of electrology.

(3~~8~~6) Student - Any person who is not licensed to practice electrology and who is engaged in learning or acquiring a knowledge of electrology. While so learning, the student performs or assists in any of the practices of electrology under the direct supervision of an electrology instructor and only within the school's premises. This definition also applies to those individuals who are engaged in limited license training.

(3~~9~~7) Use of a title or description - To hold himself out to the public as having a particular status by means of stating on signs, mailboxes, address plates, stationery, announcements, business cards, or other means of professional identification.

Authority: *T.C.A. §§~~4-5-202, 4-5-204~~, 63-1-101, 63-1-102, 63-26-101, 63-26-102, 63-26-103, ~~63-26-104,~~ 63-26-108, and 63-26-111.* ***Administrative History:*** *Original rule filed May 3, 1976; effective June 2, 1976. Repeal filed September 29, 1989; effective November 13, 1989. New rule filed December 28,*

(Rule 0540-01-.01, continued)
1995; effective March 12, 1996. Amendment filed September 11, 1998; effective November 25, 1998. Amendment filed October 28, 2002; effective January 11, 2003.

0540-01-.02 SCOPE OF PRACTICE.

Formatted

(1) The license to practice as an electrologist or electrology instructor is prescribed and limited ~~to~~ by the Tennessee Code Annotated (see especially T.C.A. §§ 63-26-101, et. seq.). The license is conferred by the ~~Tennessee Board of Examiners in Electrolysis~~Commissioner for applicants who have been found to meet established standards.

(2) Any person who possesses a valid unsuspended and unrevoked license issued by the ~~Board of Electrology~~Commissioner has the right to use the title licensed electrologist or licensed electrology instructor. No other person shall assume the title of licensed electrologist or licensed electrology instructor on any work, letter, sign, figure, advertisement, or device to indicate that the person using the same is a licensed electrologist or licensed electrology instructor. The work performed includes electrology or the teaching of electrology services to the public.

(3) Any person who possesses a valid unsuspended and unrevoked limited license has the right to use the title limited licensed electrologist. No other person shall assume this title on any work, letter, sign, figure, advertisement, or device to indicate that the person using the same holds a limited electrologist license.

(4) Any person who holds a limited electrology license must always practice under the direct supervision of a board certified or board eligible dermatologist.

(5) All electrologists and electrology instructors shall comply with the American Electrology Association's Infection Control Standards for the Practice of Electrology, and as they may from time to time be amended, except to the extent that they conflict with the laws of the state of Tennessee or the rules of the ~~Board~~ Commissioner. If there are conflicts with state law or rules, the state law or rules govern the matter. Failure to comply may subject a licensee to disciplinary action pursuant to Rule 0540-01-.15. The American Electrology Association's Infection Control Standards for the Practice of Electrology can be viewed at www.electrology.com/pdf/infection_control.pdf.

Authority: *T.C.A. §§~~4-5-202, 4-5-203, 4-5-204,~~ 63-26-108, 63-26-111, 63-26-112, 63-26-122, and 63-26-123.* ***Administrative History:*** *Original rule filed May 3, 1976; effective June 2, 1976. Repeal filed September 29, 1989; effective November 13, 1989. New rule filed December 28, 1995; effective March 12, 1996. Amendment filed December 20, 2005; effective March 5, 2006.*

0540-01-.03 NECESSITY OF LICENSURE.

(1) Prior to engaging in the practice of electrolysis in Tennessee a person must hold a current Tennessee license.

(2) It is unlawful for any person who is not licensed in the manner prescribed in Title 63, Chapter 26 of the Tennessee Code Annotated to present himself as an electrologist or electrology instructor or to hold himself 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.

(3) Electrology is one of the healing arts and as such the practice is restricted to those persons issued a ~~credential~~ license by the Commissioner~~this Board~~. Persons engaging in the practice of electrology without being licensed or expressly exempted by the laws are in violation of division law, T.C.A. § 63-1-123.

(Rule 0540-01-.02, continued)

(4) No other person shall hold ~~himself~~ themself out to the public by a title or description of services incorporating the word "electrologist," and ~~he~~ they shall not state or imply that ~~he is~~they are licensed. The provisions of these rules do not apply to a person if that person is preparing for the practice of electrology under a qualified electrology instructor in a training facility approved by the ~~Board of Electrology~~Commissioner.

(5) Persons engaging in the instruction of electrology without being licensed or expressly exempted by the laws are in violation of division law, T.C.A. § 63-1-123.

Authority: *T.C.A. §§~~4-5-202, 4-5-204,~~ 63-1-123, 63-26-108, 63-26-119, 63-26-122, ~~and~~ 63-26-123 and 63-26-127.* ***Administrative History:*** *Original rule filed May 3, 1976; effective June 2, 1976. Repeal filed September 29, 1989; effective November 13, 1989. New rule filed December 28, 1995; effective March 12, 1996.*

0540-01-.04 QUALIFICATIONS FOR LICENSURE.

(1) To qualify for licensure as an electrologist by examination, the applicant must:

(a) Be at least 18 years of age;

(b) Be of good moral character;

(c) Have completed the following education:

1. Graduation from an accredited high school or completion of equivalent recognized education~~:~~, and

2. Successful completion of an electrology education program approved by the ~~Board~~Commissioner. The electrology training curriculum must have been at least 600 hours (175 theory and 425 clinical practice pursuant to Rule 0540-03-.04). Additionally, the electrology training must have been completed within a twelve (12) month time frame from the date started, and must have been completed prior to taking the ~~practical~~ examination described in Rule 0540-01-.08; and

(d) Pass the electrology examination pursuant to Rule 0540-01-.08.

(2) To qualify for licensure as an electrologist without examination and without licensure in another state, the applicant must:

(a) Meet the requirements of Rule 0540-01-.04 (1) (a) through ~~and (b) and Rule 0540-01-.04 (1)~~ (c)1.;

(b) Provide documentation of having practiced electrology five (5) years or more in a state which does not require a license for such practice by submitting photocopies of paychecks, paycheck stubs, Internal Revenue Service (IRS) Forms W-2 or 1099-Misc., Schedules C or C-EZ for IRS Form 1040, or Schedule K-1 for IRS Form 1065 to verify proof of income (or loss) from the practice of electrology; and

(c) Cause documentation to be submitted from the certifying agency directly to the Registry's administrative office that he/she is a Certified Professional Electrologist (CPE) certified by the American Electrology Association, or is a Clinical Certified

(Rule 0540-01-.04, continued)

Electrologist (CCE) or Clinical Medical Electrologist (CME) certified by the Society of Clinical and Medical Electrologists.

(3) To qualify for an electrologist limited licensure the applicant must:

(a) Be at least 18 years of age:

(b) Have completed the following education:

1. Graduation from an accredited high school or completion of equivalent recognized education; and

2. Successful completion of at least six hundred (600) hours of electrology practice, under the direct supervision of a dermatologist and pursuant to T.C.A. § 63-26-111. Such training must have been completed within a twelve (12) month time frame from the date started, and must have been completed prior to taking the practical examination described in Rule 0540-01-.08;

(c) Have filed a Notification of Training form with the ~~Board~~ Registry at least ten (10) days prior to beginning the electrology limited licensure training program,

(d) Provide an original written statement from the supervising dermatologist that he provided direct supervision during the limited license training, the provisions of T.C.A. 63-26-108 (b) notwithstanding; and

(e) Pass the electrology examination pursuant to Rule 0540-01-.08.

(4) To qualify for licensure as an electrologist by reciprocity (licensed in another state), the applicant must:

(a) Hold a valid, unrestricted license in another state which has licensing requirements that are substantially equivalent to those of Tennessee, and

(b) Provide adequate evidence that the electrology license held in another state was obtained after passing an examination which is substantially equivalent to the examination required by Rule 0540-01-.08.

(5) To qualify for licensure as an electrology instructor, the applicant must:

(a) Hold a valid, unrestricted electrology license in Tennessee;

(b) Provide an affidavit or evidence of practicing electrology for at least five of the last ten years prior to application;

(c) Successfully complete general education courses pursuant to Rule 0540-01-.04(1)(c)3; and

(d) Pass the electrology instructor examination pursuant to Rule 0540-01-.08.

(6) To qualify for licensure, internationally educated applicants, in addition to meeting the requirements specified in either Rule 0540-01-.04 (1), (3), (4) or (5), must:

(a) Have education credential evaluated by either a professional credentialing agency or an institution of higher education (college or university). The results of such evaluation

(Rule 0540-01-.04, continued)

must be submitted directly to the ~~Board's~~ Registry's administrative office from the evaluator on the evaluator's official letterhead and contain an original signature, and

(b) Provide documentation of legal entry into the United States (certified photocopy of visa. naturalization papers or passport).

(7) To qualify for an upgrade from limited license to electrologist license the applicant must:

(a) Hold a current limited license issued by the ~~Board~~Commissioner; ~~and~~

(b) Provide evidence of having completed the educational requirements pursuant to Rule 0540-01-.04(1)(c); and

(c) File an application for licensure, pursuant to Rule 0540-01-.05(1) and pay the application, state regulatory and license fees pursuant to Rule 0540-01-.06.

(8) To qualify for licensure as an electrologist limited licensee, electrologist, or electrology instructor, the applicant shall cause to be submitted to the Registry's administrative office directly from the vendor identified in the Registry's licensure application materials, the result of a criminal background check.

Formatted: Underline

Authority: *T.C.A. §§~~4-5-202, 4-5-204,~~63-1-116, 63-26-101, 63-26-108, 63-26-111, 63-26-112, 63-26-113, 63-26-115, 63-26-117, and 63-26-119.* ***Administrative History:*** *Original rule filed May 3, 1976; effective June 2, 1976. Repeal filed September 29, 1989; effective November 13, 1989. New rule filed December 28, 1995; effective March 12, 1996. Amendment filed January 31, 2000; effective April 15, 2000. Amendment filed March 19, 2001; effective June 2, 2001. Amendment filed December 20, 2005; effective March 5, 2006.Amendment filed August 18, 2006; effective November 1, 2006. Amendment filed July 3, 2007; effective September 16, 2007. Amendment filed January 7, 2010; effective April 7, 2010.*

0540-01-.05 PROCEDURES FOR LICENSURE. To become licensed to practice as an electrologist or electrology instructor in Tennessee a person must comply with the following procedures and requirements.

(1) An applicant shall obtain an application form from the ~~Board's~~ Registry's administrative office.

(2) An applicant shall respond truthfully and completely to every question or request for information contained in the form and submit it along with all documentation and fees required by the form and this rule to the ~~Board's~~ Registry's administrative office. It is the intent of this rule that all steps necessary to accomplish the filing of the required documentation be completed prior to filing an application and that all documentation be filed simultaneously.

(3) Applications for licensure will be accepted throughout the year and files which are completed on or before the thirtieth (30th) day prior to an examination date will be processed and if eligible the individual will be scheduled for the next examination.

~~Applications for licensure will be accepted throughout the year and files which are completed on or before the 30th day prior to an examination date will be processed and if eligible the individual will be scheduled for the next practical examination. All supporting documents requested in these instructions must be received in the Board office within 30 days of receipt of a deficiency letter or file will be deemed abandoned pursuant to rule 0540-01-.07(4).~~

Formatted: Font color: Red, Strikethrough

(4) An applicant shall pay, at the time of application, the non-refundable application, examination fees and state regulatory fee as provided in Rule 0540-01-.06. Reciprocity (licensed in another state) applicants and applicants for licensure without examination and without

(Rule 0540-01-.05, continued)

licensure in another state shall also pay at the time of application the reciprocity fee as provided in Rule 0540-01-.06.

(5) An applicant shall submit with his application a signed passport photograph taken within the preceding 12 months. (The photograph must be signed by the applicant on the back).

(6) An applicant must submit evidence of good moral character and competence. Such evidence shall be two original and recent (within the preceding 12 months) letters attesting to the applicant's character on the signatory's letterhead. The letters can not be from a relative, his electrology instructor, or the dermatologist who provided the limited license training.

(7) Except for limited licensure applicants and applicants for licensure without examination and without licensure in another state, applicants shall cause to be submitted directly to the Registry's administrative office from an accredited college or university an official transcript verifying that the general education re¬quirements, pursuant to Rule 0540-01 .04 (1)(c)1, have been met.

~~Except for limited licensure applicants and applicants for licensure without examination and without licensure in another state, applicants shall cause to be submitted directly to the Board's administrative office from an accredited college or university an official transcript verifying that the general education re¬quirements pursuant to Rule 0540-01 .04 (1) (c) 3. have been met.~~

Formatted: Font color: Red, Strikethrough

(8) An applicant shall submit with his application a notarized photocopy of his birth certificate, naturalization documents, or valid driver's license.

(9) Except for limited licensure applicants, electrology instructor applicants, and applicants for licensure without examination and without licensure in another state, applicants shall cause to be submitted directly from the school of electrology an original letter on the school's letterhead and signed by the program director verifying the applicant has successfully completed the school's course of study. To be acceptable, the school's course of study and curriculum must comply with or be equivalent to Tennessee's electrology school requirements pursuant to T.C.A. § 63-26-111 (4) (A) and (B). If the school no longer exists, the following documentation will be reviewed by the ~~board~~ Commissioner for acceptability:~~.~~

(a) A signed original letter from an instructor who was employed by the school at the time the applicant attended verifying that the applicant successfully completed the school's course of study and that the curriculum complied with or was equivalent to T.C.A. § 63-26-111(4)(A); and

(b) A signed original letter from the state Board of Electrology, ~~Electrolysis~~Electrologists Registry, or Department of Education where the school existed that the school's curriculum was at least equivalent to T.C.A. § 63-26-111(4) (A) or (B): or

(c) A signed original letter, on official letterhead, from the American Electrology Association or Society of Clinical and Medical Electrolysis verifying the existence of the school and that the school's curriculum was at least equivalent to T.C.A. § 63-26-111(4)(A) and (B).

(10) An applicant, except an electrology instructor applicant, shall submit an official high school transcript, notarized photocopy of diploma, or equivalency document.

(11) Except for electrology instructor applicants and applicants for licensure without examination and without licensure in another state, applicants shall request that his/her written examination scores, pursuant to Rule 0540-01-.08, be submitted directly to the ~~Board's~~

(Rule 0540-01-.05, continued)

Registry's administrative office from the American Electrology Association or the Society of Clinical and Medical Electrologists.

(12) A limited license applicant shall submit evidence of completing an electrology training program of at least 600 hours of electrology practice directed by a board certified or board eligible dermatologist, who has documented continuing education in electrology theory and practice.

(13) Examination - All applicants shall pass the examination pursuant to Rule 0540-01-.08.

(14) If an applicant holds or has ever held a license to practice electrology or any other profession in any other state, the applicant shall submit or cause to be submitted the equivalent of a Tennessee ~~c~~ Certificate of Endorsement from each such licensing board or registry which indicates the applicant either holds a current active license and whether it is in good standing, or held a license which is currently inactive and whether it was in good standing at the time it became inactive.

(15) An applicant for electrology instructor must provide a photocopy of his current Tennessee electrology license.

(16) An applicant for electrology instructor must provide an affidavit or other proof that he has actively engaged in the practice of electrology for at least five of the last ten years prior to application.

(17) An applicant for electrology instructor shall cause to be submitted directly from an accredited college or university to the Registry's administrative office an official transcript verifying that the general education requirement, pursuant to Rule 0540-01-.04(1)(c)1, has been met.

~~An applicant for electrology instructor shall cause to be submitted directly from an accredited college or university to the Board's administrative office an official transcript verifying that the general education requirement, pursuant to Rule 0540-01-.04(1)(c)1, has been met.~~

Formatted: Font color: Red, Strikethrough

(18) An applicant shall disclose the circumstances surrounding any of the following:

(a) Conviction of any criminal law violation of any country, state, or municipality, except minor traffic violations.

(b) The denial of licensure application by any other state or the discipline of the licensee in any state.

(c) Loss or restriction of certification or licensure privileges.

(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.

(e) To the extent known by the applicant, the circumstances involved in any pending investigation of licensure by any state.

(19) An applicant shall cause to be submitted to the ~~Board's~~ Registry's administrative office directly from the vendor identified in the ~~Board's~~ Registry's Licensure application materials, the result of a criminal background check.

(Rule 0540-01-.05, continued)

(20) Where necessary, all required documents shall be translated into English. Such translation and original document must be certified as to authenticity by the issuing source.

(21) Application review and licensure decisions shall be governed by Rule 0540-01-.07.

(22) Personal resumes are not acceptable and will not be reviewed.

(23) The burden is on the applicant to prove by a preponderance of the evidence that he possesses the qualifications for licensure by examination or reciprocity.

(24) The licensure fee must be received in the ~~Board's~~ Registry's administrative office on or before the thirtieth (30th) day from receipt of notification that the license fee is due. Failure to comply will result in the application file being closed.

Formatted: Superscript

(25) A license will be issued after all requirements, including payment of a license fee pursuant to Rule 0540-01-.06, have been met.

(26) Information and application for the written examination shall be obtained from the testing agency pursuant to Rule 0540-01-.08(1)(a)2.

Authority: *T.C.A. §~~44-5-202, 4-5-204,~~ 63-1-116, 63-26-108, 63-26-111, 63-26-112, 63-26-115, and 63-26-119.* ***Administrative History:*** *Original rule filed May 3, 1976; effective June 2, 1976. Repeal filed September 29, 1989; effective November 13, 1989. New rule filed December 28, 1995; effective March 12, 1996. Amendment filed September 11, 1998; effective November 25, 1998. Amendment filed August 18, 2006; effective November 1, 2006. Amendment filed July 3, 2007, effective September 16, 2007.*

0540-01-.06 FEES.

Formatted

(1) The fees are as follows:

(a) Application Fee - A non-refundable fee to be paid by all applicants including those seeking licensure by reciprocity. It must be paid each time an application for licensure is filed.

(b) Endorsement/Verification - A non-refundable fee paid for each certification, verification, or endorsement of an individual's record for any purpose.

(c) Examination (Practical) fee - A non-refundable fee to be paid each time an applicant requests to sit for any initial or retake examination.

(d) License fee - A non-refundable fee to be paid by all applicants, except those seeking licensure by reciprocity, prior to the issuance of the initial license.

(e) License Renewal fee - A non-refundable fee to be paid by all license holders. This fee also applies to individuals who reactivate a retired or lapsed license.

(f) Reciprocity License fee - A non-refundable fee to be paid at the time an application for licensure is filed by reciprocity (licensed in another state) applicants and by applicants for licensure without examination and without licensure in another state. The fee is in addition to the application fee.

(g) Reinstatement fee - A non-refundable fee to be paid each time an individual requests to reinstate an expired license.

(Rule 0540-01-.06, continued)

(h) Replacement License fee - A non-refundable fee to be paid when a request is made for a replacement when the initial license has been lost or destroyed.

(i) State Regulatory Fee - To be paid by all individuals at the time of application and with all renewal applications.

(2) All fees shall be established, reviewed, and changed by the ~~Board~~Commissioner.

(3) All fees may be paid in person, by mail, or electronically by cash, check, money order, or by credit and/or debit cards accepted by the Division. If the fees are paid by certified, personal or corporate check they must be drawn against an account ~~in~~ held at a United States ~~B~~bank, and made payable to the Tennessee ~~Board of Electrolysis Examiners~~ Electrologists Registry.

(4) Fee Schedule:

		Electrologist	Instructor
(a)	Application	$ 300.00	$ 350.00
(b)	Endorsement/Verification	$ 50.00	$ 50.00
(c)	Examination - Practical or Re-evaluation	$ 200.00	$ 200.00
(d)	License – Initial	$ 200.00	$ 200.00
(e)	Reinstatement	$ 200.00	$ 200.00
(f)	License Renewal-Biennial	$ 420~~1,020~~.00	$ 520~~1,120~~.00
(g)	Reciprocity License fee	$ 300.00	$ 300.00
(h)	Replacement license	$ 50.00	$ 50.00
(i)	State Regulatory – Biennial	$ 10.00	$ 10.00

Authority: *T.C.A. §§~~4-5-202, 4-5-204,~~ 63-26-108, 63-26-109, 63-26-111, 63-26-112, 63-26-114, 63-26-115, 63-26-116, 63-26-117 and 63-26-120.* ***Administrative History:*** *Original rule filed May 3, 1976; effective June 2, 1976. Repeal filed September 29, 1989; effective November 13, 1989. New rule filed December 28, 1995; effective March 12, 1996. Amendment filed September 11, 1998; effective November 25, 1998. Amendment filed March 19, 2001; effective June 2, 2001. Amendment filed October 28, 2002; effective January 11, 2003. Amendment filed March 18, 2003; effective June 1, 2003. Amendment filed August 18, 2006: effective November 1, 2006. Amendment filed July 3, 2007; effective September 16, 2007. Amendment to rule filed April 29, 2008; to be effective July 13, 2008; however, the House Government Operations Committee stayed the rule on June 24, 2008; new effective date August 16, 2008. Amendment filed February 22, 2010; effective May 23, 2010.*

0540-01-.07 APPLICATION REVIEW, APPROVAL, AND DENIAL.

(1) Each completed electrologist or electrology instructor application received in the ~~Board's~~ Registry's administrative office on or before the 30th day prior to an examination shall be reviewed for eligibility to sit for the examination. ~~Each completed reciprocity application must be received in the Board's administrative office at least 30 days prior to the Board meeting.~~

(2) Applications are not considered completed until all information, including fees, has been received by the Division.

(Rule 0540-01-.07, continued)

(3) Initial review of all applications to determine whether or not the application file is complete may be delegated to the ~~board's~~ Registry's administrator provided that final approval of all applications is made and ratified by the ~~board~~Commissioner.

(4) If an application is incomplete when received in the ~~Board's~~ Registry's administrative office, or if the ~~Board's~~ Registry's administrator determines additional information is required from an applicant before an initial determination can be made, the ~~Board's~~ Registry's administrative office shall notify the applicant of the information required.

(a) The applicant shall cause the requested information to be received by the ~~Board's~~ Registry's administrative office on or before the sixtieth (60th) day, after the notification requesting such information is sent to the applicant.

(b) If the requested information is not timely received, the application file may be considered abandoned and may be closed by the ~~Board's~~ Registry's administrator. If that occurs, the applicant shall be notified that the ~~Board~~ Commissioner will not consider issuance of a license until a new application is received pursuant to the rules governing that process, including another payment of all fees applicable to the applicant's circumstances and submission of such new supporting documents as is required by the ~~Board~~ Commissioner or the ~~Board's~~Registry's administrator.

(5) Upon approval of the application, the applicant will be notified of eligibility to sit for the examination by the administrative office.

(6) If after two (2) attempts, the examination is not passed, the licensure application will be denied and the complete examination may be taken only after the applicant:

(a) Completes an additional electrolysis education program that the ~~Board~~ Commissioner recommends; and

(b) Pays the full examination fee.

(7) If an application is denied ~~and the denial is ratified as such by the Board~~, the action shall become final and the following shall occur:

(a) A notification of the denial shall be sent by the ~~Board's~~ Registry's administrative office by certified mail return receipt requested. Specific reasons for denial will be stated, such as incomplete information, unofficial records, examination failure, or other matters judged insufficient for licensure, 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 Procedures Act (T.C.A. §§4-5-101, et. seq.) to contest the denial and the procedure necessary to accomplish that action.

(c) An applicant has a right to a contested case hearing only if the licensure denial was based on subjective or discretionary criteria.

(d) An applicant may be granted a contested case hearing if licensure denial is based on objective, clearly defined criteria. If after review and attempted resolution by the ~~Board's~~ Registry'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, an appeal hearing may be requested. Such request must be

(Rule 0540-01-.07, continued)

made in writing to the ~~Board~~ Registry within thirty (30) days of the receipt of the notice of denial from the ~~Board~~Registry.

(8) The ~~Board~~ Commissioner may at ~~its~~ his/her discretion delay a decision on eligibility to take the examination for any applicant for whom the ~~Board~~ Commissioner wishes additional information.

(9) Any person furnishing false information or omitting pertinent information in such application shall be denied the right to sit for the examination. If the applicant has already been licensed before the falseness of such information has been made known to the ~~Board~~Commissioner, such license shall be subject to suspension or revocation by the ~~Board~~Commissioner.

(10) If the ~~Board~~ Commissioner finds ~~it has erred in~~that the issuance of a license was made in error, the ~~Board~~ Commissioner will give written notice by certified mail of its intent to annul the license. The notice will allow the applicant the opportunity to meet the requirements of licensure within thirty (30) days from date of receipt of the notification.

(11) If, after an application has been submitted, an applicant desires to change the type of application, a new application with supporting documents and appropriate fees shall be submitted and the first application shall be deemed withdrawn.

Authority: *T.C.A. §§~~4-5-202, 4-5-204,~~ 63-26-106, 63-26-108, 63-26-111, 63-26-112, 63-26-113, 63-26-114, 63-26-118, ~~63-26-119, and~~ 63-26-123 and 63-26-124.*. ***Administrative History:*** *Original rule filed May 3, 1976; effective June 2, 1976. Repeal filed September 29, 1989; effective November 13, 1989. New rule filed December 28, 1995; effective March 12, 1996. Amendment filed August 18, 2006; effective November 1, 2006.*

0540-01-.08 EXAMINATIONS.

(1) Electrologist Examination. An individual seeking licensure as an electrologist, either by examination, limited licensure, or reciprocity (licensed in another state) shall be required to pass ~~each of~~ the following written examination~~s~~ prior to licensure:

~~(a) Written examination~~

(a)~~1.~~ The written examination, as adopted by the ~~Board of Examiners in Electrolysis~~Commissioner, is the examination accepted by the American Electrology Association (AEA) or Society of Clinical and Medical Electrologists (SCME). Neither the association nor testing agency may discriminate in any way against any candidate seeking to take or retake an examination.

(b)~~2.~~ Admission to, application for, and the required fee to sit for the written examination are governed by and must be submitted directly to the examination service. Specific information concerning the written examination may be obtained by contacting:

American Electrology Association
106 Oak Ridge Road
Trumbull, Connecticut 06611
Telephone: 203-372-7119

or

Society of Clinical and Medical Electrologists
Post Office Box 211

(Rule 0540-01-.08, continued)

Bellingham, Massachusetts 02019
Telephone: 508-833-7263

(c)~~3.~~ Administration of the examination shall be arranged directly through AEA or SCME. AEA or SCME will notify each candidate by mail as to the time, date, and place of the examination.

Formatted: Indent: Left: 1.13", Hanging: 0.37"

(d)~~4.~~ The passing scores as established and certified by AEA and SCME to the ~~Board~~ Commissioner are adopted by the ~~Board~~Commissioner as constituting successful completion of the written section of the electrology examination.

(e)~~5.~~ Certification of passing the examination must be submitted directly to the ~~Board's~~ Registry's administrative office from AEA and SCME in conjunction with the applicant's filing an application for license with the Commissioner~~this Board~~.

Formatted: Indent: Left: 1.13", Hanging: 0.37"

(f)~~6.~~ Prior to submitting an application to the ~~Board~~ Commissioner for license, the individual must have taken and passed either the AEA or SCME examination.

Formatted: Indent: Left: 1.13", Hanging: 0.37"

~~(b) Practical examination.~~

~~1. The practical examination will consist of an actual demonstration of hair removal on a model provided by the candidate and shall not exceed 30 minutes in duration.~~

~~2. Each applicant is required to bring adequate supplies, equipment, and materials for the practical examination.~~

~~3. Graded criteria shall include model preparation, safety, sterilization, and sanitation measures, techniques, use of instruments, and aftercare.~~

~~4. All applicants for licensure must achieve a 75 percent or higher on each section of the practical examination to pass. The sections will be scored individually, not added or averaged together.~~

(c) ~~The examination shall be administered only to bona fide candidates for licensure.~~

(2) Electrology Instructor Examination.

(a) Written examination - The written examination will cover all phases of the art of electrology and required school curriculum subjects. The examination shall consist of at least 100 multiple choice questions and not exceed 1.5 hours duration.

~~(b) Practical examination~~

~~1. The practical examination will consist of submission of a complete lesson plan covering one of the required subjects in the Board's approved school curriculum: and~~

~~2. A 20-minute oral, class presentation from a daily lesson plan; and~~

~~3. A practical instructional demonstration of three modalities, as designated by the proctor at the time of the examination, on a model provided by the applicant; and~~

~~4. Submission of a course outline.~~

(Rule 0540-01-.08, continued)

(~~c~~b) Examination candidates must achieve an ~~75~~eighty-five (85) percent or higher ~~on each section~~ to pass ~~the section. The sections will be scored individually, not added or averaged together.~~

~~(d) The examination shall be administered only to bona fide candidates for licensure.~~

~~(3) Retaking Board Practical Examination~~

~~(a) Candidates shall complete all sections of the examination before being allowed to retake failed sections.~~

~~(b) Candidates seeking to retake a failed Board practical examination, shall be required to pay the re-examination fee, pursuant to Rule 0540-01-06, and submit the request to retake the examination within 30 days from date of notification that he failed the examination.~~

~~(c) Upon receipt of the request to retake the examination and the examination fee, the individual will be scheduled to take the next examination occurring at least 30 days after receipt of the retake fee and request.~~

~~(d) Once an applicant begins testing, the applicant shall have two (2) attempts to pass the examination and become licensed.~~

~~(4) Upon being deemed eligible, an applicant shall be admitted to the first regularly scheduled practical examination occurring 30 days or more after the application file is complete.~~

~~(5) The Division will notify each candidate by mail of admission to the practical examination at least ten working days prior to the examination. Such notification will include information regarding the date, location, and time.~~

~~(6) Individuals who do not sit for a scheduled practical examination must submit to the Board's administrative office a letter of explanation and request postponement and rescheduling within five days after the date of the practical examination. Examination fees are not refundable or transferable unless the applicant can show undue hardship, such as death of an immediate family member or severe illness and such requests are subject to Board approval.~~

(~~7~~3) The examination shall be "closed book," and shall be prepared and conducted in English.

~~(8) The practical skills component of the examination must be proctored by a licensed electrologist.~~

~~(9) The Division will notify each candidate by mail of the results of his practical examination scores within ten working days from the examination date. Results will not be given by any other means.~~

~~(10) An applicant for licensure who has not met the requirements as set forth in T.C.A. §63-26-111 and these rules shall be refused permission to take the examination.~~

~~(11) Examinations will be scheduled each January and June. At least one examination will be held each calendar year.~~

(~~12~~4) If an applicant ~~neglects~~ fails to pass the examination under these rules after two (2) attempts, the application will be denied. The complete examination may be taken again only after the applicant:

(Rule 0540-01-.08, continued)

(a) Completes an additional electrolysis education program that the ~~Board~~ Commissioner recommends~~:~~, and

(b) Pays the full examination fee.

(~~1~~35) Examination Misconduct. The ~~Board of Electrology~~Commissioner may deny a license to practice electrology to an individual who subverts, attempts to subvert, or compromises the licensing examination, including but not limited to:

(a) Violating the security of the examination materials.

(b) Removing from the examination room any of the examination material.

(c) Reproducing a portion of the licensing examination.

(d) Aiding in the reproduction of any portion of the licensing examination.

(e) Selling, distributing, buying, or receiving or having unauthorized possession of any portion of a future or current examination.

(f) Copying answers from another individual or permitting answers to be copied by another individual during administration of the examination.

(g) Having in one's possession during the administration of the licensing examination~~:~~ any books, photographs, recording devices, notes, written or printed materials, or data of any kind other than the examination materials distributed.

(h) Taking notes from the examination on a separate piece of paper.

(i) Falsifying or misrepresenting education credentials or other information for admission to the licensing examination by impersonating an examination candidate.

Authority: *T.C.A. §~~44-5-202, 4-5-204,~~ 63-26-108, 63-26-111, 63-26-112, 63-26-113, 63-26-114, 63-26-115, ~~and~~ 63-26-117, 63-26-123.* ***Administrative History:*** *Original rule filed May 3, 1976; effective June 2, 1976. Repeal filed September 29, 1989; effective November 13, 1989. New rule filed December 28, 1995; effective March 12, 1996. Amendment filed July 3, 2007; effective September 16, 2007.*

0540-01-.09 RENEWAL OF LICENSE.

(1) Renewal application

(a) The due date for renewal is the last day of the month in which a licensee's birth date falls pursuant to the Division of Health Related Board's biennial birth date renewal system as contained as the expiration date on renewal certificates.

(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

(Rule 0540-01-.09, continued)

by the ~~Board~~ Commissioner to the last address provided to the ~~Board~~Registry's administrative offices. 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, an individual must have completed continuing education requirements provided in Rule 0540-01-.12 and submit to the Division of Health Related Boards on or before the expiration date all of the following:

1. A completed and signed ~~Board~~ renewal application form; and

2. The renewal and state regulatory fees as provided in Rule 0540-01-.06.

(d) Anyone submitting a signed renewal form or letter which is found to be untrue may be subject to disciplinary, action as provided in Rule 0540-01-.15.

(e) 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 1200-10-01-.10.

(2) Licensees whose licenses have expired as a result of the licensee's failure to renew pursuant to rule 1200-10-01-.10 may be reinstated upon meeting the conditions as provided in paragraph (3).

(3) Reinstatement of an Expired License - Reinstatement of a license that has expired as a result of failure to timely renew in accordance with rule 1200-10-01-.10 may be accomplished upon meeting the following conditions:

(a) Payment of all past due renewal and state regulatory fees; ~~and~~

(b) Payment of the reinstatement fee provided in Rule 0540-01-.06; and

(c) Submission of proof of compliance with continuing education requirements as provided in Rule 0540-01-.12.

(4) Renewal and reinstatement decisions pursuant to this rule may be made by the Registry's administrative staff~~administratively~~ or upon review by ~~any Board member or the Board's designee.~~the Commissioner.

Authority: *T.C.A. §§~~4-3-1011, 4-5-202, 4-5-204,~~ 63-1-107, 63-26-108, 63-26-109, and 63-26-120.~~, and 63-26-121.~~* ***Administrative History:*** *Original rule filed May 3, 1976; effective June 2, 1976. Repeal filed September 29, 1989; effective November 13, 1989. New rule filed December 28, 1995; effective March 12, 1996. Amendment filed March 19, 2001; effective June 2, 2001. Amendment filed October 28, 2002; effective January 11, 2003.*

0540-01-.10 SUPERVISION.

(1) Pursuant to T.C.A. §63-26-111, every electrologist practicing with a limited license shall at all times be under the direct supervision of a board certified or board eligible dermatologist.

(2) Every student in a school of electrology shall at all times be under the direct supervision of a licensed electrology instructor and at no time shall any electrologist student be permitted to

engage in the treatment of patients unless under the direct super-vision of a licensed electrology instructor.

(3) Every student in training for a limited license shall at all times be under the direct supervision of a board certified or board eligible dermatologist who has registered with the ~~Board of Electrology~~ Tennessee Electrologists Registry to provide training.

Authority: *T.C.A. §§~~4-5-202, 4-5-204,~~ 63-26-108, 63-26-111, and 63-26-119.* ***Administrative History:*** *Original rule filed May 3, 1976; effective June 2, 1976. Repeal filed September 29, 1989; effective November 13, 1989. New rule filed December 28, 1995; effective March 12, 1996.*

0540-01-.11 RETIREMENT AND REACTIVATING OF LICENSE.

(1) A person who holds a current license and does not intend to practice as an electrologist or electrology instructor in Tennessee may apply to convert an active license to retired status. An individual who holds a retired license will not be required to pay the biennial renewal fee.

(2) A person who holds an active license may apply for retired status in the following manner:

(a) Obtain, complete, and return an affidavit of retirement form to the ~~Board's~~ Registry's administrative office; or

(b) Submit a letter, which has been signed and notarized, requesting that his/her license be placed in retirement. Such letter must contain a statement indicating that the licensee understands that, while in retired status, he/she cannot practice in Tennessee~~, while in retired status~~, cannot in any way indicate or imply that he/she holds an active Tennessee license~~,~~ or use within Tennessee any words, letters, titles, or figures which indicate or imply that he/she is a currently licensed electrologist; and

(c) Submit any documentation which may be required to the ~~Board's~~ Registry's administrative office.

(d) The effective date of retirement will be the date the Affidavit of Retirement is received in the ~~Board's~~ Registry's administrative office.

(3) An individual whose license has been retired may reactivate the license in the following manner:

(a) Submit a written request for licensure reactivation to the ~~Board's~~ Registry's administrative office; and

(b) Pay the current license renewal fees and State regulatory fee as provided in Rule 0540-01-.06. If reactivation is requested prior to the expiration of one (1) year from the date of retirement, the ~~Board~~ Commissioner will require payment of the reinstatement fee and all past due renewal fees as prescribed in Rule 0540-01-.06.

(c) Each electrologist seeking reactivation must verify by signature on a form provided by the ~~Board~~ Commissioner or submit proof of completion of the required continuing education hours pursuant to Rule 0540-01-.12(~~6~~5).

(4) Licensure reactivation applications shall be treated as licensure applications. The ~~Board's~~ Commissioner's review and decisions required by this Rule shall be governed by Rule 0540-01-.07.

(Rule 0540-01-.11, continued)

Authority: *T.C.A. §§~~4-5-202, 4-5-204, 63-1-107,~~ 63-1-111, 63-26-108, 63-26-109, ~~63-26-120,~~ and 63-26-121.* ***Administrative History:*** *Original rule filed May 3, 1976; effective June 2, 1976. Repeal filed September 29, 1989; effective November 13, 1989. New rule filed December 28, 1995; effective March 12, 1996. Amendment filed October 28, 2002; effective January 11, 2003.*

0540-01-.12 CONTINUING EDUCATION. Electrology continuing education is considered to be those pre-planned/ formalized activities with written learning objectives that are directed at developing and enhancing an individual's professional knowledge base and service delivery skills in the applicable areas of electrology.

(1) Hours Required

(a) Each licensed electrologist and limited license holder must annually attend and complete ten (10) clock hours of electrology related continuing education. An electrologist is exempt from acquiring continuing education hours during the calendar year the license is issued.

(b) The ~~Board~~ Commissioner 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 in a calendar year toward the required hourly total regardless of the number of times the course is attended or completed by any individual licensee.

(2) Acceptable Continuing Education

(a) Acceptable continuing education shall consists of seminars, workshops, conferences, home study courses or mini-courses oriented to the enhancement of electrology practice and knowledge for the purpose of accomplishing specific written learning objectives which have been sanctioned by a state, regional, or national electrology association. The following constitute acceptable continuing education:

1. Attendance at educational events sponsored by national, state, regional, or local professional associations in the field, or events related to the practice of the profession for which a nationally or regionally accredited institution of higher education grants continuing education hours. Providers who measure continuing education activities in "continuing education units" shall define continuing education units in clock hours.

2. College level course work which is electrology-related taken for credit or audited from a nationally or regionally accredited institution of higher education.

3. Home study courses that are endorsed by a national, state, regional, or local professional association in the field which issues a certificate of successful completion to the licensee.

(b) Certificates issued for the purpose of verifying attendance and compliance of the continuing education obligation must have at least the following information: Licensee's name, social security number, license number, total number of continuing education clock hours awarded, name of professional association endorser, program title, and date(s).

(c) Continuing education credit will not be allowed for the following:

1. Regular work activities.

(Rule 0540-01-.12, continued)

2. Membership, holding office in, or participation on boards or committees, business meetings of professional organizations, or banquet speeches.

3. Non-electrology course work - for example, computer, finance, or business management.

(3) Course Approval. The ~~Board~~ Commissioner does not pre-approve continuing education programs. It is the licensee's responsibility, using his professional judgment and guidelines provided within these rules, to determine whether or not the programs are applicable and appropriate to his professional development and meet the standards specified in these rules.

(4) Proof of Compliance

(a) The due date for attendance and completion of the required continuing education hours is at the time of submission of the renewal application.

(b) Each electrologist must, on a ~~Board provided~~ form provided by the Registry's administrative staff, check a box and/or enter signature which indicates attendance and completion of the required continuing education hours and that such hours were obtained during the calendar year of report.

(c) Each electrologist 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 calendar year in which the course is completed. This documentation must be produced for inspection and verification, if requested in writing by the ~~Board~~ Commissioner during its verification process.

(d) Acceptable documentation consists of:

1. Certification of the licensee's attendance at continuing education program(s). The certificate must include the following: continuing education program's sponsor, date, clock hours, awarded continuing education hours (continuing education units must be converted to clock hours), program title, licensee's name, license number, and social security number.

2. An original letter on official stationary from the continuing education program sponsor which clearly states completion of the program along with the identifying information specified in Rule 0540-01-.12(4)(e)1.

(e) If a person submits continuing education documentation that is not clearly identifiable as appropriate, the ~~Board~~ Commissioner will request a written description of the training and how it applies to the practice of electrology. If the ~~Board~~ Commissioner determines that the training cannot be considered appropriate continuing education, the licensee will be given ninety (90) days to replace the hours not allowed. Those hours will be considered replacement hours and cannot be counted during the next renewal period.

(5) Continuing Education for Reactivation of Retired License

(a) An individual whose license has been retired for one (1) year or less will be required to fulfill continuing education requirements as outlined in this rule as a prerequisite to reactivation. Those hours will be considered replacement hours and can not be counted towards meeting the annual requirements of the following year.

(Rule 0540-01-.12, continued)

(b) Along with the reactivation request, any electrologist who applies for reactivation of a license which has been retired for more than one (1) year must submit proof of attendance and completion of ten (10) hours of ~~Board~~Commissioner-approved continuing education. The electrologist who has retired his license may receive credit for courses completed during the time the license was retired provided that at least five (5) hours were completed within one (1) year preceding the application for reactivation.

(6) Continuing Education for Reinstatement of Expired License

(a) A person whose license has expired may not be reinstated without complying with these requirements.

(b) Continuing education requirements will accumulate at the same rate as for a license which is active.

(c) An electrologist who applies for reinstatement of his expired license may receive credit for courses taken during the time the license was expired provided that at least five (5) hours were within twelve (12) months preceding application for reinstatement.

(d) Continuing education hours obtained as a prerequisite for license reinstatement may not be counted toward the continuing education hours required to be obtained before the end of the calendar year of reinstatement.

(7) Extension of Time to Complete or Waiver of Continuing Education Requirements

(a) The ~~Board~~ Commissioner may grant an extension of the deadline to complete the annual continuing education requirements, or the ~~Board~~ Commissioner may grant a waiver of the need to attend and complete the annual continuing education requirements, if it can be shown that compliance is beyond the physical or mental capabilities of the person seeking the extension or waiver.

(b) Extensions or waivers of the deadline will be considered only on an individual basis and may be requested by submitting the following items to the ~~Board~~ Registry's Administrative Office prior to the expiration of the calendar year (December 31) in which the continuing education is due:

1. A written request for an extension or waiver which specifies the deadline sought to be extended or the requirements sought to be waived, and a written and signed explanation of the reason for the request; and

2. Any documentation which supports the reason(s) for the extension or waiver request or which is subsequently requested by the ~~Board~~Commissioner.

(c) A waiver or deadline extension approved by the ~~Board~~ Commissioner is effective only for the calendar year for which either is sought.

(8) Violations - Any licensee who fails to successfully complete or who falsely certifies attendance and completion of the required hours of continuing education may be subject to disciplinary action.

(a) Prior to the institution of any disciplinary proceedings, a letter shall be issued to the last known address of the individual stating the facts or conduct which warrant the intended action.

(Rule 0540-01-.12, continued)

(b) The licensee has thirty (30) days from the date of notification to show compliance with all lawful requirements for the retention of the license.

(c) Any licensee who fails to show compliance with the required continuing education hours in response to the notice contemplated by subparagraph (7) (a) above may be subject to disciplinary action.

(d) Continuing education hours obtained as a result of compliance with the terms of a ~~Board~~ Commissioner's Order in any disciplinary action shall not be credited toward the continuing education hours required to be obtained in any calendar year.

Authority: *T.C.A. §§~~4-5-202, 4-5-204,~~ 63-26-108, ~~and~~63-26-120, 63-26-121 and 63-26-123.* ***Administrative History:*** *Original rule filed May 3, 1976; effective June 2, 1976. Repeal filed September 29, 1989; effective November 13, 1989. New rule filed December 28, 1995; effective March 12, 1996. Amendment filed October 28, 2002; effective January 11, 2003. Amendment filed July 3, 2007; effective September 16, 2007.*

0540-01-.13 PROFESSIONAL ETHICS. Unprofessional conduct shall include but not be limited to the following:

(1) The electrologist shall accept the responsibility for providing competent electrology service with compassion and respect for human dignity.

(2) The electrologist shall exercise professional judgment in the use of evaluation and treatment procedures, be free to choose whom to serve, and may decline to carry out treatment if he believes the treatment would be contraindicated or unjustified.

(3) The electrologist shall provide the client with accurate information regarding the profession and treatments rendered.

(4) The electrologist shall respect the client's right to privacy and not divulge confidential information without consent of the client or guardian unless required by law.

(5) An electrologist shall deal honestly with clients and colleagues, and strive to report to the Division's investigation office those electrologists deficient in character or competence, or who engage in fraud or deception.

(6) An electrologist shall continue to study, apply, and advance scientific knowledge, make relevant information available to clients, colleagues, and the public, obtain consultation, and use the talents of other health professionals when indicated.

(7) An electrologist shall respect the law and also recognize a responsibility to seek changes in those requirements which are contrary to the best interest of the client.

(8) In the event an applicant or licensee, or other individual has a question regarding legal, ethical, and professional standards, neither the ~~Board~~ Commissioner nor ~~its~~ the Registry's administrative personnel shall consider such questions unless presented with a proper petition for a declaratory order, subject to the requirements set forth in T.C.A. §4-5-223.

(9) A licensee shall keep his ~~board~~ licensure file updated by notifying the ~~Board's~~ Registry's administrative office in writing of changes in preferred mailing address and practice address.

(Rule 0540-01-.13, continued)

(10) A licensee's office, including instruments and equipment contained therein, shall at all times be kept clean and free from any condition or surroundings that will make or tend to make the office unsanitary or unhygienic.

(11) No licensee may provide services to the public if the licensee has a known infectious or contagious disease unless the licensee takes appropriate precautions and uses safeguards which prevent the spread of the disease to the public.

(12) Services provided by a licensee shall be performed in a manner that is consistent with basic and accepted practice standards and in accordance with all applicable state statutes, ~~Board~~ rules, and local codes and ordinances.

(13) Licensees shall take adequate and necessary precautions to protect the public from health and safety hazards when performing services.

~~(14) Board members shall not:~~

~~(a) Violate the security of the examination materials.~~

~~(b) Remove from the administrative office or examination room any portion of the examination.~~

~~(c) Reproduce a portion of the licensing examination.~~

~~(d) Aid in the reproduction of any portion of the licensing examination.~~

~~(e) Sell, distribute, buy, receive or have unauthorized possession of any portion of a future or current examination.~~

Authority: *T.C.A. §§~~4-5-202, 4-5-204,~~ 4-5-223, 63-26-108, and 63-26-123.* ***Administrative History:*** *Original rule filed May 3, 1976; effective June 2, 1976. Repeal filed September 29, 1989; effective November 13, 1989. New rule filed December 28, 1995; effective March 12, 1996.*

0540-01-.14 RESERVED.

Authority: *T.C.A. §62-2411.* ***Administrative History:*** *Original rule filed May 3, 1976; effective June 2, 1976. Repeal filed September 29, 1989; effective November 13, 1989. Reserved rule filed December 28, 1995; effective March 12, 1996.*

0540-01-.15 DISCIPLINARY ACTIONS AND CIVIL PENALTIES. The purpose of this ~~paragraph~~ rule is to define disciplinary actions that the ~~Board~~ Commissioner may impose on licensees.

(1) Upon a finding by the ~~Board~~ Commissioner that an electrologist or electrology instructor has violated any provision of the Tennessee Electrologists Practice Act (T.C.A. §§ 63-26-101, et. seq.) or the rules promulgated pursuant thereto, the ~~Board~~ Commissioner may impose any of the following actions separately or in any combination deemed appropriate to the offense:

(a) Advisory Censure - This is a written action issued to the electrologist for minor or near infractions. It is informal and advisory in nature and does not constitute a formal disciplinary action.

(b) Formal censure or reprimand - This is a written action issued to an electrologist for one time and less severe violations. It is a formal disciplinary action.

(Rule 0540-01-.15, continued)

(c) Probation - This is a formal disciplinary action which places an electrologist on close scrutiny for a fixed period of time determined by the ~~Board~~Commissioner. This action may be combined with conditions which must be met before probation will be lifted and/or which restrict the individual's activities during the probationary period.

(d) Licensure Suspension - this is a formal disciplinary action which suspends an individual's right to practice for a fixed period of time. It contemplates the reentry of the individual into the practice under the licensure previously issued. When the ~~Board~~ Commissioner suspends a license, the person may not practice electrology during the period of suspension.

(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 certification or licensure previously issued. The ~~Board~~Commissioner, in ~~its~~his or her discretion, may allow reinstatement of a revoked certificate or license upon conditions and after a period of time it deems appropriate. No petition for reinstatement and no new application for certification or 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~~ Commissioner's revocation order.

(f) Conditions - These include any action deemed appropriate by the ~~Board~~ Commissioner to be required of an individual disciplined 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~~ Commissioner pursuant to paragraph (5) of this rule.

(2) 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 the Commissioner, pursuant to paragraph (3) 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.

(3) 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~~ Commissioner 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.

(Rule 0540-01-.15, continued)

(b) Procedures

1. The petitioner shall submit a Petition for Order of Compliance, as contained in subparagraph (c), to the ~~Board's~~ Registry'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~~ Commissioner~~consultant~~ and the Registry's 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~~ Commissioner authorizes ~~its consultant and the~~ Registry's 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~~ present the petition to the ~~Board~~ Commissioner as an uncontested matter; or

   (ii) Deny the petition, after consultation with legal staff, if compliance with all of the provisions of the previous order is not proven and notify the petitioner of what provisions remain to be fulfilled and/or what proof of compliance was either not sufficient or not submitted.

3. The petitioner may not submit any additional documentation or testimony other than that contained in his petition as submitted to the Commissioner and the Registry's administrative staff. ~~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~~ Commissioner finds that the petitioner has complied with all the terms of the previous order ~~an~~ the Commissioner shall issue an Order of Compliance ~~shall be issued~~.

5. If the petition is denied either initially by the Registry's administrative staff or after ~~presentation to~~review by the ~~Board~~ Commissioner, and the petitioner believes compliance with the order has been sufficiently proven, the petitioner may, as authorized by law, file a petition for a declaratory order pursuant to the provisions of T.C.A. § 4-5-223 and rule 1200-10-01-.11.

(c) Form Petition

Petition for Order of Compliance

(Rule 0540-01-.15, continued)

~~Board of Electrolysis Examiners~~ Electrologists Registry

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: _____

I, ~~T~~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~~ Commissioner and Registry's administrative staff, in their discretion, may require such signed statements to be notarized. No documentation or testimony other than that submitted will be considered in making an initial determination on, or a final order in response to, this petition.

Respectfully submitted this the _____ day of _____, 20_____.

_____
Petitioner's Signature

(4) 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~~ disciplinary 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.

(Rule 0540-01-.15, continued)

(a) The ~~Board~~ Commissioner 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~~ Registry'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 prove~~s~~ 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~~ Commissioner authorizes ~~its~~the ~~consultant and~~ Registry's administrative staff in conjunction with legal 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~~ Commissioner as an uncontested matter; or

   (ii) Deny the petition~~, after consultation with legal staff~~, if impossibility of compliance with the provisions of the previous order is not proven and notify the petitioner of what proof of impossibility of compliance was either not sufficient or not submitted.

3. ~~If the petition is presented to the Board t~~The petitioner may not submit any additional documentation or testimony other than that contained in the petition as originally submitted to the Commissioner and Registry's administrative staff.

4. If the petition is granted a new order shall be issued reflecting the modifications authorized by the ~~Board~~ Commissioner that ~~it~~the deemed appropriate and necessary in relation to the violations found in the previous order.

5. If the petition is denied either initially by the Registry's administrative staff or after ~~presentation to~~review by the ~~Board~~ Commissioner, and the petitioner believes impossibility of compliance with the order has been sufficiently proven, the petitioner may, as authorized by law, file a petition for a declaratory order pursuant to the provisions of T.C.A. § 4-5-223 and rule 1200-10-01-.11.

(c) Form Petition

(Rule 0540-01-.15, continued)

Petition for Order Modification
~~Board of Electrolysis Examiners~~ Electrologists Registry

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: _____

I, ~~T~~the petitioner respectfully represent~~s~~ that for the following reasons, as substantiated by the attached documentation, the identified provisions of the attached disciplinary order are impossible for me to comply with:

_____
_____
_____
_____
_____
_____
_____
_____

Note – You must enclose all documents necessary to prove your request including a copy of the original order. If any of the proof you are relying upon to show impossibility is the testimony of any individual, including yourself, you must enclose signed and notarized statements from every individual you intend to rely upon attesting, under oath, to the reasons why compliance is impossible. No documentation or testimony other than that submitted will be considered in making an initial determination on, or a final order in response to, this petition.

Respectfully submitted this the _____ day of _____, 20_____.

_____
Petitioner's Signature

(5) 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~~ Commissioner finds the person who is required to be licensed by the ~~Board~~ Commissioner is guilty of a willful and knowing violation of the Electrologists Practice Act, or regulations promulgated pursuant thereto, to such an extent that there is, or is likely to be an

(Rule 0540-01-.15, continued)

imminent 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 willfully and knowingly is or was practicing as an electrologist without a license from the ~~Board~~Commissioner.

2. A Type B civil penalty may be imposed whenever the ~~Board~~ Commissioner finds the person required to be licensed by the ~~Board~~ Commissioner is guilty of a violation of the Electrologists 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~~ Commissioner finds the person required to be licensed, permitted, or authorized by the ~~Board~~ Commissioner is guilty of a violation of the Electrologistsy Practice Act or regulations promulgated thereto, which are neither directly detrimental to clients or the public, nor directly impact their care, but have only an indirect relationship to client care or the public.

(c) Amount of Civil Penalties

1. Type A civil penalties shall be assessed in the amount of not less than $500 nor more than $1,000.

2. Type B civil penalties may be assessed in the amount of not less than $100 and not more than $500.

3. Type C civil penalties may be assessed in the amount of not less than $50 and not more than $100.

(d) Procedures for Assessing Civil Penalties

1. The Division of Health Related Boards may initiate a civil penalty assessment by filing a Memorandum of Assessment of Civil Penalty. The Division shall state in the memorandum the facts and law upon which it relies in alleging a violation, the proposed amount of the civil penalty and the basis for such penalty. The Division may incorporate the Memorandum of Assessment of Civil Penalty with a Notice of Charges which may be issued attendant thereto.

2. Civil Penalties may also be initiated and assessed by the ~~Board~~ Commissioner during consideration of any Notice of Charges. In addition, the ~~Board~~ Commissioner 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~~ Commissioner 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.

(Rule 0540-01-.15, continued)

(v) The interest of the public.

4. All proceedings for the assessment of civil penalties shall be governed by the contested case provisions of T.C.A. Title 4, Chapter 5.

~~(6) Informal Settlements - The Board consultant is authorized to enter into informal settlement agreements pursuant to Rule 0540-01-.19 under which a complaint against an individual may be closed without any disciplinary action. Any matter proposed for informal settlement must be subsequently ratified by the full Board before it will become effective. Such agreement may include any terms deemed appropriate by the Board consultant including, but not limited to:~~

~~(a) Mandatory education program or course attendance.~~

~~(b) Submission of reports, records or other appropriate documentation;~~

~~(c) Conditioning of the individual's activities in any manner which affects his practice in Tennessee.~~

Authority: *T.C.A. §§ 4-5-101, ~~4-5-202, 4-5-204,~~ 4-5-217, 4-5-223, ~~63-1-122,~~ 63-1-134, 63-26-108, ~~63-26-121, and~~ 63-26-123 and 63-26-124.* ***Administrative History:*** *Original rule filed December 28, 1995; effective March 12, 1996. Amendment filed October 28, 2002; effective January 11, 2003. Amendment filed November 4, 2005; effective January 18, 2006.*

0540-01-.16 LICENSE.

(1) Issuance - Upon the ~~Board~~ Commissioner determining that an applicant for licensure has successfully met all the requirements as set forth in T.C.A. §§ 63-26-101, et seq., and these rules, the ~~Board~~ Commissioner shall issue the applicant a license in the classification for which he/she is qualified to practice.

(2) Display of License

(a) The ~~Board~~ Commissioner shall furnish a license to each person which shall be posted in a conspicuous place in the primary place of business.

(b) Any licensee practicing away from his/her place of business shall carry an identification license issued by the ~~Board~~ Commissioner and shall show it to the person upon whom electrolysis services are being performed or the person in charge.

(c) It is unlawful for any person to practice electrology for compensation unless his/her license is displayed in a conspicuous place within the business or clinic.

(3) Replacement License. The ~~Board~~ Commissioner will replace a lost, damaged, or destroyed license (artistically designed "wall" license) or renewal certificate upon receipt of an affidavit detailing the loss or destruction of the original license or renewal certificate. The affidavit must be accompanied by the damaged license or renewal certificate, if available, and the appropriate fee, pursuant to Rule 0540-01-.06.

(4) Display of ~~Board~~ the Electrologists Registry Law and Rules and Regulations. Each licensee shall routinely obtain a copy of the ~~Board's~~ Electrologists Registry's laws and rules to be posted in a conspicuous place within the business or clinic.

(5) Requests for verification of license must be made in writing to the ~~Board's~~ Registry's administrative office.

(Rule 0540-01-.16, continued)

Authority: *T.C.A. §§~~4-5-202, 4-5-204,~~ 63-1-104, 63-1-105, 63-1-106, 63-1-108, 63-1-109, 63-26-108, 63-26-109, and 63-26-118.* ***Administrative History:*** *Original rule filed December 28, 1995; effective March 12, 1996.*

0540-01-.17 CHANGE OF NAME AND/OR ADDRESS.

(1) Change of Name. An individual registered with the ~~Board~~ Commissioner shall notify the ~~Board~~ Registry's administrative office in writing within thirty (30) days of a name change. The notice shall provide both the old and new names and must reference the individual's profession, ~~Board~~Registry, social security and license numbers.

(2) Change of Address. Each person holding a license who has had a change of address shall file in writing with the ~~Board~~ Registry's administrative office ~~his~~ their current mailing address, giving both old and new addresses. Such requests should be received in the ~~Board's~~ Registry's administrative office no later than thirty (30) days after such change has occurred and must reference the individual's name, profession, social security number and license number.

Authority: *T.C.A. §§~~4-5-202, 4-5-204,~~ 63-1-106, 63-1-108, ~~and~~ 63-26-108 and 63-26-118.* ***Administrative History:*** *Original rule filed December 28, 1995; effective March 12, 1996.*

0540-01-.18 MANDATORY RELEASE OF CLIENT RECORDS.

(1) Upon request from a client or the client's authorized representative, an individual registered with ~~this~~the Commissioner ~~Board~~ shall provide a complete copy of the client's records or summary of such records which were maintained by the provider.

(2) It shall be the provider's option as to whether copies of the records or a summary will be given to the client.

(3) Requests for records shall be honored by the provider in a timely manner.

(4) The individual requesting the records shall be responsible for payment of a reasonable fee to the provider for copying and mailing of the records.

Authority: *T.C.A. §§4-5-20l, ~~4-5-202, 4-5-204,~~ 63-2-101, 63-2-102, and 63-26-108.* ***Administrative History:*** *Original rule filed December 28, 1995; effective March 12, 1996.*

0540-01-.19 ~~BOARD MEETINGS, OFFICERS, CONSULTANTS~~COMMUNICATION, RECORDS, COMPLAINTS, DECLARATORY ORDERS, AND SCREENING PANELS.

~~(1) Board Meetings~~

~~(a) The time, place, and frequency of board meeting shall be at the discretion of the Board except at least two meeting shall be held annually.~~

~~(b) Special meetings are called at the discretion of the Chairperson or at the request of three members of the Board.~~

~~(c) Three members of the Board shall at all times constitute a quorum.~~

~~(d) All meetings of the Board shall be open to the public. Minutes of the Board meetings and all records, documents, applications, and correspondence will be maintained in the Board's administrative office.~~

~~(2) The Board shall elect annually the following officers/and a consultant:~~

~~(a) Chairperson - who shall preside at all board meetings.~~

(Rule 0540-01-.19, continued)

~~(b) Secretary - who, along with the Board administrator, shall be responsible for correspondence from the Board.~~

~~(c) Consultant - who, is a non-Board member, and shall be responsible for reviewing complaints and may serve on special committees as assigned by the Board.~~

~~(3) Board Conflict of Interest - Any Board member having an immediate personal, private, or financial interest in any matter pending before the Board shall disclose the fact in writing and shall not vote upon such matter.~~

(14) ~~The Board~~A Registry Consultant ~~is~~may be appointed by the ~~Board~~ Commissioner and vested with the authority to do the following acts:

(a) ~~Decide~~ Recommend whether and what type disciplinary actions should be instituted upon complaints received or investigations conducted by the Division.

(b) ~~Decide~~ Recommend whether and under what terms a complaint, case, or disciplinary action might be informally settled. Any matter proposed for informal settlement must be subsequently ratified by the ~~full Board~~Commissioner before it will become effective.

~~(c) Make determinations, subject to subsequent ratification by the full Board regarding the following:~~

~~1. Petitions for stay of Board Orders pursuant to Rule 0540-01-.15.~~

~~2. Approve continuing education courses pursuant to Rule 0540-01-.12.~~

~~(d) Undertake any other matters authorized by a majority vote of the Board.~~

(~~5~~2) All requests, applications, notices, complaints, other communications and correspondence, or any requests or inquiries requiring the Commissioner's decision or official action shall be directed to the ~~Board's~~ Registry's 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.~~

~~(6) Records and Complaints~~

~~(a) Minutes of the board meetings and a~~All ~~records, documents, applications, and correspondence will be maintained in the Board's~~ Registry's ~~administrative office.~~

~~(b) All records of the Board~~Commissioner's ~~decisions, except those made confidential by law, are open for inspection and examination, under the supervision of an employee of the Division at the Board's~~ Registry's ~~administrative office.~~

~~(c) Copies of public records shall be provided to any person upon payment of a fee.~~

~~(d) All complaints should be directed to the Division's Investigation Section.~~

(~~7~~3) Requests for Verification of Licensure must be made in writing to the ~~Board's~~ Registry's administrative office.

(Rule 0540-01-.19, continued)

(~~8~~4) Declaratory Orders - The ~~Board~~ Commissioner adopts, as if fully set out herein, rule 1200-10-01-.11, of the Division of Health Related Boards and as it may from time to time be amended, as its rule governing the declaratory order process. All declaratory order petitions involving statutes, rules, or orders within the jurisdiction of the ~~Board~~ Commissioner shall be addressed by the ~~Board~~ Commissioner pursuant to that rule and not by the Division. Declaratory Order Petition forms can be obtained from the ~~Board's~~ Registry's administrative office.

(~~5~~9) Screening Panels - The ~~Board~~ Commissioner 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~~ the rule governing the screening panel process.

~~(10) 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.~~

Authority: *T.C.A. §§~~4-5-202, 4-5-204,~~ 63-1-138, 63-26-108, and 63-26-123.* ***Administrative History:*** *Original rule filed December 28, 1995; effective March 12, 1996. Amendment filed July 29, 1999; effective October 9, 1999. Amendment filed July 3, 2007; effective September 16, 2007.*

0540-01-.20 ADVERTISING.

(1) Policy Statement. The lack of sophistication on the part of many of the public concerning electrology services, the importance of the interests affected by the choice of an electrologist or electrology instructor, and the foreseeable consequences of unrestricted advertising by electrologists which is recognized to pose special possibilities for deception require that special care be taken by electrologists to avoid misleading the public. The electrologist must be mindful that the benefits of advertising depend upon its reliability and accuracy. Since advertising by an electrologist is calculated and not spontaneous, reasonable regulations designed to foster compliance with appropriate standards serve the public interest without impeding the flow of useful, meaningful information to the public.

(2) Advertising Fees and Services

(a) 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 professional, recognized components within generally accepted standards that are required to complete the service.

(b) Range of Fees. A range of fees may be advertised for services, ~~and~~but the advertisement must disclose the factors used in determining the actual fee~~,~~ to the extent necessary to prevent deception of the public.

(c) 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 non-discounted fee for that service.

(d) Related Services and Additional Fees. Related services which may be required in conjunction with the advertised services for which additional fees will be charged, must be identified as such in any advertisement.

(Rule 0540-01-.20, continued)

(e) Time Period of Advertised Fees

1. 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.

2. 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.

(3) 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. §63-26-123(4):

(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 credential in any advertisement.

(c) Promotion of professional services which the licensee knows or should know are beyond the licensee's ability to perform.

(d) Techniques of communication which intimidate or exert undue pressure or undue influence over a prospective client.

(e) Any appeals to an individual's anxiety in an excessive or unfair manner.

(f) The use of any personal testimonial attesting to a quality of competency of a service or treatment offered by a licensee that is not reasonably verifiable.

(g) Utilization of any statistical data or other information based on past performances for prediction of future services, which creates an unjustified expectation about results that the licensee can achieve.

(h) The communication of personal identifiable facts, data, or information about a client without first obtaining client consent.

(i) Any misrepresentation of material fact.

(j) The knowing suppression, omission, or concealment of any material facts or law without which the advertisement would be deceptive or misleading.

(k) Statements concerning the benefits or other attributes of electrology 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

(Rule 0540-01-.20, continued)

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 electrology treatment.

(m) Failure to comply with the rules governing advertisement of electrology fees and services~~.~~ or advertising records.

(n) The use of bait and switch advertisements. Where the circumstances indicate bait and switch advertising, the ~~Board~~ Commissioner may require the licensee to furnish data or other evidence pertaining to those sales at the advertised fee as well as other sales.

(o) Misrepresentation of a licensee's credentials, training, experience, or ability.

(p) Failure to include the individual licensee's name, address, and telephone number in any advertisement.

(q) Failure to disclose the fact of giving compensation or anything of value to a 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 electrology 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.

(4) Advertising Records and Responsibility

(a) Each licensee who is a principal partner, or officer of a firm or entity identified in any advertisement, is jointly and severally responsible for the form and content of any advertisement. This provision shall also include any licensed professional employees acting as an agent of such firm or entity.

(b) Any and all advertisements are presumed to have been approved by the licensee named therein.

(c) A recording of every advertisement communicated by electronic media, and a copy of every advertisement communicated by print media, and a copy of any other form of advertisement, shall be retained by the licensee for a period of two (2) years from the last date of broadcast or publication and be made available for review upon request by the ~~Board~~ Commissioner or the ~~its designee~~Registry's administrative office.

(d) At the time any type of advertisement is placed, the licensee must possess and rely upon information which, when produced, would substantiate the truthfulness of any

(Rule 0540-01-.20, continued)

assertion, omission, or representation of material fact set forth in the advertisement or public communication.

(5) Advertisements for electrology services to be rendered by a limited license electrologist must clearly indicate that the electrology services are being rendered by a limited license electrologist under the direct supervision of a board certified or board eligible dermatologist.

(6) Use of Titles - Any person who possesses a valid, current and active license issued by the ~~Board~~ Commissioner that has not been suspended or revoked has the right to use the title "electrologist" and to practice electrology, as defined in T.C.A. §§ 63-26-102. Any person licensed by the ~~Board~~ Commissioner to whom this rule applies must use the title authorized by this rule in every "advertisement" [as that term is defined in rule 0540-01-.01(1)] he or she publishes. ~~or t~~The failure to do so will constitute an omission of a material fact which makes the advertisement misleading and deceptive and subjects the electrologist to disciplinary action pursuant to T.C.A. § 63-26-123.

(7) 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 rescinded if these rules would otherwise be unconstitutional or ineffective. If any one or more sections, clauses, sentences or parts shall for any reason be questioned in court, and shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provision or provisions so held unconstitutional or invalid, and the applicability or invalidity of any section, clause, sentence, or part in any one or more instance shall not be taken to affect or prejudice in any way its applicability or validity in any other instance.

Authority: *T.C.A. §§~~4-5-202, 4-5-203, 4-5-204, 63-1-116,~~ 63-1-145, 63-26-108, 63-26-111, 63-26-119, and 63-26-123.* ***Administrative History:*** *Original rule filed December 28, 1995; effective March 12, 1996. Amendment filed April 29, 2008; effective July 13, 2008.*

0540-01-.21 ELECTROLOGY LIMITED LICENSURE.

(1) Whenever a person holding a limited electrologist license changes employers, he is responsible for notifying the ~~Board's~~ Registry's administrative office in writing within ten (10) days of such change.

(2) The limited license holder shall notify the ~~Board's~~ Registry's administrative office in writing prior to beginning employment. Such notification must contain the following information: The limited license holder's name, limited license number, limited license expiration date, social security number, business address and telephone number. This notification must be received in the ~~Board's~~ Registry's administrative office on or before the tenth (10th) day following employment.

(3) In conjunction with the limited license holder's notification of employment, the supervising dermatologist shall submit to the ~~Board's~~ Registry's administrative office an affidavit that he accepts responsibility for providing direct supervision to the limited license holder.

(4) Upon termination of employment, the dermatologist and limited license holder shall notify the ~~Board~~ Registry's administrative office providing the following information: Limited license holder's name, license number, social security number, and date of termination.

Authority: *T.C.A. §§~~4-5-202, 4-5-204,~~ 63-26-108, 63-26-111, and 63-26-119.* ***Administrative History:*** *Original rule filed December 28, 1995; effective March 12, 1996.*

0540-01-.22 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).

(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.

Authority: *T.C.A. §§~~4-5-202, 4-5-204,~~ 63-26-108, and 63-51-101 et seq.* ***Administrative History:*** *Original rule filed August 24, 2000; effective November 7, 2000.*

RULES
OF
TENNESSEE ~~BOARD OF ELECTROLYSIS EXAMINERS~~ ELECTROLOGISTS REGISTRY
DEPARTMENT OF HEALTH
DIVISION OF HEALTH RELATED BOARDS

CHAPTER 0540-03
GENERAL RULES GOVERNING SCHOOLS OF ELECTROLOGY

TABLE OF CONTENTS

0540-03-.01 Definitions
0540-03-.02 Scope of Practice
0540-03-.03 Necessity of Licensure
0540-03-.04 Standards for License
0540-03-.05 Procedures for License
0540-03-.06 Fees
0540-03-.07 Application Review, Approval, and Denial
0540-03-.08 Examinations
0540-03-.09 Renewal of License
0540-03-.10 Supervision
0540-03-.11 Retirement and Reactivation
0540-03-.12 Reserved
0540-03-.13 Standards of Practice
0540-03-.14 Reserved
0540-03-.15 Disciplinary Actions and Civil Penalties
0540-03-.16 License
0540-03-.17 Change of Name and/or Address
0540-03-.18 Reserved
0540-03-.19 Advertising
0540-03-.20 Limited Licensure Electrology Training Programs

0540-03-.01 DEFINITIONS. As used in these rules, the terms and acronyms shall have the following meanings ascribed to them.

(1) Advertisement - Informational communication to the public in any manner designed to attract public attention to the practice of electrology.

(2) Advertising - Includes, but is not limited to business solicitations, with or without limiting qualifications, in a card, sign, or device issued to a person; in a sign or marking in or on any building; or in any newspaper, magazine, directory, or other printed matter. Advertising also includes business solicitations communicated by individual(s), radio, video, or television broadcasting or any other means designed to secure public attention.

(3) Applicant - Any individual seeking licensure by the ~~Board~~ Commissioner who has submitted an official application and paid the application fee.

(4) 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 the advertised service or merchandise, in order to sell something else, usually for a higher fee or on a basis more advantageous to the advertiser.

~~(5) Board - The Tennessee Board of Electrolysis Examiners.~~

(~~6~~5) ~~Board~~ Registry's Aadministrative ~~O~~office - The office of the administrator assigned to the Tennessee ~~Board of Electrolysis Examiners~~ Electrologists Registry located at 227 French Landing, Suite 300, Heritage Place, MetroCenter, Nashville, TN 37243.

(~~7~~6) Closed File - An administrative action which renders an incomplete or denied file inactive.

(7) Commissioner – The Tennessee Department of Health Commissioner or his or her designee, including but not limited to, the Assistant Commissioner of the Bureau of Health Licensure and Regulation.

(8) Contagious - That which can be transmitted by direct or indirect contact.

(9) Course of Instruction -The complete body of prescribed subjects or studies to prepare students for admission to an examination for electrology licensure.

(Rule 0540-03-.01, continued)

(10) Department - Tennessee Department of Health.

(11) Direct Supervision - Personal, on-site, and visual observation.

(12) Discounted fee - A fee offered or charged by a person or organization for any electrology 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."

(13) Disinfectant - An agent that destroys or neutralizes harmful microorganisms.

(14) Division - The Tennessee Department of Health, Division of Health Related Boards, from which the ~~Board~~ Commissioner receives administrative support.

(15) Electrology - The art and practice relating to the removal of hair from the normal skin by the application of an electric current to the hair root by means of a needle or needles, whether the process employs direct electric current or short wave alternating electric current or combination of both, or by F.D.A. approved laser beam process designated for permanent hair removal. Electronic tweezers or non-needle methods are prohibited within the practice of electrology.

Formatted

(16) Electrology Instructor - An electrologist who is licensed by the ~~Board~~ Commissioner to practice and teach electrology.

(17) Electrology-related - Means workshops, seminars, conferences, classes, or home study courses approved by a state, regional, or local electrology professional association or institution of higher education.

(18) Electrologist - Any person practicing electrolysis for the-permanent removal of hair.

(19) Electrolysis - The process by which the hair is removed from the normal skin by the application of an electric current to the hair root by means of a needle or needles, whether the process employs direct electric current or short wave alternating electric current or combination of both, or by F.D.A. approved laser beam process designated for permanent hair removal.

(20) Equivalent - Comparable but not identical, covering the same subject matter.

(21) Fee - Money, gifts, services, or anything of value offered or received as compensation in return for rendering services; also the required licensure fee(s).

(22) Fee Splitting - The practice of paying commissions to colleagues out of fees received from clients who have been referred by the colleague for rendering services.

(23) He/she, Him/her - When "he" appears in the text of these rules, the word represents both the feminine and masculine genders.

(24) HRB - When the acronym "HRB" appears in the text of these rules, it represents Health Related Boards.

(25) Infectious - That which is capable of being transmitted without physical contact.

(26) License - Document issued to an applicant who successfully completes the licensure process. The license takes the form of an "artistically designed" license as well as other versions bearing an expiration date.

(27) Licensee - Any person who has been lawfully issued a license to practice electrology. Where applicable this shall include instructors or schools in the State of Tennessee.

(28) Limited - When used in reference to a credential, means to impose conditions and requirements upon the holder of the credential, and to restrict the scope of the holder's practice.

(29) Official Transcript - Document certified by an approved school indicating hours and type of course work, examinations, and scores.

(30) 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 electrologists regarding the utilization of electrology services to serve his or her particular needs.

(31) Notification of Training Form - The form available from the ~~Board's~~ Registry's administrative office which must be completed by a limited license trainee and signed by the supervising dermatologist and received by the ~~Board's~~ Registry's administrative office at least ten (10) days prior to beginning training.

(32) Person - Any individual, firm, corporation, partnership, organization, or body politic.

(33) Recognized education institution - Any educational institution that is accredited by a nationally or regionally recognized educational body.

(34) Registrant - Any person who has been lawfully issued a license.

(35) School - An electrology school teaching the art of electrology.

(36) Student - Any person who is not licensed to practice electrology and who is engaged in learning or acquiring a knowledge of electrology. While so learning, the student performs or assists in any of the practices of electrology under the direct supervision of an electrology instructor and only within the school's premises. This definition also applies to those individuals who are engaged in limited license training.

(37) Use of a title or description - To hold himself out to the public as having a particular status by means of stating on signs, mailboxes, address plates, stationery, announcements, business cards, or other means of professional identification.

Authority: *T.C.A. §§~~4-5-202, 4-5-204,~~ 63-1-101, 63-1-102, 63-26-101, 63-26-102, 63-26-103, ~~63-26-104,~~ 63-26-108, 63-26-111, 63-26-112, and 63-26-119.* ***Administrative History:*** *Original rule filed September 29, 1989; effective November 13, 1989. Repeal and new rule filed December 28, 1995; effective March 12, 1996. Amendment filed October 28, 2002; effective January 11, 2003.*

0540-03-.02 SCOPE OF PRACTICE.

(1) The license to open and operate a school of electrology is prescribed and limited to the Tennessee Code Annotated (see especially T.C.A. §§~~62~~63-26-101, *et seq.*). The license is conferred by the Commissioner ~~Tennessee Board of Electrolysis Examiners~~ for schools which have been found to meet established standards.

(2) Any school of electrology which possesses a valid unsuspended and unrevoked license has the right to use the title school of electrology. No other school shall assume this title~~tide~~ on any work, letter, sign, figure, advertisement, or device to indicate that the school using the

(Rule 0540-03-.02, continued)

same is a licensed school of electrology. The work performed includes electrology or the teaching of electrology services to the public.

Authority: *T.C.A. §§~~4-5-203, 4-5-204,~~ 63-26-108, 63-26-111, 63-26-112, 63-26-118, 63-26-119, and 63-26-122.* ***Administrative History:*** *Original chapter filed December 15, 1988; effective January 29, 1989. Amendment filed January 5, 1990; effective February 19, 1990. Repeal and new rule filed December 28, 1995; effective March 12, 1996.*

0540-03-.03 NECESSITY OF LICENSURE.

(1) Before a person may open a school of electrology, the person shall submit an application to the ~~board's~~Registry's ~~-~~ administrative office and secure the ~~board's~~ Commissioner's approval of the application.

(2) No school of electrology shall operate without a valid license issued by the ~~board~~Commissioner. Any school of electrology which opens or operates without being licensed or expressly exempted by the laws is in violation of division law, T.*C.A. §63-1-123.*

(3) No other person may provide instruction in a school of electrology unless the person holds a current electrologist license and a current electrology instructor license issued by the ~~board~~Commissioner.

(4) Before a person may provide limited licensure instruction, ~~he~~ they must be a board certified or board eligible dermatologist who has provided to the ~~board's~~ Commissioner's satisfaction evidence of continuing education in electrology theory and practice.

Authority: *T.C.A. §§~~4-5-202, 4-5-204,~~ 63-1-123, 63-26-108, 63-26-111, 63-26-112, 63-26-118, 63-26-119, 63-26-122, and 63-26-123.* ***Administrative History:*** *Original rule filed September 29, 1989; effective November 13, 1989. Amendment filed September 29, 1989; effective November 4, 1991. Repeal and new rule filed December 28, 1995; effective March 12, 1996.*

0540-03-.04 STANDARDS FOR LICENSE. The following shall constitute minimum standards required to be furnished on a nondiscriminatory basis to all students before any school will be granted a license:

(1) Staff

(a) Program Director. Each school shall at all times be under the direction and supervision of a licensed practicing electrologist, who also is licensed as an electrology instructor and who is recognized by the Council of Electrolysis Education, ~~or~~ the National Electrolysis Organization, or an equivalent organization. The program director of each school shall be responsible for the organization, administration, development, and general effectiveness of the electrolysis training program.

(b) Instructional Staff. Any person teaching in the school of electrology shall meet the qualifications for and be licensed pursuant to T.C.A. §63-26-112 as an electrology instructor.

(2) Facilities - All buildings where courses of instruction are being conducted must comply with all municipal, county, state, and federal regulations as to fire, safety, health, and sanitation codes or regulations.

(3) Equipment

(a) Each electrology school shall maintain the following equipment on the school's premises at all times:

1. One high frequency or thermolysis machine;
2. One galvanic or electrolysis machine or one combination machine;
3. One dozen epilation probes or needles of size 002, 003, 004;
4. Adequate lamps and light bulbs for illuminating treatment areas;
5. Treatment table and chair for patients and adjustable stool for operator;
6. A towel and utility cabinet;
7. Covered containers for all lotions, soaps, sterilizing agents, cotton swabs and tissues necessary for electrolysis treatment;
8. Fine pointed epilation forceps; and
9. Sterilization equipment sufficient to insure against the spread of infectious diseases.

(b) All equipment shall be maintained in good working order and shall be updated as required.

(4) Curriculum

(a) A person wishing to obtain ~~board~~ the Commissioner's approval for a school of electrology shall provide and maintain a course of study of at least six hundred (600) hours, one hundred seventy-five (175) hours of theory, and four hundred twenty-five (425) hours of clinical practice training. The curriculum for a school of electrology shall include the following:

Subject	Hours
1. Electrology Theory	
(i) General Orientation	3
(I) History of Electrology	
(II) School Program/School Rules	
(III) State law and regulations	
(IV) Supplies	
(ii) Causes of Hair Problems	15
(iii) Structure of Hair and Skin	27
(I) Skin Structure	
(II) Functions of Skin	
(III) Insertion	

(Rule 0540-03-.04, continued)

(IV) Histology of PLilosebaceous Unit

I. Types of hair structure

II. Follicle structure - lanugo, terminal

III. Hair growth/re-growth

IV. Dermatology/Trichology

(iv)	Neurology and Angilogy	10
	(I) Central Nervous System	
	(II) Circulatory System	
(v)	Microbiology, Bacteriology and disinfecting, Hygiene	10
	(I) Pathogenic and non-pathogenic	
	(II) Growth/reproduction	
	(III) Infection/viruses	
	(IV) Methods of sterilization	
(vi)	Principles of Electricity and Equipment	10
(vii)	Modalities of Electrology	75
	(I) Electrolysis	
	I. Single needle method	
	II. Multiple needle method	
	(II) Thermolysis	
	I. Manual	
	II. Automatic	
	(III) Blend	
(viii)	General Treatment Procedure	15
	(I) Consultation	
	(II) After Treatment	
(ix)	Development of a Practice	10
	(I) Office procedures and management	
	(II) Bookkeeping and accounting	

(Rule 0540-03-.04, continued)

(III) Public relations and advertising

2. Clinical Experience (Supervised)

(i) The clinical experience shall consist of actual electrolysis treatments applied to the following areas of the human anatomy for at least the following specified number of hours:

(I)	Legs {including lower legs, thighs, knees, and toes)	90
(II)	Arms (including lower and upper arms, elbows, and fingers)	90
(III)	Face including chin, checks, skin area around the eyes, lips, nose, forehead and ears)	155
(IV)	Torso (including throat, napeline, underarm, chest, breast, back and abdomen)	90

(ii) Hours spent in clinical treatment of patients

(I) Students shall adhere to the following limitations in the clinical treatment of patients with electrolysis:

I. No more than two (2) hours per day during the first fifty (50) hours of the required 425 hours of clinical treatment of electrolysis patients;

II. No more than three (3) hours per day during the next 200 hours of such clinical work; and

III. No more than four (4) hours per day during the remaining hours of such clinical work;

IV. No student shall engage at any one time in the continuous clinical treatment of an electrolysis patient in excess of one and one half hours.

(b) Each electrology school shall at all times provide a curriculum necessary to satisfy the instruction and clinical experience required in electrolysis necessary for licensure as provided for in these rules.

(c) In performing the electrolysis treatment specified in this rule, due consideration must be given to the various positions and techniques of electrolysis treatment as well as the relative skin conditions before and after electrolysis treatment.

(5) Student Practice

(a) A school shall not permit a student with less than 120 hours of training to perform electrology services on the public. The 120 school hours shall consist of not less than 35 classroom theory hours and not less than 85 hours of practical study.

(b) A student, before receiving a license, shall not practice electrology on the public outside the school.

(Rule 0540-03-.04, continued)

(c) Identification. Students and limited license trainees shall be required to wear a name badge indicating "STUDENT".

(d) A student practicing on the public outside the school or outside the approved limited license training program may be deemed ineligible to take the state ~~board~~ Commissioner approved examination.

(6) Student Records

(a) A school shall keep permanent records of students which shall be maintained not less than five years after termination of training. The record will include all of the following:

1. A summary of the student's attendance record

2. A summary of the student's training

3. The date of the student's enrollment

4. The student's final grades and completion date

5. A copy of the student's contract

(b) A school shall keep temporary records of students which shall be maintained for two (2) years after the termination of training and which shall include the following:

1. The daily attendance record

2. A daily record of the type of services and practical applications performed

3. Progress records

(7) Fees for treatment by electrolysis performed by a student are prohibited. No electrology school or student enrolled in such school shall directly or indirectly accept any remuneration or make any charge for services rendered to patients by the students of such school, provided; however, a nominal charge may be made to cover expenses of equipment and materials used in the treatment of such patients.

(8) Restriction on training time period.

(a) No student shall be permitted to spend time in training, in excess of five (5) days per week and six (6) hours per day.

(b) All students, including limited license trainees, shall have completed the electrology theory and clinical training within a twelve (12) month time frame from the date started.

(9) Completion of Training. Upon completion of the training:

(a) The program director must submit to the ~~Board's~~ Registry's administrative office sufficient evidence documenting that the student has satisfactorily completed the course curriculum pursuant to this rule; and

(b) The student must apply for licensure pursuant to Rule 0540-01-.05.

(10) Posting of ~~board~~ Electrologists Registry Law and Rules and Regulations. Each school shall routinely obtain a copy of the ~~Board's~~ Electrologists Registry's law and rules to be posted in a conspicuous place within the school.

(11) School records shall be open to inspection and photo copying by the ~~Board~~ Commissioner upon reasonable notice and during business hours.

Authority: *T.C.A. §§~~4-5-202, 4-5-204,~~ 63-26-108, 63-26-111, and 63-26-119.* ***Administrative History:*** *Original rule filed September 29, 1989; effective November 13, 1989. Amendment filed July 20, 1992; effective September 3, 1992. Repeal and new rule filed December 28, 1995; effective March 12, 1996. Amendment filed January 31, 2000; effective April 15, 2000. Amendment filed August 18, 2006; effective November 1, 2006 Amendment filed January 7, 2010; effective April 7, 2010.*

0540-03-.05 PROCEDURES FOR LICENSE. To acquire a license to operate a school of electrology in Tennessee a person must comply with the following procedures and requirements.

(1) Obtain an application form from the ~~Board's~~ Registry's administrative office.

(2) Applications for licensure will be accepted throughout the year. However, an application to open a school of electrology shall be submitted to the ~~board~~ Commissioner at least ninety (90) days before the proposed date of opening.

(3) The application and State Regulatory fees must accompany the application for license, pursuant to Rule 0540-03-.06. The application must be completed in its entirety, notarized, signed, and submitted to the ~~Board's~~ Registry's administrative office.

(4) The application shall be accompanied by a copy of the school's curriculum and course outline.

(5) Provide the ~~Board~~ Commissioner with the name, address, telephone number, license number, and license expiration date for each electrology instructor affiliated with the school.

(6) An applicant shall disclose the circumstances surrounding any of the following:

(a) Conviction of any criminal law violation of any country, state, or municipality, except minor traffic violations.

(b) The denial of licensure application by any other state or the discipline of the licensee in any state.

(c) Loss or restriction of certification or licensure privileges.

(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.

(c) Where necessary, all required documents shall be translated into English and such translation and original document certified as to authenticity by the issuing source shall be submitted.

(7) Application review and licensure decisions shall be governed by Rule 0540-03-.07.

(8) The licensure fee must be received in the ~~Board's~~ Registry's administrative office on or before the thirtieth (30th)~~30th~~ day from receipt of notification that the license fee is due. Failure to comply will result in the application file being closed.

(9) A license will be issued only after all requirements, including payment of a license fee, pursuant to Rule 0540-03-.06 have been met.

(10) If the program director has ever held a license to operate a school in any other state, the individual shall submit or cause to be submitted the equivalent of a Tennessee Certificate of Endorsement (verification of licensure) from each such licensing board or registry which indicates the status of the license and whether it is in good standing.

Authority: *T.C.A. §§~~4-5-202, 4-5-204,~~ 63-26-108, 63-26-109, 63-26-111, 63-26-112, 63-26-113, 63-26-118, 63-26-119, and 63-26-122~~, and 63-26-125~~.* ***Administrative History:*** *Original rule filed September 29, 1989; effective November 13, 1989. Repeal and new rule filed December 28, 1995; effective March 12, 1996.*

0540-03-.06 FEES.

(1) The fees are as follows:

(a) Application Fee - A non-refundable fee to be paid each time an application for license is filed.

(b) Endorsement/Verification - A non-refundable fee paid for each certification, verification, or endorsement of an individual's record for any purpose.

(c) Late Renewal fee - A non-refundable fee to be paid when an individual fails to timely renew a license.

(d) License fee - A non-refundable fee to be paid prior to the issuance of the initial license.

(e) License Renewal fee - A non-refundable fee to be paid by all license holders. This fee also applies to individuals who reactivate a retired or lapsed license.

(f) Replacement License fee - A non-refundable fee to be paid when a request is made for a replacement when the initial license has been lost or destroyed.

(g) State Regulatory Fee - To be paid by all individuals at the time of application and with all renewal applications.

(2) All fees shall be established, reviewed and changed by the ~~Board~~Commissioner.

(3) All applicable fees must be submitted to the ~~Board's~~ Registry's administrative office by certified check, personal check, or money order and made payable to the Tennessee ~~Board~~ Electrolgists Registry~~of Electrology~~.

(4) Fee Schedule:

(a)	Application	$550.00
(b)	Endorsement Verification	50.00
(c)	Late Renewal	200.00
(d)	License (Initial)	200.00
(e)	License Renewal (annual)	680.00
(f)	Replacement License	50.00

(g) State Regulatory Fee (annual) 5.00

Authority: *T.C.A. §§~~4-5-202, 4-5-204,~~ 63-1-106, 63-26-108, 63-26-109, ~~63-26-111, 63-26-112, 63-26-113, 63-26-114,~~ 63-26-119, and 63-26-120.* ***Administrative History:*** *Original rule filed January 4, 1990; effective February 18, 1990. Repeal and new rule filed December 28, 1995; effective March 12, 1996. Amendment filed March 18, 2003; effective June 1, 2003. Amendment to rule filed April 29, 2008; to be effective July 13, 2008; however, on June 24, 2008, the House Government Operations Committee stayed the rule amendment; new effective date August 16, 2008.*

0540-03-.07 APPLICATION REVIEW, APPROVAL, AND DENIAL.

(1) Each completed school application received in the ~~Board's~~ Registry's administrative office ~~on or before the 30th day prior to a Board meeting will be presented at the next~~will be reviewed regularly ~~scheduled meeting for the purpose of reviewing files.~~by the Commissioner.

(2) Applications are not considered completed until all information, including fees, has been received by the Division.

(3) Initial review of all applications to determine whether or not the application file is complete may be delegated to the ~~Board's~~ Registry's administrative staff~~administrator~~, provided that final approval of all applications is made and ratified by the ~~Board~~Commissioner. In no event may an application be approved or denied without prior review by ~~a member of the Board~~the Commissioner.

(4) If an application is incomplete when received in the ~~Board's~~ Registry's administrative office, a deficiency letter will be sent to the applicant notifying him/her of the deficiency. The requested information must be received in the ~~Board's~~ Registry's administrative office on or before the thirtieth (30th) day after receipt of the notification.

Formatted: Superscript

(a) Such notification shall be sent certified mail return receipt requested from the ~~Board's~~ Registry's administrative office.

(b) If the requested information is not timely received, the application file shall be closed and the applicant notified. No further ~~Board~~ action will take place until a new application is received pursuant to the rules governing the application process, including another payment of all fees.

~~(5) Each member of the Board is vested with the authority to make the initial determination.~~

(~~5~~6) Upon approval of the application, the applicant will be notified.

(~~7~~6) The ~~Board~~ Commissioner may at ~~its~~his or her discretion delay a decision on an application to operate a school of electrology if the ~~Board~~ Commissioner wishes additional information.

(~~8~~7) If a completed application has been denied ~~and ratified as such by the Board~~by the Commissioner, the action shall become final and the following shall occur:

(a) A notification of the denial shall be sent by the ~~Board's~~ Registry's administrative office by certified mail return receipt requested. Specific reasons for denial will be stated, such as incomplete information, unofficial records, or other matters judged insufficient for licensure, 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 Procedures Act (T.C.A. §4-5-101, *et seq.)* to contest the denial and the procedure necessary to accomplish that action.

(c) An applicant has a right to a contested case hearing only if the licensure denial was based on subjective or discretionary criteria.

(d) An applicant may be granted a contested case hearing if licensure denial is based on objective, clearly defined criteria. If after review and attempted resolution by the ~~Board's~~Registry' administrative staff, the licensure application can not be approved and the reasons for continued denial present a genuine issue of fact and/or law which is appropriate for appeal, an appeal hearing may be requested. Such request must be made in writing to the ~~Board~~ Registry within thirty (30) days of the receipt of the notice of denial from the ~~Board.~~Registry.

(8~~9~~) Any person furnishing false information or omitting pertinent information in such application shall be denied licensure to operate a school of electrology. If the applicant has already been licensed before the falseness of such information has been made known to the ~~Board~~Commissioner, such license shall be subject to suspension or revocation by the ~~Board~~Commissioner.

(~~10~~9) If the ~~Board~~ Commissioner finds ~~it has erred in~~that the issuance of a license was in error, the ~~Board~~ Commissioner will give written notice by certified mail of its intent to annul the license. The notice will allow the applicant the opportunity to meet the requirements of licensure within thirty (30) days from date of receipt of the notification.

(1~~1~~0) Whenever requirements for licensure are not completed within twelve (12) months from the date of the initial review of application and credentials, written notification will be mailed to the applicant and the application file will be closed. An applicant whose file has been closed shall subsequently be considered for licensure only upon the filing of a new application and payment of all appropriate fees.

(1~~2~~1) Abandonment of Application

(a) An application shall be deemed abandoned and closed if the application has not been completed by the applicant within ~~12 months~~90 days after it was initially reviewed by the ~~Board~~Commissioner.

(b) Whenever the applicant fails to complete the application process as stated in Rule 0540-03-.07(~~12~~11)(a) above, written notification will be mailed to the applicant notifying him/her that the file has been closed. A determination of abandonment must be ratified by the ~~Board~~Commissioner.

(c) An application submitted subsequent to the abandonment of a prior application shall be treated as a new application.

Authority: *T.C.A. §§~~4-5-202, 4-5-204,~~ 63-26-106, 63-26-108, 63-26-111, 63-26-112, ~~and~~ 63-26-119, 63-26-123, and 63-26-124.* ***Administrative History:*** *Original rule filed October 31, 1990; effective December 15, 1990. Repeal and new rule filed December 28, 1995; effective March 12, 1996.*

0540-03-.08 EXAMINATIONS.

(1) School Examinations

(Rule 0540-03-.08, continued)

(a) A school shall give written, practical, and oral school examinations on all curriculum subjects.

(b) Final examination papers shall not be returned to the student.

(2) ~~Board~~ Commissioner Approved Examination. Prior to filing an application to take the ~~state board~~Commissioner approved examination, pursuant to Rule 0540-01-.08, a student must:

(a) Satisfactorily complete the ~~Board~~ Commissioner approved electrology school's course of study and shall pass a final examination on each subject; and

(b) Satisfactorily complete all the general education course work.

Authority: *T.C.A. §§~~4-5-202, 4-5-204,~~ 63-26-108, 63-26-111, 63-26-112, 63-26-113, and 63-26-119.*
Administrative History: *Original rule filed December 28, 1995; effective March 12, 1996.*

0540-03-.09 RENEWAL OF LICENSE.

(1) Renewal Application

(a) The due date for license renewal is the expiration date indicated on the school's renewal certificate.

(b) Methods of Renewal

1. Internet Renewals - Schools 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 schools who have not renewed their license online via the Internet, a renewal application form will be mailed to each school licensed by the ~~Board~~ Commissioner to the last address provided to the ~~Board~~Registry's administrative office. Failure to receive such notification does not relieve the school from the responsibility of meeting all requirements for renewal.

(c) To be eligible for renewal, the following must be submitted to the Division of Health Related Boards on or before the expiration date:

1. A completed and signed renewal application form; and

2. The renewal and State regulatory fees as provided in Rule 0540-03-.06.

(d) Anyone submitting a signed renewal form or letter on behalf of the school which is found to be untrue may be subject to disciplinary action as provided in Rule 0540-03-.15.

(e) Schools 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 1200-10-01-.10.

(2) Reinstatement of an Expired License - Reinstatement of a license that has expired as a result of failure to timely renew in accordance with rule 1200-10-01-.10 may be accomplished upon meeting the following conditions:

(Rule 0540-03-.09, continued)

(a) Payment of all past due renewal and state regulatory fees; and

(b) Payment of the late renewal fee provided in Rule 0540-03-.06.

(3) Renewal and reinstatement decisions pursuant to this rule may be made by the Registry's administrative staff ~~administratively~~ or upon review by the Commissioner~~any Board member or the Board's designee~~.

Authority: *T.C.A. §§~~4-5-202, 4-5-204,~~ 63-1-107, 63-26-108, 63-26-109, 63-26-119, and 63-26-120~~, and 63-26-121.~~* ***Administrative History:*** *Original rule filed December 28, 1995; effective March 12, 1996. Amendment filed October 28, 2002; effective January 11, 2003.*

0540-03-.10 SUPERVISION.

(1) Every student in a school of electrology shall at all times be under the daily, personal, and direct supervision of a licensed electrology instructor and at no time shall any electrology student be permitted to engage in the treatment of patients unless under the visual observation or supervision of a licensed electrology instructor.

(2) Every student in a limited license training program shall at all times be under the personal supervision of a board certified or board eligible dermatologist.

Authority: *T.C.A. §§~~4-5-202, 4-5-204,~~ 63-26-108, 63-26-111, and 63-26-119.* ***Administrative History:*** *Original rule filed December 28, 1995; effective March 12, 1996.*

0540-03-.11 RETIREMENT AND REACTIVATION.

(1) A person who holds a current license and does not intend to operate a school of electrology in Tennessee may apply to convert an active license to retired status. An individual who holds a retired license will not be required to pay the annual renewal fee.

(2) A person who holds an active license to operate a school of electrology may apply for retired status in the following manner:

(a) Obtain from the ~~Board's~~ Registry's administrative office an affidavit of retirement form; or

(b) Submit a letter, which has been signed and notarized, requesting that his/her license be placed in retirement. Such letter must contain a statement indicating that the licensee understands that, while in retired status, he/she cannot operate a school of electrology in Tennessee ~~while in retired status~~, indicate or imply in any way that he/she holds an active Tennessee license, or use within Tennessee any words, letters, titles, or figures which indicate or imply that he is currently licensed to operate a school of electrology, and

(c) Submit any documentation which may be required to the ~~Board's~~ Registry's administrative office.

(3) The effective date of retirement will be the date the Affidavit of Retirement is received in the ~~Board's~~ Registry's administrative office.

(4) An individual whose license to operate a school of electrology has been retired may reactive the license in the following manner:

(Rule 0540-03-.11, continued)

(a) Submit a written request for licensure reactivation to the ~~Board's~~ Registry's administrative office; and

(b) Pay the current license renewal fees and State regulatory fee as provided in Rule 0540-03-.06. If retirement reactivation is requested prior to the expiration of one (1) year from the date of retirement, the ~~Board~~ Commissioner will require payment of the late renewal fee and all past due renewal fees as prescribed in Rule 0540-03-.06.

(5) Licensure reactivation applications shall be treated as licensure applications and review and decisions required by this Rule shall be governed by Rule 0540-03-.07.

Authority: *T.C.A. §§~~4-5-202, 4-5-204,~~ 63-1-111, 63-26-108, 63-26-119, and 63-26-121.* ***Administrative History:*** *Original rule filed December 28, 1995; effective March 12, 1996.*

0540-03-.12 RESERVED.

0540-03-.13 STANDARDS OF PRACTICE. Acceptable standards of practice and operation of a School of Electrology shall include but not be limited to the following:

(1) Each school shall display, in a conspicuous place within the clinical area of the school, a sign which shall read: "All services in this school are performed by students who are in training as electrologists."

(2) No school of electrology shall pay compensation to any of its students, either directly or indirectly.

(3) No school premises shall be used for the private practice of electrolysis.

(4) No school shall directly or indirectly, accept any remuneration or make any charge for services rendered by its students at said school for practical work, but a school may make reasonable, nominal charges to cover expenses of equipment and material used.

(5) Every school shall maintain regular class hours with a daily schedule.

(6) The program director, instructors, and students shall at all times abide by the Professional Ethics as defined in Rule 0540-01-.13.

(7) Services provided by a student shall be performed in a manner that is consistent with basic and accepted practice standards and in accordance with all applicable state statutes, ~~board~~ rules, and local codes and ordinances.

(8) The program director and instructors shall at all times ensure that each student is taking adequate and necessary precautions to protect the public from health and safety hazards when performing services.

(9) A school's management and staff shall at all times comply with T.C.A. *§§62-26-101, et seq.*

(10) A school shall not discriminate in the acceptance of students upon the basic of race, color, religion, sex, or national origin.

(11) No student may provide services to the public if the licensee has a known infectious or contagious disease unless the licensee takes appropriate precautions and uses safeguards which prevent the spread of the disease to patrons.

(Rule 0540-03-.13, continued)

(12) A school's management and staff shall not furnish false, misleading, or incomplete information to the ~~Board~~ Commissioner or ~~its designee.~~Registry administrative office.

~~(13) Every school shall provide and maintain adequate and necessary modem equipment.~~

Authority: *T.C.A. §§~~4-5-202, 4-5-204, 4-5-223, 63-26-102, 63-26-105, 63-26-106,~~ 63-26-108, 63-26-119, and 63-26-123.~~63-26-124.~~* ***Administrative History:*** *Original rule filed December 28, 1995; effective March 12, 1996.*

0540-03-.14 RESERVED.

0540-03-.15 DISCIPLINARY ACTIONS AND CIVIL PENALTIES. The purpose of this rule is to define disciplinary actions that the ~~Board~~ Commissioner may impose on licensees.

(1) Upon a finding by the ~~Board~~ Commissioner that a school of electrology has violated any provision of the Tennessee Electrologists Practice Act (*T.C.A.* §§63-26-101, *et. seq.)* or the rules promulgated thereto, the ~~Board~~ Commissioner may impose any of the following actions separately or in any combination deemed appropriate to the offense:

(a) Advisory Censure - This is a written action issued to the licensee for minor or near infractions. It is informal and advisory in nature and does not constitute a formal disciplinary action.

(b) Formal censure or reprimand - This is a written action issued to a licensee 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 on close scrutiny for a period of time determined by the ~~Board~~Commissioner. This action may be combined with conditions which must be met before probation will be lifted and/or which restrict the licensee's activities during the probationary period.

(d) Licensure Suspension - This is a formal disciplinary action which suspends a~~n~~ licensee's right to operate a school of electrology for a fixed period of time. It contemplates the reentry of the licensee into the operation under the licensure previously issued. When the ~~Board~~ Commissioner suspends a license, the school may not train electrology students during the period of suspension.

(e) Revocation for cause. This is the most severe form of disciplinary action which removes a licensee from the operation of a school of electrology and terminates the licensure previously issued. The ~~Board~~Commissioner, in ~~its~~his or her discretion, may allow reinstatement of a revoked license upon conditions and after a period of time ~~it~~the 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~~ Commissioner's revocation order.

(f) Conditions - These include any action deemed appropriate by the ~~Board~~ Commissioner to be required of an individual disciplined 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~~ Commissioner pursuant to paragraph (5) of this rule.

(Rule 0540-03-.15, continued)

(2) 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 the Commissioner, pursuant to paragraph (3) 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.

(3) 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 operation of an electrology school civil penalty order, and wishes or is required to obtain an order reflecting that compliance.

(a) The ~~Board~~ Commissioner 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~~ Registry'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~~ Commissioner ~~consultant~~ and Registry's 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~~ Commissioner authorizes ~~its consultant and~~ the Registry's administrative staff to make an initial determination on the petition and take one of the following actions:

(Rule 0540-03-.15, continued)

(i) Certify compliance and ~~have the matter scheduled for presentation to the Board~~ present the petition to the Commissioner as an uncontested matter; or

(ii) Deny the petition, after consultation with legal staff, if compliance with all of the provisions of the previous order is not proven, and notify the petitioner of what provisions remain to be fulfilled and/or what proof of compliance was either not sufficient or not submitted.

3. ~~If the petition is presented to the Board the petitioner may not submit any additional documentation or testimony other than that contained in the petition as originally submitted.~~The petitioner may not submit any additional documentation or testimony other than that contained in his/her petition as submitted to the Commissioner and the Registry's administrative staff.

4. If the ~~Board~~ Commissioner finds that the petitioner has complied with all the terms of the previous order the Commissioner shall ~~an~~ issue an Order of Compliance ~~shall be issued~~.

5. If the petition is denied either initially by the Registry's administrative staff or after ~~presentation to~~review by the ~~Board~~ Commissioner, and the petitioner believes compliance with the order has been sufficiently proven the petitioner may, as authorized by law, file a petition for a declaratory order pursuant to the provisions of T.C.A. § 4-5-223 and rule 1200-10-01-.11.

(c) Form Petition

Petition for Order of Compliance
~~Board of Electrolysis Examiners~~ Electrology Registry

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: _____

~~I~~, the petitioner respectfully represent~~s~~, 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~~Commissioner's and Registry's administrative staff, in their discretion, may require such signed statements to be notarized. No documentation or testimony other than that submitted will be considered in making an initial determination on, or a final order in response to, this petition.

Respectfully submitted this the _____ day of _____, 20____.

_____
Petitioner's Signature

(4) Order Modifications - This procedure is not intended to allow anyone under a previously issued disciplinary order, including an unlicensed operation of an electrology school 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~~ disciplinary 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~~ Commissioner 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~~ Registry'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 prove~~s~~ 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~~ Commissioner authorizes ~~its consultant and~~the Registry's administrative staff in conjunction with legal 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~~ Commissioner as an uncontested matter; or

(ii) Deny the petition, ~~after consultation with legal staff,~~ if impossibility of compliance with the provisions of the previous order is not proven and notify the petitioner of what proof of impossibility of compliance was either not sufficient or not submitted.

3. ~~If the petition is presented to the Board t~~The petitioner may not submit any additional documentation or testimony other than that contained in the petition as originally submitted to the Commissioner and Registry's administrative staff.

4. If the petition is granted a new order shall be issued reflecting the modifications authorized by the ~~Board~~Commissioner that ~~i~~the deemed appropriate and necessary in relation to the violations found in the previous order.

5. If the petition is denied either initially by the Registry's administrative staff or after ~~presentation to the Board~~review by the Commissioner, and the petitioner believes impossibility of compliance with the order has been sufficiently proven, the petitioner may, as authorized by law, file a petition for a declaratory order pursuant to the provisions of T.C.A. § 4-5-223 and rule 1200-10-01-.11.

(c) Form Petition

Petition for Order Modification
~~Board of Electrolysis Examiners~~ Electrologists Registry

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: _____

~~I~~, the petitioner respectfully represent~~s~~ that for the following reasons, as substantiated by the attached documentation, the identified provisions of the attached disciplinary order are impossible for me to comply with:

_____
_____
_____
_____
_____
_____
_____
_____

(Rule 0540-03-.15, continued)

Note – You must enclose all documents necessary to prove your request including a copy of the original order. If any of the proof you are relying upon to show impossibility is the testimony of any individual, including yourself, you must enclose signed and notarized statements from every individual you intend to rely upon attesting, under oath, to the reasons why compliance is impossible. No documentation or testimony other than that submitted will be considered in making an initial determination on, or a final order in response to, this petition.

Respectfully submitted this the _____ day of _____, 20_____.

_____
Petitioner's Signature

(5) 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~~ Commissioner finds the person who is required to be licensed by the ~~Board~~ Commissioner is guilty of a willful and knowing violation of the Electrologists 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 client or the public. For purposes of this section, a Type A penalty shall include, but not be limited to, a person who willfully and knowingly is or was operating an electrology school without a license from the ~~Board~~Commissioner.

2. A Type B civil penalty may be imposed whenever the ~~Board~~ Commissioner finds the person required to be licensed by the ~~Board~~ Commissioner is guilty of a violation of the ~~Veterinary~~ Electrologists 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~~ Commissioner finds the person required to be licensed by the ~~Board~~ Commissioner is guilty of a violation of the Electrologists Practice Act or regulations promulgated pursuant thereto, which are neither directly detrimental to clients or the public, nor directly impact their care, but have only an indirect relationship to client care or the public.

(c) Amount of Civil Penalties

1. Type A civil penalties shall be assessed in the amount of not less than $500 nor more than $1,000.

2. Type B civil penalties may be assessed in the amount of not less than $100 and not more than $500.

3. Type C civil penalties may be assessed in the amount of not less than $50 and not more than $100.

(d) Procedures for Assessing Civil Penalties

1. The Division of Health Related Boards may initiate a civil penalty assessment by filing a Memorandum of Assessment of Civil Penalty. The Division shall state in

the memorandum the facts and law upon which it relies in alleging a violation, the proposed amount of the civil penalty and the basis for such penalty. The Division may incorporate the Memorandum of Assessment of Civil Penalty with a Notice of Charges which may be issued attendant thereto.

2. Civil Penalties may also be initiated and assessed by the ~~Board~~ Commissioner during consideration of any Notice of Charges. In addition, the Commissioner~~Board~~ may, upon good cause shown, assess 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~~ Commissioner may consider the following factors:

   (i) Whether the amount imposed will be a substantial economic deterrent to the violator;

   (ii) The circumstances leading to the violation;

   (iii) The severity of the violation and the risk of harm to the public;

   (iv) The economic benefits gained by the violator as a result of non-compliance; and,

   (v) The interest of the public.

4. All proceedings for the assessment of civil penalties shall be governed by the contested case provisions of T.C.A. Title 4, Chapter 5.

~~(6) Informal Settlements - The Board consultant is authorized to enter into informal settlement agreements pursuant to Rule 0540-01-.19 under which a complaint against a licensee may be closed without any disciplinary action. Any matter proposed for informal settlement must be subsequently ratified by the full board before it will become effective. Such agreement may include any terms deemed appropriate by the Board consultant including, but not limited to:~~

~~(a) Mandatory education program or course attendance;~~

~~(b) Submission of reports, records or other appropriate documentation; or~~

~~(c) Conditioning of the individual's activities in any manner which affects his operation of a school of electrology in Tennessee.~~

(6) A Registry Consultant may be appointed by the Commissioner and vested with the authority to do the following acts:

(a) Recommend whether and what type disciplinary actions should be instituted upon complaints received or investigations conducted by the Division.

(b) Recommend whether and under what terms a complaint, case, or disciplinary action might be informally settled. Any matter proposed for informal settlement must be subsequently ratified by the Commissioner before it will become effective.

Authority: *T.C.A. §§~~4-5-101, 4-5-202, 4-5-204,~~ 4-5-217, 4-5-223, ~~63-1-122,~~ 63-1-134, 63-26-108, 63-26-119, ~~63-26-121, and~~ 63-26-123, and 63-26-124.* ***Administrative History:*** *Original rule filed December*

(Rule 0540-03-.15, continued)

28, 1995; effective March 12, 1996. Amendment filed October 28, 2002; effective January 11, 2003. Amendment filed November 4, 2005; effective January 18, 2006.

0540-03-.16 LICENSE.

(1) Issuance - Upon the ~~Board~~ Commissioner determining that an applicant for licensure has successfully met all the requirements as set forth in T.C.A. *§§63-~~12~~26-101, et seq.* and these rules, the ~~Board~~ Commissioner shall issue the school a license.

(2) Display of License - The ~~Board Commisisoner~~Commissioner shall furnish a license to each school which shall be posted in a conspicuous place within the school.

(3) Replacement License. The ~~Board~~ Commissioner will replace a lost, damaged, or destroyed license (artistically designed "wall" license) or renewal certificate upon receipt of an affidavit detailing the loss or destruction of the original license or renewal certificate. The affidavit must be accompanied by the damaged license or renewal certificate, if available, and the appropriate fee, pursuant to Rule 0540-03-.06.

(4) Display of ~~Board~~ Electrologists Registry Law and Rules and Regulations. Each licensee shall routinely obtain a copy of the ~~Board's~~Electrologists Registry's laws and rules to be posted in a conspicuous place within the school of electrology.

(5) Requests for Verification of Licensure must be made in writing to the ~~Board's~~ Registry's administrative office.

Authority: *T.C.A. §§~~4-5-202, 4-5-204,~~ 63-1-104, 63-1-105, 63-1-106, 63-1-109, 63-26-108, 63-26-109, 63-26-118, and 63-26-119.* ***Administrative History:*** *Original rule filed December 28, 1995; effective March 12, 1996.*

0540-03-.17 CHANGE OF NAME AND/OR ADDRESS.

(1) Change of Name. The school's program director shall notify the ~~Board~~ Registry's administrative office in writing within thirty (30) days of a name change. The notice shall provide both the old and new names and must reference the license number, along with a certified or notarized photocopy of the document authorizing such a name change.

(2) Change of Address. The school's program director shall notify the ~~Board~~ Registry's administrative office in writing within thirty (30) days of a change of address. The notice shall provide both the old and new addresses and must reference the school's name, telephone number, and license number.

Authority: *T.C.A. §§~~4-5-202, 4-5-204,~~ 63-1-106, 63-1-108, 63-26-108, 63-26-118, and 63-26-119.* ***Administrative History:*** *Original rule filed December 28, 1995; effective March 12, 1996.*

0540-03-.18 RESERVED.

0540-03-.19 ADVERTISING.

(1) A school of electrology shall display a sign designating it as a school and giving the name of the school.

(2) A school of electrology shall be identified in advertisements, brochures, and promotional material by the name indicated on the license. All advertisements, brochures, or promotional materials printed by or caused to be printed shall include the license number of the school.

(3) A school of electrology shall not use false, confusing, or misleading statements in its advertising.

Authority: *T.C.A. §§4-5-202, 4-5-203, 4-5-204, 63-1-116, 63-26-108, and 63-26-119.* ***Administrative History:*** *Original rule filed December 28, 1995; effective March 12, 1996.*

0540-03-.20 LIMITED LICENSURE ELECTROLOGY TRAINING PROGRAMS.

(1) A person wishing to provide limited licensure electrology training must:

(a) Be a board certified or board eligible dermatologist who has submitted evidence to this board's satisfaction that he has completed continuing education in electrology theory and practice; and

(b) Ensure that the trainee has completed and mailed to the ~~Board's~~ Registry's administrative office the Notification of Training form at least ten (10) days prior to beginning the training. The notification of training form must be completed in its entirety and be signed by the supervising dermatologist indicating that he will personally provide daily instruction and direct supervision to each trainee during the training period.

(2) Curriculum - The curriculum shall consist of at least 600 hours of electrology theory and clinical practice.

(3) Training Period

(a) Training shall not begin until the Notification of Training has been submitted to the ~~board's~~ Registry's administrative office. Written verification of receipt will be provided to the trainee by the ~~Board's~~ Registry's administrative office within five (5) working days after receipt.

(b) No trainee shall be permitted to spend time in training in excess of five (5) days per week and six (6) hours per day.

(c) All trainees shall have completed the training program within twelve (12) months from the date started.

(4) Supervision - During the training period, the dermatologist must personally provide direct supervision as defined in Rule 0540-03-.01(12).

(5) Completion or Abandonment of Training

(a) Upon the trainee's completion of the training program, the dermatologist must provide to the ~~Board's~~ Registry's administrative office, concurrently with the trainee filing an application for license, verification that the training has been satisfactorily completed, along with a course outline, and an outline of training hours including specific theory topics and clinical practice.

(b) The dermatologist must provide an affidavit stating the number of training hours including specific theory topics and clinical practice to the ~~Board of Electrolysis Examiners.~~Commissioner at the Registry's administrative office.

(c) The dermatologist must notify the ~~Board's~~ Registry's administrative office in writing, within ten (10) days of the date he terminates or the trainee terminates training prior to completion.

(Rule 0540-03-.20, continued)

Authority: *T.C.A. §§4-5-202, 4-5-204, 63-26-108, 63-26-111, and 63-26-119.* ***Administrative History:*** *Original rule filed December 28, 1995; effective March 12, 1996.*

* 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)
NA					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Department of Health on 03/13/2013, 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: *01/17/13*

Rulemaking Hearing(s) Conducted on: (add more dates). *03/13/13*

Date: 4/5/13

Signature: Rosemarie Otto

Name of Officer: Rosemarie Otto

Title of Officer: Commissioner's Designee for Electrologists Registry

THEODORA P. WILKINS STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY

Subscribed and sworn to before me on: 4/5/13

Notary Public Signature: Theodora P. Wilkins

My commission expires on: 11/3/15

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

Robert E. Cooper, Jr.
Robert E. Cooper, Jr.
Attorney General and Reporter

4-2-14
Date

Department of State Use Only

RECEIVED 2014 APR -4 PM 3:56 OFFICE OF SECRETARY OF STATE

Filed with the Department of State on: 4/4/14

Effective on: 7/3/14

Tre Hargett
Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Human Services
DIVISION:	Family Assistance
SUBJECT:	Families First/TANF Work Requirements and Child Care
STATUTORY AUTHORITY:	42 U.S.C. § 607 and Tennessee Code Annotated, Section 71-3-104(h)(4).
EFFECTIVE DATES:	July 1, 2014 through June 30, 2015
FISCAL IMPACT:	According to the department, the new sanction policy, which the rule amendment implements, is estimated to save the state approximately $155,308.00 in the first year, and will lead to an increase in TANF savings in subsequent years. Furthermore, the rule amendment requires systems modifications totaling approximately $50,000.00.
STAFF RULE ABSTRACT:	The rule implements a new sanction policy for Families First/TANF recipients with work and/or educational activities requirements. Under the current rule, after the Department determines a recipient is non-compliant the Department closes the recipient's case, but the recipient may re-apply immediately and receive benefits after complying with work and/or educational activities for a five (5) day period. The rule changes the current sanction policy in several ways. Following a referral of a recipient's potential non-compliance, the Department must review the Families First/TANF case to consider whether the recipient was non-compliant and whether the recipient has any potential ADA issues or other barriers to compliance. If the Department does not find any issues that indicate significant barriers to compliance, then the Department will take action to close the Families First/TANF case and issue the recipient a notice of adverse action/conciliation.

The notice of adverse action/conciliation provides the recipient with notice that the recipient's Families First/TANF case has been closed, provides an effective date for the closure, provides that the recipient has ten (10) calendar days during which the recipient must contact the Department to verify that the recipient has good cause for non-compliance, and describes the Department's appeal procedures. If the recipient contacts the Department within the ten (10) calendar days to provide verification of good cause, then the Department will reverse the adverse action.

If the Families First/TANF recipient fails to provide good cause to the Department within ten (10) days following the notice of adverse action/conciliation, then the Department will impose sanctions on the entire assistance unit, except in cases where a minor parent is a dependent. For the first sanction, the assistance unit will be ineligible for cash assistant for one (1) month. For the second sanction, the assistance unit will be ineligible for three (3) months. For the third sanction, the assistance unit will be ineligible for six (6) months. For the fourth and any subsequent sanctions, the assistance unit will be ineligible for twelve (12) months.

Next, if the Families First/TANF recipient faces certain situations, then the recipient may be deemed eligible for Families First/TANF prior to the expiration of the mandatory sanction periods. These situations include where the recipient faces homelessness, where the recipient's children may be taken away by DCS, or where the recipient has become incapacitated or is taking care of a disabled family member.

This rule also decreases the current eighteen (18) months of Transitional Child Care to a minimum of twelve (12) months.

This rule provides for a mandatory referral program of disabled and incapacitated Families First/TANF recipients to the Department's Division of Rehabilitative Services. If eligible for DRS services then the Families First/TANF recipient may choose to voluntarily comply with work requirements through DRS participation.

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.

Comment One:
In Rule 1240-01-49-.02(2)(a)-(b), members of the public were concerned about DRS's ability to handle the all the referrals of Families First/TANF recipients and still maintain the positive changes that have been made in the past two years in that program. These concerns were based on the following entries in the VR 2014 State Plan: VR projected in its 2014 State Plan that an additional 793 individuals would join the waiting list during 2014 and that "The Division's resources (staff) remain inadequate to serve individuals in all four priority categories." Additionally, there were concerns about mandating DRS assessment and participation for Families First/TANF recipients who were either already classified as disability according to the Social Security Administration or were alleging incapacity. Commenters states that it is contrary to both the interests and legal rights of persons who have been found to be disabled by the Social Security Administration and by the Department's Disability Determination Services to require them to undergo and evaluation by DRS. Such individuals have already been deemed incapable of performing substantial gainful employment.

Response and reasons for adoption or rejection of suggested changes:
The Department has considered these comments and made changes to the Rule. The Rule still provides for a mandatory referral process to DRS for those Families First/TANF recipients who have a disability or allege incapacity to work which is determined by the Department to last longer than six (6) months; however, if found eligible for DRS, those individuals will not be mandated to participate, instead participation will be voluntary. The Department is working toward enabling all Families First/TANF recipients to have opportunities to become self-sufficient and a relationship between the Families First/TANF program and the DRS program will help reach that goal.

Comment Two:
In 1240-01-49-.02(2), (3) and 1240-01-49-.04(1)(b), members of the public were concerned that individuals who had been determined to be exempt from the work and/or educational activity requirements could be sanctioned for failure to comply with their assigned activities. The possibility of sanction will discourage individuals from opting in to participate in the work and/or educational activities. In addition, others stated that the rule essentially precludes many Families First/TANF recipients from having the opportunity to participate.

Response and reasons for adoption or rejection of suggested changes:
The Department has considered the comments and has decided to adopt the suggested changes. The Department has deleted the portion of the Rule providing for sanctions for those exempt individuals who opt-in to participate in the work and/or educational activities and then fail to meet those requirements.

Comment Three:
In 1240-01-49-.04(1)(a), members of the public commented that the standard, "failure to make satisfactory progress," was too subjective and arbitrary for the Department to initiate the sanction process. .

Response and reasons for adoption or rejection of suggested changes:
The standard, "failure to make satisfactory progress," has been in the Department's rules prior to these changes in the Department's sanction policy. The Department, however, has considered these comments and provided clarification for the standard as a newly designated section 1240-01-49-.04(1)(b), which explains that the Department will evaluate "satisfactory progress" based on objective performance measurements criteria for each specific work and educational activity.

Comment Four:
In 1240-01-49-.04(2), members of the public commented that initiating the sanction policy based on the "first unexcused absence" is unduly harsh.

Response and reasons for adoption or rejection of suggested changes:
The Department disagrees that initiating the sanction process based on the "first unexcused absence" is unduly

harsh. The Families First/TANF recipient will have an opportunity to discuss and remedy any absence with the Employment and Case Management Service caseworker prior to the Department initiating any sanction process. In addition, the recipient/employee has opportunity to present to the Department verification of good cause for any absences/non-compliance with work activities prior to the imposition of a sanction.

Comment Five:
In 1240-01-49-.04(3), members of the public were concerned about language providing for the Department to, at its discretion, choose from two sanction processes, only one of which employed a cure period. The Rules did not lay out exactly how the Department would choose between the two sanction processes. Comments on this part also suggested that the thirty (30) day cure period was an integral part of the sanction process in all instances because a cure period is designed to encourage compliance.

Response and reasons for adoption or rejection of suggested changes:
The Department has considered the comments and determined that, due to the Department's desire to encourage compliance, the ineffectiveness of the current sanction policy, and the Department's systems processes, the option for a thirty (30) day cure period will be deleted from this Rule. The Department has amended the Rule to provide for a sanction process that will consist of conciliation and adverse action, without an opportunity for a thirty (30) day cure period.

The non-compliant Families First/TANF recipient will be referred by a work and education service provider to the Department for a determination of non-compliance. The Department's eligibility counselor will then evaluate a recipient's case to determine if the recipient may be unable to comply due to a disability under the Americans with Disabilities Act. If the eligibility counselor determines that the recipient's case does not reflect any ADA issues, then the eligibility counselor will initiate the conciliation/adverse action process. The recipient will have ten (10) days to provide the Department with verification of good cause, as defined in the rules, for any non-compliance as well as an opportunity to appeal any decision of the Department to sanction the individual for non-compliance.

Comment Six:
In 1240-01-49-.04(3), members of the public commented that if the Department does employ the thirty (30)-day cure period, a notice must be created and sent to each Families First/TANF recipient that includes an explanation of the cure period.

Response and reasons for adoption or rejection of suggested changes:
The Department will not be employing a thirty (30)-day cure period, as stated above. As such, the Department has not made any changes to the Rule based on this comment.

Comment Seven:
In 1240-01-49-.04(3), members of the public expressed concerns regarding the length of the conciliation period being only ten (10) calendar days. Some discussed how the Rules could possibly affect recipients with domestic violence issues or medical issues that may not have time to provide adequate verification of good cause within only ten (10) days. In addition, others commented that recipients are often unable to contact their eligibility counselors because the counselors do not answer phone calls, do not return calls, as well as have voicemail boxes that are completely full. One example provided was that it took fourteen (14) days for a recipient to contact their eligibility counselor. The suggestion was that the Department should at least extend the adverse action period time to longer than ten (10) days.

Response and reasons for adoption or rejection of suggested changes:
The Department has determined that a ten (10) day conciliation period is adequate time for a Families First/TANF recipient to provide verification of good cause. The Department currently strives to and will continue to strive to provide excellent and timely services for all Families First/TANF recipients.

Comment Eight:
In 1240-01-49-.06(3), members of the public commented that the good cause reason list for voluntary quit should include a failure to provide reasonable accommodations as required by the Americans with Disabilities Act and the employer's violation of any federal, state or local employment safety law with regard to the employee.

Response and reasons for adoption or rejection of suggested changes:
The Department has amended the Rule as suggested.

Comment Nine:

In 1240-01-49-.06(3)(b), a comment was that the "Tennessee Family Medical Leave Act" did not exist.

Response and reasons for adoption or rejection of suggested changes:
The Department has considered this comment and has deleted the reference to "Tennessee Family Medical Leave Act."

Comment Ten:
In 1240-01-54-.02, some members of the public commented that the Transitional Child Care time limit should not be reduced to a minimum of twelve (12) months from the current 18-month limit for the following reasons:

(1) Caretakers will lose their jobs and return to Families First, which negates any possible savings from shortening the time limit;

(2) Former TANF clients are sixty percent (60%) more likely to still be employed after two years if they receive help paying for child care;

(3) The longer caretakers receive child care, the longer they will work, which results in increased job retention and increased wages;

(4) It is unlikely the Department will save enough from the shortened Transitional Child Care period to be able to apply the savings to a low Income child care program;

(5) Removing the guarantee of eighteen (18) months of Transitional Child Care increases the likelihood that the child care funding that was used to cover the additional six (6) months will be lost because there is no requirement that this assistance be provided; and

(6) The recipients who have been able to leave the program due to earned income are "success stories" for the Department and every effort should be applied to help them maintain employment and prevent the need to return to the program.

Response and reasons for adoption or rejection of suggested changes:
The Department has considered these comments and has decided, based on the Department's goal to provide more non-TANF related child care, to reject the suggested changes. The Department has determined that a minimum of twelve (12) months of transitional child care will be sufficient to enable the recipients to successfully transition off of Families First/TANF. In addition, the Department is exploring ways to provide child care assistance to non-Families First/TANF families. The money saved from a reduced Transitional Child Care may enable the Department to provide additional assistance to families that are not receiving Families First/TANF.

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.

For purposes of the Regulatory Flexibility Act of 2007, the Department of Human Services certifies that these rulemaking hearing rules do not regulate or attempt to regulate 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)

These rules have no projected financial impact on local governments.

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

For Department of State Use Only

Sequence Number: 04-01-14
Rule ID(s): 5680 - 5681
File Date: 4/2/14
Effective Date: 7/1/14

Rulemaking Hearing Rule(s) Filing Form

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

Agency/Board/Commission:	Tennessee Department of Human Services
Division:	Family Assistance Division
Contact Person:	Madeline Brough
Address:	Office of General Counsel Citizens Plaza Building, 15th Floor 400 Deaderick Street Nashville, Tennessee 37243-1403
Zip:	615-313-4731
Phone:	Madeline.Brough@tn.gov
Email:	Family Assistance Division

Revision Type (check all that apply):
✓ Amendment
___ New
___ Repeal

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

Chapter Number	**Chapter Title**
1240-01-49	Families First Work Requirements
Rule Number	**Rule Title**
1240-01-49-.02	Exemption Determination
1240-01-49-.04	Failure to Comply, Conciliation, Good Cause, and Sanctions
1240-01-49-.06	Voluntary Quit
1240-01-49-.08	Reserved for Future Use

Chapter Number	**Chapter Title**
1240-01-54	Child Care - Families First Program
Rule Number	**Rule Title**
1240-01-54-.02	Transitional Child Care Coverage

"REDLINE VERSION-CHAPTERS 1240-01-49 AND 1240-01-54 DATED MARCH 17, 2014"

RULES
OF
TENNESSEE DEPARTMENT OF HUMAN SERVICES
FAMILY ASSISTANCE DIVISION

CHAPTER 1240-01-49
FAMILIES FIRST WORK REQUIREMENTS

TABLE OF CONTENTS

1240-01-49-.01 Families First Work Requirements
1240-01-49-.02 Exemption Determination
1240-01-49-.03 Families First work Requirements Provisions
1240-01-49-.04 Failure to Comply, Conciliation, Good Cause, and Sanctions
1240-01-49-.05 Appeals and Hearings
1240-01-49-.06 Voluntary Quit
1240-01-49-.07 Strikers
1240-01-49-.08 Reversserved for Future Use
1240-01-49-.09 Diversion Program for Families with a One Time Financial Need

1240-01-49-.01 FAMILIES FIRST WORK REQUIREMENTS.

(1) The Department of Human Services administers the Families First Program directly and through contractual arrangements with other entities to provide or arrange for employment, training, education, and support services for Families First recipients. All Families First adult recipients in the AG must participate in the Families First work requirements unless they are exempt from this requirement.

Authority: *T.C.A. §§4-5-201 et seq., 4-5-202, 4-5-209, 71-1-105, 71-3-152, 71-3-153 and 71-3-154; 71-3-158(d)(2)(D); 42 U.S.C. §§ 601 et seq., 42 U.S.C. § 602, 42 U.S.C. § 607(c), (d) and (e), 42 U.S.C. § 608 and 42 U.S.C. § 609; Public Acts of 1996, Chapter 950, and 45 CFR 250., 45 C.F.R. § 260.30, 45 C.F.R. § 260.31, 45 C.F.R. § 261.2, 45 C.F.R. § 261.10, 45 C.F.R. § 261.30, 45 C.F.R. § 261.31, and 45 C.F.R. § 261.32; Deficit Reduction Act 2005 (Pub. L. 109-171 §§ 7101 and 7102, February 8, 2006); 71 Federal Register 37454 (June 29, 2006); and Acts 2007, Chapter 31.* ***Administrative History:*** *Original rule filed December 2, 1996; effective February 15, 1997. Public Necessity rule filed July 2, 2007; expired December 14, 2007. Amendment filed October 1, 2007; effective December 15, 2007.*

1240-01-49-.02 EXEMPTION DETERMINATION.

(1) The following ~~adults~~ individuals are exempt, except as otherwise provided in this Chapter, from participation in the Families First/TANF ~~W~~work and/or educational ~~R~~requirements~~, but may volunteer to participate if they are an eligible member of the Assistance Group~~:

~~(1) Reserved for future use.~~

~~(2) Reserved for future use.~~

(3a) An individual who is disabled. An individual is disabled if the individual:

~~(a)~~1. ~~An individual who h~~Has been approved for Social Security Disability (Title 11) or Supplemental Security Income on the basis of his/her disability~~.~~;

2. Receives Veterans benefits on the basis of his/her one hundred percent (100%) disability~~.~~; or

3. Receives Black Lung benefits based on his/her disability~~, is exempt from the Families First work requirements.~~;

_____(~~4~~b) An individual who has been determined to be incapacitated for the purpose of participating in a work and/or educational activities requirement. The incapacity determination shall be made according to paragraph (2);~~.~~

~~(a) Incapacity is deemed to exist when one parent has a physical or mental defect, illness or impairment. The defect, illness or impairment must be:~~

~~1. Supported by competent medical testimony;~~

~~2. Of such a debilitating nature as to reduce substantially, or eliminate the parent's ability to support or care for the child(ren); and~~

~~3. Expected to last for a period of at least thirty (30) days.~~

~~(b) Incapacity shall be determined by:~~

~~1. Reserved for future use.~~

~~2. Reserved for future use.~~

~~3. Reserved for future use.~~

~~4. Reserved for future use.~~

~~5. The Department's Medical Evaluation Unit (MEU). All claims of incapacity must be forwarded to the Medical Evaluation Unit (MEU) for review.~~

~~(c) Review/Redetermination of Incapacity. Incapacity status must be reviewed at each twelve month case review. Individuals who were recently terminated from Social Security Disability/SSI disability benefits who claim continued incapacity may continue to be exempt as incapacitated while the necessary information is being secured and submitted to the MEU. If the client fails to cooperate with the MEU without good cause or refuses to cooperate, the exemption on the basis of incapacity ends.~~

~~(d) Period of Incapacity for Families First.~~

~~1. Verification of continued incapacity must be made at the end of the MEU approval period if continued incapacity is claimed.~~

~~2. Reserved for future use.~~

~~3. For an active incapacity exemption denied by the MEU, the exemption will be terminated as soon as the recipient is notified.~~

~~4. If there is any indication the client is no longer incapacitated, the complete medical file will be resubmitted to MEU with current medical-social information including the facts which indicate that incapacity no longer exists.~~

_____(~~5~~c) An individual for whom an incapacity determination, under paragraph (2), is pending~~.~~;

_____(~~6~~d) An individual who is age sixty-five (65) or older~~.~~;

~~(7) An individual who is age sixty (60) or over as of July 1, 2007. If the participant leaves Families First after their sixtieth (60th) birthday and returns to the program before their sixty-fifth (65th) birthday and meets no other exemption criteria, the individual will have a work requirement.~~

(~~8~~e) An individual who is needed in the home to care for an in-home relative who is disabled as determined by a physician or a licensed or certified psychologist, and no other appropriate member of the household is available to provide the needed care~~.~~; ~~This exemption does not apply if the ill or incapacitated family member is attending school full-time.~~

(~~9~~f) An individual who is the caretaker, in a single-parent household, of a child under one (1) year of age~~ 16 weeks.~~; provided, however, the Department may reduce the exemption to sixteen (16) weeks for persons who were exempt but chose to volunteer to fulfill the work and/or educational requirements;

(g) An individual who is one (1) of two (2) parents in a two-parent household caring for a child under age sixteen (16) weeks; and

(h) A non-parental caretaker who chooses not to be included in the assistance group.

~~(10) Reserved for future use.~~

(2) Evaluation of Disabled Individuals and Individuals Alleging Incapacity for Participation in Work and/or Educational Activities.

(a) The Department shall refer a Families First/TANF applicant/recipient, who alleges incapacity, to the Department's Medical Evaluation Unit (MEU) when:

1. The Families First/TANF recipient alleges incapacity to work that is expected to last for a period of at least (30) days; or

2. An incapacity evaluation is necessary to determine deprivation of parental support. MEU shall determine whether incapacity exists that would deprive a child of parental support.

(b) For purposes of the MEU determination, incapacity is deemed to exist when the defect, illness, or impairment is:

1. Supported by competent medical evidence; and

2. Expected to last for a period of at least thirty (30) days.

(c) Review of MEU Incapacity Status. For incapacity determinations made by the MEU, incapacity status shall also be reviewed and verified at the end of the MEU approval period if continued incapacity is claimed.

1. Individuals who were recently terminated from Social Security Disability/SSI disability benefits who claim continued incapacity may continue to be exempt as incapacitated while the necessary information is being secured and submitted to the MEU.

2. If the client fails to cooperate with the MEU without good cause or refuses to cooperate, the exemption on the basis of incapacity ends.

(d) Period of Incapacity for Families First/TANF recipients exempt from work and/or educational requirements.

1. At any time, if there is any indication the Families First/TANF recipient is no

longer incapacitated, the recipient's complete medical file shall be resubmitted to the MEU with current medical-social information, including the facts which indicate that incapacity no longer exists.

2. For an active incapacity exemption denied by the MEU, the exemption will be terminated as soon as the recipient is notified.

(e) Effective July 1, 2014, the Department shall refer all Families First recipients/applicants, who are disabled or who are deemed incapacitated for longer than six (6) months, as determined by MEU, to the Division of Rehabilitative Services (DRS) to undergo an evaluation. The DRS shall determine, under Chapter 1240-08-04, whether the Families First/TANF recipient/applicant is eligible for DRS services that would provide the individual an opportunity to voluntarily fulfill the Families First/TANF work and/or educational activities requirement, consistent with his/her capabilities.

1. Any Families First/TANF recipient who voluntarily participates in the DRS program shall have the opportunity to volunteer for the work and/or educational activities requirement for Families First/TANF.

2. There is no requirement for financial participation in the DRS program by the individual for receiving any vocational rehabilitation services if the individual is determined eligible for Families First/TANF cash assistance.

(3) Voluntary Participation in Families First/TANF Work and/or Educational Activities.

(a) Any individual who is exempt from the Families First/TANF work and/or educational requirements under this rule, except SSI recipients and Child Only caretakers, may choose to volunteer to participate in the work and/or educational activities.

(b) Any individual who voluntarily chooses to participate in the Families First/TANF work and/or educational requirements may retain exempt status if he/she chooses not to comply, except those individuals who are caretakers, in a single-parent household, of a child at least sixteen (16) weeks of age.

Authority: *T.C.A. §§4-5-201 et seq., 4-5-202, 4-5-209, 71-1-105, 71-3-152, 71-3-154, and 71-3-154(h)(3)(A)-(G), 71-3-158(d)(2)(D); 42 U.S.C. §§ 601 et seq., 42 U.S.C. § 602: 42 U.S.C. § 607(c), (d, and (e); 42 U.S.C. § 608; 42 U.S.C. § 608(b); 42 U.S.C. § 609, 42 USC §1315(a); Public Acts of 1996, Chapter 950, 45 CFR 233.90(c)(iv), and 45 CFR 250.30, §1115 of the Social Security Act45 C.F.R. § 260.30; 45 C.F.R. § 260.31; 45 C.F.R. 233.90, 45 C.F.R. § 261.2(b) through (m); 45 C.F.R. § 261.2(n); Deficit Reduction Act 2005 (Pub. L. 109-171 §§ 7101 and 7102, February 8, 2006); 71 Federal Register 37454 (June 29, 2006); and Acts 2007, Chapter 31.* ***Administrative History:*** *Original rule filed December 2, 1996; effective February 15, 1997. Amendment filed July 5, 2002; effective September 18, 2002. Public necessity rule filed July 2, 2007; expired December 14, 2007. Amendment filed October 1, 2007; effective December 15, 2007.*

1240-01-49-.03 FAMILIES FIRST WORK REQUIREMENT PROVISIONS.

(1) An individual, unless otherwise exempt, will be required to participate in work or work-related activities for thirty (30) hours per week as set forth in his/her Personal Responsibility Plan (PRP). At least twenty (20) hours must be spent working in core activities; the remaining ten (10) hours must be spent in core or non-core activities.

(2) Activities that will be included as a part of the Families First work requirements include:

(a) Core Activities. Core Activities must be used to meet the first twenty (20) hours of the work requirement and can be used to meet the entire work requirement. The use of core activities to meet the Families First work requirement is subject to allowances or restrictions on these activities, as defined by federal law and regulation. Unless expanded through federal law or regulation, core activities are:

1. Unsubsidized Employment.

2. Job search and job readiness assistance.

3. Work Experience.

4. Community Service.

5. Vocational Education.

6. On-the-job training.

7. Subsidized work. Families First participants can be placed in private or public sector subsidized work positions.

(b) Non-core Activities. Non-core activities can be used to fulfill up to ten (10) hours of the Families First work requirement as long as the recipient is engaged in twenty (20) hours of core activities. The use of non-core activities to meet the Families First work requirement is subject to allowances or restrictions on these activities, as defined by federal law and regulation. Unless expanded through federal law or regulation, non-core activities are:

1. Job Skills Training Directly Related to Employment.

2. Education Directly Related to Employment.

3. Satisfactory attendance at secondary school or in a GED course, for those who do not yet have a high school diploma.

(c) Reserved for future use.

(d) Reserved for future use.

(e) Reserved for future use.

(f) Reserved for future use.

(g) Reserved for future use.

(h) Reserved for future use.

(i) Reserved for future use.

(j) Reserved for future use.

(k) Reserved for future use.

(3) Reserved for future use

(4) The Families First work requirement can be met through satisfactory attendance at secondary school, in the case of a minor parent recipient who:

(a) has not completed secondary school; and

(b) is a caretaker who is nineteen (19) years of age or younger.

(5) A minor parent who is eligible as a dependent child must attend school. Failure to comply with this requirement will result in the needs of the non-compliant individual being removed from the grant.

(6) A caretaker who is in the residential program at Renewal House is in compliance with the Families First work requirement if she is in good standing with Renewal House program requirements.

(7) Participation in Vocational Rehabilitation services will meet the Families First work requirement.

Authority: *T.C.A. §§4-5-201 et seq., 4-5-202, 4-5-209, 71-1-105, 71-3-152, 71-3-153 and 71-3-154; 71-3-158(d)(2)(D); 42 U.S.C. §§ 601 et seq., 42 U.S.C. § 602, 42 U.S.C. § 607(c), (d)(1) through (12) and (e), 42 U.S.C. § 608, 42 U.S.C. § 609; Public Acts of 1996, Chapter 950, and 45 CFR 250.30 through 32; 45 CFR 234.60, §1115 of the Social Security Act; 45 C.F.R. § 260.30, 45 C.F.R. § 260.31, 45 C.F.R. § 261.2(b) through (m), 45 C.F.R. § 261.2(n), 45 C.F.R. § 261.10, 45 C.F.R. § 261.30, 45 C.F.R. § 261.31 and 45 C.F.R. § 261.32; Deficit Reduction Act 2005 (Pub. L. 109-171 §§ 7101 and 7102, February 8, 2006); 71 Federal Register 37454 (June 29, 2006); and Acts 2007, Chapter 31.* ***Administrative History:*** *Original rule filed December 2, 1996; effective February 15, 1997. Public necessity rule filed July 2, 2007; expired December 14, 2007. Amendment filed October 1, 2007; effective December 15, 2007.*

1240-01-49-.04 FAILURE TO COMPLY, CONCILIATION, GOOD CAUSE, AND SANCTIONS.

(1) The Department shall sanction ~~A~~a Families First/TANF ~~participant~~ recipient who is required to ~~meet the~~participate in a work and/or educational activities requirement~~,~~ and who fails~~,~~ without good cause, to participate in the required work and/or educational activities in his/her Personal Responsibility Plan~~program, will be sanctioned. When the non-exempt caretaker or other parent in a two parent unit in the Families First assistance group fails or refuses to comply with the work requirement in the caretaker's Personal Responsibility Plan, and he/she does not have good cause for failure to comply, the entire assistance group will be ineligible for cash assistance until compliance~~

(a) Failure to participate in required work and/or educational activities includes, but is not limited to, refusal to cooperate in the required activities, failure to make satisfactory progress in the required activities, failure to meet minimum attendance standards for the required activities, refusal to participate in the activities directed towards the recipient's employment goals, falsifying employment documentation, refusal to accept suitable employment, refusal to participate in Family Focused Solutions (FFS) if FFS hours are being used as job search/ job readiness hours, or voluntarily quitting employment without good cause.

1. Following non-compliance with required work and/or educational activities, a sanction shall make the entire assistance unit (AU) ineligible during the mandatory period of case closure when the Families First/TANF recipient to be sanctioned is the caretaker or either parent in a two (2) parent AU.

2. Following non-compliance with required work and/or educational activities, a sanction shall be applied to remove a Families First/TANF recipient from the AU when that individual is a minor parent who is also a dependent child in an AU.

(b) Failure to make satisfactory progress shall be determined by a Families First/TANF recipient's grades in educational activities, objective performance measurements of the recipient's employer, or other objective criteria for the measurement of a recipient's performance for each specific work and/or educational activity. The recipient is responsible for obtaining such written documentation as the Department determines may be necessary to verify satisfactory progress.

(c) Exempted Individuals Volunteering. If a Families First/TANF recipient chooses to volunteer to participate in the work and/or educational activities requirement, the recipient may retain exempt status if he/she choose not to comply, except those individuals who are caretakers, in a single-parent household, of a child at least sixteen (16) weeks of age.

(~~a~~2) Attendance Standards and Good Cause.

(a) All Families First/TANF work and/or educational activities requirements are mandatory. ~~Participants~~ Recipients ~~will~~ shall be sanctioned for any unexcused absences from Families First/TANF work and/or educational activities requirements. A ~~participant's~~ recipient's first unexcused absence is considered non-compliance and is grounds for sanction. ~~The DHS worker will determine whether an absence is excused or unexcused. The participant will have the opportunity to claim a good cause for an absence during the conciliation process. Excused absences are never grounds for sanction.~~

(b) Good Cause~~.~~ may excuse ~~The DHS worker is responsible for determining good cause any time she/he learns that~~ a Families First/TANF recipient's ~~participant has~~ failed~~d~~ure to comply with their work and/or educational activities requirement~~or refused to cooperate, failed to make satisfactory progress in the required work activities, failed to meet minimum attendance standards, refused to accept suitable employment, or quit employment~~. Good cause reasons include, but are not limited to, the following:

1. Recipient is determined through medical evidence to be physically or mentally unable to perform the work and/or educational activities requirement assigned~~.~~;

2. Recipient ~~L~~lacks ~~of~~ child care~~.~~;

3. Recipient has ~~A~~a serious household emergency~~.~~;

4. Recipient ~~M~~meets a work and/or educational activities requirement exemption criterion~~.~~;

5. Recipient's ~~H~~health or safety is at risk~~.~~;

6. ~~Reserved for future use.~~ Recipient lacks transportation;

7. ~~Reserved for future use.~~ Recipient voluntarily quits employment with good cause as set forth in Rule 1240-01-49-.06;

~~8. Reserved for future use.~~

~~9. Lack of transportation.~~

~~10. Reserved for future use.~~

~~11~~8. Recipient is under threat of ~~Is actively seeking shelter from~~ domestic violence ~~or abuse, such as someone residing in a domestic violence or abuse shelter, or fleeing from immediate harm.~~; or

~~12~~9. ~~There are~~ Any other factors which exists that ~~are clearly~~ is beyond the control of the ~~participant~~ Families First/TANF recipient.

(3) The Department shall impose sanctions on all Families First/TANF recipients who are determined non-compliant, without good cause, with the work and/or educational activities requirements included in his/her Personal Responsibility Plan as set forth below.

(a) Notification of non-compliant Families First/TANF recipients. The Department shall receive notification from the work and educational service providers for Families First/TANF recipients to determine whether the recipient is non-compliant with required work and/or educational activities.

(b) ADA Evaluation. Prior to issuing a notice of adverse action, the Department's eligibility counselor shall review the referred recipient's case to determine whether the recipient may have any disabilities, as defined by the Americans with Disabilities Act, or barriers to employment that prevent the recipient from complying with required work and/or educational activities.

(c) Conciliation and Adverse Action. ~~An attempt to resolve the non-compliance will be made by the Department during the ten (10) day adverse action period. The following conciliation guidelines will apply:~~

~~1. If the participant contacts the DHS worker during the adverse action period and provides verification of good cause, the case will be reopened.~~

~~2. If the participant contacts the DHS worker during the adverse action period, and does not have good cause, but wants to comply, he/she will be re-referred to a work activity and must comply for five (5) consecutive business days.~~

~~3. Following the five day compliance period, the case will be reopened.~~

~~4. If the participant does not comply or does not want to comply, the case will remain closed, but the participant may reapply at any time. Compliance for five (5) days will be required prior to subsequent approval.~~

~~5. If the participant contacts the DHS worker after the expiration of the ten (10) day adverse action period, he/she must reapply.~~

~~(d) Sanctions. Refusal or failure, without good cause, by a non-exempt caretaker (including either parent/caretaker in a two-parent AG) to engage in the required work activities that are included in the caretaker's Personal Responsibility Plan will result in the application of sanctions.~~

~~1. If the person to be sanctioned is the caretaker or in a two-parent AG, either parent, the entire assistance group is ineligible for the cash assistance payment.~~

~~2. An individual who is not the head of household, who has not reached eighteen (18) years of age, who has a child who is at least sixteen (16) weeks of age in~~

~~such person's care, and who has not successfully completed a high school education or its equivalent, will be removed from the Families First AG unless the individual participates in educational activities directed toward the attainment of a high school diploma or its equivalent.~~

~~(i) If the sanctioned individual in the previous paragraph (part 2 of this paragraph) is the only child in the AG, assistance may continue for the caretaker if the caretaker remains otherwise eligible.~~

~~3. An individual who is the head of his/her household, who has not reached twenty (20) years of age, who has a child who is at least sixteen (16) weeks of age in such person's care, and who has not successfully completed a high school education or its equivalent, will be subject to sanction for his/her entire AG unless the individual participates in:~~

~~(i) Educational activities directed toward the attainment of a high school diploma or its equivalent; or~~

~~(ii) Thirty (30) hours of countable work activities as described in 1240-1-49-.03.~~

1. Notice of Adverse Action. If the Department's eligibility counselor determines that a Families First/TANF recipient is non-compliant with assigned work and/or educational activities, the eligibility counselor shall close the recipient's Families First/TANF case and issue the non-compliant recipient a notice of adverse action. The notice of adverse action shall contain:

   (i) Notice to the Families First/TANF recipient that he/she must contact the Department's eligibility counselor within ten (10) calendar days of the date of the notice to provide verification of good cause for non-compliance with work and/or educational activities;

   (ii) The effective date of closure; and

   (iii) Notice of the Department's appeal procedures.

2. Conciliation/Adverse Action Period. The Families First/TANF recipient must contact the Department during the ten (10) calendar day conciliation/adverse action period to provide verification of good cause. If the recipient contacts the Department during the ten (10) calendar day conciliation/adverse action period and provides adequate verification of good cause the Department shall reverse the closure of the recipient's Families First/TANF case.

3. Sanction Period. If the non-compliant recipient fails to provide the Department adequate verification of good cause during the ten (10) calendar day conciliation/adverse action period, the recipient's case closure shall be effective on the date set forth in the notice of adverse action and a sanction shall be applied to the recipient's Families First/TANF case pursuant to paragraph (4) below.

(~~e~~4) Length of Sanction~~s~~. ~~If a Families First participant fails to comply with the work requirements without good cause, sanctions are applied~~ The mandatory sanction shall be imposed for the following time periods:

~~1. For non-compliance with the work requirement, the AG will be ineligible for Families First until the sanctioned person complies or becomes exempt.~~

~~2. Reserved for future use.~~

~~3. Reserved for future use.~~

~~4. When an individual agrees to comply during the 10-day adverse action period and completes the required compliance period without an unexcused absence, eligibility will begin the first of the month after the last month benefits were received.~~

~~5. When an individual agrees to comply anytime after the expiration of the 10-day adverse action period, a new application must be filed. If the required compliance period is completed within the 45-day processing period, eligibility will begin effective the date of application, provided all other conditions of eligibility are met. If the required compliance period is not completed due to the fault of the client within the 45-day processing period, the application will be denied.~~

~~6. Reserved for future use.~~

(a) First violation. The first violation shall result in the imposition of a one (1) month case closure period of ineligibility for cash assistance.

(b) Second violation. The second violation shall result in the imposition of a three (3) month case closure period of ineligibility for cash assistance.

(c) Third violation. The third violation shall result in the imposition of a six (6) month case closure period of ineligibility for cash assistance.

(d) Fourth or Subsequent Violation. The fourth or subsequent violation shall result in a twelve (12) month case closure period of ineligibility for cash assistance.

(e) The sanction shall begin with the next recurring month following the expiration of the adverse action period, unless the participant timely appeals within ten (10) days of the date of the conciliation/adverse action notice.

(5) Child Care. The Department shall not provide transitional child care to any Families First/TANF recipient whose case is closed due to noncompliance with the work and/or educational activities requirement.

(6) Early Re-entry during Case Closure. A Families First/TANF recipient whose case was closed due to noncompliance with the work and/or educational activities requirement may apply for early re-entry if he/she meets the following criteria:

(a) The early re-entry criteria during the mandatory sanction periods are:

1. The receipt of cash assistance would prevent removal of a child from the home by the Department of Children's Services;

2. The recipient has become disabled or incapacitated according to the Families First/TANF work activities exemption policy;

3. The recipient is under a threat of domestic violence;

4. The receipt of cash assistance would prevent the recipient's family or AU from becoming homeless; or

5. The recipient has assumed the responsibility of caring for an in-home disabled relative.

(b) Fourth or Subsequent Sanction Period. If a non-compliant recipient has been continuously employed for a period of three (3) months for at least thirty (30) hours per week, is still employed, and is able to verify the employment, then that recipient is eligible for early re-entry during a fourth or subsequent sanction period.

(7) Families First/TANF Eligibility after Sanction.

(a) Applications filed prior to the expiration of the mandatory sanction period shall be denied due to ineligibility for benefits during the sanction period unless the applicant is able to show early re-entry criteria, as set forth in paragraph (6) above.

(b) Participation in Families First/TANF after a sanction due to non-compliance with the work and/or educational activities requirement may resume when:

1. The mandatory sanction period has expired;

2. The former recipient timely files a new Families First/TANF application as required by subparagraph (a) and meets all other eligibility criteria; and

3. The former Families First/TANF recipient complies with required work and/or educational activities for ten (10) consecutive business days after re-application.

(c) The Department shall consider a former recipient's Families First/TANF application pending during the mandatory ten (10) consecutive business days compliance period and the recipient shall receive childcare, as needed.

(8) Appeals. Any individual who receives notification of a case closure as a result of non-compliance with the work and/or educational activities requirement may timely appeal according to the appeal procedures outlined in Chapter 1240-05 and Title 4, Chapter 5, Part 3 of the Uniform Administrative Procedures Act.

(a) To continue receiving benefits, without the imposition of a sanction, the Families First/TANF recipient must request a hearing during the ten (10) day period following the notice of adverse action. If the recipient appeals during the adverse action period, no sanctions shall be imposed until a final decision is entered.

(b) Overpayments. If a final decision upholding the sanction decision is entered, the cash assistance received during the sanction period pending the fair hearing will be considered an overpayment and DHS may collect the overpayment in accordance with the procedures set forth in Chapter 1240-01-52.

Authority: *T.C.A. §§4-5-201 et seq., 4-5-202, 4-5-209, 71-1-105, 71-1-105(12), 71-3-151 through 71-3-165, 71-3-154(a), (d)(1)(B) and (C), (g) and (h), 71-3-157(c)(1) and (f), and 71-3-158(d)(2)(D); 42 U.S.C. §§ 601 et seq. , 42 U.S.C. § 602, 42 U.S.C. § 607(c)(2)(C), 42 U.S.C. § 607(c), (d)(1) through (12) and (e), 42 U.S.C. § 608, 42 U.S.C. § 608(a)(4) and 42 U.S.C. § 609; 42 U.S.C.A. § 1315; Federal Waiver of July 26, 1996; Acts of 1996, Chapter 950, and 45 CFR 250.34 through 250.36, §1115 of the Social Security Act, 45 C.F.R. § 260.30, 45 C.F.R. § 260.31, 45 C.F.R. § 261.2(b) through (m), 45 C.F.R. § 261.2(n), 45 C.F.R. § 261.10, 45 C.F.R. § 261.30, 45 C.F.R. § 261.31 and 45 C.F.R. § 261.32; Deficit Reduction Act 2005 (Pub. L. 109-171 §§ 7101 and 7102, February 8, 2006); 71 Federal Register 37454 (June 29, 2006) and Acts 2007, Chapter 31.* ***Administrative History:*** *Original rule filed December 2, 1996; effective February 15, 1997. Amendment filed December 13, 2002; effective February 26, 2003.*

Amendment filed December 19, 2003; effective March 3, 2004. Public necessity rule filed July 2, 2007; expired December 14, 2007. Amendment filed October 1, 2007; effective December 15, 2007.

1240-01-49-.05 APPEALS AND HEARINGS. The Department of Human Services is responsible for hearing appeals on any disputed matter relating to Families First eligibility and amount of grant and any Families First work requirement dispute including but not limited to a referral to Families First service providers, effective participation in Families First work requirements, whether good cause for failure to participate exists, and imposition of sanctions. These appeals will be conducted according to appeal procedures set forth in Chapter 1240-5 and Title 4, Chapter 5, Part 3 of the Administrative Procedures Act and which shall not be more narrow than those in existence on August 31, 1996.

Authority: *T.C.A. §§4-5-201 et seq., 4-5-202, 4-5-209, 4-5-301 et seq., 71-1-105, 71-3-152, 71-3-153 and 71-3-154; 71-3-158(d)(2)(D); 42 U.S.C. §§ 601 et seq. , 42 U.S.C. § 602, 42 U.S.C. § 607(c)(2)(C), 42 U.S.C. § 607(c), (d)(1) through (12) and (e), 42 U.S.C. § 608, 42 U.S.C. § 608(a)(4) and 42 U.S.C. § 609; Public Acts of 1996, Chapter 950, Title 4, Chapter 5, Part 3, and 45 CFR 205.10 and 250.36, 45 C.F.R. 205.10, 45 C.F.R. § 260.30, 45 C.F.R. § 260.31, 45 C.F.R. § 261.2(b) through (m), 45 C.F.R. § 261.2(n), 45 C.F.R. § 261.10, 45 C.F.R. § 261.30, 45 C.F.R. § 261.31 and 45 C.F.R. § 261.32; Deficit Reduction Act 2005 (Pub. L. 109-171 §§ 7101 and 7102, February 8, 2006); 71 Federal Register 37454 (June 29, 2006) and Acts 2007, Chapter 31.* ***Administrative History:*** *Original rule filed December 2, 1996; effective February 15, 1997. Public necessity rule filed July 2, 2007; expired December 14, 2007. Amendment filed October 1, 2007; effective December 15, 2007.*

1240-01-49-.06 VOLUNTARY QUIT.

(1) ~~When an applicant caretaker, including either parent in a two-parent AG, voluntarily quits a job without good cause within three months prior to the month of application, during the month of application, or during the application processing period, the application will be denied until the individual completes a five (5) day compliance with the thirty (30) hour work requirement.~~ Any member of an AU with a work and/or educational activities requirement, including either parent in a two-parent AU, shall not voluntarily quit employment, without good cause, within the two (2) months prior to the month of application, during the month of application, or during the application processing period for Families First/TANF cash assistance.

(a) If any member of an AU with a work activities requirement voluntarily quits employment as set forth in this section, the application will be pended.

(b) An AU is eligible for Families First/TANF cash assistance after a voluntary quit prior to or during the application processing period when:

1. The Families First/TANF applicant meets all eligibility criteria; and

2. The Families First/TANF applicant complies with required work and/or educational activities for ten (10) consecutive business days after application.

(2) ~~When a recipient caretaker, including either parent in a two-parent group,~~ If, during receipt of Families First/TANF cash assistance, any member of an AU with a work activities requirement, including either parent in a two-parent AU, voluntarily quits ~~a job~~ employment without good cause, ~~the assistance group will be terminated and will remain ineligible until the individual completes a five (5) day compliance with the thirty (30) hour work requirement~~ the individual and/or AU shall receive a sanction as set forth in Rule 1240-01-49-.04.

(3) Good cause to avoid a voluntary quit sanction includes, but is not limited to:

(a) ~~c~~Complications of pregnancy which render the mother incapacitated, as certified by a physician;

(b) ~~t~~The individual was required to return to work prior to the end of ~~the~~ sixteen (16) weeks of leave following the birth of a child~~, as provided for in the Tennessee Family Medical Leave Act~~;

(c) ~~e~~Existing child care became unavailable and substitute child care could not be arranged, for reasons beyond the caretaker's control;

(d) ~~t~~Transportation was unavailable and the ~~caretaker~~ employee submits evidence that substitute transportation could not be arranged;

(e) ~~T~~the ~~caretaker~~ employee was needed in the home to care for an ill or disabled family member;

(f) ~~t~~The employer refused to allow time off for the ~~caretaker~~ employee to attend to a temporary family emergency;

(g) ~~t~~The job paid less than minimum wage based on the number of hours actually worked;

(h) ~~t~~There was discrimination by the employer based on age, race, sex, color, handicaps, religious beliefs, national origins, or political beliefs;

(i) ~~w~~Work demands or conditions rendered continued employment unreasonable;

(j) ~~t~~The ~~caretaker~~ employee accepted other employment with at least comparable gross wages;~~ or~~

(k) ~~t~~The employee left a job in connection with patterns of employment in which workers frequently move from one employer to another;~~ or~~

(l) ~~Reserved for future use.~~The employer failed to provide reasonable accommodations for the employee pursuant to the Americans with Disabilities Act; or

(m) The employer violated any federal, state, or local employment law in the employer's treatment of the employee.

~~(4) The assistance group may reapply before compliance, but eligibility will not be approved until compliance is met or the individual meets exemption criteria. An individual who has been sanctioned for quitting a job as head of one assistance group will carry the sanction with him/her to a new assistance group if he/she joins the new group as a parent/caretaker.~~

~~(5) Reserved for future use.~~

Authority: *T.C.A. §§4-5-201 et seq., 4-5-202, 4-5-209, 71-1-105, 71-1-105(12), 71-3-151 through 71-3-165, 71-3-154(a), (d), (g) and(h), 71-3-157(c)(1) and (f), and 71-3-158(d)(2)(D), 42 U.S.C. §§ 601 et seq., 42 U.S.C. § 602, 42 U.S.C. § 607(c), (d) and (e), 42 U.S.C. § 608, 42 U.S.C. § 608(b)(3), 42 U.S.C. § 609, 42 U.S.C.A. § 1315; Federal Waiver of July 26, 1996, 42 USC §1315(a), Acts of 1996, Chapter 950, and §1115 of the Social Security Act, 45 C.F.R. § 261.2, 45 C.F.R. § 261.10, 45 C.F.R. § 261.14, 45 C.F.R. § 261.30, 45 C.F.R. § 261.31, and 45 C.F.R. § 261.32; Deficit Reduction Act 2005 (Pub. L. 109-171 §§ 7101 and 7102, February 8, 2006); 71 Federal Register 37454 (June 29, 2006); and Acts 2007, Chapter 31.* ***Administrative History:*** *Original rule filed December 2, 1996; effective February 15, 1997. Amendment filed July 5, 2002; effective September 18, 2002. Amendment filed December 13, 2002; effective February 26, 2003. Public necessity rule filed July 2, 2007; expired December 14, 2007. Amendment filed October 1, 2007; effective December 15, 2007.*

"REDLINE VERSION-CHAPTERS 1240-01-49 AND 1240-01-54 DATED MARCH 17, 2014"

1240-01-49-.07 STRIKERS.

(1) Definitions.

(a) The term "strike" includes any strike or other concerted stoppage of work by employees (including a stoppage by reason of expiration of a collective bargaining agreement) and any concerted shutdown or other concerted interruption of operation by employees.

(b) The term "participating in a strike" means an actual refusal in concert with others to provide services to one's employers.

(2) Eligibility Factors.

(a) If a parent with whom the children live is participating in a strike, the entire assistance group is ineligible for as long as the parent is on strike. The parent does not have to be a member of the assistance group to cause ineligibility.

(b) If an assistance group member other than a parent is participating in a strike, that individual is ineligible for assistance as long as she/he is on strike.

(c) If a payment of Families First benefits has already been made for any month(s) in which a parent or other assistance group member participated in a strike as of the last day of the month, the payment (or the individual's share) for the entire month constitutes an overpayment subject to recovery.

Authority: *T.C.A. §§4-5-201 et seq., 71-1-105, Public Acts of 1996, Chapter 950, and 45 CFR 233.106.*
Administrative History: *Original rule filed December 2, 1996; effective February 15, 1997.*

1240-01-49-.08 ~~RESERVED FOR FUTURE USE~~DEFINITIONS.

For purposes of this Chapter:

(1) "Adverse Action Notice" is a computer generated notice sent to a Families First/TANF recipient when a negative action is taken on a Families First/TANF case.

(2) "Assistance Unit (AU)" means the "aid group (AG)" or group of people applying for or receiving Families First/TANF cash assistance benefits.

(3) "Caretaker" is a relative within a specified degree of relationship to the child who:

(a) provides a home for the child; and

(b) exercises primary responsibility for care and control of child.

(4) "Child Care" means the provision of supervision and protection, and at a minimum, meeting the basic needs of a child or children for less than twenty-four (24) hours a day. Child care is provided when necessary for the participant to take part in work or training activities while the AU is receiving Families First/TANF cash assistance.

(5) "Child Only caretaker" is a caretaker who is either a non-parental relative who is not included in the AU or a caretaker receiving SSI benefits.

(6) "Conciliation" means a ten (10) calendar day period of time given to a Families First/TANF recipient to establish good cause for failure to comply with their work activities requirements

following the issuance of a notice of adverse action, unless the tenth (10th) day falls on a weekend or holiday.

(7) "Department" means the Department of Human Services.

(8) "Employee" means the Families First/TANF recipient and/or caretaker, who works in the service of another person, private entity, or governmental entity.

(9) "Employment" means the relationship between an employee and his/her employer consisting of the employee's work responsibilities for the employer.

(10) "Families First" refers to the temporary public assistance program provided under Temporary Assistance for Needy Families ("TANF"), administered by the Department pursuant to Title IV-A of the Social Security Act and title 71, chapter 5, part 3 of the Tennessee Code Annotated.

(11) "Family Focused Solutions ("FFS")" refers to a Families First/TANF support service whose purpose is to provide supportive assistance to Families First/TANF recipients who may have barriers to employment.

(12) "Incapacity" is deemed to exist when one parent has a physical or mental defect, illness, or impairment. The incapacity shall be supported by competent medical testimony and must be of such a debilitating nature as to reduce substantially, or eliminate the parent's ability to support or care for the otherwise eligible child and be expected to last for a period of at least thirty (30) days. Incapacity may be a reason for deprivation or may be a reason for a temporary exemption from a work activities requirement.

(13) "Sanction" means the period of time during which a Families First/TANF case is closed due to lack of adequate participation in required work and/or educational activities.

(14) "Support Services" means the transportation, optical, dental, and other services which are provided by the Families First/TANF work activity contractor when necessary for participation in work and/or educational activities.

(15) "Work activities" means the work and/or educational activities performed in return for cash assistance benefits that provide a Families First/TANF recipient with an opportunity to acquire the general skills, training, knowledge, and work habits necessary to obtain employment.

Authority: *T.C.A. §§4-5-201 et seq., 4-5-202, 4-5-209, 71-1-105, 71-1-105(12), 71-3-151 through 71-3-165, 71-3-154(d)(1)(B) and (C), 71-3-155; 71-3-157(c)(1), 71-3-158(d)(2)(D); 42 U.S.C. §§ 601 et seq., 42 U.S.C.A. § 1315; Federal Waiver of July 26, 1996; Deficit Reduction Act 2005 (Pub. L. 109-171 §§ 7101 and 7102, February 8, 2006); 71 Federal Register 37454 (June 29, 2006); and Acts 2007, Chapter 31.* ***Administrative History:*** *Original rule filed December 13, 2002; effective February 26, 2003. Public necessity rule filed July 2, 2007; expired December 14, 2007. Amendment filed October 1, 2007; effective December 15, 2007.*

1240-01-49-.09 DIVERSION PROGRAM FOR FAMILIES WITH A ONE-TIME FINANCIAL NEED.

(1) AGs who are eligible for Families First may receive the option of a one-time lump sum payment, if appropriate for the AG's needs and situation. The one-time lump sum payment would be received in lieu of ongoing, recurring Families First benefits. The one-time lump sum payment is available to AGs:

(a) Who meet residency and benefit history requirements, as defined by policy;

(b) Who do not have major barriers to employment as defined by policy;

(c) Whose caretaker is job ready, as defined by policy; and

(d) Who need only a one-time financial assistance payment to prevent the need for ongoing Families First benefits.

(2) Acceptance of the diversion one-time payment will make the AG ineligible for Families First for one year.

(3) Employed diversion AGs may receive up to three (3) months of Families First child care.

(4) Early Return. An AG who received a diversion lump-sum payment may be eligible to return to Families First before the one year period of ineligibility is finished if:

(a) The caretaker becomes disabled or incapacitated.

(b) Receipt of Families First would prevent a child from being removed from the home by DCS.

(c) Receipt of Families First would prevent the Assistance Unit/AG from becoming homeless (as defined by policy).

(d) The caretaker begins caring for an in-home disabled relative who is not in school full-time.

(e) There is an immediate threat of domestic violence.

Authority: *T.C.A. §§ 4-5-201 et seq., 4-5-202, 4-5-209, 71-1-105, 71-3-152, 71-3-153 and 71-3-154; 71-3-158(d)(2)(D); 42 U.S.C. §§ 601 et seq., 45 C.F.R. § 233.90; Deficit Reduction Act 2005 (Pub. L. 109-171 §§ 7101 and 7102, February 8, 2006); 71 Federal Register 37454 (June 29, 2006); and Acts 2007, Chapter 31.* ***Administrative History:*** *Original public necessity rule filed July 2, 2007; expired December 14, 2007. Amendment filed October 1, 2007; effective December 15, 2007.*

"REDLINE VERSION-CHAPTERS 1240-01-49 AND 1240-01-54 DATED MARCH 17, 2014"

RULES
OF
TENNESSEE DEPARTMENT OF HUMAN SERVICES
FAMILY ASSISTANCE DIVISION

CHAPTER 1240-01-54
CHILD CARE
FAMILIES FIRST PROGRAM

TABLE OF CONTENTS

1240-01-54-.01 Families First Child Care
1240-01-54-.02 Transitional Child Care Coverage

1240-01-54-.01 FAMILIES FIRST CHILD CARE. If child care is required to enable a Families First recipient to accept or hold employment or to engage in employment-related activities, the Department can provide for the cost of child care in either of two ways. The recipient may choose the manner in which child care will be provided, as described in (1) and (2) below, whichever is most advantageous to the AG.

(1) Deduct the cost of child care from earnings in accordance with 1240-1-50-.16(1)(c)5.(ii); or

(2) Direct payment to a child care provider for the cost of care (up to established maxima).

(3) When Families First eligibility is dependent on the deduction of child care from earnings, this will be the method used to provide child care for that individual.

(4) Families First child care cannot be used for persons not included in the AG (e.g., a grandmother who is the caretaker of children in the AG, but is not herself included in the AG.)

Authority: *T.C.A. §§4-5-201 et seq., 71-1-105, Public Acts of 1996, Chapter 950, 45 CFR 255.2 and 255.3, and §1115 of the Social Security Act.* ***Administrative History:*** *Original rule filed December 2, 1996; effective February 15, 1997.*

1240-01-54-.02 TRANSITIONAL CHILD CARE COVERAGE.

(1) Transitional Child Care (TCC) ~~will~~ shall be provided following the effective date of the Families First/TANF case closure for a ~~total~~ minimum of ~~eighteen~~ a twelve (12~~8~~) month~~s~~ ~~after period~~ of time, beginning with the month following the effective date of the Families First/TANF ~~case~~ closure~~.~~ for any reason except for closures resulting from circumstances described in paragraphs (3) or (4). If the recipient does not request TCC at case closure and then later requests TCC, then TCC will only be provided ~~when~~: for the remaining months in the twelve (12) month period of time that followed case closure.

(2) TCC for a minimum of twelve (12) months shall be provided when:

(a) ~~t~~The caretaker has a minimum of ~~forty~~ thirty (43~~0~~) hours per week in allowable activities, as defined by policy; ~~and~~

(b) ~~t~~The individual's gross wages equal the current federal minimum wage when averaged over the number of hours worked per week; and

(c) ~~t~~Total family income is below the level established in State ~~t~~Transitional ~~c~~Child ~~c~~Care policies.

~~1.~~ This income level will be set at sixty ~~(60)~~ percent (60%) of the state median income or higher.

(3) An Assistance Unit (AU) is ineligible for TCC beginning with the month after the Families First/TANF AU becomes ineligible when the case is closed due to:

(a) ~~TCC will be provided to such families regardless of the reason for case closure, except that TCC will not be provided for cases closed due to n~~Non-cooperation with child support~~.~~ establishment and enforcement requirements; or ~~In addition, TCC will be provided even when an otherwise eligible family has not received Families First for three out of the prior six months.~~

(b) Non-compliance with work activity requirements.

(4) Eligibility for Transitional Child Care (TCC) ends and does not begin again until re-application for Families First, when:

(a) The AU moves out of state;

(b) The caretaker fails to pay required parent co-pay fees or to make acceptable payment arrangements;

(c) There is no eligible adult;

(d) The only child in the assistance unit leaves the home;

(e) The case has no minor parent (Eligible Child) in the AU who has signed a Personal Responsibility Plan;

(f) The case that was approved for interim benefits is later found to have been ineligible for Families First;

(g) The caretaker fails to cooperate with child support establishment and enforcement requirements as determined by the Department;

(h) The case is closed due to non-compliance with work activity requirements; or

(i) The established period of TCC eligibility ends.

Authority: *T.C.A. §§4-5-201 et seq., 71-1-105, 71-3-154(b)(1), 71-3-158, and 42 USCA §1315(a).* ***Administrative History:*** *Original rule filed December 2, 1996; effective February 15, 1997. Amendment filed July 5, 2002; effective September 18, 2002. Amendment filed November 24, 2003; effective February 7, 2004.*

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Department of Human Services (board/commission/ other authority) on 03/17/2014, 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: 12/16/13

Rulemaking Hearing(s) Conducted on: (add more dates). 02/04/13; 02/05/13; 02/06/13; 02/07/13; 02/10/13; 02/11/13; 02/13/13; 02/14/13

Date: March 17, 2014

Signature: Madeline Brough

Name of Officer: Madeline Brough

Title of Officer: Assistant General Counsel
Tennessee Department of Human Services

DEBRA E. BATTS
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY
My Commission Expires May 20, 2014

Subscribed and sworn to before me on: March 17, 2014

Notary Public Signature: Debra E. Batts

My commission expires on: May 20, 2014

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

Robert E. Cooper, Jr.
Attorney General and Reporter

3-24-14
Date

Department of State Use Only

Filed with the Department of State on: 4/2/14

Effective on: 7/1/14

Tre Hargett
Secretary of State

RECEIVED
2014 APR -2 AM 8:26
OFFICE OF SECRETARY OF STATE

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Human Services
DIVISION:	Family Assistance
SUBJECT:	Families First Eligibility – Drug Screening and Testing
STATUTORY AUTHORITY:	Tennessee Code Annotated, Title 71, Chapter 3, Part 12 and 21 U.S.C. § 862b
EFFECTIVE DATES:	July 1, 2014 through June 30, 2015
FISCAL IMPACT:	The rule will have a fiscal impact on the department; however, the costs of the rule will be absorbed by the department using existing resources through TANF.
STAFF RULE ABSTRACT:	This rule requires new applicants to the Families First/TANF program to complete a drug screening questionnaire to determine whether there is reasonable cause to believe the applicant engages in illegal drug use. This rule also provides that if the screening indicates that the applicant engages in illegal drug use, then the applicant must undergo a drug test. Applicants who test positive for drugs are referred for substance abuse evaluation to determine whether the applicant requires drug abuse treatment or support. If the applicant requires treatment, then the applicant must submit a drug treatment plan to the department. If the applicant undergoes drug treatment, then the applicant will receive benefits for the duration of the drug treatment period, not to exceed six (6) months. However, if the applicant fails to participate or complete drug treatment, then the applicant is ineligible for cash assistance benefits for six (6) months.

After the drug treatment period, the applicant must submit to another drug test. If the applicant completes the drug treatment plan and tests positive for drugs after the drug treatment period, then the applicant is ineligible for cash assistance for six (6) months. After the six (6) month disqualification period, the applicant may reapply for benefits, but must submit to an additional drug test to receive such benefits. If the applicant tests positive for drugs in the subsequent test, then the applicant is ineligible to receive benefits for one (1) year.

A determination that an applicant is ineligible for benefits due to drug use will not disqualify any otherwise qualified dependents of the applicant from eligibility for benefits.

This rule prohibits the department from disclosing any information relative to the drug testing program to law enforcement, in civil or criminal legal proceedings, or for any other public or private use. However, the information obtained as a part of the drug testing program may be used in proceedings concerning the protection of children, in claims arising from the administration of the Families First/TANF program, or in reporting child abuse, child sexual abuse, or child neglect.

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.

Comment One:
Perhaps there is a drafting error in the proposed rules as the proposed rules refer to "AU"/"Assistance Unit" instead of "AG"/"aid group," which is used in the current regulations. See 1240-01-02-.01(1), which states the abbreviation for "aid group" is "AG."

Response and reason for adoption or rejection of suggested changes:
The Department's regulations at 1240-01-02-.01 refer to "Assistance Group" as it relates to the Food Stamp (SNAP) program. In 1240-01-02-.03, however, the Department defines the "Assistance Unit" for TANF, formerly AFDC, as "the group of individuals for whom assistance is sought." For this reason, the use of "assistance unit" "AU" is appropriate and the Department has not deleted the use of "assistance unit" or "AU" in the proposed regulations. The Department has included "Assistance Unit (AU)" as a definition in this Chapter.

Comment Two:
A provision should be added to section 1240-01-57-.03 which provides that "Drug testing shall be administered in conformity with requirements of the Drug-Free Workplace Program Act, T.C.A. § 50-9-101 et seq." This provision is needed to ensure that procedures and methods followed in the drug testing will produce valid and reliable results. A similar provision is found at T.C.A. § 50-7-303(a)(b) concerning disqualification from unemployment benefits.

Response and reason for adoption or rejection of suggested changes:
Changes have been made to the Rule as suggested and a provision has been added to 1240-01-57-.06.

Comment Three:
1240-01-57-.03(2)(b) states that in two parent households, only the new Families First/TANF applicant shall be required to submit to the drug screening and testing requirements of the chapter. This provision is inconsistent with the state statute which provides at TCA 71-3-1-1202(b)(2) that in a two parent household, only one parent shall be required to undergo a drug test.

Response and reason for adoption or rejection of suggested changes:
The Department disagrees that the Rule is inconsistent with the Statute because the Statute specifically states that each applicant will submit to the suspicion based drug testing program as well as stating that only one (1) parent in a two (2) parent household would be screened and tested. Reconciling these two pieces of the statute, the intent of the Rule is to screen only one (1) parent in a two (2) parent household, the parent acting as the new applicant. The Rule provided specificity regarding which parent, in a two-parent household, would be tested. The Department, however, has added additional language to 1240-01-57-.03(1) to further clarify which parent in a two-parent household will be screened and tested pursuant to this Chapter.

Comment Four:
T.C.A. §.71-3-1202(h)(1) states "that the department shall establish a referral process for any applicant who tests positive to be referred to an appropriate treatment resource for drug abuse treatment or other resource by the department." DHS proposed Regulation 1240-01-57-.07(1) requires the Department to refer the Families First recipient for substance abuse evaluation to determine the appropriate treatment plan and/or recovery support group or resource..." The proposed DHS regulations state further at (1)(b) that "after submitting to a substance abuse evaluation...the recipient must take action to begin the drug treatment/recovery support plan." The proposed DHS regulations do not require "the department to refer the recipient to an appropriate treatment resource for drug abuse treatment or other resource by the department," as T.C.A. §71-3-1202(h)(1) requires. T.C.A. § 71-3-1202(h)(1) requires that the department shall establish a referral process so that the client is "referred to an appropriate treatment resource." The proposed DHS regulations also require the recipient to provide verification of enrollment, attendance, or wait list in an "approved" program. Nowhere on the department's website, manual, or in the proposed regulations is there a list of "approved" programs. Often SNAP recipients are

unable to locate any DHS "approved" list of providers or any "approved" programs for substance abuse treatment. The DHS case workers also were unable to provide a copy of the "approved" providers of programs to the clients.

Response and reason for adoption or rejection of suggested changes:
To clarify, it is the Department's intent to first refer the recipient who has had a positive drug test to an appropriate entity for a substance abuse evaluation. The substance abuse evaluation results will determine the type of treatment that each individual requires. The Department will work with the agency providing the substance abuse evaluation to refer the Families First/TANF recipient to an appropriate entity for treatment and/or support. The Department has added clarifying language to the Rule to establish that the Department will provide the individual both a referral for evaluation and a referral for treatment. In addition, a list of approved treatment facilities will be provided to the Families First/TANF recipient.

Comment Five:
T.C.A. § 71-3-1204(a) states all information and drug tests results "may not be used or received in evidence," obtained in discovery or "disclosed in any public or private proceedings...." The statute does not limit the use of information and drug test results in criminal proceedings. Proposed rule 1240-01-57-.08 should include the phrase "may not be used or received in evidence" in civil cases.

Response and reason for adoption or rejection of suggested changes:
The Department has amended Rule 1240-01-57-.08(c) to read: "For use or received as evidence in any civil or criminal proceedings."

Comment Six:
Clarify who pays for the confirmation test. In 1240-01-57.06(1), the Rule states that the cost for drug test is paid for by the Department, but does not include the same language regarding payment for confirmation tests.

Response and reason for adoption or rejection of suggested changes:
The Department has added additional language in the Rule at 1240-01-57-.06(1), as suggested, to clarify that the confirmation test is also provided by the Department at no charge to the Families First/TANF recipient.

Comment Seven:
In 1240-01-57-.07(3), what is the reasoning behind the requirement that only children under sixteen (16) years of age will be assigned a protective payee?

Response and reason for adoption or rejection of suggested changes:
The Department has promulgated this Rule based upon the requirement in the statute, T.C.A. § 71-3-1202(h)(5), "[t]hat if a caretaker relative is deemed ineligible for TANF benefits as a result of failing a drug test, the dependent child's eligibility for TANF benefits is not affected, and an appropriate protective payee shall be designated to receive TANF benefits on behalf of the child who is under sixteen (16) years of age."

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.

For purposes of the Regulatory Flexibility Act, the Department of Human Services certifies that these rulemaking hearing rules substantially codify existing state law, compiled at T.C.A. § 71-3-1201 et. seq., such that, pursuant to Section 6 of the Regulatory Flexibility Act, the Regulatory Flexibility Act's provisions do not apply to these rules. In addition, these rulemaking hearing rules do not appear to affect small businesses as defined in the Act because these rules are related to the determination of eligibility and provision of benefits to individuals and households who file an application for Families First/TANF benefits.

Impact on Local Governments

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

These rules have no projected financial impact on local governments.

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

For Department of State Use Only

Sequence Number: 04-02-14
Rule ID(s): 5682
File Date: 4/2/14
Effective Date: 7/1/14

Rulemaking Hearing Rule(s) Filing Form

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

Agency/Board/Commission:	Tennessee Department of Human Services
Division:	Family Assistance Division
Contact Person:	Madeline Brough
Address:	Office of General Counsel Citizens Plaza Building, 15th Floor 400 Deaderick Street Nashville, Tennessee 37243-1403
Zip:	615-313-4731
Phone:	Madeline.Brough@tn.gov
Email:	Family Assistance Division

Revision Type (check all that apply):

___ Amendment
✓ New
___ Repeal

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

Chapter Number	**Chapter Title**
1240-01-57	Families First Eligibility – Drug Screening and Testing
Rule Number	**Rule Title**
1240-01-57-.01	Purpose
1240-01-57-.02	Definitions
1240-01-57-.03	Program of Suspicion-Based Drug Testing
1240-01-57-.04	Drug Screening
1240-01-57-.05	Reasonable Cause
1240-01-57-.06	Drug Test
1240-01-57-.07	Referral for Substance Abuse Evaluation, Treatment, Ineligibility for Benefits, Appeals
1240-01-57-.08	Confidentiality

Chapter 1240-01-57
Families First Eligibility – Drug Screening and Testing

New Rules

Table of Contents

1240-01-57-.01 Purpose
1240-01-57-.02 Definitions
1240-01-57-.03 Program of Suspicion-Based Drug Testing
1240-01-57-.04 Drug Screening
1240-01-57-.05 Reasonable Cause
1240-01-57-.06 Drug Test
1240-01-57-.07 Referral for Substance Abuse Evaluation, Treatment, Ineligibility for Benefits, Appeals
1240-01-57-.08 Confidentiality

1240-01-57-.01 Purpose

(1) The purpose of this Chapter is to establish a process to screen for, and, if appropriate, test for the use of drugs, as defined in this Chapter, by applicants for Families First/TANF benefits, and to refer persons found to be using such drugs for a substance abuse evaluation and any necessary treatment; and

(2) Provide for the appropriate use of Families First/TANF benefits for the children of recipients.

Authority: T.C.A. §§ 4-5-201 et seq., 71-3-1201 et seq., 21 U.S.C. § 862b.

1240-01-57-.02 Definitions

For the purposes of this Chapter:

(1) "Assistance Unit (AU)" means the "aid group (AG)" or group of people applying for or receiving Families First/TANF cash assistance benefits.

(2) "Applicant" is an individual who makes application for Families First/TANF cash assistance.

(3) "Caretaker relative" means the father, mother, grandfather or grandmother of any degree, brother or sister of the whole or half-blood, stepfather, stepmother, stepbrother, stepsister, aunt or uncle of any degree, first cousin, nephew or niece, the relatives by adoption within the previously named classes of persons, and the biological relatives within the previous degrees of relationship, and the legal spouses of persons within the previously named classes of persons, even if the marriage has been terminated by death or divorce, with whom a child is living.

(4) "Chain of custody" means the methodology of tracking specified materials or substances for the purpose of maintaining control and accountability from initial collection to final disposition for all such materials or substances, and providing for accountability at each stage in handling, testing and storing specimens and reporting test results.

(5) "Child" or "children" means:

(a) A person or persons under eighteen (18) years of age; or

(b) A person who has not attained nineteen (19) years of age and who is a full-time student in a secondary school or the equivalent and who is expected to graduate by the person's nineteenth birthday.

(6) "Confirmation test," "confirmed test" or "confirmed drug test" means a second analytical procedure used to identify the presence of a specific drug as defined in this Chapter, or its metabolite, in a

specimen, which test must be different in scientific principle from that of the initial test procedure and must be capable of providing requisite specificity, sensitivity and quantitative accuracy.

(7) "Department" means the Department of Human Services.

(8) "Drug" means marijuana, cocaine, methamphetamine, amphetamine, and opiates, such as, but not limited to, morphine.

(9) "Drug screening" consists of a questionnaire regarding the Families First applicant's current and prior use of drugs as defined in paragraph (8).

(10) "Drug test" or "test" means any chemical, biological or physical instrumental analysis administered by an authorized drug testing agency, using the applicant's urine, for the purpose of determining the presence or absence of a drug or its metabolites pursuant to this Chapter.

(11) "Drug testing agency" means an entity that has the required credentials as established by regulatory or certification authorities to administer tests using a person's urine, blood or DNA that will detect and validate the presence of drugs in such person's body.

(12) "Drug treatment period" is the length of the treatment plan, not to exceed six (6) months. If the treatment plan requires more than six (6) months in a continuum of care, the Families First applicant may take a drug test at the end of six (6) months of treatment to determine the applicant's continued eligibility for Families First benefits.

(13) "Drug treatment program" means a service provider that provides confidential, timely and expert identification, assessment and resolution of drug or alcohol abuse problems affecting persons, including residential/in-patient drug treatment and outpatient drug treatment.

(14) "Families First" refers to the temporary public assistance program provided under Temporary Assistance for Needy Families (TANF), pursuant to Title IV-A of the Social Security Act.

(15) "Five (5) panel test" means a drug test for marijuana, cocaine, methamphetamine, amphetamine, and opiates that uses a specimen of the applicant's urine.

(16) "Initial drug test" means a procedure that qualifies as a "screening test" or "initial test."

(17) "Legal guardian" means a person or entity that has the legal authority to provide for the care, supervision or control of a minor child as established by law or court order.

(18) "Medical review officer (MRO)" means a licensed physician who has knowledge of substance abuse disorders, laboratory testing procedures and chain of custody collection procedures; who verifies positive, confirmed test results; and who has the necessary medical training to interpret and evaluate a Families First/TANF recipient's positive test result in relation to the recipient's medical history and current, valid prescription(s), or any other relevant biomedical information.

(19) "Minor" is a person less than eighteen (18) years of age. A minor is considered a "dependent child" if he/she is living with a specified relative and is otherwise eligible.

(20) "New applicant" is an applicant who has not received prior cash assistance under the Families First/TANF program or has not received cash assistance under the Families First/TANF program for at least one (1) month due to case closure, for any reason, prior to the application date.

(21) "New application" means that the applicant has not received prior cash assistance under the Families First/TANF program or has not received cash assistance under the Families First/TANF program for at least one (1) month due to case closure, for any reason, prior to the application date.

(22) "Protective payee" means a caretaker relative or a legal guardian of the child; provided, however, that the person defined as a caretaker relative or guardian who is the applicant for Families First/TANF

g:\legal\dhsrules\13-06FFDrugTesting\notice\13-06FFDrugTestingfinaltextR.doc March 12, 2014

benefits who tests positive for the use of a drug as defined in this Chapter shall be excluded from this definition.

(23) "Recovery support" means a group or resource for drug abuse treatment and recovery, which includes self-help and support groups, such as, but not limited to, Narcotics Anonymous.

(24) "Specimen" means tissue, fluid or a product of the human body capable of revealing the presence of drugs or their metabolites.

(25) "Treatment plan" is a document used by an approved drug treatment agency that specifies an applicant's drug treatment program, activities, and continuum of care for a defined time period, subject to continuing assessments. The drug treatment plan may include residential treatment, out-patient treatment, or recovery support groups, or resources for assistance with the Families First/TANF recipient's drug abuse recovery.

Authority: T.C.A. §§ 4-5-201 et seq., 71-3-1201 et seq., 21 U.S.C. § 862b.

1240-01-57-.03 Program of Suspicion-Based Drug Testing

(1) Effective July 1, 2014, the Department's Families First/TANF Program shall conduct a drug screening of new Families First/TANF applicants to determine whether there is reasonable cause to believe the applicant engages in the use of drugs as defined in this Chapter.

(2) Except as provided in subparagraphs (a) and (b) of this paragraph (2), all new Families First/TANF applicants who are eighteen (18) years of age or older and who are otherwise eligible to receive Families First/TANF benefits as defined in Chapters 1240-01-47, 1240-01-50, and 1250-01-51 are required to submit to the drug testing requirements under this Chapter, subject to the Department's finding of reasonable cause.

(a) Dependent children less than eighteen (18) years of age are exempt from the drug screening and testing, provided, however, that any minor parent who is a new Families First/TANF applicant who does not live with a parent, legal guardian, or other adult caretaker relative must submit to drug screening and any required drug testing.

(b) In a two (2)-parent household, only one (1) parent, the new Families First/TANF applicant, shall be required to submit to the drug screening and testing requirements of this Chapter.

(3) The Department's drug screening and testing program for new Families First/TANF applicants is separate from any employer-required drug screening and/or drug test.

Authority: T.C.A. §§ 4-5-201 et seq., 71-3-1201 et seq., 21 U.S.C. § 862b.

1240-01-57-.04 Drug Screening

(1) Effective July 1, 2014, new Families First/TANF applicants shall submit a completed drug screening questionnaire as a part of the eligibility determination for Families First/TANF cash assistance.

(2) Refusal and/or failure, without good cause, to submit a completed drug screening questionnaire shall result in denial of the applicant's Families First/TANF application.

Authority: T.C.A. §§ 4-5-201 et seq., 71-3-1201 et seq., 21 U.S.C. § 862b.

1240-01-57-.05 Reasonable Cause

(1) If the Department determines that there is reasonable cause to believe that a new Families First/TANF applicant is using drugs as defined in this Chapter, the applicant shall submit to a drug test at a drug testing agency approved by the Department.

(2) Initial Drug Screening to Determine Reasonable Cause.

(a) Reasonable cause shall exist when the applicant's completed drug screening questionnaire contains one or more "yes" responses.

(b) Any applicant who answers "yes" to one or more questions on the drug screening questionnaire must submit to a drug test.

(c) Any Families First/TANF applicant/recipient who has a current, valid prescription or prescriptions for a drug or drugs, as defined in this Chapter, may present the prescription(s) to the drug testing agency and/or medical review officer (MRO) as well as inform the agency and/or MRO of any over-the-counter medication the individual is currently taking after submitting to a drug test. No drug for which an applicant has a current, valid prescription shall be a basis for denial of Families First/TANF benefits pursuant to this Chapter.

(3) Failure to complete the drug screening questionnaire or to submit to a drug test based on the results of the drug screening questionnaire, without good cause, shall result in denial of the applicant's Families First/TANF application.

Authority: T.C.A. §§ 4-5-201 et seq., 71-3-1201 et seq., 21 U.S.C. § 862b.

1240-01-57-.06 Drug Test

(1) All drug tests conducted pursuant to this Chapter shall consist of a five (5) panel drug test, as defined in this Chapter, and be administered by an approved drug testing agency that uses a specimen of the applicant's urine. All drug tests, including any confirmation test, required under this Chapter shall be paid for by the Department.

(2) Confirmation Test. If a Families First/TANF applicant tests positive for the presence of drugs, as defined in this Chapter, the drug testing agency shall perform a confirmation test using the same urine specimen from the initial positive drug test.

(a) The results of the confirmation tests shall be verified by a MRO in relation to an applicant's biomedical history as well as any current, valid prescriptions and over-the-counter medication.

(b) The Department shall use the MRO's report, providing an evaluation of the confirmation test, to determine whether the applicant/recipient is eligible for Families First/TANF and whether to refer the applicant/recipient for a substance abuse evaluation.

(3) An applicant who tests positive for a drug as defined by this Chapter shall be ineligible for Families First/TANF, except as otherwise provided by this Chapter.

(4) All drug testing procedures, including chain of custody, specimen handling, and performance of the drug test, shall be in conformity with the requirements of the Tennessee Drug-Free Workplace Act, compiled at T.C.A. § 50-9-101 et seq. to the extent that no requirement is more broad than that provided in T.C.A. § 71-3-1201 et seq. or this Chapter.

Authority: T.C.A. §§ 4-5-201 et seq., 71-3-1201 et seq., 21 U.S.C. § 862b.

1240-01-57-.07 Referral for Substance Abuse Evaluation, Treatment, Ineligibility for Benefits, Appeals

(1) Drug Treatment Referral. If the results of the confirmation test indicate usage of drugs as defined in this Chapter, the Department shall refer the Families First/TANF recipient for a substance abuse evaluation to determine the appropriate treatment plan and/or recovery support group or resource.

(a) If, as a result of the substance abuse evaluation, the Families First/TANF recipient is determined not to need any drug treatment or drug recovery support, the recipient shall be exempt from the drug treatment requirements under this Chapter and shall continue to be eligible for Families First/TANF benefits.

(b) After submitting to a substance abuse evaluation, if the Families First/TANF recipient is determined to require drug abuse treatment and/or recovery support, the Department, in conjunction with the agency performing the substance abuse evaluation, shall refer the recipient to an appropriate drug treatment facility and/or recovery support group or resource to begin the drug treatment/recovery support plan. The recipient shall have ten (10) business days, after a referral for treatment is made, to provide the Department any of the following, as required under the drug treatment plan:

1. Verification of enrollment in an approved drug treatment program;

2. Verification of placement on a waiting list for an approved drug treatment program; or

3. Verification of attendance at approved recovery support resource meeting.

(c) If the Families First/TANF recipient is placed on a waiting list for enrollment in an approved drug treatment program, the recipient shall continue to receive benefits during the waiting list period; provided, however, the recipient is not eligible for immediate enrollment in any other comparable drug treatment program.

(d) The recipient shall receive benefits for the duration of the drug treatment period, not to exceed six (6) months.

1. The drug treatment period shall begin with the date of the first treatment session in the drug treatment program or the first date of attendance at a drug recovery support group/resource meeting.

2. To receive Families First/TANF benefits for the duration of the drug treatment program, not to exceed six (6) months, the recipient must provide the Department with evidence of ongoing compliance with the drug treatment program or recovery support resource, including, but not limited to, verification of attendance and participation in the program on a weekly basis or as otherwise necessitated by the individual treatment plan.

3. If the drug treatment plan requires more than six (6) months in a continuum of care, the Families First/TANF recipient may submit to a drug test at the end of six (6) months of treatment to determine the recipient's continued eligibility for Families First/TANF benefits.

(e) At the conclusion of the drug treatment period, the Families First/TANF recipient shall submit to another five (5) panel drug test in accordance with this Chapter.

1. If the recipient tests positive for drugs as defined in this Chapter, validated by a confirmation test and evaluated by a MRO, the recipient shall be ineligible to receive cash assistance benefits for six (6) months from the date of the positive confirmation test.

2. After the six (6) month disqualification period, if the disqualified individual reapplies for Families First/TANF benefits, the applicant shall submit to a drug test, conducted pursuant to this Chapter. If the applicant tests positive for drugs as defined in this Chapter, in a subsequent drug test, validated by a confirmation test, the recipient shall be ineligible to receive Families First/TANF benefits for one (1) year from the date of the positive confirmation test.

(2) If the recipient fails to begin, participate in, and/or complete, the drug treatment/recovery support resource program after a Department referral for a substance abuse evaluation, the recipient shall be ineligible for cash assistance benefits for six (6) months.

(a) Good cause. The Families First/TANF recipient may submit verification of good cause to the Department for his/her failure to begin, complete, and/or participate in the drug treatment program/recovery support resource.

1. The Department shall determine whether an individual has good cause for failure to begin, participate in, and/or complete the drug treatment/recovery support resource program by considering the exigency of the applicant's circumstances, whether failure to comply is the result of circumstances beyond the applicant's control and the requirements of the applicant's drug treatment and/or recovery support program.

2. If the Department determines that good cause exists, the Department shall work in collaboration with the substance abuse evaluation agency and/or the drug treatment program to amend the recipient's drug treatment plan so that the recipient is able to complete the requirements of the drug treatment plan consistent with his/her abilities.

3. The recipient shall not receive cash assistance benefits for longer than six (6) months during drug treatment prior to undergoing a subsequent drug test, as set forth below.

4. If, after amending the recipient's drug treatment plan to meet the recipient's needs and abilities, the recipient fails to begin, participate in, or complete the drug treatment program, the recipient shall be ineligible for six (6) months. After the six (6) month disqualification period, the recipient shall submit to another drug test, pursuant to subparagraph (b) below.

(b) At the conclusion of the six (6) month disqualification period, the Families First/TANF recipient shall submit to another five (5) panel drug test in accordance with this Chapter. If the recipient tests positive for drugs as defined in this Chapter, in a subsequent drug test, validated by a confirmation test and verified by a MRO, the recipient shall be ineligible to receive Families First/TANF benefits for one (1) year from the date of the positive confirmation test.

(3) Protective Payees.

(a) If a caretaker relative is found ineligible to receive Families First/TANF benefits as a result of a positive drug test or failure to begin, participate in, and/or complete the drug treatment/recovery support resource program, that caretaker relative shall be removed from the Assistance Unit and the dependent child's eligibility for Families First/TANF benefits shall not be affected.

(b) The Department shall designate a protective payee, either a caretaker relative or legal guardian of the child, to receive the dependent child's Families First/TANF benefits for a child less than sixteen (16) years of age; provided, however, for purposes of this Chapter, that no person who is the applicant for Families First/TANF benefits and tests positive for the use of drugs as defined in this Chapter shall serve as a protective payee.

(4) The Families First/TANF recipients participating in a drug treatment or recovery support program under this Chapter shall receive necessary child care services during drug treatment, provided, however, the recipient is participating in a work or educational activities requirement as required by the Families First/TANF program.

(5) Appeals. A Families First/TANF applicant or recipient may appeal any denial of eligibility for Families First/TANF benefits under this Chapter according to appeal procedures set forth in Chapter 1240-5 and Title 4, Chapter 5, Part 3 of the Uniform Administrative Procedures Act.

Authority: T.C.A. §§ 4-5-201 et seq., 71-3-1201 et seq., 21 U.S.C. § 862b, 42 U.S.C. § 608(b)(2)(A)(v).

1240-01-57-.08 Confidentiality

(1) Except as provided in paragraph (2), the Department shall not disclose, without the applicant/recipient's written consent, any information, interviews, reports, statements, memoranda, drug screening and other questionnaires, drug tests results and samples, or any related materials:

(a) To any law enforcement authorities;

(b) For use in any public or private proceedings or in a discovery proceeding related to any legal proceedings;

(c) For use or received as evidence in any civil or criminal proceedings; or

(d) For any other public or private use.

(2) Any information received as a part of the drug testing program may be used in accordance with the administration of the Families First/TANF program, in any proceedings concerning the protection or permanency of children, in adjudicating any claim or action arising from the administration of the Families First/TANF program, or in reporting child abuse, child sexual abuse, or child neglect.

Authority: T.C.A. §§ 4-5-201 et seq., 71-3-1201 et seq., 21 U.S.C. § 862b.

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Department of Human Services (board/commission/ other authority) on 03/12/2014, 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: 12/16/13

Rulemaking Hearing(s) Conducted on: (add more dates). 02/04/13; 02/05/13; 02/06/13; 02/07/13; 02/10/13; 02/11/13; 02/13/13; 02/14/13

Date: March 12, 2014

Signature: Madeline Brough

Name of Officer: Madeline Brough

Title of Officer: Assistant General Counsel
Tennessee Department of Human Services

DEBRA E. BATTS
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY
My Commission Expires May 20, 2014

Subscribed and sworn to before me on: March 12, 2014

Notary Public Signature: Debra E. Batts

My commission expires on: May 12, 2014

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.

R E Cooper Jr

Robert E. Cooper, Jr.
Attorney General and Reporter

3-24-14
Date

Department of State Use Only

Filed with the Department of State on: 4/2/14

Effective on: 7/1/14

Tre Hargett

Tre Hargett
Secretary of State

RECEIVED
2014 APR -2 AM 8:28
OFFICE OF SECRETARY OF STATE

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Human Services
DIVISION:	Family Assistance
SUBJECT:	Non-financial Eligibility Requirements for Families First; EBT Card Prohibited Uses
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 71-3-126; 42 U.S.C. § 608
EFFECTIVE DATES:	July 1, 2014, through June 30, 2015
FISCAL IMPACT:	The Department reports that the cost of implementing the rules can be administered within existing resources. The department reports that failure to implement the rules may result in reduced TANF funding of $9.5 million to the state.
STAFF RULE ABSTRACT:	Amends Rule 1240-01-47, and creates Rule 1240-01-58 to prevent misuse of cash assistance benefits in the Department of Human Services' Families First/TANF program. The rules prohibit a recipient from knowingly using an EBT card containing public assistance benefits at an ATM machine or point of sale (POS) of a restricted business (i.e. liquor stores, casinos, gaming establishments, and adult cabarets) and prohibits restricted businesses from knowingly accepting EBT cards for prohibited transactions. Illegal use may result in the recipient's reimbursement to the Department for the amount of the purchase or cash withdrawn. Upon the third violation, the recipient will be subject to permanent prohibition from the use of the EBT card for public assistance benefits. Any restricted person or business entity that accepts an EBT card containing public assistance benefits will be subject to penalties ranging from $1,000 for the first violation to $5,000 for a third or subsequent violation within five (5) years and may have their licenses or other permits to operate for one (1) year suspended. The amended Rule also adds two new requirements to the personal responsibility plan for cash assistance recipients that include: (1) agreement not to falsify work documents; and (2) agreement not to knowingly use the EBT card in any prohibited business.

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.

Comment One:
In 1240-01-47, perhaps there is a drafting error in the proposed rules as the rules refer to "AU"/"Assistance Unit" instead of "AG"/"aid group," which is used in the current regulations. See 1240-01-02-.01(1), which states the abbreviation for "aid group" is "AG."

Response and reason for adoption or rejection of suggested changes:
The Department's regulations at 1240-01-02-.01 refer to "Assistance Group" as it relates to the Food Stamp (SNAP) program. In 1240-01-02-.03, however, the Department defines the "Assistance Unit" for TANF, formerly AFDC, as "the group of individuals for whom assistance is sought." For this reason, the use of "assistance unit" "AU" is appropriate and the Department has not deleted the use of "assistance unit" or "AU" in the proposed regulations. The Department, however, has provided clarification of the definition of "Assistance Unit" in this Rule.

Comment Two:
In 1240-01-47-.16, there is not any authority in T.C.A. § 71-3-126 for the Department to change and/or add to the personal responsibility plan requirements.

Response and reasons for adoption or rejection of suggested changes:
First, T.C.A. § 71-1-105(12) provides that the Department has the authority to "[m]ake such rules and regulations and take such action as may be deemed necessary or desirable to carry out this part and that are not inconsistent with this part." Second, T.C.A. § 71-3-104(h)(2)(B) provides that the personal responsibility plan "is not limited to" the following requirements: (1) the children in the family attend school; (2) the children in the family receive immunizations and health checks; and (3) the parent or caretaker relative cooperate in the establishment and enforcement of child support. Third, amending the personal responsibility plan requirements to add an agreement to comply with EBT prohibited uses strengthens the effectiveness of the personal responsibility plan and ensures the Department that the Families First/TANF recipient is aware of his/her responsibilities for proper use of the EBT card. In addition, the inclusion of the agreement not to falsify work documentation also strengthens the effectiveness of the personal responsibility plan because work activities are a central component of the Families First/TANF program. For these reasons, the Department has not removed the additional requirements to the personal responsibility plan added by the proposed rules.

Comment Three:
In 1240-01-47-.16, perhaps 1240-01-47-.16(1)(b)(5), which speaks to the falsification of work activities documentation, should be removed from these proposed rules as this addition is not required to enact the EBT prohibited uses statute, T.C.A. § 71-3-126. In addition, there was not any notice of this change provided to the public.

Response and reasons for adoption or rejection of suggested changes:
The Department has the authority to promulgate rules and regulations, pursuant to T.C.A. § 71-1-105(12), which are deemed necessary to carry out the temporary assistance program. Based on the Department's review of the temporary assistance program, the Department has determined that it is necessary to expand the requirements of the personal responsibility plan to include an agreement not to falsify work activities documentation. In addition, the Department provided appropriate notice of these proposed rules as required in T.C.A. § 4-5-203. For those reasons, the Department has not deleted the new personal responsibility plan requirements as suggested. The Department, however, has made drafting changes to 1240-01-47-.16(1)(b)(5).

Comment Four:
In 1240-01-47-.16, perhaps the Department should add the word "knowingly" to 1240-01-47-.15(1)(b)(6) because the intent of T.C.A. § 71-3-126 is to prohibit cash assistance recipients from knowingly accessing public assistance benefits through an electronic benefit transfer card or ATM device at any restricted establishment.

Response and reasons for adoption or rejection of suggested changes:

The Department has added the word "knowingly" to 1240-01-47-.16(1)(b)(6) as suggested.

Comment Five:
In 1240-01-47-.16(5)(d), perhaps "knowingly" should be added so that paragraph (d) will read: "Failure to knowingly comply . . . ."

Response and reasons for adoption or rejection of suggested changes:
The Department has determined that the addition of "knowingly" is not necessary in 1240-01-47-.16(5)(d).

Comment Six:
In 1240-01-58, perhaps the rules should set forth how the Department will prevent cash assistance benefits from being spent on liquor, beer, wine, etc. in locations where cash assistance recipients may use their EBT cards to purchase beer, such as in grocery stores which sell beer and may, in the future, sell liquor and wine. Grocery stores are not able to prevent individuals from buying beer with their EBT cards. The rules should set forth how the Department plans to determine what items customers purchase or to restrict the purchase of those products.

Response and reasons for adoption or rejection of suggested changes:
Neither state or federal law require the Department to restrict the usage of the EBT card at grocery stores where a recipient has access to staple food items along with other items such as beer, etc. The regulations specifically exempt a grocery store which sells both intoxicating liquor and groceries including staple foods from being one of the prohibited businesses. The law specifically limits the restrictions of the recipient's use of cash assistance on EBT card in liquor stores, casinos, and adult entertainment venues. For this reason, the Department has not made any changes to the proposed rules based on this comment.

Comment Seven:
In Rule 1240-01-58, these rules allow a Families First/TANF recipient to access cash benefits at an unrestricted location and then use that cash withdrawn from an EBT card at one of the prohibited businesses.

Response and reasons for adoption or rejection of suggested changes:
Federal and state law do not restrict where Families First/TANF recipients may spend their EBT card cash, which they withdrew at an unrestricted location. For this reason, the Department did not make any changes to the rules based on this comment.

Comment Eight:
In 1240-01-58-.01(13), it is noted that the definition of "protective payee" does not match the definition of protective payee under the proposed rules in 1240-01-57, which limits the protective payee to being assigned for children under sixteen (16) years of age.

Response and reasons for adoption or rejection of suggested changes:
The proposed rules in 1240-01-57 are consistent with the drug testing statute, T.C.A. § 71-3-1202(h)(5), which state that a "protective payee shall be designated to receive TANF benefits on behalf of the child who is under sixteen (16) years of age." The protective payee definition promulgated in these proposed rules does not provide the same limitation, but is instead consistent with the Department's current definition of protective payee set forth in 1240-01-45-.02. For these reasons, the Department did not make any changes to these proposed rules.

Comment Nine:
In 1240-01-58, commenters suggest that the Department add the word "knowingly" as the intent of T.C.A. 71-3-126 is to prohibit recipients from knowingly accessing public assistance benefits through an electronic benefit transfer card at any ATM or point of sale device in a restricted establishment.

Response and reasons for adoption or rejection of suggested changes:
The Department has included "knowingly" in 1240-01-58-.04(2)(a) and (b).

Comment Ten:
In 1240-01-58-.02(11), the definition of "located in", perhaps the phrase "including any common area adjacent to the merchant's business" is too arbitrary and cash assistance recipients may easily violate these rules by mistake.

Response and reasons for adoption or rejection of suggested changes:

The Department has removed "including any common area adjacent to the merchant's business property that the merchant uses to conduct business or facilitate entry into the business" from the definition of "located in" in 1240-01-58-.02(11). This change was made as suggested to clarify that the transaction must have occurred on the restricted merchant's business property, either owned or leased by the merchant.

Comment Eleven:
Please clarify who will be liable in the event that a person or business entity knowingly accepts public assistance benefits from an EBT card for the purchase of good or services in one of the prohibited locations. It is unclear whether the retailer and/or the POS device vendor will be liable.

Response and reasons for adoption or rejection of suggested changes:
The liability will be placed on the merchant and/or agents or employees of the merchant who knowingly accept EBT cards at the prohibited business establishments. The POS device vendors would not be liable. The Department has provided additional clarity in the rules based upon this comment.

Regulatory Flexibility Addendum

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

The prohibitions for the use of Electronic Benefit Transfer cards by households in the Temporary Assistance for Needy Families program are codified at 42 U.S.C. § 608(a)(12). The United States Code requires states to implement policies and practices to prevent the prohibited use of the EBT card. In addition, the Tennessee legislature passed similar legislation in response to the federal law, which is codified at T.C.A. § 71-3-126. For purposes of the Regulatory Flexibility Act of 2007, the Department of Human Services certifies that these rulemaking hearing rules substantially codify existing federal and state law, such that, pursuant to Section 6 of the Regulatory Flexibility Act, the Regulatory Flexibility Act's provisions do not apply to these rules. In addition, these rulemaking hearing rules appear to have a minimal effect on small businesses as defined in the Act because these rules provided penalties to be assessed to a limited number of businesses as required by the federal and state statutes and who are found to knowingly be in violation of the prohibitions set forth in state and federal law. Compliance with the law and rules as written will minimize civil penalties ranging from $1000.00 for the first offense up to $5,000.00 for a third or subsequent offense.

Impact on Local Governments

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

These rules have no projected financial impact on local governments.

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

For Department of State Use Only

Sequence Number: 04-03-14
Rule ID(s): 56083-56084
File Date: 4/2/14
Effective Date: 7/1/14

Rulemaking Hearing Rule(s) Filing Form

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

Agency/Board/Commission:	Tennessee Department of Human Services
Division:	Family Assistance Division
Contact Person:	Madeline Brough
Address:	Office of General Counsel Citizens Plaza Building, 15th Floor 400 Deaderick Street Nashville, Tennessee 37243-1403
Zip:	615-313-4731
Phone:	Madeline.Brough@tn.gov
Email:	Family Assistance Division

Revision Type (check all that apply):

✓ Amendment
✓ New
___ Repeal

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

Chapter Number	**Chapter Title**
1240-01-47	Non-Financial Eligibility Requirements Families First Program
Rule Number	**Rule Title**
1240-01-47-.16	Personal Responsibility Plan

Chapter Number	**Chapter Title**
1240-01-58	Electronic Benefit Transfer Card - Prohibited Uses
Rule Number	**Rule Title**
1240-01-58-.01	Purpose
1240-01-58-.02	Definitions
1240-01-58-.03	Prohibited Uses
1240-01-58-.04	Monitoring and Penalties
1240-01-58-.05	Appeals

"REDLINE VERSION-CHAPTER 1240-01-47 DATED MARCH 11, 2014"

RULES
OF
TENNESSEE DEPARTMENT OF HUMAN SERVICES
FAMILY ASSISTANCE DIVISION

CHAPTER 1240-01-47
NON-FINANCIAL ELIGIBILITY REQUIREMENTS
FAMILIES FIRST PROGRAM

TABLE OF CONTENTS

1240-01-47-.01	Non-Financial Eligibility Requirements	1240-01-47-.15	School Attendance
1240-01-47-.02	Residence	1240-01-47-.16	Personal Responsibility Plan
1240-01-47-.03	Temporary Absences	1240-01-47-.17	Immunizations and Health Checks for Minor Children
1240-01-47-.04	Termination of Residence		
1240-01-47-.05	Reporting Addresses	1240-01-47-.18	Relationship Requirements
1240-01-47-.06	Basic Eligibility Requirements	1240-01-47-.19	Evidence Regarding Relationship
1240-01-47-.07	Verification of US Citizenship	1240-01-47-.20	Living in the Relative's Home
1240-01-47-.08	Method of Verification of US Citizenship	1240-01-47-.21	Eligibility of Maternity Home Residents
1240-01-47-.09	Promptness of Case Action - Questionable Citizenship	1240-01-47-.22	Individuals Not Eligible to Receive Families First
1240-01-47-.10	Eligible Aliens	1240-01-47-.23	Deprivation of Parental Support/Care
1240-01-47-.11	Ineligible Aliens	1240-01-47-.24	Death of a Parent
1240-01-47-.12	Verification of Alien Status	1240-01-47-.25	Incapacity of a Parent
1240-01-47-.13	Social Security Enumeration Requirements	1240-01-47-.26	Absence of a Parent
1240-01-47-.14	Age Requirements	1240-01-47-.27	Unemployment of a Parent

1240-01-47-.16 PERSONAL RESPONSIBILITY PLAN.

(1) Personal Responsibility Plans Required for Eligibility.

(a) As a condition of eligibility for the entire ~~AG~~AU, the caretaker (both parents in a two- (2) parent AU ~~groups, both parents~~) who applies for or receives Families First/TANF must sign a Personal Responsibility Plan (PRP). Signing the PRP indicates an intent to comply with the requirements of the plan. ~~-~~The PRP is developed by the Department in consultation with the ~~Department~~ caretaker relative and:

(b) Requires that all caretakers (~~in two-parent groups,~~ both parents in ~~the Ag~~a two (2) parent AU):

1. Agree to cooperate with child support enforcement activities;

2. Assure that the children in the ~~AG~~AU attend school, including kindergarten when available;

3. Assure that the children in the ~~AG~~AU receive regular immunizations and health checks;~~ and~~

4. Agree to participate in thirty (30) hours per week of activities as described in 1240-01-49-.03, if not exempt~~.~~;

5. Agree not to falsify work and/or educational activities documentation, such as providing a falsified employer's statement, attendance, etc. to validate work activities; and

6. Agree not to knowingly access public assistance benefits through an electronic benefit transfer card at any point of sale device, automated teller machine or other online system used for the processing of payment or withdrawal of funds

located in any liquor store, casino, gambling casino, gaming establishment, or adult cabaret as prohibited under Chapter 1240-01-58.

(2) As a condition of eligibility for him/herself, the minor parent who is a dependent child in an ~~assistance unit~~AU~~,~~ must sign a P~~ersonal Responsibility Plan~~. Signing the PRP indicates the intent to comply with the requirements of the plan listed in subparagraph (b), parts 1-5 above. ~~The PRP requirements are the same as those listed in 1240-01-47-.16(1)(a) above.~~ Subparagraph (b), part 6 above does not apply to a minor parent who is a dependent child in an AU.

(3) As a condition of eligibility for the entire AG/AU, the minor parent who is a caretaker of his/her own AG/AU must sign a Personal Responsibility Plan. Signing the PRP indicates the intent to comply with the requirements of the plan. The PRP requirements are the same as those listed in 1240-01-47-.16(1)(a) above.

(4) The Department or its designees will provide benefits such as child care and transportation necessary to assist the individual in complying with the requirements set out in the Personal Responsibility Plan.

(5) Failure, without good cause, to comply with the provisions of the PRP will result in the following sanctions:

(a) For failure to comply with the work requirement:

1. For noncompliance with the work requirement, the entire AG will be ineligible for a Families First payment until compliance is met;

2. For noncompliance with the work requirement of a minor parent who is not the head of household, the noncompliant individual's needs will be removed in the determination of eligibility.

(b) For failure to comply with the school attendance requirement:

1. Failure of one or more of the children to meet this requirement will result in a twenty percent (20%) reduction in the Families First grant until compliance is met.

(c) For failure to comply with the immunization and health check requirement:

1. Failure to meet these requirements for one or more children will result in a twenty percent (20%) reduction in the Families First grant until compliance is met.

(d) Failure to comply with the prohibited uses of the electronic benefit transfer card as described under Chapter 1240-01-58 shall result in reimbursement of the illegally transferred funds to the Department and/or prohibition from receipt of public assistance benefits by means of direct cash payment or electronic benefit transfer card.

Authority: *T.C.A. §§4-5-201 et seq., 4-5-202, 4-5-209, 71-1-105, 71-3-152, 71-3-153 and 71-3-154; 71-3-158(d)(2)(D);42 U.S.C. §§ 601 et seq., 42 U.S.C. § 604(i); 42 U.S.C. § 607(c), (d) and (e); 42 U.S.C. § 608(a)(2) and (3), 42 U.S.C. § 608(b)(3); 42 U.S.C. § 609(a)(14) and 42 U.S.C. §§ 654 and 657; 45 C.F.R. § 261.2, 45 C.F.R. § 261.12 and 45 C.F.R. § 261.14; and Public Acts of 1996, Chapter 950, §1115 of the Social Security Act; Deficit Reduction Act 2005 (Pub. L. 109-171 §§ 7101 and 7102, February 8, 2006); 71 Federal Register 37454 (June 29, 2006); and Acts 2007, Chapter 31.*

"REDLINE VERSION-CHAPTER 1240-01-47 DATED MARCH 11, 2014"

Administrative History: *Original rule filed December 2, 1996; effective February 15, 1997. Public necessity rule filed July 2, 2007; expired December 14, 2007. Amendment filed October 1, 2007; effective December 15, 2007.*

Chapter 1240-01-58
Electronic Benefit Transfer Card - Prohibited Uses

New Rules

Table of Contents

1240-01-58-.01 Purpose
1240-01-58-.02 Definitions
1240-01-58-.03 Prohibited Uses
1240-01-58-.04 Monitoring and Penalties
1240-01-58-.05 Appeals

1240-01-58-.01 Purpose

The purpose of this Chapter is to prevent public assistance benefits, provided pursuant to the Families First/TANF program, from being used in any EBT transaction in any liquor store, casino, gambling casino, gaming establishment, or adult cabaret.

Authority: T.C.A. §§ 4-5-201 et seq.; 57-2-101(1); 71-3-126; 42 U.S.C. § 603; 42 U.S.C. § 608(a)(12).

1240-01-58-.02 Definitions. For purposes of this Chapter:

(1) "Adult cabaret" is an establishment that features, as a principal use of its business, entertainers, waiters, or bartenders who expose to public view of the patrons within such establishment, at any time, the bare female breast below a point immediately above the top of the areola, human genital, pubic region, or buttocks, even if partially covered by opaque material or completely covered by translucent material, including swim suits, lingerie, or latex covering. "Adult cabaret" includes a commercial establishment that features entertainment of an erotic nature, including exotic dancers, strippers, male or female impersonators, or similar entertainers.

(2) "Assistance Unit (AU)" means the "aid group (AG)" or group of people applying for or receiving Families First/TANF cash assistance benefits.

(3) "Automated teller machine (ATM)" is an electronic cash dispensing device from which an account holder may withdraw cash, including public assistance benefits, using an electronic benefit transfer card.

(4) "Casino," "gambling casino," or "gaming establishment," means an establishment with a primary purpose of accommodating the wagering or gambling of money. The term "casino," "gambling casino," or "gaming establishment" does not include either:

(a) A grocery store which sells groceries including staple foods and which also offers, or is located within the same building or complex as, casino, gambling, or gaming activities; or

(b) Any other establishment that offers casino, gambling, or gaming activities incidental to the principal purpose of the business.

(5) "Department" means the Department of Human Services.

(6) "Electronic benefit transfer (EBT) card" is a debit card which allows the EBT card holder to access public assistance benefits through an ATM or point of sale device.

(7) "EBT transaction" means the use of a credit or debit card service, automated teller machine, point-of-sale terminal, or access to an online system for the withdrawal of funds or the processing of a payment for merchandise or a service.

(8) "Families First" refers to the temporary public assistance program administered by the Department and provided under the federal Temporary Assistance for Needy Families (TANF), pursuant to Title IV-A of the Social Security Act.

(9) "Gambling" means risking anything of value for a profit whose return is to any degree contingent on games of chance associated with casinos, including, but not limited to, slot machines, roulette wheels and the like.

(10) "Intoxicating Liquor" means and includes alcohol, spirits, liquors, wines, and every liquid or solid, patented or not, containing alcohol, spirits, liquor or wine, and capable of being consumed by human beings.

(11) "Knowingly" means that an EBT card user, merchant, or business entity has actual knowledge that the EBT card contains public assistance benefits and the ATM or point of sale device used for the illegal transaction is located in a liquor store, casino, gambling casino, gaming establishment, or adult cabaret. The term "knowingly" may be established by direct or circumstantial evidence of knowledge that the EBT card contains public assistance benefits and the ATM or point of sale device is located in a liquor store, casino, gambling casino, gaming establishment, or adult cabaret.

(12) "Liquor store" is any retail establishment which sells exclusively or primarily intoxicating liquor. The term "liquor store" does not include a grocery store which sells both intoxicating liquor and groceries including staple foods.

(13) "Located in". An ATM, POS device, or other online system used for the withdrawal of funds or processing of payments is "located in" a liquor store, casino, gambling casino, gaming establishment, or adult cabaret, when the ATM, POS device, or other online system is located on any part of the merchant's business property, which is either owned or leased by the merchant.

(14) "Point of sale (POS) device" is any terminal at which a customer makes a payment to a merchant in exchange for goods or services, including any manual or electronic terminal where a Families First/TANF recipient may complete a retail transaction using an EBT card.

(15) "Protective payee" is a person, other than the caretaker or grantee relative who is disqualified from directly receiving public assistance benefits under this Chapter, to whom a Families First/TANF grant is made payable for the benefit of the qualified members of the AU. A protective payee has responsibility for administering the payment for the benefit of the AU.

(16) "Public assistance benefits" means money, in cash or in other forms of exchange, provided directly or indirectly to a Families First/TANF recipient through the Families First/TANF program.

Authority: T.C.A. §§ 4-5-201 et seq.; 4-51-102; 7-51-1102;39-17-501; 57-3-101; 71-3-103; 71-3-126, 42 U.S.C. § 601 et seq.; 42 U.S.C. § 608(a)(12)(B).

1240-01-58-.03 Prohibited Uses.

(1) It is illegal for any Families First/TANF recipient to knowingly use an EBT card to purchase any goods or services through a POS device or any other online system used to process payments or access public assistance benefits through an ATM or other online system used for the withdrawal of funds located in any of the following businesses:

(a) liquor store;

(b) casino;

(c) gambling casino;

(d) gaming establishment; or

(e) adult cabaret.

(2) It is illegal for any person or business entity, or any agent or employee of the person or business entity, to knowingly accept public assistance benefits from an EBT card for the purchase of any goods or services in the following locations:

(a) liquor store;

(b) casino;

(c) gambling casino;

(d) gaming establishment; or

(e) adult cabaret.

Authority: T.C.A. §§ 4-5-201 et seq.; 7-51-1102; 39-17-501; 57-3-101;71-3-126, 42 U.S.C. § 608(a)(12)(B).

1240-01-58-.04 Monitoring and Penalties.

(1) Any Families First/TANF caretaker must submit to the Department a signed Personal Responsibility Plan (PRP) acknowledging his/her understanding that it is illegal to knowingly use an EBT card containing public assistance benefits at any POS device, ATM, or other online system used for the processing of payments or withdrawal of funds located in any liquor store, casino, gambling casino, gaming establishment, or adult cabaret to purchase any goods or services as described in this Chapter.

(2) The Department shall monitor EBT transactions on a quarterly basis to determine whether there is any illegal use of EBT cards under this Chapter.

(a) Any Families First/TANF recipient or caretaker who knowingly participates or knowingly allows another to use the recipient's EBT card in an EBT transaction at an ATM machine, POS device, or other online system used for processing of payments or withdrawal of funds in any prohibited business location shall be subject to the following penalties:

1. First or Second Violation. The Families First/TANF recipient or caretaker shall be required to reimburse the Department for the amount of the purchase at a POS machine or the amount of the cash withdrawn and used from an ATM.

2. Third or Subsequent Violation. The Families First/TANF recipient or caretaker shall be required to reimburse the Department for the amount of the purchase at the POS machine or the amount of cash withdrawn and used from an ATM, and:

(i) The Families First/TANF recipient or caretaker shall be permanently prohibited from accessing temporary public assistance benefits, to the extent permitted by federal law, by means of direct cash payment or an EBT card.

(ii) The Department shall afford the Families First/TANF recipient or caretaker an administrative hearing prior to taking any action to disqualify the individual from direct receipt of public assistance benefits.

(iii) The Department shall designate a protective payee to administer the temporary public assistance grant for the benefit of the AU in the event a Families First/TANF recipient or caretaker is prohibited from receipt of public assistance benefits by means of direct cash payment or an EBT card under this Chapter.

3. Any illegal EBT transaction under this Chapter shall be classified as an overpayment and the Department shall initiate collection proceedings pursuant to Chapter 1240-01-52.

(b) Any person or business entity, or any agent or employee of the person or business entity, which knowingly accepts EBT card purchases for any goods or services at any prohibited business location, shall be subject to the following penalties:

1. First Violation. The first violation shall result in a civil penalty of one thousand dollars ($1,000).

2. Second Violation. The second violation within five (5) years of the first violation shall result in a civil penalty of twenty-five hundred dollars ($2,500).

3. Third or Subsequent Violation. The third or subsequent violation within five (5) years shall result in a civil penalty of five thousand dollars ($5,000).

4. The Department may refer any person or business entity that violates this Chapter to the district attorney for that district, who may bring an action to suspend the business license and permits of the person or business entity for one (1) year for any violation under this Chapter.

5. The Department may bring a civil action to enforce any civil penalties assessed to any person or business entity under this Chapter in a complaint filed in the chancery court of the county where the person or business entity is located.

(3) The Department may, at its discretion and to the extent permitted under federal law, take action to block POS devices, online systems used for the withdrawal of funds or processing of payments, and ATMs located in any prohibited location from accepting an EBT card transaction.

Authority: T.C.A. §§ 4-5-201 et seq.; 71-3-126; 42 U.S.C. § 608(a)(12).

1240-01-58-.05 Appeals.

Any Families First/TANF recipient, merchant, or business entity the Department determines has illegally used an EBT card or unlawfully engaged in an EBT transaction under this Chapter shall have the right to an appeal conducted according to appeal procedures set forth in Chapter 1240-5 and Title 4, Chapter 5, Part 3 of the Uniform Administrative Procedures Act.

Authority: T.C.A. §§ 4-5-201 et seq.; 4-5-301 et seq.; 71-3-126.

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Department of Human Services (board/commission/ other authority) on 03/12/2014, 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: 12/16/13

Rulemaking Hearing(s) Conducted on: (add more dates). 02/04/13; 02/05/13; 02/06/13; 02/07/13; 02/10/13; 02/11/13; 02/13/13; 02/14/13

Date: March 12, 2014

Signature: Madeline Brough

Name of Officer: Madeline Brough

Title of Officer: Assistant General Counsel
Tennessee Department of Human Services

DEBRA E. BATTS
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY
My Commission Expires May 20, 2014

Subscribed and sworn to before me on: March 12, 2014

Notary Public Signature: Debra E. Batts

My commission expires on: May 20, 2014

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.

R E Cooper Jr

Robert E. Cooper, Jr.
Attorney General and Reporter

3-24-14
Date

Department of State Use Only

Filed with the Department of State on: 4/2/14

Effective on: 7/1/14

Tre Hargett

Tre Hargett
Secretary of State

RECEIVED
2014 APR -2 AM 8:31
OFFICE OF SECRETARY OF STATE