

**RULES
OF
THE TENNESSEE DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
DIVISION OF WORKERS' COMPENSATION**

**CHAPTER 0800-02-20
MEDICAL IMPAIRMENT RATING REGISTRY PROGRAM**

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0800-02-20-.01 DEFINITIONS. The following definitions are for the purposes of this chapter only:

- (1) "Act" means the Tennessee Workers' Compensation Act, Tenn. Code Ann. § 50-6-101 et seq., as amended.
- (2) "Administrator" means the chief administrative officer of the Workers' Compensation Division of the Tennessee Department of Labor and Workforce Development or the Administrator's designee.
- (3) "Business day(s)" means any day upon which the Division is open for business.
- (4) "Commissioner" means the Commissioner of the Tennessee Department of Labor and Workforce Development or the Commissioner's designee.
- (5) "Department" means the Tennessee Department of Labor and Workforce Development.
- (6) "Dispute of degree of medical impairment" means one of two things: either at least two (2) different physicians have issued differing permanent medical impairment ratings in compliance with the Act and the parties disagree as to those permanent impairment ratings; or, a dispute may also exist if a physician has issued an opinion in compliance with the Act that no permanent medical impairment exists, yet that physician has issued permanent physical restrictions to the injured employee.
- (7) "Division" means the Workers' Compensation Division of the Tennessee Department of Labor and Workforce Development.
- (8) "Employee" shall have the same meaning as set forth in Tenn. Code Ann. § 50-6-102.
- (9) "Employer" shall have the same meaning as set forth in Tenn. Code Ann. § 50-6-102.
- (10) "Form" means the "Application for a Medical Impairment Rating," required to be used to request a MIR Registry physician from the Administrator. The Form is available upon request from the Department or online at www.state.tn.us/labor-wfd/mainforms.html.
- (11) "Insurer" or "carrier" means an employer's workers' compensation insurance carrier and additionally shall include any entity claiming, operating, or attempting to operate as a self-insured employer, self-insured pool, or self-insured trust pursuant to the requirements of

(Rule 0800-02-20-.01, continued)

Tenn. Code Ann. § 50-6-405 and Chapter 0780-01-54, Self-Insured Pools, of the Rules of the Department of Commerce and Insurance, Insurance Division.

- (12) "Medical Director" means the Division's Medical Director, appointed by the Administrator pursuant to T.C.A. § 50-6-126 (Repl. 1999) or the Medical Director's designee.
- (13) "Medical Impairment Rating Registry" or "MIR Registry" means the registry or listing of physicians established by the Administrator pursuant to Tenn. Code Ann. § 50-6-204 (2005) to perform independent medical impairment ratings when there is a dispute as to the degree of medical impairment, as defined in 0800-02-20-.01(5) above.
- (14) "Party" means any person or entity which either could be liable for payment of workers' compensation benefits or a person who has a potential right to receive workers' compensation benefits. "Party" shall include a legal representative of a party.
- (15) "Physician" means a person currently licensed in good standing to practice as a doctor of medicine or doctor of osteopathy.
- (16) "Program Coordinator" means the chief administrative officer of the MIR Registry Program, appointed by the Administrator, or the Program Coordinator's Designee.

Authority: T.C.A. §§ 4-5-202, 50-6-102, 50-6-204 (2005), 50-6-205, 50-6-233, and Public Chapters 282 & 289 (2013). **Administrative History:** Public necessity rule filed June 15, 2005; effective through November 27, 2005. Public necessity rule filed November 16, 2005; effective through April 30, 2006. Original rule filed January 30, 2006; effective April 15, 2006. Amendment filed November 8, 2011; effective April 29, 2012. Amendments filed March 25, 2013; effective June 23, 2013. Amendment filed December 26, 2013; effective March 26, 2014.

0800-02-20-.02 PURPOSE AND SCOPE.

- (1) Purpose. The purpose of the Medical Impairment Rating Registry Program is to comply with and implement Tenn. Code Ann. § 50-6-204(d)(5) and (6) (Repl. 2005) by establishing a resource to resolve disputes regarding the degree of permanent medical impairment ratings for injuries or occupational diseases to which the Act is applicable. In order to ensure high-quality independent medical impairment evaluations, the Department establishes these Rules for parties and physicians. MIR Registry physicians shall provide evaluations in a manner consistent with the standard of care in their community and in compliance with these Rules, as well as issue opinions based upon the applicable edition of the AMA Guides to the Evaluation of Permanent Impairment or other appropriate method pursuant to the Act.
- (2) Scope. The MIR Registry is available to any party with a dispute of the degree of medical impairment rating as defined herein for injuries or any occupational disease which occurred on or after July 1, 2005. The only aspect considered by a MIR Registry physician shall be the degree of permanent medical impairment.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005). **Administrative History:** Public necessity rule filed June 15, 2005; effective through November 27, 2005. Public necessity rule filed November 16, 2005; effective through April 30, 2006. Original rule filed January 30, 2006; effective April 15, 2006.

0800-02-20-.03 SEVERABILITY.

- (1) If any provision of these Rules or the application thereof to any person or circumstance is, for any reason, held to be invalid, the remainder of the Rules and the application of the provisions to other persons or circumstances shall not be affected in any respect whatsoever.

(Rule 0800-02-20-.03, continued)

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005). **Administrative History:** Public necessity rule filed June 15, 2005; effective through November 27, 2005. Public necessity rule filed November 16, 2005; effective through April 30, 2006. Original rule filed January 30, 2006; effective April 15, 2006.

0800-02-20-.04 REQUISITE PHYSICIAN QUALIFICATIONS FOR INCLUSION ON MEDICAL IMPAIRMENT RATING REGISTRY.

- (1) A physician seeking appointment to the MIR Registry shall make application and must satisfy the following qualifications:
 - (a) Possess a license to practice medicine or osteopathy in Tennessee which is current, active, and unrestricted;
 - (b) Be board-certified in his/her medical specialty by a board recognized by the American Board of Medical Specialties, the American Osteopathic Association or another organization acceptable to the Administrator;
 - (c) Have successfully completed a training course, approved by the Administrator, dedicated to the proper application of the applicable edition of the American Medical Association Guides to the Evaluation of Permanent Impairment (hereafter the "AMA Guides") in impairment evaluations and furnish satisfactory evidence thereof; and
 - (d) Furnish satisfactory proof of carrying the minimum medical malpractice insurance coverage amounts enumerated in T.C.A. § 29-20-403; and
 - (e) Be trained on these program rules, either in-person or by telephone, by the Program Coordinator.

Authority: T.C.A. §§ 4-5-202, 50-6-102, 50-6-204 (2005), 50-6-205, 50-6-233, and Public Chapters 282 & 289 (2013). **Administrative History:** Public necessity rule filed June 15, 2005; effective through November 27, 2005. Public necessity rule filed November 16, 2005; effective through April 30, 2006. Original rule filed January 30, 2006; effective April 15, 2006. Amendments filed March 25, 2013; effective June 23, 2013. Amendment filed December 26, 2013; effective March 26, 2014.

0800-02-20-.05 APPLICATION PROCEDURES FOR PHYSICIANS TO JOIN THE REGISTRY.

- (1) Appointment to the MIR Registry shall expire upon a physician's decision to withdraw from the Registry or the Division's removal of a physician from the Registry. The Division reserves the right to charge physicians a non-refundable application fee upon appointment or reinstatement to the MIR Registry. For each application, an advisory panel of three (3) current MIR Registry physicians shall be randomly selected by the Program Coordinator to review the application. The Panel shall include one member from each grand division of the state who shall have been on the MIR Registry for at least five (5) years without any disciplinary actions imposed by the Department. Each member of the panel shall vote to either recommend or not recommend the applicant for inclusion on the MIR Registry. The Administrator, upon the advice of the Medical Director, Program Coordinator, and the advisory panel, shall have the sole and exclusive authority to approve or reject applications for inclusion on the MIR Registry.
- (2) Physicians seeking appointment to the MIR Registry shall complete an "Application for Appointment to the MIR Registry," available upon request or on-line at www.state.tn.us/labor-wfd/mainforms.html, certify to and, upon approval of the application, comply with the following conditions:
 - (a) Conduct all MIR evaluations based on the guidelines in the applicable edition of the AMA Guides and submit the original "MIR Report" with all attachments to the Program

(Rule 0800-02-20-.05, continued)

Coordinator. In cases not covered by the applicable AMA Guides, any impairment rating allowed under the Act shall be appropriate;

- (b) Decline requests to conduct an evaluation only on the basis of good cause shown. Consideration will be given to a physician's schedule and other previously arranged or emergency obligations;
 - (c) Comply with the MIR Registry's Rules;
 - (d) While on the MIR Registry, agree to maintain an active and unrestricted license to practice medicine or osteopathy in Tennessee and to immediately notify the Administrator of any change in the status of the license, including any restrictions placed upon the license;
 - (e) While on the MIR Registry, agree to maintain all board certifications listed on the application and to immediately notify the Administrator of any change in their status;
 - (f) Conduct MIR evaluations in an objective and impartial manner, and shall:
 - 1. Conduct these evaluations only in a professional medical office suitable for medical or psychiatric evaluations where the primary use of the site is for medical service.
 - 2. Comply with all local, state and federal laws, regulations, and other requirements with regard to business operations, including specific requirements for the provision of medical services.
 - 3. Not conduct a physical examination on a claimant of the opposite sex without a witness of the same sex as the claimant present.
 - (g) Not refer any MIR Registry claimant to another specific physician for any treatment or testing nor suggest referral or treatment. However, if new diagnoses are discovered, the physician has a medical obligation to inform the requesting party and the claimant about the condition and recommend further medical assessment;
 - (h) Not become the treating physician for the claimant regarding the work-related injury;
 - (i) Not evaluate an MIR Registry claimant if a conflict of interest exists;
 - (j) Not substitute, or allow to be substituted, anyone else, including any other physician, physician assistant, nurse practitioner, physical therapist or staff member, as the physician to conduct the MIR Registry evaluation;
 - (k) No later than fifteen (15) calendar days after a request by the Program Coordinator to refund to the paying party part or all of any fee paid by that party for a MIR Registry evaluation, as may be required by these Rules and the Administrator; and
 - (l) For each MIR Registry case assigned, address only the issue of permanent impairment rating.
- (3) Physicians denied appointment to the MIR Registry by the Administrator or Administrator's designee on their initial application may seek reconsideration of their application by submitting a request for reconsideration stating the grounds for such reconsideration to the Program Coordinator within fifteen (15) calendar days of the issuance of the Notice of Denial of their application. The Administrator may affirm or reverse the initial determination upon reconsideration of the initial decision. The Administrator shall issue a Notice of Final

(Rule 0800-02-20-.05, continued)

Determination which shall be the final decision. If the Administrator does not act on the request for reconsideration within twenty (20) calendar days, then the request shall be deemed to have been denied, which shall be the final decision.

Authority: T.C.A. §§ 4-5-202, 50-6-102, 50-6-204 (2005), 50-6-205, 50-6-233, and Public Chapters 282 & 289 (2013). **Administrative History:** Public necessity rule filed June 15, 2005; effective through November 27, 2005. Public necessity rule filed November 16, 2005; effective through April 30, 2006. Original rule filed January 30, 2006; effective April 15, 2006. Amendments filed March 25, 2013; effective June 23, 2013. Amendment filed December 26, 2013; effective March 26, 2014.

0800-02-20-.06 REQUESTS FOR A MIR REGISTRY PHYSICIAN.

- (1) When a dispute of the degree of medical impairment, as defined in Rule 0800-02-20-.06 exists, any party may request a listing of physicians from the Administrator's MIR Registry by completing the "Application for Medical Impairment Rating" (hereinafter "Form"), available upon request from the Department or online at www.state.tn.us/labor-wfd/mainforms.html. The completed Form must then be returned to the Program Coordinator via electronic mail, facsimile or U.S. Mail.
- (2) The requesting party shall send a copy of the Form to the opposing party. The Program Coordinator's decision to accept or deny the Form is final for administrative purposes.
- (3) The Administrator requires the request for a MIR Registry physician designate:
 - (a) All body part(s) or medical condition(s) to be evaluated, including whether mental impairment shall be evaluated;
 - (b) The names of all physicians that have previously evaluated, treated, or are currently evaluating or treating the claimant for the work-related injury at employer and/or employee expense;
 - (c) The names of all physicians made available to the claimant. If an employer provides the claimant with the name of a group of physicians rather than with individual physician names, the same information shall be included on the request form. If a panel of physicians has been provided to the employee in accordance with T.C.A. § 50-6-204, then a completed Form C-42 must accompany the request form;
 - (d) The state file number assigned to the claims.
- (4) Selection of MIR Registry physician through party agreement:
 - (a) Within five (5) business days of receipt of the completed Form from the requesting party, the Program Coordinator shall issue a listing of all qualified physicians in the appropriate geographic area (which shall mean within an approximate one hundred (100) mile straight-line radius of the employee's home zip code), from the MIR Registry to all parties listed on the Form so the parties may negotiate an agreement on the selection of a physician as the MIR Registry physician. If the parties agree, they shall notify the Program Coordinator of the agreement so he or she may schedule the appointment with the selected physician for the MIR examination. Parties agreeing to the selection of the MIR Registry physician under this paragraph must abide by all of the Rules set forth here in Chapter 0800-02-20. A written opinion as to the permanent impairment rating given by the MIR Registry physician selected pursuant to this Rule shall be presumed to be the accurate impairment rating.
 - (b) If the Program Coordinator determines that there are an inadequate number of qualified physicians within a 100 mile straight-line radius of the employee's home zip code, the

(Rule 0800-02-20-.06, continued)

Program Coordinator may produce a state-wide listing of all registry physicians qualified to give the rating.

- (5) If the parties cannot agree upon selection of a MIR Registry physician from the Administrator's listing of MIR Registry physicians provided within fifteen (15) calendar days of the Program Coordinator issuing the requested listing, it shall be the responsibility of the employer to provide a written request to the Program Coordinator to provide a three-physician list by submitting such request on the Form. A written opinion as to the permanent impairment rating given by the MIR Registry physician selected pursuant to this Rule shall be presumed to be the accurate impairment rating.
- (6) The submitting party shall certify that all parties, as well as the Program Coordinator, have been sent the completed Form at the same time. The Form will not be processed until all required information has been provided.
- (7) The three (3) physician listing.
 - (a) Within five (5) business days of receipt of the completed "Application for a Medical Impairment Rating," the Division shall produce a list of three qualified physicians drawn from the Administrator's MIR Registry, from which one physician shall be designated to perform the evaluation. The three-physician listing created will be comprised of physicians qualified, based on the information provided by the physician and on their accreditation to perform evaluations of the body part(s) and/or medical condition(s) designated on the application for an evaluation. Psychiatric or psychological evaluations regarding mental and/or behavioral impairment shall be performed by a psychiatrist.
 - (b) All physician selections shall be derived from the pool of qualified physicians.
- (8) MIR Registry three (3) physician list selection process.
 - (a) Within three (3) business days of the issuance of the three-physician listing, the employer shall strike one name and inform the Program Coordinator and all parties of the remaining physicians. Within three (3) business days of the date of receipt of that name from the employer, the claimant shall strike one of the two remaining names and inform the Program Coordinator and other parties of the name of the remaining physician, who will perform the evaluation.
 - (b) If one party fails to timely strike a name from the listing, the other party shall notify the Program Coordinator and at the same time provide to Program Coordinator the name that it wishes to strike. In that situation, the Medical Director may randomly select one physician from the remaining two, and that physician shall perform the evaluation. The Program Coordinator shall inform the parties of the name of the selected physician in writing.
 - (c) If a selected physician is unable to perform the evaluation, the Medical Director shall provide one replacement name to the original listing using the same criteria and process set forth above, and present that revised listing to the parties and each shall again strike one name according to the above procedures. Additionally, if a physician is removed from the three-physician listing for any reason other than having been struck by one of the parties, the Medical Director will issue one replacement physician name.
- (9) Appointment date.
 - (a) Within three (3) business days of providing or receiving notice of the MIR physician selection, the Program Coordinator shall contact the MIR Registry physician to schedule the evaluation and shall immediately notify all parties of the date and time of the

(Rule 0800-02-20-.06, continued)

evaluation. Only after this notification should the employer or insurance carrier contact the MIR Registry physician and only to arrange for payment and for medical records submission required by these Rules.

(10) Submission of Medical Records.

- (a) All parties shall concurrently provide to the MIR registry physician and all other parties a complete copy of all pertinent medical records pertaining to the subject injury, postmarked or hand-delivered at least ten (10) calendar days prior to the evaluation. If necessary, the claimant shall promptly sign a "MIR Waiver and Consent" permitting the release of information relevant to the subject injury to the MIR physician.
- (b) In cases involving untimely medical record submission by a party, the Program Coordinator may elect to reschedule the evaluation to allow the physician adequate time for record review. Otherwise, the physician shall perform the evaluation and shall produce an "MIR Report."
- (c) The medical records shall include a dated cover sheet listing the claimant's name, MIR Registry physician's name, MIR Registry case number, date and time of the appointment, and the state file number. The medical records shall be in chronological order, by provider, and tabbed by year.
- (d) Medical bills, adjustor notes, surveillance tapes, denials, vocational rehabilitation reports, case manager records, commentaries, depositions, or any other document deemed by the Administrator to compromise the impartiality of the review shall not be submitted to the MIR Registry physician.

(11) Any forms the MIR physician requests to be completed should be completed by the claimant only. If the claimant needs assistance in completing these forms for any reason, the claimant shall notify the MIR Registry physician prior to the evaluation so that assistance can be provided by the MIR Registry physician's staff. The case manager shall not meet with the MIR Registry physician.

(12) The claimant shall notify the Program Coordinator of the necessity for a language interpreter concurrently with his/her notification of the chosen physician's name. The Program Coordinator shall arrange for such services and the employer shall be responsible for paying for such language interpreter. The language interpreter shall be impartial and independent, and have no professional or personal affiliation with any party to the claim or to the MIR Registry physician.

(13) When a claimant is required to travel outside a radius of fifteen (15) miles from the claimant's residence or workplace, then such claimant shall be reimbursed by the employer for reasonable travel expenses as allowed in the Act.

Authority: T.C.A. §§ 4-5-202, 50-6-102, 50-6-204 (2005), 50-6-205, 50-6-233, and Public Chapters 282 & 289 (2013). **Administrative History:** Public necessity rule filed June 15, 2005; effective through November 27, 2005. Public necessity rule filed November 16, 2005; effective through April 30, 2006. Original rule filed January 30, 2006; effective April 15, 2006. Amendments filed March 25, 2013; effective June 23, 2013. Amendment filed December 26, 2013; effective March 26, 2014.

0800-02-20-.07 PAYMENTS/FEES.

(1) The following timeframes shall exclude legal holidays. A physician performing evaluations under these Rules shall be prepaid by the employer a total evaluation fee for each evaluation performed, under a MIR Registry physician estimated timetable as outlined below

(Rule 0800-02-20-.07, continued)

- (a) Completed reports received and accepted by the Program Coordinator within thirty (30) calendar days of completing the examination \$1,000.00
 - (b) Completed reports received and accepted by the Program Coordinator between thirty-one (31) and forty-five (45) calendar days of the completing the examination \$850.00
 - (c) Completed reports received and accepted by the Program Coordinator between forty-six (46) and sixty (60) calendar days of the completing the examination \$500.00
 - (d) Completed reports received and accepted by the Program Coordinator later than sixty (60) calendar days of completing the examination No fee paid
- (2) The evaluation fee includes normal record review, the evaluation, and production of a standard "MIR Report." At the Administrator's sole discretion, the evaluation fee may be increased up to an additional \$250.00 if the time required for the record review, evaluation, or production of the MIR Report is extraordinary. All non-routine test(s) for an impairment rating essential under the applicable edition of the AMA Guides to the Evaluation of Permanent Impairment shall have been performed prior to the evaluation. Routine tests necessary for a complete evaluation, such as range of motion or spirometry tests, should be performed by the MIR Registry physician as part of the evaluation at no additional cost. Any additional x-rays that the registry physician deems necessary to render the MIR Report must be approved in writing by the Program Coordinator and are subject to the Medical Fee Schedule.
- (3) Cancellations. To be considered timely, notice of a party's desire to cancel an evaluation appointment shall be given to the Program Coordinator at least three (3) business days prior to the date of the evaluation. An evaluation may be canceled or rescheduled only after obtaining the consent of the Administrator. The Administrator shall decide whether an evaluation may be rescheduled within ten (10) calendar days of a request to cancel.
- (a) If the request is not timely, the MIR Registry physician shall be entitled to collect/retain a \$300.00 cancellation fee. If the evaluation is rescheduled, the MIR Registry physician is entitled to the entire evaluation fee (for the scheduled evaluation) in addition to this fee.
 - 1. If the claimant fails to appear for the evaluation with good cause, the Program Coordinator shall reschedule the evaluation.
 - 2. If the claimant fails to appear for the evaluation without good cause as determined by the Administrator, this may be deemed a refusal to comply with a reasonable request for medical examination and the injured employee's right to compensation may be suspended pursuant to Tenn. Code Ann. § 50-6-204(d)(8) and no compensation shall be due and payable while the injured employee continues such refusal.

Authority: T.C.A. §§ 4-5-202, 50-6-102, 50-6-204 (2005), 50-6-205, 50-6-233, and Public Chapters 282 & 289 (2013). **Administrative History:** Public necessity rule filed June 15, 2005; effective through November 27, 2005. Public necessity rule filed November 16, 2005; effective through April 30, 2006. Original rule filed January 30, 2006; effective April 15, 2006. Amendments filed March 25, 2013; effective June 23, 2013. Amendment filed December 26, 2013; effective March 26, 2014.

0800-02-20-.08 MULTIPLE IMPAIRMENT RATING EVALUATIONS.

- (1) In instances of more than one impairment rating being disputed in more than one medical specialty, and there is an insufficient number of physicians on the Registry who are qualified to perform all aspects of the evaluation, separate evaluations may be required, each being separate application and physician-selection processes and fees.

(Rule 0800-02-20-.08, continued)

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005). **Administrative History:** Public necessity rule filed June 15, 2005; effective through November 27, 2005. Public necessity rule filed November 16, 2005; effective through April 30, 2006. Original rule filed January 30, 2006; effective April 15, 2006.

0800-02-20-.09 COMMUNICATION WITH REGISTRY PHYSICIANS.

- (1) During the MIR physician selection process, registry physicians cannot render opinions as to the impairment relating to the subject injury to a party to the case in cases in which the physician's name appears on the three-physician listing. MIR Registry physicians who have rendered an opinion as to the impairment relating to the subject injury to a party to the case must disclose the nature and extent of those discussions to the Administrator immediately upon their selection as the MIR registry physician. The Administrator, in his or her sole authority, will determine whether or not a conflict of interest exists. Failure to disclose a potential conflict of interest may result in a physician's removal from the MIR Registry. While removed from the Registry, physicians shall not be eligible to perform MIR evaluations.
- (2) If selected as the MIR physician, there shall be no communication with the parties or their representatives prior to the Program Coordinator's acceptance and distribution of the final MIR Report, unless allowed by the Rules or approved by the Program Coordinator. Any approved communication, other than arranging for payment and the submission of medical records and the evaluation itself, shall be in writing with copies provided to all parties and the Program Coordinator. Failure by a Registry physician to disclose such communications will result in penalties under the Rules.
- (3) A party who seeks the presence of the MIR physician as a witness at a proceeding for any purpose, by subpoena, deposition or otherwise, shall be responsible for payment for those services to the MIR physician. Deposition fees shall be in accordance with applicable state rules and laws.
- (4) This Rule 0800-02-20-.09 shall also apply to any MIR physician selected to perform peer review pursuant to Rule 0800-02-20-.12.

Authority: T.C.A. §§ 4-5-202, 50-6-102, 50-6-204 (2005), 50-6-205, 50-6-233, and Public Chapters 282 & 289 (2013). **Administrative History:** Public necessity rule filed June 15, 2005; effective through November 27, 2005. Public necessity rule filed November 16, 2005; effective through April 30, 2006. Original rule filed January 30, 2006; effective April 15, 2006. Amendments filed March 25, 2013; effective June 23, 2013. Amendment filed December 26, 2013; effective March 26, 2014.

0800-02-20-.10 REQUIREMENTS FOR THE EVALUATION.

- (1) The MIR Registry physician's responsibilities prior to the evaluation are to:
 - (a) Review all materials provided by the parties subject to these Rules; and,
 - (b) Review the purpose of the evaluation and the impairment questions to be answered in the evaluation report.
- (2) The MIR Registry physician's responsibilities following the evaluation are to:
 - (a) Consider all medical evidence obtained in the evaluation and provided by the parties subject to the Rules;
 - (b) Complete an "MIR Report";
 - (c) Notify the Program Coordinator when the report has been completed;

(Rule 0800-02-20-.10, continued)

- (d) Send that complete report with all required attachments to the Program Coordinator only, via electronic mail or overnight delivery. The Program Coordinator will acknowledge, to the physician, receipt of the report.
- (3) No physician-patient relationship is created between the MIR physician and the claimant through the MIR Registry evaluation. The sole purpose of the evaluation is to establish an impairment rating and not to recommend future treatment or to provide a diagnosis or other medical advice. However, if new diagnoses are discovered, the physician has a medical obligation to inform the requesting party and the claimant about the condition and recommend further medical assessment.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005). **Administrative History:** Public necessity rule filed June 15, 2005; effective through November 27, 2005. Public necessity rule filed November 16, 2005; effective through April 30, 2006. Original rule filed January 30, 2006; effective April 15, 2006.

0800-02-20-.11 REQUIREMENTS FOR THE “MIR REPORT.”

- (1) After conducting the evaluation, the MIR physician shall produce the “MIR Report”. The format, available by using the Program’s electronic access, available upon request from the Program Coordinator or available online at www.state.tn.us/labor-wfd/mainforms.html, or a materially substantial equivalent approved by the Program Coordinator shall be used in all cases to detail the evaluation’s results. The MIR physician shall first review the determination by the attending physician that the claimant has reached Maximum Medical Improvement (MMI).
- (2) If, after reviewing the records, taking a history from the claimant and performing the evaluation, the MIR Registry physician concurs with the attending doctor’s determination of MMI, the report shall, at a minimum, contain the following:
 - (a) A brief description and overview of the claimant’s medical history as it relates to the subject injury, including reviewing and recapping all previous treatments.
 - (b) A statement of concurrence with the attending doctor’s determination of MMI;
 - (c) Pertinent details of the physical or psychiatric evaluation performed (both positive and negative findings);
 - (d) An impairment rating consistent with the findings and utilizing a standard method as outlined in the applicable AMA Guides, calculated as a total to the whole person if appropriate. In cases not covered by the AMA Guides, an impairment rating by any appropriate method used and accepted by the medical community is allowed, however, a statement that the AMA Guides fails to cover the case as well as a statement of the system on which the rating was based shall be included;
 - (e) The rationale for the rating based on reasonable medical certainty, supported by specific references to the clinical findings, especially objective findings and supporting documentation including the specific rating system, sections, tables, figures, and AMA Guides page numbers, when appropriate, to clearly show how the rating was derived; and
 - (f) A true or electronic signature and date by the MIR physician performing the evaluation certifying to the following:
 1. “It is my opinion, both within and to a reasonable degree of medical certainty that, based upon all information available to me at the time of the MIR impairment evaluation and by utilizing the relevant AMA Guides or other appropriate method

(Rule 0800-02-20-.11, continued)

as noted above, the claimant has the permanent impairment so described in this report. I certify that the opinion furnished is my own, that this document accurately reflects my opinion, and that I am aware that my signature attests to its truthfulness. I further certify that my statement of qualifications to serve on the MIR Registry is both current and completely accurate.”

- (3) If, after reviewing the records, taking a history from the claimant and performing the evaluation, the MIR physician does not concur with the attending doctor's determination of MMI, a report shall be completed similar to the one outlined above which documents and certifies to, in sufficient detail, the rationale for disagreeing. The physician is still entitled to collect/retain the appropriate MIR fee.
- (4) Services rendered by an MIR Registry physician shall conclude upon the Program Coordinator's acceptance of the final “MIR Report.” An MIR report is final and accepted for the purpose of these Rules when it includes the requested determination regarding final medical impairment rating, along with any necessary worksheets, and is signed by the Program Coordinator. Once the report has been accepted, the Program Coordinator will distribute copies of the report to the parties and the Workers' Compensation Specialist, if one is currently assigned. After acceptance of the “MIR Report” the medical records file, including the final “MIR Report,” shall be stored and/or disposed of by the MIR registry physician in a manner used for similar health records containing private information and within a time frame consistent with all applicable federal, state and local laws and the Tennessee Board of Medical Examiners' rules.
- (5) Any addendums or changes to the MIR Report after it has been deemed accepted shall be approved and signed by the Program Coordinator prior to distribution to the parties.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005). **Administrative History:** Public necessity rule filed June 15, 2005; effective through November 27, 2005. Public necessity rule filed November 16, 2005; effective through April 30, 2006. Original rule filed January 30, 2006; effective April 15, 2006. Amendments filed March 25, 2013; effective June 23, 2013.

0800-02-20-.12 PEER REVIEW.

- (1) All MIR Reports are subject to peer review for appropriateness and accuracy by either the Medical Director or a physician selected randomly by the Program Coordinator who shall have been on the MIR Registry for at least five (5) years without any disciplinary actions, shall be certified in the applicable edition of the AMA Guides by the American Academy of Disability Evaluating Physicians or the American Board of Independent Medical Examiners, and shall comply with Rule 0800-02-20-.05(2); provided, however, that the peer review shall not include a physical examination of the claimant. If the peer review is performed by a MIR Registry physician, then such physician shall be entitled to a fee of \$250.00 to be paid by the employer in advance of the peer review.
- (2) The peer review shall be completed within ten (10) business days of referral from the Program Coordinator. The Medical Director or peer review physician may recommend an MIR Report for reconsideration by the examining MIR physician if the Medical Director or peer review physician deems the report to be incomplete, inaccurate, or unclear pursuant to the requirements of Rule 0800-02-20-.11. Reconsideration and any revision shall be completed by the examining MIR physician within ten (10) business days of referral from the Program Coordinator.
- (3) The time limits in Rule 0800-02-20-.07(1) shall be tolled while a MIR Report is being reviewed or reconsidered pursuant to this rule; provided, however, that if the examining MIR physician or the peer review physician does not comply with the time requirements in paragraph (2), then the Program Coordinator may reduce their respective fees.

(Rule 0800-02-20-.12, continued)

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005). **Administrative History:** Public necessity rule filed June 15, 2005; effective through November 27, 2005. Public necessity rule filed November 16, 2005; effective through April 30, 2006. Original rule filed January 30, 2006; effective April 15, 2006. Repeal and new rule filed March 25, 2013; effective June 23, 2013.

0800-02-20-.13 REMOVAL OF A PHYSICIAN FROM THE REGISTRY.

- (1) The Administrator, upon the advice of the Medical Director, may remove a physician from the MIR Registry permanently or temporarily. In doing so, the Administrator shall first notify the physician in writing that he or she is at risk of being removed from the MIR Registry. The procedures followed for removal under this section shall follow the same procedures as those set forth below in Rule 0800-02-20-.13(2) and (3). The Administrator may remove a physician from the MIR Registry permanently or temporarily based upon any of the following grounds:
 - (a) Misrepresentation on the "Application for Appointment to the MIR Registry" as determined by the Administrator;
 - (b) Failure to timely report a conflict of interest in a case assignment, as determined by the Administrator;
 - (c) Refusal or substantial failure to comply with the provisions of these Rules, including, but not limited to, failure to determine impairment ratings correctly using the AMA Guides, as determined by the Medical Director;
 - (d) Failure to maintain the requirements of the Rules, as determined by the Administrator; or
 - (e) Any other reason for the good of the Registry as determined solely and exclusively by the Administrator.
- (2) Written complaints regarding any MIR Registry physician shall be submitted to the Program Coordinator. Upon receipt of a complaint regarding a MIR Registry physician, the Administrator shall send written notice of the complaint (or in cases arising under Rule 0800-02-20-.13(1), notice and grounds for possible removal) to such physician, stating the grounds, and notifying the physician that he or she is at risk of being removed from the MIR Registry.
 - (a) The physician shall have thirty (30) calendar days from the date the Notice of Complaint in which to respond in writing to the complaint(s), and may submit any responsive supporting documentation to the Program Coordinator for consideration. Failure of the physician to submit a timely response to the Notice of Complaint may result in removal of the physician from the MIR Registry.
 - (b) The Administrator, in consultation with the Medical Director, shall consider the complaint(s) and any response(s) from the physician in reaching a decision as to whether the physician shall be removed from the MIR Registry, and if removed, whether the removal will be permanent or temporary.
 - (c) Upon reaching a determination on the complaint(s), the Administrator shall issue a written Notice of Determination and set forth the basis for the decision in such Notice. The determination set forth shall become final fifteen (15) calendar days after issuance of the Notice of Determination, unless a timely request for reconsideration is received.
 - (d) A MIR Registry physician may seek reconsideration of an adverse decision from the Administrator by submitting a request for reconsideration stating the grounds for such reconsideration to the Program Coordinator within fifteen (15) calendar days of the

(Rule 0800-02-20-.13, continued)

issuance of the Notice of Determination. The Administrator may affirm, modify or reverse the initial determination upon reconsideration of the initial decision. The Administrator shall issue a Notice of Determination upon Reconsideration which shall be the final decision. If the Administrator does not act on the request for reconsideration within twenty (20) calendar days, then the request shall be deemed to have been denied, which shall be the final decision.

- (3) A physician who has been removed from the MIR Registry by the Administrator may apply for reinstatement six (6) months after the date of removal by submitting a written request to the Program Coordinator.

Authority: T.C.A. §§ 4-5-202, 50-6-102, 50-6-204 (2005), 50-6-205, 50-6-233, and Public Chapters 282 & 289 (2013). **Administrative History:** Public necessity rule filed June 15, 2005; effective through November 27, 2005. Public necessity rule filed November 16, 2005; effective through April 30, 2006. Original rule filed January 30, 2006; effective April 15, 2006. Amendment filed March 25, 2013; effective June 23, 2013. Amendment filed December 26, 2013; effective March 26, 2014.

0800-02-20-.14 PENALTIES.

- (1) Failure by an employer or insurer to pre-pay the evaluation fee shall allow the physician to charge the employer a \$100.00 late fee in addition to the evaluation fee. If the evaluation fee and/or late fee remains unpaid fifteen (15) calendar days following the date of the evaluation, an additional \$250.00 penalty is authorized. If any portion of a fee or penalty remains unpaid after an additional thirty (30) calendar day period, an additional \$500.00 penalty is authorized, and again for each additional thirty (30) calendar day period, or portion thereof, that it remains unpaid until all fees and/or penalties are fully paid.
- (2) If an employer or insurer fails to pay the cancellation fee of \$300.00, an additional \$250.00 penalty is authorized. If any portion of a fee or penalty remains unpaid after an additional thirty (30) calendar day period, an additional \$500.00 penalty is authorized, and again for each additional thirty (30) calendar day period, or portion thereof, that it remains unpaid until all fees and/or penalties are fully paid.
- (3) Failure by a MIR Registry physician to timely refund any unearned evaluation fee shall allow the employer or insurer to recover in addition to the unearned fee a \$100.00 late fee from that MIR Registry physician. If the unearned fee and/or late fee remains unpaid fifteen (15) calendar days following the date of the evaluation, an additional \$250.00 penalty against the MIR Registry physician is authorized. If any portion of the unearned fee or penalty remains unpaid after an additional thirty (30) calendar day period, an additional \$500.00 penalty is authorized, and again for each additional thirty (30) calendar day period, or portion thereof, that it remains unpaid until all fees and/or penalties are fully paid.
- (4) If any party engages in unauthorized communications with the MIR physician, then the Administrator or Administrator's designee is authorized to assess a penalty of up to \$500.00 per violation against that party.
- (5) Notwithstanding any other provision in these rules to the contrary, and in addition to any other penalty provided for in these Rules and the Act, failure by any party to comply with these Rules in a manner for which no penalty has specifically been set forth herein may subject that party to civil penalties of \$100.00 per violation, as determined by the Administrator.
- (6) Any party assessed a monetary penalty by the Division may request a contested case hearing in accordance with the Penalty Program Rules of the Division, 0800-2-13, by submitting a request for such hearing within fifteen (15) days of issuance of the notice of violation and assessment of civil penalties hereunder.

(Rule 0800-02-20-.14, continued)

Authority: T.C.A. §§ 4-5-202, 50-6-102, 50-6-118, 50-6-204, 50-6-205, 50-6-233 (2005), and Public Chapters 282 & 289 (2013). **Administrative History:** Public necessity rule filed June 15, 2005; effective through November 27, 2005. Public necessity rule filed November 16, 2005; effective through April 30, 2006. Original rule filed January 30, 2006; effective April 15, 2006. Repeal and new rule filed March 25, 2013; effective June 23, 2013. Amendment filed December 26, 2013; effective March 26, 2014.

0800-02-20-.15 TIME LIMITS.

- (1) All time limits referenced in these Rules may be extended by the Administrator in his or her sole and exclusive discretion.

Authority: T.C.A. §§ 4-5-202, 50-6-102, 50-6-204 (2005), 50-6-205, 50-6-233, and Public Chapters 282 & 289 (2013). **Administrative History:** Public necessity rule filed June 15, 2005; effective through November 27, 2005. Public necessity rule filed November 16, 2005; effective through April 30, 2006. Original rule filed January 30, 2006; effective April 15, 2006. Amendment filed December 26, 2013; effective March 26, 2014.

0800-02-20-.16 COOPERATION.

- (1) Injured workers, employers, insurers and carriers shall cooperate in good faith with the Department in scheduling MIR Registry evaluations. They shall also cooperate in good faith with all reasonable requests made by any MIR Registry physician.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005). **Administrative History:** Public necessity rule filed June 15, 2005; effective through November 27, 2005. Public necessity rule filed November 16, 2005; effective through April 30, 2006. Original rule filed January 30, 2006; effective April 15, 2006.

0800-02-20-.17 OVERTURNING A MIR PHYSICIAN'S OPINION.

- (1) Parties are prohibited from seeking a second MIR Registry impairment rating for the same injury if an impairment rating was issued after the first MIR Registry evaluation.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005). **Administrative History:** Public necessity rule filed June 15, 2005; effective through November 27, 2005. Public necessity rule filed November 16, 2005; effective through April 30, 2006. Original rule filed January 30, 2006; effective April 15, 2006.