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Sequence Number: 03-41-16
 Rule ID(s): 6164
 File Date: 3/21/16
 Effective Date: 6/29/16

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Tennessee Board of Physical Therapy
Division:	
Contact Person:	Thomas Aumann, Assistant General Counsel
Address:	665 Mainstream Drive, Nashville, Tennessee
Zip:	37932
Phone:	(615) 741-1611
Email:	Thomas.Aumann@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
1150-01	General Rules Governing the Practice of Physical Therapy
Rule Number	Rule Title
1150-01-.15	Disciplinary Actions, Civil Penalties, Assessment of Costs, and Screening Panels

(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 1150-01
General Rules Governing the Practice of Physical Therapy

Amendments

Rule 1150-01-.15 Disciplinary Actions, Civil Penalties, Assessment of Costs, and Screening Panels is amended by deleting current paragraph (2) in its entirety and renumbering the remaining paragraphs accordingly, and is further amended by deleting the newly-renumbered paragraph (2), but not its subparagraphs, and substituting instead the following language, so that as amended, the new paragraph shall read:

- (2) Order of Compliance - This procedure is a necessary adjunct to each previously issued disciplinary order containing probation, suspension or other condition limiting the licensee's ability to practice. An order of compliance is available only when a petitioner has completely complied with the conditions of a previously issued disciplinary order, including payment of civil penalties, completion of continuing education courses, or payment of administrative costs. If all conditions of the ordered discipline have been satisfied, or if no conditions have been placed on the license in addition to probation or suspension, the Board may consider a petition at its last meeting before the expiration of any such discipline. The Board, at its discretion, may require the petitioner to appear before granting such order. No discipline issued by the Board shall be lifted until the licensee petitions for and receives such order from the Board, which shall only be effective the original date the discipline was to expire, and in no event effective earlier than the date of petition, pursuant to this paragraph.

Authority: T.C.A. §§ 63-13-304, 63-13-312, 63-13-313, and 63-13-314.

* 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)
Brigina T. Wilkerson	X				
Bethany R. Buttrey	X				
David Harris				X	
David Finch	X				
Minty R. Ballard	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Board of Physical Therapy (board/commission/ other authority) on 08/14/2015 (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: 04/06/15 (mm/dd/yy)

Rulemaking Hearing(s) Conducted on: (add more dates). 08/14/15 (mm/dd/yy)

Date: 3/14/16

Signature: *Thomas J. Aumann*

Name of Officer: Thomas Aumann

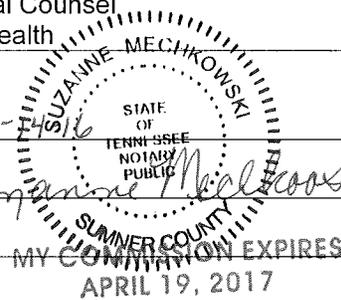
Assistant General Counsel

Title of Officer: Department of Health

Subscribed and sworn to before me on: 3-14-16

Notary Public Signature: *Suzanne Mechkowski*

My commission expires on: APRIL 19, 2017



Tennessee Board of Physical Therapy
Rule 1150-01-.15
General Rules Governing the Practice of Physical Therapy
Disciplinary Actions, Civil Penalties, Assessment of Costs, and Screening Panels

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.

Herbert H. Slatery III
Herbert H. Slatery III
Attorney General and Reporter
3/23/2016
Date

Department of State Use Only

Filed with the Department of State on: 3/31/16

Effective on: 6/29/16

Tre Hargett
Tre Hargett
Secretary of State

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PUBLICATIONS

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.

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

This rule amendment does not overlap, duplicate, or conflict with other federal, state, and local government rules.

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

This rule amendment is established with clarity, conciseness, and lack of ambiguity.

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

This rule amendment does not establish 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.**

This rule amendment does not establish friendly schedules or deadlines for compliance reporting requirements for small businesses.

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

This rule amendment does not consolidate or simplify compliance or 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.**

This rule amendment does not establish performance standards for small businesses as opposed to design or operational standards required for the proposed rule.

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

This rule amendment does not create unnecessary barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

Name of Board, Committee or Council: Tennessee Board of Physical Therapy

Rulemaking hearing date: August 14, 2015

- 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:**

These rule amendments will affect all Physical Therapists and clarify language regarding the requirements to obtain an order of compliance when necessary. The therapists will benefit from these rule amendments because the old language created confusion as to the process for obtaining such orders.

- 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:**

These proposed rule amendments will not affect reporting or recordkeeping and do not involve administrative costs.

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

The Board does not anticipate that there will be any adverse impacts to small businesses or consumers due to these rule amendments.

- 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 methods of achieving the purpose and/or objectives of the proposed rule amendments. On the contrary, these rule amendments could have a positive impact on business.

- 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 proposed rule amendments do not provide exemptions for small businesses.

Impact on Local Governments

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

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

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

This rule amendment to Disciplinary Actions, Civil Penalties, Assessment of Costs, and Screening Panels, will delete paragraphs (2) and (3), pertaining to Orders of Compliance, by combining and modifying the language to more efficiently and accurately state the requirements to complete this procedure.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

None.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

These rule amendments will affect all Physical Therapists. Currently there are five thousand seventy-six (5,076) such licensees.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

None.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

These rules should not result in any increase or decrease in state or local government revenues or expenditures.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Thomas Aumann, Assistant General Counsel, Department of Health.

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Thomas Aumann, Assistant General Counsel, Department of Health.

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Office of General Counsel, 665 Mainstream Drive, Nashville, Tennessee 37243, (615) 741-1611, Thomas.Aumann@tn.gov.

- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

None.

(Rule 1150-01-.13, continued)

of any section, clause, sentence or part in any one or more instances shall not be taken to affect or prejudice in any way its applicability or validity in any other instance.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-145, 63-1-146, 63-13-108, 63-13-302, 63-13-304, 63-13-310, 63-13-312, and 63-13-313. **Administrative History:** Original rule filed February 21, 1996; effective May 6, 1996. Repeal and new rule filed March 16, 2000; effective May 30, 2000. Amendment filed August 18, 2006; effective November 1, 2006.

1150-01-.14 CODE OF ETHICS. The Board adopts for licensed physical therapists, as if fully set out herein, and as it may from time to time be amended, the current "Code of Ethics" issued by the American Physical Therapy Association. The Board adopts for licensed physical therapist assistants, as if fully set out herein, and as it may from time to time be amended, the current "Standards of Ethical Conduct for the Physical Therapist Assistant" issued by the American Physical Therapy Association. Information to acquire copies may be obtained by contacting either of the following:

- (1) American Physical Therapy Association
1111 North Fairfax Street
Alexandria, VA 22314-1488
Telephone: (703) 684-2782
Telephone: (800) 999-2782
Fax: (703) 684-7343
T.D.D.: (703) 683-6748
Internet: www.apta.org
- (2) Board of Physical Therapy
227 French Landing, Suite 300
Heritage Place, MetroCenter
Nashville, TN 37243
Telephone: (615) 532-3202 ext. 25135
Telephone: (888) 310-4650 ext. 25135
Fax: (615) 532-5164
Internet: www.state.tn.us/health

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-13-103, 63-13-104, 63-13-108, 63-13-302, and 63-13-304. **Administrative History:** Original rule filed February 21, 1996; effective May 6, 1996. Amendment filed September 24, 1998; effective December 8, 1998. Original rule filed March 15, 1996; effective May 29, 1996. Repeal and new rule filed March 16, 2000; effective May 30, 2000. Amendment filed September 22, 2005; effective December 6, 2005. References to Board of occupational and Physical Therapy Examiners has been changed by The Secretary of State to the Applicable entity; Board of Occupational Therapy and/or Board of Physical Therapy pursuant to Public Chapter 115 of the 2007 session of the Tennessee General Assembly.

1150-01-.15 DISCIPLINARY ACTIONS, CIVIL PENALTIES, ASSESSMENT OF COSTS, AND SCREENING PANELS.

- (1) Upon a finding by the Board that a physical therapist or physical therapist assistant has violated any provision of the T.C.A. §§ 63-13-101, et seq., or the rules promulgated thereto, the Board 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 physical therapist or physical therapist assistant for minor or near infractions. It is advisory in nature and does not constitute a formal disciplinary action.

(Rule 1150-01-.15, continued)

- (b) Formal Censure or Reprimand - This is a written action issued to a physical therapist or physical therapist assistant for one time and less severe violations. It is a formal disciplinary action.
- (c) Probation - This is a formal disciplinary action which places a physical therapist or physical therapist assistant on close scrutiny for a fixed period of time. This action may be combined with conditions which must be met before probation will be lifted and/or which restrict 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 license previously issued.
- (e) Licensure Revocation - This is the most severe form of disciplinary action which removes an individual from the practice of the profession and terminates the licensure previously issued. If revoked, it relegates the violator to the status he possessed prior to application for licensure. However, the Board may, in its discretion, allow the reinstatement of a revoked license upon conditions and after a period of time it deems appropriate. No petition for reinstatement and no new application for licensure from a person whose license was revoked shall be considered prior to the expiration of at least one (1) year unless otherwise stated in the Board's revocation order.
- (f) Conditions - Any action deemed appropriate by the Board to be required of a disciplined licensee in any of the following circumstances:
 - 1. During any period of probation, suspension; or
 - 2. During any period of revocation after which the licensee may petition for an order of compliance to reinstate the revoked license; or
 - 3. As a prerequisite to the lifting of probation or suspension or as a prerequisite to the reinstatement of a revoked license; or
 - 4. As a stand-alone requirement(s) in any disciplinary order.

~~(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, 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.~~

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~~(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.~~

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(2) Order of Compliance - This procedure is a necessary adjunct to each previously issued disciplinary order containing probation, suspension or other condition limiting the licensee's ability to practice. An order of compliance is available only when a petitioner has completely complied with the conditions of a previously issued disciplinary order, including payment of civil penalties, completion of continuing education courses, or payment of administrative costs. If all conditions of the ordered discipline have been satisfied, or if no conditions have been placed on the license in addition to probation or suspension, the Board may consider a petition at its last meeting before the expiration of any such discipline. The Board, at its discretion, may require the petitioner to appear before granting such order. No discipline

(Rule 1150-01-.15, continued)

issued by the Board shall be lifted until the licensee petitions for and receives such order from the Board, which shall only be effective the original date the discipline was to expire, and in no event effective earlier than the date of petition, pursuant to this paragraph.

- (a) The Board will entertain petitions for an Order of Compliance as a supplement to a previously issued order upon strict compliance with the procedures set forth in subparagraph (b) in only the following three (3) circumstances:
1. When the petitioner can prove compliance with all the terms of the previously issued order and is seeking to have an order issued reflecting that compliance; or
 2. When the petitioner can prove compliance with all the terms of the previously issued order and is seeking to have an order issued lifting a previously ordered suspension or probation; or
 3. When the petitioner can prove compliance with all the terms of the previously issued order and is seeking to have an order issued reinstating a license previously revoked.
- (b) Procedures
1. The petitioner shall submit a Petition for Order of Compliance, as contained in subparagraph (c), to the Board's Administrative Office that shall contain all of the following:
 - (i) A copy of the previously issued order; and
 - (ii) A statement of which provision of subparagraph (a) the petitioner is relying upon as a basis for the requested order; and
 - (iii) A copy of all documents that prove compliance with all the terms or conditions of the previously issued order. If proof of compliance requires testimony of an individual(s), including that of the petitioner, the petitioner must submit signed statements from every individual the petitioner intends to rely upon attesting, under oath, to the compliance. The Board's consultant and administrative staff, in their discretion, may require such signed statements to be notarized. No documentation or testimony other than that submitted will be considered in making an initial determination on, or a final order in response to, the petition.
 2. The Board authorizes its consultant and administrative staff to make an initial determination on the petition and take one of the following actions:
 - (i) Certify compliance and have the matter scheduled for presentation to the Board as an uncontested matter; or
 - (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.

(Rule 1150-01-.15, continued)

4. If the Board finds that the petitioner has complied with all the terms of the previous order an Order of Compliance shall be issued.

5. If the petition is denied either initially by staff or after presentation to the Board and the petitioner believes compliance with the order has been sufficiently proven the petitioner may, as authorized by law, file a petition for a declaratory order pursuant to the provisions of T.C.A. § 4-5-223 and rule 1200-10-01-.11.

(Rule 1150-01-.15, continued)

(c) Form Petition

Petition for Order of Compliance
Board of Physical Therapy

Petitioner's Name: _____
Petitioner's Mailing Address: _____

Petitioner's E-Mail Address: _____
Telephone Number: _____

Attorney for Petitioner: _____
Attorney's Mailing Address: _____

Attorney's E-Mail Address: _____
Telephone Number: _____

The petitioner respectfully represents, as substantiated by the attached documentation, that all provisions of the attached disciplinary order have been complied with and I am respectfully requesting: (circle one)

1. An order issued reflecting that compliance; or
2. An order issued reflecting that compliance and lifting a previously ordered suspension or probation; or
3. An order issued reflecting that compliance and reinstating a license previously revoked.

Note – You must enclose all documents necessary to prove your request including a copy of the original order. If any of the proof you are relying upon to show compliance is the testimony of any individual, including yourself, you must enclose signed statements from every individual you intend to rely upon attesting, under oath, to the compliance. The Board's consultant and administrative staff, in their discretion, may require such signed statements to be notarized. No documentation or testimony other than that submitted will be considered in making an initial determination on, or a final order in response to, this petition.

Respectfully submitted this the _____ day of _____, 20_____.

Petitioner's Signature

~~(3)(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 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

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(Rule 1150-01-.15, continued)

have been either exhausted or not timely pursued. It is also not available for those who have accepted and been issued a reprimand.

(a) The Board will entertain petitions for modification of the disciplinary portion of previously issued orders upon strict compliance with the procedures set forth in subparagraph (b) only when the petitioner can prove that compliance with any one or more of the conditions or terms of the discipline previously ordered is impossible. For purposes of this rule the term "impossible" does not mean that compliance is inconvenient or impractical for personal, financial, scheduling or other reasons.

(b) Procedures

1. The petitioner shall submit a written and signed Petition for Order Modification on the form contained in subparagraph (c) to the Board's Administrative Office that shall contain all of the following:
 - (i) A copy of the previously issued order; and
 - (ii) A statement of why the petitioner believes it is impossible to comply with the order as issued; and
 - (iii) A copy of all documents that proves that compliance is impossible. If proof of impossibility of compliance requires testimony of an individual(s), including that of the petitioner, the petitioner must submit signed and notarized statements from every individual the petitioner intends to rely upon attesting, under oath, to the reasons why compliance is impossible. No documentation or testimony other than that submitted will be considered in making an initial determination on, or a final order in response to, the petition.
2. The Board authorizes its consultant and administrative staff to make an initial determination on the petition and take one of the following actions:
 - (i) Certify impossibility of compliance and forward the petition to the Office of General Counsel for presentation to the Board as an uncontested matter; or
 - (ii) Deny the petition, after consultation with legal staff, if impossibility of compliance with the provisions of the previous order is not proven and notify the petitioner of what proof of impossibility of compliance was either not sufficient or not submitted.
3. If the petition is presented to the Board the petitioner may not submit any additional documentation or testimony other than that contained in the petition as originally submitted.
4. If the petition is granted a new order shall be issued reflecting the modifications authorized by the Board that it deemed appropriate and necessary in relation to the violations found in the previous order.
5. If the petition is denied either initially by staff or after presentation to the Board and the petitioner believes impossibility of compliance with the order has been sufficiently proven the petitioner may, as authorized by law, file a petition for a declaratory order pursuant to the provisions of T.C.A. § 4-5-223 and rule 1200-10-01-.11.

(Rule 1150-01-.15, continued)

(c) Form Petition

Petition for Order Modification
Board of Physical Therapy

Petitioner's Name: _____
Petitioner's Mailing Address: _____

Petitioner's E-Mail Address: _____
Telephone Number: _____

Attorney for Petitioner: _____
Attorney's Mailing Address: _____

Attorney's E-Mail Address: _____
Telephone Number: _____

The petitioner respectfully represents that for the following reasons, as substantiated by the attached documentation, the identified provisions of the attached disciplinary order are impossible for me to comply with:

Note – You must enclose all documents necessary to prove your request including a copy of the original order. If any of the proof you are relying upon to show impossibility is the testimony of any individual, including yourself, you must enclose signed and notarized statements from every individual you intend to rely upon attesting, under oath, to the reasons why compliance is impossible. No documentation or testimony other than that submitted will be considered in making an initial determination on, or a final order in response to, this petition.

Respectfully submitted this the _____ day of _____, 20_____.

Petitioner's Signature

~~(4)(5) Civil Penalties.~~

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- (a) Purpose - The purpose of this rule is to set out a schedule designating the minimum and maximum civil penalties which may be assessed.
- (b) Schedule of Civil Penalties
 - 1. A Type A Civil Penalty may be imposed whenever the Board finds a person who is required to be licensed, certified, permitted or authorized by the Board, guilty of a willful and knowing violation of the Practice Act, or regulations promulgated pursuant thereto, to such an extent that there is, or is likely to be, an imminent,

(Rule 1150-01-.15, continued)

substantial threat to the health, safety and welfare of an individual patient or the public. For purposes of this section, willfully and knowingly practicing as a physical therapist or physical therapist assistant without a permit, license, certification, or other authorization from the Board is one of the violations of the Physical Therapy Practice Act for which a Type A Civil Penalty is assessable.

2. A Type B Civil Penalty may be imposed whenever the Board finds the person required to be licensed, certified, permitted, or authorized by the Board guilty of a violation of the Physical Therapy Practice Act or regulations promulgated pursuant thereto in such a manner as to impact directly on the care of patients or the public.
3. A Type C Civil Penalty may be imposed whenever the Board finds the person required to be licensed, certified, permitted, or authorized by the Board guilty of a violation of the Physical Therapy Practice Act or regulations promulgated pursuant thereto, which are neither directly detrimental to patients or the public, nor directly impact their care, but have only an indirect relationship to patient 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 during consideration of any Notice of Charges. In addition, the Board may, upon good cause shown, assess a type and amount of civil penalty which was not recommended by the Division.
3. In assessing the civil penalties pursuant to these rules the Board may consider the following factors:
 - (i) Whether the amount imposed will be a substantial economic deterrent to the violator;
 - (ii) The circumstances leading to the violation;
 - (iii) The severity of the violation and the risk of harm to the public; and
 - (iv) The economic benefits gained by the violator as a result of non-compliance; and

(Rule 1150-01-.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 Title 4, Chapter 5, Tennessee Code Annotated.

~~(5)(6)~~ Assessment of costs in disciplinary proceedings shall be as set forth in T.C.A. §§ 63-1-144 and 63-13-313.

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~~(6)(7)~~ Reconsiderations and Stays - 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.

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~~(7)(8)~~ Screening Panels - Any screening panel(s) established pursuant to Tennessee Code Annotated § 63-1-138:

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- (a) Shall have concurrent authority with the Board members and any individual Physical Therapist or Physical Therapist Assistant designated by the Board pursuant to paragraph (6) of Rule 1150-01-.19, to do the acts enumerated in paragraph (6) of Rule 1150-01-.19 subject to the conditions contained therein.
 1. A screening panel(s) comprised of two (2) or more persons shall elect a chairperson prior to convening to conduct business.
 2. A screening panel(s) comprised of two (2) or more persons is required to conduct the informal hearings authorized in subparagraph (b) immediately below.
- (b) After completion of an investigation by the Division, may upon request of either the state, or the licensee who is the subject of an investigation but only with the agreement of the state, or upon agreement of both the licensee and the state, conduct a non-binding informal hearing and make recommendations as a result thereof as to what, if any, terms of settlement of any potential disciplinary action are appropriate.
 1. Neither the Rules of Civil Procedure, the Rules of Evidence, nor Contested Case Procedural Rules under the Administrative Procedures Act shall apply in informal hearings before the screening panel(s). However, Rule 31 of the Rules of the Tennessee Supreme Court may serve as general guidance as to the principles of mediation and alternative dispute resolution.
 - (i) Evidence may be presented or received in any manner and in whatever order agreed upon by the parties.
 - (ii) In the absence of an agreement of the parties the screening panel chairperson shall determine the manner and order of presentation of evidence.
 2. A licensee who is the subject of an investigation being considered by a screening panel cannot be compelled to participate in any informal hearing.
 3. Proposed settlements reached as a result of any informal hearing will not become binding and final unless they are:
 - (i) Approved by a majority of the members of the screening panel which issued them; and

(Rule 1150-01-.15, continued)

- (ii) Agreed to by both the Department of Health, by and through its attorney(s), and the licensee; and
 - (iii) Subsequently presented to and ratified by the Board.
4. The activities of the screening panels and any mediation or arbitration sessions shall not be construed as meetings of an agency for purposes of the open meetings act and shall remain confidential. The members of the screening panels, mediators and arbitrators have a deliberative privilege and the same immunity as provided by law for the boards, and are not subject to deposition or subpoena to testify regarding any matter or issue raised in any contested case, criminal prosecution or civil lawsuit which may result from or be incident to cases processed before them.

Authority: T.C.A. §§ 4-5-202, 4-5-204, ~~63-13-108~~, 63-13-304, 63-13-312, 63-13-313, and 63-13-314. **Administrative History:** Original rule filed February 21, 1996; effective May 6, 1996. Repeal and new rule filed March 16, 2000; effective May 30, 2000. Amendment filed July 29, 2002; effective October 12, 2002. Amendment filed September 8, 2004; effective November 22, 2004. Amendment filed February 2, 2007; effective April 18, 2007. References to Board of occupational and Physical Therapy Examiners has been changed by The Secretary of State to the Applicable entity; Board of Occupational Therapy and/or Board of Physical Therapy pursuant to Public Chapter 115 of the 2007 session of the Tennessee General Assembly. Amendment filed September 24, 2009; effective December 23, 2009.

1150-01-.16 DUPLICATE (REPLACEMENT) LICENSE.

- (1) A license holder whose "artistically designed" license has been lost or destroyed may be issued a new license upon receipt of a written request in the Board's 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, accompanied by a recent photograph, signed and notarized, and the required fee pursuant to Rule 1150-01-.06.
- (2) A license holder whose renewal certificate license has been lost or destroyed may be issued a new license upon receipt of a written request in the Board's 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, accompanied by a recent photograph, signed and notarized, and the required fee pursuant to Rule 1150-01-.06.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-104, 63-1-106, 63-13-104, 63-13-108, 63-13-304, and 63-13-303. **Administrative History:** Original rule filed February 21, 1996; effective May 6, 1996. Amendment filed September 24, 1998; effective December 8, 1998. Repeal and new rule filed March 16, 2000; effective May 30, 2000.

1150-01-.17 CHANGE OF ADDRESS AND/OR NAME.

- (1) Change of Address - Each person holding a license who has had a change of address shall file in writing with the Board his current mailing address, giving both old and new addresses. Such notification should be received in the Board's administrative office no later than thirty (30) days after such change is effective and must reference the individual's name, profession, and license 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. The notice shall provide both the old and new name, a notarized photocopy of the official document involved, and must reference the individual's profession and license number.