

Department of Health
Proposed Rules of the
Division of Health Related Boards

Chapter 1200-10-1
General Rules and Regulations

Presented herein is a proposed new rule of the Department of Health, Division of Health Related Boards submitted pursuant to Tennessee Code Annotated, Section 4-5-202 in lieu of a rulemaking hearing. It is the intent of the Department of Health, Division of Health Related Boards, to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed amendments are published. Such petition to be effective must be filed in the office of the Division of Health Related Boards on the First Floor of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, Tennessee 37247-1010 and in the Administrative Procedures Division of the Department of State, Eighth Floor, William R. Snodgrass Tennessee Tower, 312 Eighth Avenue North, Nashville, TN 37243, and must be signed by twenty-five (25) persons who will be affected by the rule, or submitted by a municipality which will be affected by the rule or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For a copy of this proposed rule, contact: Jerry Kosten, Regulations Manager, Division of Health Related Boards, First Floor - Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN 37247-1010, (615) 532-4397.

The text of the proposed new rule is as follows:

New Rule

Table of Contents

1200-10-1-.13 Screening Panels

1200-10-1-.13 Screening Panels.

- (1) Any screening panel(s) established pursuant to T.C.A. § 63-1-138 shall have concurrent authority with the members of the applicable Board and with any individual practitioner designated by the applicable Board pursuant to such Board's authority to select consultant(s), to decide the following:
 - (a) What, if any, investigation should be instituted upon complaints received by the Division; and

- (b) Whether a licensee who is the subject of a complaint received and/or an investigation conducted by the Division is an appropriate candidate pursuant to Board established guidelines for diversion to a professional peer review organization and/or impaired professional association; and
 - (c) Whether a disciplinary action should be instituted against a licensee; and
 - (d) What, if any, terms of settlement should be offered to a licensee. A proposed settlement for formal discipline will not become final unless it is subsequently ratified by the applicable Board or a duly constituted panel of the applicable Board.
- (2) A screening panel comprised of two (2) or more persons shall elect a chairperson prior to convening to conduct business. A screening panel shall include at least one (1) individual currently licensed by the applicable Board.
 - (3) A screening panel comprised of two (2) or more persons is required in order to conduct the informal hearings set forth in paragraph (6).
 - (4) When, and only when, a screening panel is used as a mechanism to resolve issues that are internal to the Division involving a complaint and/or an investigation, and no agreement that is binding on the subject of the complaint/investigation is authorized to be reached, the subject of the complaint/investigation need not be present and no prior or subsequent notice of such meeting of a screening panel need be issued to the subject of the complaint/investigation.
 - (5) The Division shall provide notification and explanation to the Boards when there are substantive amendments to this rule.
 - (6) After completion of an investigation by the Division, a screening panel, upon request of either the Department or the licensee who is the subject of an investigation, but only with the agreement of the Department, or upon request of both the licensee and the Department, may conduct an informal hearing and make recommendations as a result thereof as to what, if any, disciplinary action is appropriate. Any proposed settlement for formal discipline must be finalized pursuant to subparagraph (c) below.
- (a) The Rules of Civil Procedure, the Rules of Alternative Dispute Resolution, the Rules of Evidence, and the Contested Case Procedural Rules under the Administrative Procedures Act shall not apply in informal hearings before the screening panel(s).

- (b) A licensee who is the subject of an investigation being considered by a screening panel cannot be compelled to participate in any informal hearing.
- (c) Proposed settlements for formal discipline will not become binding and final unless they are:
 - 1. Approved by a majority of the members of the screening panel which issued them; and
 - 2. Agreed to by both the Department and the licensee; and
 - 3. Subsequently presented to and ratified by the applicable Board or a duly constituted panel of the applicable Board.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-132, and 63-1-138.

Legal contact: Richard Russell, Deputy General Counsel, Office of General Counsel, 26th Floor, William R. Snodgrass Tennessee Tower, 312 Eighth Avenue North, Nashville, Tennessee 37247-0120, (615) 741-1611.

Contact for disk acquisition and the party who will approve final copy for publication: Jerry Kosten, Regulations Manager, Division of Health Related Boards, First Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, Tennessee 37247-1010, (615) 532-4397.

Signature of the agency officer or officers directly responsible for proposing and/or drafting these rules:

Robbie H. Bell, Director
Division of Health Related Boards

I certify that this is an accurate and complete copy of proposed rules lawfully promulgated and adopted by the Department of Health, Division of Health Related

Boards on the 14th day of June, 2005. The Secretary of State is hereby instructed that, in the absence of a petition for rulemaking hearing being filed under the conditions set out herein and in the location described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of thirty (30) days after the publication date of the issue of the Tennessee Administrative Register in which these proposed rules are published.

Robbie H. Bell, Director
Division of Health Related Boards

Subscribed and sworn to before me this the 14th day of June, 2005.

Notary Public

My commission expires on the 25th day of March, 2006.

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.

Paul G. Summers
Attorney General and Reporter

The proposed rules set out herein were properly filed in the Department of State on the 5th day of April, 2006, and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 28th day of August, 2006.