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Sequence Number: 04-04-09  
 Rule ID(s): 4159-4160  
 File Date: 04/09/2009  
 Effective Date: 06/23/2009

# Rulemaking Hearing Rule(s) Filing Form

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

<b>Agency/Board/Commission:</b>	Tennessee Massage Licensure Board
<b>Division:</b>	
<b>Contact Person:</b>	Andrea Huddleston
<b>Address:</b>	Department of Health Office of General Counsel 220 Athens Way Suite 210 Nashville, TN
<b>Zip:</b>	37243
<b>Phone:</b>	(615) 741-1611
<b>Email:</b>	<a href="mailto:Andrea.Huddleston@state.tn.us">Andrea.Huddleston@state.tn.us</a>

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

- Amendment  
 New  
 Repeal

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

Chapter Number	Chapter Title
0870-01	General Rules Governing Licensed Massage Therapists and Establishments
Rule Number	Rule Title
0870-01-.06	Fees
0870-01-.12	Continuing Education

Chapter Number	Chapter Title
0870-02	General Rules Governing Massage Therapy Educational Programs
Rule Number	Rule Title
0870-02-.02	Program Approval and Curriculum Requirements
0870-02-.08	Fees

(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 0870-01  
General Rules Governing Licensed Massage Therapists and Establishments

Rule 0870-01-.06 Fees is amended by deleting subparagraph (1)(h) in its entirety and substituting the following language, and by adding a new subparagraph (1)(i) as follows:

- (1)(h) A reinspection fee is a nonrefundable fee to be paid by an establishment when an establishment does not pass inspection, fails to schedule an inspection, does not appear for a scheduled inspection, or moves to a new location requiring an inspection of the new establishment.
- (1)(i) A continuing education course approval fee is a nonrefundable fee to be paid by a continuing education course provider upon the submission of a continuing education curriculum to be approved by the Board each continuing education cycle.

Authority: T.C.A. §63-18-111.

Rule 0870-01-.06 Fees is amended by deleting subparagraphs (2)(a), (2)(b), (2)(c), (2)(d), and (2)(h) in their entirety and substituting the following language, and by adding a new subparagraph (2)(i) as follows:

- (a) Individual application fees shall include the following:
  - 1. Application fee..... \$85.00
  - 2. Initial licensure fee.....\$185.00
  - 3. State regulatory fee..... \$10.00
  - Total application fees due upon submission of an application..... \$280.00
- (b) Establishment application fees shall include the following:
  - 1. Application fee..... \$95.00
  - 2. Initial licensure fee..... \$120.00
  - 3. State regulatory fee.....\$10.00
  - Total application fees due upon submission of an application.....\$225.00
- (c) Individual biennial licensure renewal fee.....\$185.00
- (d) Establishment biennial licensure renewal fee.....\$135.00
- (h) Reinspection fee
  - 1. due to a failed inspection or for a failure to allow or to appear for inspection.....\$110.00
  - 2. due to a change of address because of moving to a new location.....\$135.00

- (i) Continuing education course approval fee.....\$100.00  
(per course)

Authority: T.C.A. §63-18-111.

Rule 0870-01-.12 Continuing Education 0870-01-.12(4)(b)1 is amended by deleting the text of subpart (iii) in its entirety and substituting instead the following language, and by adding a new subpart (iv) as follows:

- (iii) The provider must submit documentation sufficient to show that the information to be disseminated in those hours is accurate and current and is in compliance with paragraph (1) and subparagraph (4)(c) of this rule; and
- (iv) The provider shall submit the continuing education course approval fee established in rule 0870-1-.06(2)(i).

Authority: T.C.A. §63-18-111.

Chapter 0870-02  
General Rules Governing Massage Therapy Educational Programs

Table of Contents

0870-02-.08 Fees.

- (1) Types of Fees.
  - (a) Program application fee is a non-refundable fee to be paid by all applicants for approval of a new massage therapy program. This fee includes an initial approval fee and the state regulatory fee.
  - (b) Annual program renewal fee is a non-refundable fee to be paid prior to the issuance of the renewal certificate. This fee includes an annual renewal fee and the state regulatory fee. This fee must be received annually on or before June 30<sup>th</sup>.
  - (c) Existing program registration fee is a non-refundable fee to be paid by all massage programs that (within ninety (90) days of the effective date of this rule) are currently approved by the Board.
  - (d) Late renewal fee is a non-refundable fee to be paid when the program fails to submit the required annual report. This is an additional fee which must be submitted with the annual program renewal fee and state regulatory fee.
  - (e) State regulatory fee is a non-refundable fee to be paid by all programs upon initial application and renewal.
  - (f) Replacement certificate fee is a non-refundable fee to be paid when an approved massage program requests replacement approval for the massage therapy educational program due to name and/or address changes.

(g) Remedial application fee is a non-refundable fee to be paid when an approved massage program is required to submit a remedial plan.

(2) Fee Schedule:

(a) Program application fee shall include the following:

- 1. Initial approval fee.....\$500.00
- 2. State regulatory fee.....\$5.00

(b) Existing program registration fee.....\$100.00

(c) Annual program renewal fee shall include the following:

- 1. Annual renewal fee.....\$250.00
- 2. State regulatory fee.....\$5.00

(d) Late renewal fee.....\$500.00

(e) Replacement certificate fee.....\$25.00

(f) Remedial application fee.....\$750.00

Authority: T.C.A. §63-18-111 and 63-18-115.

Rule 0870-02-.02 Program Approval and Curriculum Requirements is amended by adding a new paragraph (4) as follows:

- (4) The program providers shall pay all applicable fees established in rule 0870-2-.08 for the application and renewal of the program approval by the Board as well as fees to process a replacement certificate and a remedial plan.

Authority: T.C.A. § 63-18-111 and 63-18-115.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Phyllis B. Salyers, Chair	X				
Marcela Collins	X				
Marilyn Field	X				
Faith Mayton	X				
Chris Sluss	X				
Cynthia Jagers	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Massage Licensure Board (board/commission/ other authority) on 10/27/2008 (mm/dd/yyyy), and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: (08/29/08)

Notice published in the Tennessee Administrative Register on: (09/15/08)

Rulemaking Hearing(s) Conducted on: (add more dates). (10/27/08)

Date: 12-11-08

Signature: \_\_\_\_\_

Name of Officer: Andrea Huddleston

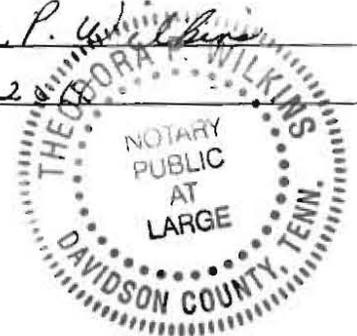
Assistant General Counsel

Title of Officer: Department of Health

Subscribed and sworn to before me on: Dec. 11, 2008

Notary Public Signature: Theodora P. Wilkins

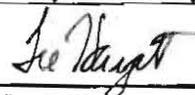
My commission expires on: Nov. 7, 2010



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

  
Robert E. Cooper, Jr.  
Attorney General and Reporter  
4-6-09  
Date

Department of State Use Only

Filed with the Department of State on: ~~4/19~~ 4/9/09  
Effective on: 6/23/09  
  
Tre Hargett  
Secretary of State

RECEIVED  
2009 APR -9 PM 4: 31  
SECRETARY OF STATE  
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 shall 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.



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PHIL BREDESEN  
GOVERNOR

SUSAN R. COOPER, M.S.N., R.N.  
COMMISSIONER

**MEMORANDUM**

**TO: TRE HARGETT**  
**Secretary of State**

**FROM: ANDREA HUDDLESTON**  
**Assistant General Counsel**

**DATE: April 13, 2009**

**SUBJECT: Massage Licensure Board Rule Amendments**  
**0870-01-.06, Fees;**  
**0870-01-.12, Continuing Education;**  
**0870-02-.02, Program Approval and Curriculum Requirements;**  
**0870-02-.08, Fees.**

**OGC Case Number: 07-1647**

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Pursuant to T.C.A. § 4-5-222, the following is a summary of the comments received regarding the above rule amendments as well as the agency's responses to those comments.

Approximately twenty (20) written comments in response to the above-rulemaking hearing were received from licensed massage therapists as well as massage program owners/ operators. These responses generally expressed that the percentage of the increase was unnecessarily high and would result in an undue hardship on therapists as well as massage programs. Several comments suggested that, while an increase could be necessary, the degree of increase in these rule amendments was excessive.

The agency (the Tennessee Massage Licensure Board) responded that the proposed fee increases are necessary for the continued functioning of the Board (inasmuch as self-sufficiency is required of regulatory agencies pursuant to T.C.A. § 4-29-121). The Board noted that a larger increase had been contemplated and that the increases contained in these rule amendments represented a compromise. The amount of the compromise was carefully calibrated based on projected expenditures and was deemed to be both affordable for licensees as well as consistent with fees charges other such regulatory boards around the country.

*Tennessee Department of Health Mission:  
To promote, protect and improve the health of persons living in, working in, or visiting the State of Tennessee.*

**Regulatory Flexibility Addendum**

Pursuant to Public Chapter 464 of the 105<sup>th</sup> General Assembly, prior to initiating the rule making process as described in § 4-5-202(a)(3) and § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

(If applicable, insert Regulatory Flexibility Addendum here)

**Economic Impact Statement:**

1. Types of small businesses directly affected:

These rule amendments would impact small businesses since they increase fees. Small businesses impacted would include licensed massage therapists, licensed massage establishments and board-approved massage therapy school owners, along with those seeking to become licensed or board-approved.

2. Projected reporting, recordkeeping and other administrative costs:

There are no projected additional administrative costs as a result of these amendments.

3. Probable effect on small businesses:

There is no expected adverse impact on small businesses as a result of these amendments. These fee increases have been calibrated to be both affordable for payors as well as sufficient to allow the continued operation of the regulating board.

4. Less burdensome, intrusive or costly alternative methods:

There are no alternative means which are less burdensome, intrusive or costly. These fee increases are necessary to ensure the self-sufficiency required of the board pursuant to T.C.A. § 4-29-121.

5. Comparison with federal and state counterparts:

There are no Federal counterparts. These fees are similar to those of other states.

6. Effect of possible exemption of small businesses:

There is no expected exemption of small businesses as a result of these amendments or effect thereof.

**Additional Information Required by Joint Government Operations Committee**

All agencies, upon filing a rule, must also submit the following pursuant to TCA 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;

These rule amendments increase initial licensure fees and renewal fees for both massage therapists and establishment licenses, as well as increase fees for re-inspections and continuing education course approval. These rules also add new fees for massage therapy program approval.

- (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;

T.C.A. § 4-29-121 provides that boards such as the Tennessee Massage Licensure Board which do not collect sufficient fees to cover the board's operating costs are subject to early termination. T.C.A. § 63-18-111 gives the Board rulemaking authority, including the setting of fees for licensure and renewal.

- (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;

The amendments will directly affect all current and future state-licensed massage therapists, as well as current and future holders of a massage establishment license. The amendments will also affect owners of Tennessee board-approved massage therapy programs.

Written comments from some of these classes of interested parties were received. Those comments urged rejection of these rule amendments. These comments were addressed by the Board at the rulemaking hearing and written responses are attached hereto.

- (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;

Estimates regarding massage therapist licenses fees are based on assumptions of approximately 2050 renewing massage therapist licenses per year and approximately 350 new massage therapist applicants per year. Estimate are further based on assumptions of approximately 700 renewing massage establishment licenses per year and 250 new establishment applicants per year. Estimate are further based on approximately 24 already certified massage therapy schools and 1 new applicant per year. The estimated increase in revenues resulting from these rule changes is approximately \$350,000.

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

Dianne Birkner, Board Manager for the Tennessee Massage Licensure Board

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

Andrea Huddleston, Department of Health/ Office of General Counsel

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

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