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Sequence Number: 08-21-13  
 Rule ID(s): 5518  
 File Date: 8/26/13  
 Effective Date: 11/29/13

# Rulemaking Hearing Rule(s) Filing Form

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

<b>Agency/Board/Commission:</b>	Board of Osteopathic Examination
<b>Division:</b>	
<b>Contact Person:</b>	Diona E. Layden, Deputy General Counsel
<b>Address:</b>	Plaza One, Suite 210, 220 Athens Way, Nashville, Tennessee 37243
<b>Zip:</b>	
<b>Phone:</b>	(615) 741-1611
<b>Email:</b>	Diona.Layden@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
1050-02	General Rules and Regulations Governing the Practice of Osteopathy
Rule Number	Rule Title
1050-02-.02	Fees
1050-02-.18	Medical Records

(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>)

Rule 1050-02-.02 Fees is amended by deleting the fee amount in subparagraph (1)(b) and substituting instead the following fee, so that as amended, the new fee shall read:

- (b) Licensure Renewal Fee – To be paid biennially by all licensees. \$300.00  
This fee also applies to licensees who reactivate a retired license.

Authority: T.C.A. §§ 4-3-1011, 4-5-202, 4-5-204, 63-1-106, 63-9-101, 63-9-104, 63-9-105, and 63-9-107.

Rule 1050-02-.18 Medical Records is amended by deleting subparagraph (4)(d) and substituting instead the following language, so that as amended, the new subparagraph shall read:

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

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-2-101, 63-2-102, 63-9-101, 63-9-106, and 63-9-111.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Jill Robinson, DO	X				
Jeffrey Hamre, DO	X				
Donald H. Polk, DO	X				
Robert Fletcher Lance	X				
Karen R. Shepherd, DO	X				
Jack G. Pettigrew, DO				X	

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Osteopathic Examination (board/commission/ other authority) on 5/15/2013 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 02/15/13

Rulemaking Hearing(s) Conducted on: (add more dates). 05/15/13

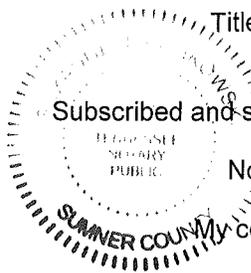
Date: May 24, 2013

Signature: [Handwritten Signature]

Name of Officer: Diona E. Layden

Deputy General Counsel

Title of Officer: Department of Health



Subscribed and sworn to before me on: May 24, 2013

Notary Public Signature: [Handwritten Signature]

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

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

[Handwritten Signature]

Robert E. Cooper, Jr.

Attorney General and Reporter

8-22-13

Date

Department of State Use Only

Filed with the Department of State on: 8/26/13

Effective on: 11/24/13

  
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Tre Hargett  
Secretary of State

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## **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 oral or written comments on the rules.

### **Regulatory Flexibility Addendum**

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

(If applicable, insert Regulatory Flexibility Addendum here)

#### Regulatory Flexibility Analysis

- (1) The proposed rules do not overlap, duplicate, or conflict with other federal, state, or local government rules.
- (2) The proposed rules exhibit clarity, conciseness, and lack of ambiguity.
- (3) The proposed rules are not written with special consideration for the flexible compliance and/or requirements because the licensing boards have, as their primary mission, the protection of the health, safety and welfare of Tennesseans. However, the proposed rules are written with a goal of avoiding unduly onerous regulations. The rule is written to provide a decrease in the renewal fee for osteopathic physicians.
- (4) The compliance requirements throughout the proposed rules are as "user-friendly" as possible while still allowing the division to achieve its mandated mission in licensing osteopathic physicians.
- (5) Compliance requirements are not consolidated or simplified for small businesses in the proposed rules.
- (6) The standards required in the proposed rules are very basic and do not necessitate the establishment of performance standards for small businesses.
- (7) There are no unnecessary entry barriers or other effects in the proposed rules that would stifle entrepreneurial activity or curb innovation.

## STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

1. **Name of Board, Committee or Council:** Tennessee Board of Osteopathic Examination
2. **Rulemaking hearing date:** May 15, 2013
3. **Type or types of small businesses that will be directly affected by the proposed rules:**  
Osteopathic Physicians will be affected by the proposed rules.
4. **Types of small businesses that will bear the cost of the proposed rules:**  
The proposed rules will reduce the costs borne by Osteopathic Physicians.
5. **Types of small businesses that will directly benefit from the proposed rules:**  
Osteopathic Physicians will benefit by the proposed rules.
6. **Description of how small business will be adversely impacted by the proposed rules:**  
The Board does not anticipate that there will be adverse impacts to small businesses.
7. **Alternatives to the proposed rule that will accomplish the same objectives but are less burdensome, and why they are not being proposed:**  
These rule amendments are not burdensome, intrusive, or costly. On the contrary, these rule amendments will have a positive impact on business.
8. **Comparison of the proposed rule with any federal or state counterparts:**
  - (a) Federal: The Board is not aware of any federal counterparts.
  - (b) State: There are other Health Professional Boards whose renewal fees have been decreased when the Board is operating at a surplus.

### **Impact on Local Governments**

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

(Insert statement here)

The proposed rule amendments should not have an 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;

Rule 1050-02-.02 is being amended to reduce the renewal fee for osteopathic physicians. Rule 1050-02-.18 is being amended to correct an incorrect statutory reference within the rule.

- (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. § 63-9-107 authorizes the Board of Osteopathic Examination to set a renewal fee amount for osteopathic physicians.

- (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 proposed rule amendments affect osteopathic physicians. Neither written nor oral comments were made to the Board of Osteopathic Examination in response to the proposed amendments.

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

Unknown.

- (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;

The proposed rule amendments will neither increase nor decrease state and local government revenues and expenditures.

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

Diona E. Layden, Deputy General Counsel, Department of Health, possesses substantial knowledge and understanding of the rule.

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

Diona E. Layden, Deputy General Counsel, Department of Health, will explain the rule at a scheduled meeting of the committees.

- (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

Diona E. Layden, Deputy General Counsel, Office of General Counsel, 220 Athens Way, Suite 210, Nashville, TN 37243, (615) 741-1611, [Diona.Layden@tn.gov](mailto:Diona.Layden@tn.gov)

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

None.

(Rule 1050-02-.01, continued)

- (11) FCVS - The Federation Credentials Verification Service which is a service offered by the Federation of State Medical Boards that provides primary source identification and verification of physician core credentials as required in licensure applications by the states.
- (12) FLEX - The Federation Licensing Examination.
- (13) Licensee - Any person who has been lawfully issued a license to practice osteopathic medicine in Tennessee by the Board.
- (14) Medical Service - An activity that falls within the definition of the "practice of osteopathic medicine" as set forth in Tennessee Code Annotated, Section 63-9-106(a).
- (15) N.B.M.E. - The National Board of Medical Examiners' Examination
- (16) N.B.O.M.E. - The National Board of Osteopathic Medical Examiners' Examination.
- (17) Practice of Medicine - The "practice of osteopathic medicine" as set forth in Tennessee Code Annotated, Section 63-9-106(a). See also "Medical Service" or "Professional Service".
- (18) Professional Service - An osteopathic service.
- (19) Shall or Must - Where these words are used, compliance is mandatory.
- (20) Should or May - Where these words are used, it means a suggestion or a recommendation.
- (21) SPEX - The Special Purpose Examination, as written by the Federation of State Medical Boards.
- (22) Supervising Physician - Where these words are used, it shall include a licensed physician who actively oversees a certified nurse practitioner or a licensed physician assistant; and shall also include any properly authorized alternate or substitute supervising physician.
- (23) U.S.M.L.E. - The United States Medical Licensing Examination.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 63-9-101, 63-9-105, 63-9-107, and 63-9-111. **Administrative History:** Original rule filed April 29, 1988; effective June 13, 1988. Amendment filed November 30, 1990; effective January 14, 1991. Amendment filed July 12, 1995; effective September 25, 1995. Repeal and new rule filed April 10, 2000; effective June 24, 2000. Amendment filed October 2, 2002; effective December 16, 2002.

**1050-02-.02 FEES.**

- (1) The fees authorized by the Tennessee Osteopathic Medical Practice Act (T.C.A. §§ 63-9-101 through 63-9-114) and other applicable statutes to be established by the Board are established as follows:
  - (a) Application Fee - A non refundable fee to be paid by all licensure applicants, except Special Training License applicants, regardless of the type of license applied for. It must be paid each time an application for licensure is filed or an application to take the Board examination is filed. \$ 400.00
  - (b) ~~Licensure Renewal Fee - To be paid biennially by all licensees. This fee also applies to licensees who reactivate a retired license.~~ ~~\$ 375.00~~  
Licensure Renewal Fee - To be paid biennially by all licensees. \$300.00

(Rule 1050-02-.02, continued)

This fee also applies to licensees who reactivate a retired license.

(c)	State Regulatory Fee - To be paid by all licensees upon application and biennially upon renewal.	\$ 10.00
(d)	Late Licensure Renewal Fee - To be paid when a licensee fails to timely renew a licensure.	\$ 200.00
(e)	Duplicate License Fee.	\$ 25.00
(f)	Certificate of Fitness.	\$10.00
(g)	Licensure Exemption Fee.	\$50.00
(h)	Special Training License Fee.	\$50.00

- (2) All fees may be paid in person, by mail or electronically by cash, check, money order, or by credit and/or debit cards accepted by the Division. If the fees are paid by certified, personal or corporate check they must be drawn against an account in a United States Bank, and made payable to the Tennessee Board of Osteopathic Examination.

**Authority:** T.C.A. §§4-3-1011, 4-5-202, 4-5-204, 63-1-106, 63-9-101, 63-9-104, 63-9-105, and 63-9-107.

**Administrative History:** Original rule filed April 29, 1988; effective June 13, 1988. Amendment filed November 30, 1990; effective January 14, 1991. Amendment filed July 12, 1995; effective September 25, 1995. Amendment filed January 4, 1996; effective March 19, 1996. Suspension filed April 17, 1996; effective April 25, 1996. Repeal and new rule filed August 13, 1999; effective October 27, 1999. Repeal and new rule filed April 10, 2000; effective June 24, 2000. Amendment filed April 19, 2002; effective July 3, 2002. Amendment filed September 17, 2002; effective December 1, 2002. Amendment filed October 2, 2002; effective December 16, 2002. Amendment filed January 14, 2005; effective March 30, 2005.

**1050-02-.03 LICENSURE PROCESS.** To practice osteopathic medicine in Tennessee, a person must possess a lawfully issued license from the Board. The procedure for obtaining a license is as follows:

- (1) Initial Licensure As An Osteopathic Physician -Consideration for initial licensure as a Doctor of Osteopathic Medicine requires that the applicant shall submit to the Board the following materials:
- (a) An application from the Board Administrative Office in which the applicant responds truthfully and completely to every question or request for information along with all documentation and fees to the Board Administrative Office. It is the intent of this rule that all activities necessary to accomplish the filing of the required documentation be completed prior to filing a licensure application and that all documentation be filed simultaneously. This form will include the applicant's name, current address, social security number and age (which shall not be less than eighteen years of age).
  - (b) A clear and recognizable, recently taken, bust photograph which shows the full head, face forward from at least the top of the shoulders up. The photograph must be signed by the applicant.
  - (c) A graduate transcript from an accredited osteopathic medical school in good standing with the American Osteopathic Association at the time of graduation (or its successor). The transcript must be submitted directly from the school to the Board Administrative Office. The transcript must show that the degree has been conferred based upon the

(Rule 1050-02-.17, continued)

- (b) Licensed / registered osteopathic physicians or surgeons of other states when called in consultation by a Tennessee licensed / registered osteopathic physician.
- (7) Not exempted from these rules is the practice of osteopathic medicine across state lines conducted within the parameters of a contractual relationship.
- (8) At the Board's discretion, submission of any document or set of documents required by this rule or submission of verification of the authenticity, validity and accuracy of the content of any document or set of documents required by this rule directly from the FCVS or other Board approved credentialing service to the Board Administrative Office shall be deemed to be submission of originals of those documents or sets of documents by the issuing institution(s).

**Authority:** T.C.A. §§4-5-202, 4-5-204, 63-9-101, 63-9-104, and 63-9-111. **Administrative History:** Original rule filed April 10, 2000; effective June 24, 2000. Amendment filed March 14, 2006; effective May 28, 2006.

#### 1050-02-.18 MEDICAL RECORDS.

- (1) Purposes - The purposes of these rules are:
  - (a) To recognize that medical records are an integral part of the practice of osteopathic medicine as defined in T.C.A. § 63-9-106.
  - (b) To give physicians, their professional and non-professional staff, and the public direction about the content, transfer, retention, and destruction of those records.
  - (c) To recognize that a distinction exists between a physician's medical records for a patient receiving services in the physician's office and those records created by the physician for that patient for purposes of services provided in a hospital as defined by T.C.A. § 68-11-302 (4) and that the distinction exists regardless of the fact that the physician may also be an employee of the hospital or of a medical group employed or owned by the hospital.
- (2) Conflicts - As to medical records, these rules should be read in conjunction with the provisions of T.C.A. §§ 63-2-101 and 102, and are not intended to conflict with those statutes in any way. Those statutes, along with these rules, govern the subjects that they cover in the absence of other controlling state or federal statutes or rules to the contrary.
- (3) Applicability - These rules regarding medical records shall apply only to those records, the information for which was obtained by physicians or their professionally licensed employees, or those over whom they exercise supervision, for purposes of services provided in any clinical setting other than those provided in a hospital as defined by T.C.A. § 68-11-302 (4), a hospital emergency room or hospital outpatient facility.
- (4) Medical Records -
  - (a) Duty to Create and Maintain Medical Records - As a component of the standard of care and of minimal competency a physician must cause to be created and cause to be maintained a medical record for every patient for whom he or she, and/or any of his or her professionally licensed supervisees, performs services or provides professional consultation.
  - (b) Notice - Anywhere in these rules where notice is required to be given to patients of any physician that notice shall be required to be issued within thirty (30) days of the date of

(Rule 1050-02-.18, continued)

the event that triggers the notice requirement, and may be accomplished by public notice.

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

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

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

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

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

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

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

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

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

(e) Transfer -

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

(Rule 1050-02-.18, continued)

- physician. This notification requirement shall not apply to a patient when there have been fewer than two (2) office patient encounters within the immediately preceding eighteen (18) months.
2. Records of Physicians upon Departure from a Group - The responsibility for notifying patients of a physician who leaves a group practice whether by death, retirement or departure shall be governed by the physician's employment contract.
    - (i) Whomever is responsible for that notification must notify patients seen by the physician in his/her office during the immediately preceding thirty-six (36) months of his/her departure, except that this notification requirement shall not apply to a patient when there have been fewer than two (2) office patient encounters within the immediately preceding eighteen (18) months.
    - (ii) Except where otherwise governed by provisions of the physician's contract, those patients shall also be notified of the physician's new address and offered the opportunity to have copies of their medical records forwarded to the departing physician at his or her new practice. Provided however, a group shall not withhold the medical records of any patient who has authorized their transfer to the departing physician or any other physician.
    - (iii) The choice of physicians in every case should be left to the patient, and the patient should be informed that upon authorization his/her records will be sent to the physician of the patient's choice.
  3. Sale of a Medical Practice - A physician or the estate of a deceased physician may sell the elements that comprise his/her practice, one of which is its goodwill, i.e., the opportunity to take over the patients of the seller by purchasing the physician's medical records. Therefore, the transfer of records of patients is subject to the following:
    - (i) The physician (or the estate) must ensure that all medical records are transferred to another physician or entity that is held to the same standards of confidentiality as provided in these rules.
    - (ii) Patients seen by the physician in his/her office during the immediately preceding thirty-six (36) months shall be notified that the physician (or the estate) is transferring the practice to another physician or entity who will retain custody of their records and that at their written request the copies of their records will be sent to another physician or entity of their choice. This notification requirement shall not apply to a patient when there have been fewer than two (2) office patient encounters within the immediately preceding eighteen (18) months.
  4. Abandonment of Records - For purposes of this section of the rules death of a physician shall not be considered as abandonment.
    - (i) It shall be a prima facie violation of T.C.A. § 63-9-111 (b) (1) for a physician to abandon his practice without making provision for the security, or transfer, or otherwise establish a secure method of patient access to their records.
    - (ii) Upon notification that a physician in a practice has abandoned his practice and not made provision for the security, or transfer, or otherwise

(Rule 1050-02-.18, continued)

established a secure method of patient access to their records patients should take all reasonable steps to obtain their medical records by whatever lawful means available and should immediately seek the services of another physician.

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

1. Immunization records shall be retained indefinitely.
2. Medical records for incompetent patients shall be retained indefinitely.
3. Mammography records shall be retained for at least twenty (20) years.
4. X-rays, radiographs and other imaging products shall be retained for at least four (4) years after which if there exist separate interpretive records thereof they may be destroyed.
5. Medical records of minors shall be retained for a period of not less than one (1) year after the minor reaches the age of majority or ten (10) years from the date of the physician's or his supervisees' last professional contact with the patient, whichever is longer.
6. Notwithstanding the foregoing, no medical record involving services which are currently under dispute shall be destroyed until the dispute is resolved.

(g) Destruction of Medical Records -

1. No medical record shall be singled out for destruction other than in accordance with established office operating procedures.
2. Records shall be destroyed only in the ordinary course of business according to established office operating procedures that are consistent with these rules.
3. Records may be destroyed by burning, shredding, or other effective methods in keeping with the confidential nature of the records.
4. When records are destroyed, the time, date and circumstances of the destruction shall be recorded and maintained for future reference. The record of destruction need not list the individual patient medical records that were destroyed but shall be sufficient to identify which group of destroyed records contained a particular patient's medical records.

(5) Violations - Violation of any provision of these rules is grounds for disciplinary action pursuant to T.C.A. §§ 63-9-111 (b) (1), and/or (2).

**Authority:** T.C.A. §§4-5-202, 4-5-204, 63-2-101, 63-2-102, 63-9-101, 63-9-106, and 63-9-111.

**Administrative History:** Original rule filed July 27, 2000; effective October 10, 2000. Repeal and new rule filed April 29, 2003; effective July 13, 2003. Amendment filed October 18, 2004; effective January 1, 2005.

**1050-02-.19 MEDICAL PROFESSIONAL CORPORATIONS AND MEDICAL PROFESSIONAL LIMITED LIABILITY COMPANIES.**