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Sequence Number: 08-26-14  
Rule ID(s): 5793  
File Date: 08-29-14  
Effective Date: 11-27-14

# 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*

**Agency/Board/Commission:** Board of Osteopathic Examination  
**Division:**  
**Contact Person:** Devin M. Wells  
Deputy General Counsel  
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**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-.12	Continuing Education Requirements
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>)

#### Amendments

Rule 1050-02-.12 Continuing Education Requirements is amended by deleting subparagraph (1)(b) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (1)(b) shall read:

- (b) At least two (2) of the forty (40) required hours shall be a course(s) designated specifically to address prescribing practices. The course(s) should include, but not be limited to, instruction on controlled substance prescribing practices,

Authority: T.C.A. §§ 63-9-101, and 63-9-107.

Rule 1050-02-.18 Medical Records is amended by deleting part (4)(f)3. in its entirety and renumbering the remaining parts and is further amended by adding the following language to newly-renumbered part (4)(f)3., so that as amended, subparagraph (4)(f) shall read:

- (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. 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. However, mammography imaging and reports shall be maintained for ten (10) years.
  4. 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.
  5. Notwithstanding the foregoing, no medical record involving services which are currently under dispute shall be destroyed until the dispute is resolved.

Authority: T.C.A. §§ 63-2-101, 63-2-102, 63-9-101, 63-9-111, and 2013 Acts, Public Chapter 113.

\* 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 Tennessee Board of Osteopathic Examination (board/commission/ other authority) on 11/06/2013 (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: 09/05/13 (mm/dd/yy)

Rulemaking Hearing(s) Conducted on: (add more dates). 11/06/13 (mm/dd/yy)

Date: 8-15-2014

Signature: [Handwritten Signature]

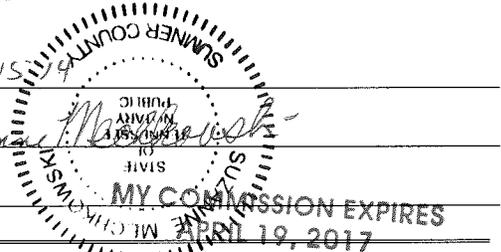
Name of Officer: Devin M. Wells

Title of Officer: Deputy General Counsel  
Department of Health

Subscribed and sworn to before me on: 8-15-14

Notary Public Signature: [Handwritten Signature]

My commission expires on: 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.

Robert E. Cooper, Jr.  
Robert E. Cooper, Jr.  
Attorney General and Reporter  
8-22-14  
Date

**Department of State Use Only**

Filed with the Department of State on: 08-29-14

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Effective on: 11-27-14

Tre Hargett  
Tre Hargett  
Secretary of State

## **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 comments submitted at the public hearing on the proposed 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 extent to which the rule or rule may overlap, duplicate, or conflict with other federal, state, and local governmental rules.**

The proposed rule does not overlap, duplicate, or conflict with other federal, state, or local governmental rules.

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

The proposed rule exhibits clarity, conciseness, and lack of ambiguity.

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

The compliance and reporting requirements established in the proposed rule are uniform for all licensed physicians and are as flexible as possible while achieving the Board's mission to protect the public and ensure competent licensees.

- (4) **The establishment of friendly schedules or deadlines for compliance and/or reporting requirements for small businesses.**

The compliance and reporting requirements established in these proposed rules are uniform for all licensed physicians and are as friendly and flexible as possible while achieving the Board's mission to protect the public and ensure competent licensees.

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

Compliance requirements contained in the rules are the same for all licensed physicians.

- (6) **The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule.**

The proposed rule does not establish performance, design, or operational standards.

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

The proposed rule does not create unnecessary barriers or stifle entrepreneurial activity or innovation.

## STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

- 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:**

All licensed osteopathic physicians will be subject to the proposed rule amendment. The rule amendment does not increase the total required hours of continuing medical education (CME). The proposed rule amendment will affect approximately 1,097 licensees.

- 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:**

The proposed rule amendment does not affect the reporting requirements or other administrative costs for compliance. Osteopathic physicians are already required to report and retain for compliance documentation of completion of all CME hours, and this rule amendment does not alter those requirements.

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

The proposed rule amendment should have little effect on small businesses. Although there is an increased requirement that two of the forty CME hours must be related to the prescribing of controlled substances, the number of CME hours remains at forty hours biennially.

- 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:**

The proposed rule amendment is not burdensome, intrusive, or costly.

- 5. Comparison of the proposed rule with any federal or state counterparts:**

**Federal:** The United States Code Annotated has requirements for military physicians to complete applicable continuing medical education requirements.

**State:** Almost all health related boards have some type of continuing education requirements.

- 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.**

The proposed rule amendment should not provide an exemption for small businesses as the rule amendment is necessary to protect the public and to ensure competent licensees.

### **Impact on Local Governments**

Pursuant to T.C.A. § 4-5-228(a), “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 financial impact on local governments.”

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;

*Rule 1050-02-.18(4)(f): The rule amendment will remove Part 3 as an exception to Subparagraph (f), such that mammography records will be required to be maintained for only a period of ten (10) years.*

*Rule 1050-02-.12(1)(b): The rule amendment will require two hours of continuing education regarding prescribing practices rather than one hour.*

- (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;

*Rule 1050-02-.18(4)(f): This amendment was required as a result of Public Chapter No. 113, passed by the 108<sup>th</sup> Tennessee General Assembly.*

- (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;

*Osteopathic physicians will be affected by the proposed rule amendments. There were no written comments submitted.*

- (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;

*There will be no increase or decrease in state and local government revenues and expenditures.*

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

*Devin M. Wells, Deputy 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;

*Devin M. Wells, 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

*Devin M. Wells, Deputy General Counsel, Department of Health, Office of General Counsel, 665 Mainstream Drive, Nashville, TN 37243, (615)741-1611, [Devin.M.Wells@tn.gov](mailto:Devin.M.Wells@tn.gov).*

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

None.

(Rule 1050-02-.11, continued)

provision or provisions so held unconstitutional or invalid, and the inapplicability or invalidity of any section, clause, sentence or part in any one or more instance 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, 63-9-101, and 63-9-111. **Administrative History:** Original rule filed April 10, 2000; effective June 24, 2000.

#### 1050-02-.12 CONTINUING EDUCATION REQUIREMENTS.

(1) Hours Required, Waiver, and Exemptions

(a) During the two (2) calendar years that precede licensure renewal, all licensees must complete forty (40) hours of courses approved by the Board in Category I-A, II-A and/or I-B continuing medical education as defined in the most current annual American Osteopathic Association Yearbook and Directory.

~~(b) At least one (1) of the forty (40) required hours shall be a course designed specifically to address prescribing practices. The course should include, but not be limited to, instruction on controlled substance prescribing practices.~~

(b) At least two (2) of the forty (40) required hours shall be a course(s) designated specifically to address prescribing practices. The course(s) should include, but not be limited to, instruction on controlled substance prescribing practices.

(c) Osteopathic physicians serving as preceptors in any AOA approved osteopathic medical education program may be granted one (1) Category I-B credit for each hour of preceptor work actually performed, up to a maximum of fifty percent (50%) of the total biennially required continuing medical education.

(d) The Board approves a course for only the number of hours contained in the course. The approved hours of any individual course will not be counted more than once in a calendar year toward the required hourly total regardless of the number of times the course is attended or completed by any individual.

(e) Waiver - The Board may waive the requirements of these rules in cases where illness, disability, or other undue hardship beyond the control of the licensee prevents a licensee from complying. Requests for waivers must be sent in writing to the Board prior to the expiration of the calendar year in which the continuing medical education is due.

(f) Exemptions:

1. Anyone whose license is in the retired status pursuant to rule 1050-02-.08 is exempt from the requirements of these continuing medical education rules.

2. Anyone who obtains licensure in the same calendar year as successful completion of the NBOME, COMLEX, or the USMLE Step 3 is exempt from the provisions of these continuing medical education rules but only for the calendar year in which licensure is issued.

(2) Proof of Compliance - All licensees must retain independent documentation of completion of all continuing medical education hours and compliance with the provisions of these rules.

(a) This documentation must be retained for a period of four (4) years from the end of the calendar year in which the continuing medical education was acquired.

(Rule 1050-02-.12, continued)

- (b) This documentation must be produced for inspection and verification, if requested in writing by the Division during its verification process.
- (c) Documentation verifying the licensee's completion of the continuing medical education hours may consist of any one (1) or more of the following:
  - 1. Original certificates verifying the individual's attendance at the continuing education programs described above.
  - 2. Original letters on official institution stationary or photocopies of original letters on official institution stationary from the instructor of the graduate level course verifying that the course was completed and listing the number of credit hours of attendance completed by the individual; or
  - 3. Documentation from the American Academy of Family Physicians (hereafter AAFP) indicating acquired continuing medical education hours; or
  - 4. Official transcript verifying credit hours earned. One (1) semester academic credit hour is equivalent to fifteen (15) clock hours for the purpose of licensure renewal. Credit for auditing will be for the actual clock hours in attendance, not to exceed the academic credit.
- (3) Acceptable Continuing Education - To be utilized for satisfaction of the continuing education requirements of this rule, the continuing education hours must comply with the following:
  - (a) They must be approved in content, structure and/or format by the A.O.A., or by the Accreditation Council for Continuing Medical Education (A.C.C.M.E.) or by a state medical association recognized by the A.C.C.M.E. as an intrastate accreditor of sponsors of continuing medical education; or
  - (b) They must be designated by the AAFP as meeting the criteria of the AAFP's prescribed credit.
- (4) Violations and Disciplinary Orders
  - (a) Any licensee who fails to obtain the required continuing medical education hours or otherwise comply with the provisions of these rules will be subject to disciplinary action.
  - (b) Continuing medical education hours obtained as a result of compliance with the terms of Board Orders in any disciplinary action or obtained pursuant to licensure or renewal restriction/conditions mandated by the Board shall not be credited toward the continuing medical education hours required to be obtained in any calendar year.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 63-9-101, and 63-9-107. **Administrative History:** Original rule filed April 10, 2000; effective June 24, 2000. Amendment filed October 2, 2002; effective December 16, 2002. Amendment filed April 17, 2007; effective July 1, 2007. Amendments filed August 27, 2009; effective November 25, 2009.

#### **1050-02-.13 SPECIFICALLY REGULATED AREAS AND ASPECTS OF MEDICAL PRACTICE.**

- (1) The scope of practice of osteopathic physicians in Tennessee is broadly defined in the Osteopathic Medical Act and promulgated rules and includes many aspects which if not particularly regulated could lead to serious ramifications for the consuming public. This rule

(Rule 1050-02-.17, continued)

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 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.

(Rule 1050-02-.18, continued)

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.
- (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 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

(Rule 1050-02-.18, continued)

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 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.~~

~~3.4.~~ 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