Department of Health
Notice of Rulemaking Hearing
Board of Chiropractic Examiners
Division of Health Related Boards

There will be a hearing before the Tennessee Board of Chiropractic Examiners to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 48-101-605, 48-101-608, 48-101-610, 48-101-618, 48-101-624, 48-101-628, 48-101-629, 48-101-630, 48-248-104, 48-248-202, 48-248-401, 48-248-404, 48-248-409, 48-248-501, 48-248-601, 48-248-602, 48-248-603, 63-4-101, 63-4-106, 63-4-107, 63-4-114, 63-4-115, and Public Chapter 286 of the Public Acts of 2005. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Cumberland Room of the Cordell Hull Building located at 425 5th Fifth Avenue North, Nashville, TN at 9:30 a.m. (CDT) on the 18th day of October, 2005.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Department of Health, Division of Health Related Boards to discuss any auxiliary aids or services needed to facilitate such participation or review. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date such party intends to review such filings), to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the ADA Coordinator at the Division of Health Related Boards, First Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN 37247-1010, (615) 532-4397.

For a copy of the entire text of this notice of rulemaking hearing contact:

Jerry Kosten, Regulations Manager, Division of Health Related Boards, 425 Fifth Avenue North, First Floor, Cordell Hull Building, Nashville, TN 37247-1010, (615) 532-4397.

Substance of Proposed Rules

Amendments

Rule 0260-2-.19 Board Members, Officers, Consultants, Records, and Declaratory Orders, is amended by adding the following language as new paragraph (10):

(10) 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 1360-4-1-.18 regarding petitions for reconsiderations and stays in that case.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-4-103, 63-4-106, 63-4-114, and 63-4-115.

Rule 0260-2-.24 Chiropractic Professional Corporations and Chiropractic Professional Limited Liability Companies, is amended by deleting paragraphs (1), (2), and (3) in their entirety and substituting instead the following language, and is further amended by adding the following language as new paragraph (5), so that as amended, the new paragraphs (1), (2), (3), and (5) shall read:

(1) Chiropractic Professional Corporations (CPC) – Except as provided in this rule Chiropractic Professional Corporations shall be governed by the provisions of Tennessee Code Annotated, Title 48, Chapter 101, Part 6.

(a) Filings – A CPC need not file its Charter or its Annual Statement of Qualifications with the Board.

(b) Ownership of Stock – Only the following may form and own shares of stock in a foreign or domestic CPC doing business in Tennessee:

1. Chiropractic physicians licensed pursuant to Tennessee Code Annotated Title 63, Chapter 4 or licensed in another state; and/or

2. A foreign or domestic general partnership, CPC or CPLLC in which all partners, shareholders, members or holders of financial rights are chiropractic physicians licensed pursuant to Tennessee Code Annotated Title 63, Chapter 4 to practice chiropractic in Tennessee or chiropractic physicians licensed by other states, or composed of entities which are directly or indirectly owned by such licensed chiropractic physicians.

(c) Officers and Directors of Chiropractic Professional Corporations -

1. All, except the following officers, must be persons who are eligible to form or own shares of stock in a chiropractic professional corporation as limited by T.C.A. § 48-101-610 (d) (1), (2), and/or (3) and subparagraph (1) (b) of this rule:

(i) Secretary;

(ii) Assistant Secretary;

(iii) Treasurer; and

(iv) Assistant Treasurer.

2. With respect to members of the Board of Directors, only persons who are eligible to form or own shares of stock in a chiropractic professional corporation as limited by T.C.A. § 48-101-610 (d) (1),

(2), and/or (3) and subparagraph (1) (b) of this rule shall be directors of a CPC.

(d) Practice Limitations

1. Engaging in, or allowing another chiropractic physician incorporator, shareholder, officer, or director, while acting on behalf of the CPC, to engage in, chiropractic practice in any area of practice or specialty beyond that which is specifically set forth in the charter may be a violation of the professional ethics enumerated in Rule 0260-2-.13 and/or Tennessee Code Annotated, Section 63-4-114 (4).

2. Nothing in these rules shall be construed as prohibiting any health care professional licensed pursuant to Tennessee Code Annotated, Title 63 from being an employee of or a contractor to a CPC.

3. Nothing in these rules shall be construed as prohibiting a CPC from electing to incorporate for the purposes of rendering professional services within two (2) or more professions or for any lawful business authorized by the Tennessee Business Corporations Act so long as those purposes do not interfere with the exercise of independent chiropractic judgment by the chiropractic physician incorporators, directors, officers, shareholders, employees or contractors of the CPC who are practicing chiropractic as defined by Tennessee Code Annotated, Section 63-4-101.

4. Nothing in these rules shall be construed as prohibiting a chiropractic physician from owning shares of stock in any type of professional corporation other than a CPC so long as such ownership interests do not interfere with the exercise of independent chiropractic judgment by the chiropractic physician while practicing chiropractic as defined by Tennessee Code Annotated, Section 63-6-204.

(2) Chiropractic Professional Limited Liability Companies (CPLLC) - Except as provided in this rule Chiropractic Professional Limited Liability Companies shall be governed by either the provisions of Tennessee Code Annotated, Title 48, Chapter 248 or Public Chapter 286 of the Public Acts of 2005.

(a) Filings - Articles filed with the Secretary of State shall be deemed to be filed with the Board and no Annual Statement of Qualifications need be filed with the Board.

(b) Membership - Only the following may be members or holders of financial rights of a foreign or domestic CPLLC doing business in Tennessee:

1. Chiropractic physicians licensed pursuant to Tennessee Code Annotated Title 63, Chapter 4; and/or

2. A foreign or domestic general partnership, CPC or CPLLC in which all partners, shareholders, members or holders of financial rights are either chiropractic physicians licensed pursuant to Tennessee Code Annotated Title 63, Chapter 4 to practice chiropractic in Tennessee or chiropractic physicians licensed by other states or composed of entities which are directly or indirectly owned by such licensed chiropractic physicians.

(c) Managers, Directors or Governors of a CPLLC

1. All, except the following managers, must be persons who are eligible to form or become members or holders of financial rights of a chiropractic professional limited liability company as limited by T.C.A. § 48- 248-401 and subparagraph (2) (b) of this rule:

   (i) Secretary

   (ii) Treasurer

2. Only persons who are eligible to form or become members or holders of financial rights of a chiropractic professional limited liability company as limited by T.C.A. § 48-248-401 and subparagraph (2) (b) of this rule shall be allowed to serve as a director, or serve on the Board of Governors of a CPLLC.

(d) Practice Limitations

1. Engaging in, or allowing another chiropractic physician member, officer, manager, director, or governor, while acting on behalf of the CPLLC, to engage in, chiropractic practice in any area of practice or specialty beyond that which is specifically set forth in the articles of organization may be a violation of the professional ethics enumerated in Rule 0260-2-.13 and/or Tennessee Code Annotated, Section 63-4-114 (4).

2. Nothing in these rules shall be construed as prohibiting any health care professional licensed pursuant to Tennessee Code Annotated, Title 63 from being an employee of or a contractor to a CPLLC.

3. Nothing in these rules shall be construed as prohibiting a CPLLC from electing to form for the purposes of rendering professional services within two (2) or more professions or for any lawful business authorized by the Tennessee Business Corporations Act so long as those purposes do not interfere with the exercise of independent chiropractic judgment by the chiropractic physician members or holders of financial rights, governors, officers, managers, employees or contractors of the CPLLC who are practicing chiropractic as defined by Tennessee Code Annotated, Section 63-4-101.

4. Nothing in these rules shall be construed as prohibiting a chiropractic physician from being a member of any type of professional limited liability company other than a CPLLC so long as such membership interests do not interfere with the exercise of independent chiropractic judgment by the chiropractic physician while practicing chiropractic as defined by Tennessee Code Annotated, Section 63-4-101.

5. All CPLLCs formed in Tennessee pursuant to Tennessee Code Annotated, Section 48-248-104 or Public Chapter 286 of the Public Acts of 2005, to provide services only in states other than Tennessee shall annually file with the Board a notarized statement that they are not providing services in Tennessee.

(3) Dissolution - The procedure that the Board shall follow to notify the attorney general that a CPC or a CPLLC has violated or is violating any provision of Title 48, Chapters 101 and/or 248 or Public Chapter 286 of the Public Acts of 2005, shall be as follows but shall not terminate or interfere with the secretary of state's authority regarding dissolution pursuant to Tennessee Code Annotated, Sections 48-101-624 or 48-248-409.

(a) Service of a written notice of violation by the Board on the registered agent of the CPC and/or CPLLC or the secretary of state if a violation of the provisions of Tennessee Code Annotated, Title 48, Chapters 101 and/or 248 or Public Chapter 286 of the Public Acts of 2005 occurs.

(b) The notice of violation shall state with reasonable specificity the nature of the alleged violation(s).

(c) The notice of violation shall state that the CPC and/or CPLLC must, within sixty (60) days after service of the notice of violation, correct each alleged violation or show to the Board's satisfaction that the alleged violation(s) did not occur.

(d) The notice of violation shall state that, if the Board finds that the CPC and/or CPLLC is in violation, the attorney general will be notified and judicial dissolution proceedings may be instituted pursuant to Tennessee Code Annotated, Title 48.

(e) The notice of violation shall state that proceedings pursuant to this section shall not be conducted in accordance with the contested case provisions of the Uniform Administrative Procedures Act, compiled in Title 4,Chapter 5 but that the CPC and/or CPLLC, through its agent(s), shall appear before the Board at the time, date, and place as set by the Board and show cause why the Board should not notify the attorney general and reporter that the organization is in violation of the Act or these rules. The Board shall enter an order that states with reasonable particularity the facts describing each violation and the statutory or rule reference of each violation. These proceedings shall constitute the conduct of administrative rather than disciplinary business.

(f) If, after the proceeding the Board finds that a CPC and/or CPLLC did violate any provision of Title 48, Chapters 101 and/or 248 or these rules, and failed to correct said violation or demonstrate to the Board's satisfaction that the violation did not occur, the Board shall certify to the attorney general and reporter that it has met all requirements of either Tennessee Code Annotated, Sections 48-101-624 (1)-(3) and/or 48-248-409 (1)-(3) and/or Public Chapter 286 of the Public Acts of 2005.

(5) The authority to own shares of stock or be members or holders of financial rights in an CPC or an CPLLC granted by statute or these rules to professionals not licensed in this state shall in no way be construed as authorizing the practice of any profession in this state by such unlicensed professionals.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 48-101-605, 48-101-608, 48-101-610, 48-101-618, 48-101-624, 48-101-628, 48-101-629, 48-101-630, 48-248-104, 48-248-202, 48-248-401, 48-248-404, 48-248-409, 48-248-501, 48-248-601, 48-248-602, 48-248-603, 63-4-101, 63-4-106, 63-4-107, 63-4-114, and Public Chapter 286 of the Public Acts of 2005.

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Contact who can answer questions concerning this notice of rulemaking hearing, technical contact for disk acquisition, and person 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, TN 37247-1010 615-532-4397.

I certify that this is an accurate and complete representation of the intent and scope of rulemaking proposed by the Tennessee Board of Chiropractic Examiners.

Robbie H. Bell, Director
Health Related Boards

Subscribed and sworn to before me this the 30th day of August, 2005.

Notary Public

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 31 day of August, 2005.

Riley C. Darnell
Secretary of State

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By: