

Department of Health  
Notice of Rulemaking Hearing  
Board of Dentistry  
Division of Health Related Boards

There will be a hearing before the Tennessee Board of Dentistry to consider the promulgation of amendments to rules and repeal of a rule pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-5-105. 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 Tennessee Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 3:30 p.m. (CST) on the 23rd day of November, 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 0460-1-.03, Board Officers, Consultants, Records, and Meetings, is amended by deleting the catchline in its entirety and substituting instead the following language, and is further amended by adding the following language as new paragraphs (9) and (10), so that as amended, the new catchline and the new paragraphs (9) and (10) shall read:

0460-1-.03 Board Officers, Consultants, Meetings, and Screening Panels, Declaratory Orders, and Screening Panels.

- (9) Declaratory Orders. The Board adopts, as if fully set out herein, Rule 1200-10-1-.11 of the Division of Health Related Boards, as it may from time to time be amended, as its rule governing the declaratory order process. All declaratory order petitions involving statutes, rules or orders within the jurisdiction of the Board shall be addressed by the Board pursuant to the rule and not by the

Division. Declaratory order petition forms can be obtained from the Board's Administrative office.

- (10) Screening Panels - The Board adopts, as if fully set out herein, Rule 1200-10-1-.13, of the Division of Health Related Boards and as it may from time to time be amended, as its rule governing the screening panel process.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 4-5-223, 4-5-224, 4-5-225, 63-1-138, 63-5-105, 63-5-124, and Public Chapter 234 of the Public Acts of 2005.

Rule 0460-1-.06, Disciplinary Actions, Civil Penalties, Procedures, Declaratory Orders, Assessment of Costs, and Subpoenas, is amended by deleting the catchline in its entirety and substituting instead the following language, and is further amended by deleting paragraph (6) in its entirety and renumbering the present paragraphs (7) and (8) as paragraphs (6) and (7), so that as amended, the new catchline shall read:

0460-1-.06 Disciplinary Actions, Civil Penalties, Procedures, Assessment of Costs, and Subpoenas.

Authority: T.C.A. §§ 4-5-202, 4-5-204, and 63-5-105.

Rule 0460-1-.08, Dental Professional Corporations (D.P.C.), is amended by deleting the catchline in its entirety and substituting instead the following language, and is further amended by deleting paragraphs (1), (2), (3), (4), and (5) in their entirety and substituting instead the following language, and is further amended by deleting paragraphs (6) and (7), so that as amended, the new catchline and the new paragraphs (1), (2), (3), (4), and (5) shall read:

0460-1-.08 Dental Professional Corporations and Dental Professional Limited Liability Companies.

- (1) Dental Professional Corporations (D.P.C.) – Except as provided in this rule Dental Professional Corporations shall be governed by the provisions of Tennessee Code Annotated, Title 48, Chapter 101, Part 6.
  - (a) Filings – A D.P.C. 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 D.P.C. doing business in Tennessee:
    1. Dentists licensed pursuant to Tennessee Code Annotated Title 63, Chapter 5 or licensed in another state; and/or

2. A foreign or domestic general partnership, D.P.C. or Dental Limited Liability Company (D.P.L.L.C.) in which all partners, shareholders, members or holders of financial rights are dentists licensed pursuant to Tennessee Code Annotated Title 63, Chapter 5 to practice dentistry in Tennessee or dentists licensed by other states, or composed of entities which are directly or indirectly owned by such licensed dentists.

(c) Officers and Directors of Dental Professional Corporations -

1. All, except the following officers, must be persons who are eligible to form or own shares of stock in a dental 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 dental 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 D.P.C.

(d) Practice Limitations

1. Engaging in, or allowing another dentist incorporator, shareholder, officer, or director, while acting on behalf of the D.P.C., to engage in, dental practice in any area of practice or specialty beyond that which is specifically set forth in the charter may be a violation of the unprofessional conduct enumerated in Rule 0460-1-.12 and/or Tennessee Code Annotated, Section 63-5-124 (a) (1).
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 D.P.C.

3. Nothing in these rules shall be construed as prohibiting a D.P.C. 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 dental judgment by the dentist incorporators, directors, officers, shareholders, employees or contractors of the D.P.C. who are practicing dentistry as defined by Tennessee Code Annotated, Section 63-5-108.
  4. Nothing in these rules shall be construed as prohibiting a dentist from owning shares of stock in any type of professional corporation other than a D.P.C. so long as such ownership interests do not interfere with the exercise of independent dental judgment by the dentist while practicing dentistry as defined by Tennessee Code Annotated, Section 63-5-108.
- (2) Dental Professional Limited Liability Companies (D.P.L.L.C.) - Except as provided in this rule Dental 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 D.P.L.L.C. doing business in Tennessee:
    1. Dentists licensed pursuant to Tennessee Code Annotated Title 63, Chapter 5; and/or
    2. A foreign or domestic general partnership, D.P.C. or D.P.L.L.C. in which all partners, shareholders, members or holders of financial rights are either dentists licensed pursuant to Tennessee Code Annotated Title 63, Chapter 5 to practice dental in Tennessee or dentists licensed by other states or composed of entities which are directly or indirectly owned by such licensed dentists.
  - (c) Managers, Directors or Governors of a D.P.L.L.C.

1. All, except the following managers, must be persons who are eligible to form or become members or holders of financial rights of a dental 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 dental 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 D.P.L.L.C.

(d) Practice Limitations

1. Engaging in, or allowing another dentist member, officer, manager, director, or governor, while acting on behalf of the D.P.L.L.C., to engage in, dental 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 unprofessional conduct enumerated in Rule 0460-1-.12 and/or Tennessee Code Annotated, Section 63-5-124 (a) (1).
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 D.P.L.L.C.
3. Nothing in these rules shall be construed as prohibiting a D.P.L.L.C. 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 dental judgment by the dentist members or holders of financial rights, governors, officers, managers, employees or contractors of the D.P.L.L.C. who are practicing dentistry as defined by Tennessee Code Annotated, Section 63-5-108.

4. Nothing in these rules shall be construed as prohibiting a dentist from being a member of any type of professional limited liability company other than a D.P.L.L.C. so long as such membership interests do not interfere with the exercise of independent dental judgment by the dentist while practicing dentistry as defined by Tennessee Code Annotated, Section 63-5-108.
  5. All D.P.L.L.C.s 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 D.P.C. or a D.P.L.L.C. 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 D.P.C. and/or D.P.L.L.C. 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 D.P.C. and/or D.P.L.L.C. 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 D.P.C. and/or D.P.L.L.C. 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 D.P.C. and/or

D.P.L.L.C., 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 D.P.C. and/or D.P.L.L.C. 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.
- (4) Violation of this rule by any physician individually or collectively while acting as a D.P.C. or as a D.P.L.L.C. may subject the dentist(s) to disciplinary action pursuant to Tennessee Code Annotated, Sections 63-5-124 (a) (1).
- (5) The authority to own shares of stock or be members or holders of financial rights in an D.P.C. or an D.P.L.L.C. 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, 63-5-105, 63-5-107, 63-5-108, 63-5-110, 63-5-121, 63-5-124, and Public Chapter 286 of the Public Acts of 2005.

Rule 0460-2-.05, Examinations, is amended by deleting parts (1) (a) 2. and (1) (a) 4. in their entirety and renumbering the present part (1) (a) 3. as part (1) (a) 2.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-5-105, and 63-5-111.

Rule 0460-3-.05, Examinations, is amended by deleting parts (1) (a) 2. and (1) (a) 4. in their entirety and renumbering the present part (1) (a) 3. as part (1) (a) 2.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-5-105, and 63-5-111.

Repeal

Rule 0460-1-.09 Dental Professional Limited Liability Companies (D.P.L.L.C.), is repealed.

Authority: T.C.A. §§ 4-5-202, 4-5-204, and 63-5-105.

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 Dentistry.

Robbie H. Bell, Director  
Health Related Boards

Subscribed and sworn to before me this the 21st day of September, 2005.

Notary Public

My commission expires on the 25<sup>th</sup> day of March, 2006.

The notice of rulemaking set out herein was properly filed in the Department of State on the 21 day of Sept., 2005.

Riley C. Darnell  
Secretary of State

By: \_\_\_\_\_

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