

Rulemaking Hearing Rules
Department of Health
Board of Athletic Trainers
Division of Health Related Boards

Chapter 0150-01

General Rules and Regulations Governing the Practice of Athletic Trainers

Amendments

Rule 0150-01-.01 Definitions, is amended by deleting paragraphs (2) and (6) in their entirety and substituting instead the following language, so that as amended, the new paragraphs (2) and (6) shall read:

- (2) Board – The Tennessee Board of Athletic Trainers.
- (6) NATABOC – National Athletic Trainers Association Board of Certification, Inc., or its successor association.

Authority: T.C.A. §§ 63-24-101, 63-24-104, and 63-24-111.

Rule 0150-01-.06 Fees, is amended by deleting paragraph (7) in its entirety and substituting instead the following language, so that as amended, the new paragraph (7) shall read:

- (7) 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 Athletic Trainers.

Authority: T.C.A. §§ 63-24-106 and 63-24-111.

Rule 0150-01-.09 Licensure Renewal and Reinstatement, is amended by deleting subparagraph (2) (d) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (2) (d) shall read:

- (2) (d) If derogatory information or communication is received during the renewal process, if requested by the Board or its duly authorized representative, appear before the Board, a Board member, a screening panel when the individual is under investigation or the Board Designee for an interview and/or be prepared to meet or accept other conditions or restrictions as the Board may deem necessary to protect the public.

Authority: T.C.A. §§ 63-1-138, 63-24-105, 63-24-107, and 63-24-111.

Rule 0150-01-.11 Retirement and Reactivation of License, is amended by deleting subparagraph (3) (e) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (3) (e) shall read:

- (3) (e) If requested, after review by the Board or a designated Board member, appear before either the Board, or another Board member, or the Board Designee for an interview regarding continued competence.

Authority: T.C.A. §§ 63-24-105 and 63-24-111.

Rule 0150-01-.12 Continuing Education, is amended by deleting paragraph (3) in its entirety and substituting instead the following language, so that as amended, the new paragraph (3) shall read:

- (3) Acceptable continuing education - To be utilized for satisfaction of the continuing education requirements of this rule, the continuing education must be approved in content, structure and format by NATABOC.

Authority: T.C.A. §§ 63-24-111.

Rule 0150-01-.13 Professional Ethics, is amended by adding the following language as new subparagraph (2) (c), and is further amended by deleting subparagraphs (3) (a) and (4) (b) 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 subparagraphs (2) (c), (3) (a) and (4) (b), and the new paragraph (5) shall read:

- (2) (c) The activities described in this paragraph require notation in records and prior, written consent from the athlete's parent or guardian when the athlete is under eighteen (18) years of age.
- (3) (a) An athletic trainer shall not misrepresent his or her professional qualifications. An athletic trainer meeting the requirements of the Board and having been duly licensed in the State of Tennessee may use the credentialing of "ATC, LAT" to signify both the NATABOC certification and licensure granted by the Board.
- (4) (b) The Board of Athletic Trainers or the names of any of its members may not be used in any testimonials and/or endorsements by athletic trainers.
- (5) Violation of this rule may subject the licensed athletic trainer to disciplinary action pursuant to T.C.A. §§ 63-24-107 (b) and 63-24-111 (a) (5).

Authority: T.C.A. §§ 63-24-111.

Rule 0150-01-.15, Disciplinary Grounds, Actions, and Civil Penalties, is amended by inserting the following language as new subparagraphs (1) (r) and (1) (s) and renumbering the existing subparagraph (1) (r) as subparagraph (1) (t), and is further amended by deleting subparagraphs (2) (f), (2) (g) and (2) (h) in their entirety and substituting instead the following language, and is further amended by adding the following language as new subparagraph (2) (i), and is further amended by deleting paragraph (5) in its entirety and substituting instead the following language, so that as amended, the new subparagraphs (1) (r), (1) (s), (2) (f), (2) (g), (2) (h) and (2) (i), and the new paragraph (5) shall read:

- (1) (r) Knowingly employing, contracting for or otherwise utilizing unlicensed persons in the practice of athletic training, with or without compensation;
- (1) (s) Failing to report violations committed by other licensees of Tennessee Code Annotated, Title 63, Chapter 24 and Official Compilation, Rules and Regulations, Chapter 0150-01;
- (2) (f) Conditions - Any action deemed appropriate by the Board to be required of a disciplined licensee in any of the following circumstances:

1. During any period of probation, suspension; or
2. During any period of revocation after which the licensee may petition for an order of compliance to reinstate the revoked license; or
3. As a prerequisite to the lifting of probation or suspension or as a prerequisite to the reinstatement of a revoked license; or
4. As a stand-alone requirement(s) in any disciplinary order.

(2) (g) Civil Penalties

1. Purpose - The purpose of this is to set out a schedule designating the minimum and maximum civil penalties which may be assessed pursuant to T.C.A. § 63-1-134.
2. Schedule of Civil Penalties
 - (i) A Type A civil penalty may be imposed whenever the Board finds the person who is required to be licensed or certified, permitted or authorized by the Board guilty of a willful and knowing violation of T.C.A. § 63-24-101, et seq., or regulations promulgated pursuant thereto, to such an extent that there is, or is likely to be an imminent, substantial threat to the health, safety and welfare of an individual client or the public. For purposes of this section, willfully and knowingly practicing as an athletic trainer without a license, certification or other authorization from the Board is one of the violations of T.C.A. § 63-24-101, et seq., for which a Type A civil penalty is assessable.
 - (ii) A Type B civil penalty may be imposed whenever the Board finds the person who is required to be licensed or certified, permitted or authorized by the Board is guilty of a violation of T.C.A. § 63-24-101, et seq., or regulations promulgated pursuant thereto, in such a manner as to impact directly on the care of patients or the public.
 - (iii) A Type C civil penalty may be imposed whenever the Board finds the person who is required to be licensed by the Board or certified, permitted or authorized by the Board is guilty of a violation of T.C.A. § 63-24-101, et seq., or regulations promulgated pursuant thereto, which are neither directly detrimental to the patients or public, nor directly impact their care, but have only indirect relationship to patient care or the public.
3. Amount of Civil Penalties
 - (i) Type A Civil Penalties shall be assessed in the amount of not less than \$500 or more than \$1,000.
 - (ii) Type B Civil Penalties may be assessed in the amount of not less than \$100 and not more than \$500.
 - (iii) Type C Civil Penalties may be assessed in the amount of not less than \$50 and not more than \$100.

4. Procedures for Assessing Civil Penalties

- (i) The Division of Health Related Boards may initiate a civil penalty assessment by filing a Memorandum of Assessment of Civil Penalty. The Division shall state in the memorandum the facts and law upon which it relies in alleging a violation, the proposed amount of the civil penalty and the basis for such penalty. The Division may incorporate the Memorandum of Assessment of Civil Penalty with a Notice of Charges which may be issued attendant thereto.
- (ii) Civil Penalties may also be initiated and assessed by the Board during consideration of any Notice of Charges. In addition, the Board may, upon good cause shown, assess a type and amount of civil penalty which was not recommended by the Division.
- (iii) In assessing the civil penalties pursuant to these rules the Board may consider the following factors:
 - (I) Whether the amount imposed will be a substantial economic deterrent to the violator;
 - (II) The circumstances leading to the violation;
 - (III) The severity of the violation and the risk of harm to the public;
 - (IV) The economic benefits gained by the violator as a result of non-compliance; and,
 - (V) The interest of the public.
- (iv) All proceedings for the assessment of civil penalties shall be governed by the contested case provisions of Title 4, Chapter 5, Tennessee Code Annotated.

(2) (h) Assessment of Costs - Shall be as set forth in T.C.A. §§ 63-1-144.

(2) (i) Summary Suspension - This is a formal preliminary disciplinary action which immediately suspends a licensee's right to practice as an athletic trainer until a final disposition of the matter is had after a promptly instituted, full hearing before the Board. This type of suspension is ordered ex parte, pursuant to the notice procedures contained in T.C.A. § 4-5-320 and then only upon a finding by the Board that the public health, safety or welfare imperatively requires emergency action.

(5) Order Modifications - This procedure is not intended to allow anyone under a previously issued disciplinary order, including an unlicensed practice civil penalty order, to modify any findings of fact, conclusions of law, or the reasons for the decision contained in the order. It is also not intended to allow a petition for a lesser disciplinary action, or civil penalty other than the one(s) previously ordered. All such provisions of Board orders were subject to reconsideration and appeal under the provisions of the Uniform Administrative Procedures Act (T.C.A. §§ 4-5-301, et seq.). This procedure is not available as a substitute for reconsideration and/or appeal and is only available after all reconsideration and appeal rights have been either exhausted or not timely pursued. It is also not

available for those who have accepted and been issued a reprimand.

(a) The Board will entertain petitions for modification of the disciplinary portion of previously issued orders upon strict compliance with the procedures set forth in subparagraph (b) only when the petitioner can prove that compliance with any one or more of the conditions or terms of the discipline previously ordered is impossible. For purposes of this rule the term "impossible" does not mean that compliance is inconvenient or impractical for personal, financial, scheduling or other reasons.

(b) Procedures

1. The petitioner shall submit a written and signed Petition for Order Modification on the form contained in subparagraph (c) to the Board's Administrative Office that shall contain all of the following:

(i) A copy of the previously issued order; and

(ii) A statement of why the petitioner believes it is impossible to comply with the order as issued; and

(iii) A copy of all documents that proves that compliance is impossible. If proof of impossibility of compliance requires testimony of an individual(s), including that of the petitioner, the petitioner must submit signed and notarized statements from every individual the petitioner intends to rely upon attesting, under oath, to the reasons why compliance is impossible. No documentation or testimony other than that submitted will be considered in making an initial determination on, or a final order in response to, the petition.

2. The Board authorizes its consultant and administrative staff to make an initial determination on the petition and take one of the following actions:

(i) Certify impossibility of compliance and forward the petition to the Office of General Counsel for presentation to the Board as an uncontested matter; or

(ii) Deny the petition, after consultation with legal staff, if impossibility of compliance with the provisions of the previous order is not proven and notify the petitioner of what proof of impossibility of compliance was either not sufficient or not submitted.

3. If the petition is presented to the Board the petitioner may not submit any additional documentation or testimony other than that contained in the petition as originally submitted.

4. If the petition is granted a new order shall be issued reflecting the modifications authorized by the Board that it deemed appropriate and necessary in relation to the violations found in the previous order.

- 5. If the petition is denied either initially by staff or after presentation to the Board and the petitioner believes impossibility of compliance with the order has been sufficiently proven the petitioner may, as authorized by law, file a petition for a declaratory order pursuant to the provisions of T.C.A. § 4-5-223 and rule 1200-10-1-.11.

(c) Form Petition

Petition for Order Modification
Board of Athletic Trainers

Petitioner's Name: _____

Petitioner's Mailing Address: _____

Petitioner's E-Mail Address: _____

Telephone Number: _____

Attorney for Petitioner: _____

Attorney's Mailing Address: _____

Attorney's E-Mail Address: _____

Telephone Number: _____

The petitioner respectfully represents that for the following reasons, as substantiated by the attached documentation, the identified provisions of the attached disciplinary order are impossible for me to comply with:

Note – You must enclose all documents necessary to prove your request including a copy of the original order. If any of the proof you are relying upon to show impossibility is the testimony of any individual, including yourself, you must enclose signed and notarized statements from every individual you intend to rely upon attesting, under oath, to the reasons why compliance is impossible. No documentation or testimony other than that submitted will be considered in making an initial determination on, or a final order in response to, this petition.

Respectfully submitted this the ____ day of _____, 20

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Petitioner's Signature

Rule 0150-01-.20 Advertising, is amended by deleting the language of the rule in its entirety and substituting instead the following language as new paragraphs (1) through (6):

- (1) Policy Statement. The lack of sophistication on the part of many of the public concerning an athletic trainer's services, the importance of the interests affected by the choice of an athletic trainer and the foreseeable consequences of unrestricted advertising by athletic trainers which is recognized to pose special possibilities for deception, require that special care be taken by athletic trainers to avoid misleading the public. The athletic trainer must be mindful that the benefits of advertising depend upon its reliability and accuracy. Since advertising by athletic trainers is calculated and not spontaneous, reasonable regulation designed to foster compliance with appropriate standards serves the public interest without impeding the flow of useful, meaningful, and relevant information to the public.
- (2) Definitions
 - (a) Advertisement. Informational communication to the public in any manner designed to attract public attention to the practice of an athletic trainer who is licensed to practice in Tennessee.
 - (b) Licensee. Any person holding a license to practice as an athletic trainer in the State of Tennessee. Where applicable this shall include partnerships and/or corporations.
 - (c) Material Fact. Any fact which an ordinary reasonable and prudent person would need to know or rely upon in order to make an informed decision concerning the choice of practitioners to serve his or her particular needs.
 - (d) Bait and Switch Advertising. An alluring but insincere offer to sell a product or service which the advertiser in truth does not intend or want to sell. Its purpose is to switch consumers from buying the advertised service or merchandise, in order to sell something else, usually for a higher fee or on a basis more advantageous to the advertiser.
 - (e) Discounted Fee. Shall mean a fee offered or charged by a person for a product or service that is less than the fee the person or organization usually offers or charges for the product or service. Products or services expressly offered free of charge shall not be deemed to be offered at a "discounted fee."
- (3) Advertising Fees and Services
 - (a) Fixed Fees. Fixed fees may be advertised for any service. It is presumed unless otherwise stated in the advertisement that a fixed fee for a service shall include the cost of all professional recognized components within generally accepted standards that are required to complete the service.
 - (b) Range of Fees. A range of fees may be advertised for services and the advertisement must disclose the factors used in determining the actual fee necessary to prevent deception of the public.

- (c) Discount Fees. Discount fees may be advertised if:
 - 1. The discount fee is in fact lower than the licensee's customary or usual fee charged for the service; and
 - 2. The licensee provides the same quality and components of service and material at the discounted fee that are normally provided at the regular, non-discounted fee for that service.
- (d) Related Services and Additional Fees. Related services which may be required in conjunction with the advertised services for which additional fees will be charged must be identified as such in any advertisement.
- (e) Time Period of Advertised Fees.
 - 1. Advertised fees shall be honored for those seeking the advertised services during the entire time period stated in the advertisement whether or not the services are actually rendered or completed within that time.
 - 2. If no time period is stated in the advertisement of fees, the advertised fee shall be honored for thirty (30) days from the last date of publication or until the next scheduled publication whichever is later whether or not the services are actually rendered or completed within that time.
- (4) Advertising Content. The following acts or omissions in the context of advertisement by any licensee shall constitute unethical and unprofessional conduct, and subject the licensee to disciplinary action pursuant to T.C.A. § 63-24-107.
 - (a) Claims that the services performed, personnel employed, materials or office equipment used are professionally superior to that which is ordinarily performed, employed, or used, or that convey the message that one licensee is better than another when superiority of services, personnel, materials or equipment cannot be substantiated.
 - (b) The misleading use of an unearned or non-health degree in any advertisement.
 - (c) Promotion of professional services which the licensee knows or should know is beyond the licensee's ability to perform.
 - (d) Techniques of communication which intimidate, exert undue pressure or undue influence over a prospective client.
 - (e) Any appeals to an individual's anxiety in an excessive or unfair manner.
 - (f) The use of any personal testimonial attesting to a quality of competency of a service or treatment offered by a licensee that is not reasonably verifiable.
 - (g) Utilization of any statistical data or other information based on past performances for prediction of future services, which creates an unjustified expectation about results that the licensee can achieve.

- (h) The communication of personal identifiable facts, data, or information about a patient without first obtaining patient consent.
- (i) Any misrepresentation of a material fact.
- (j) The knowing suppression, omission or concealment of any material fact or law without which the advertisement would be deceptive or misleading.
- (k) Statements concerning the benefits or other attributes of an athletic trainer's procedures or products that involve significant risks without including:
 - 1. A realistic assessment of the safety and efficiency of those procedures or products; and
 - 2. The availability of alternatives; and
 - 3. Where necessary to avoid deception, descriptions or assessment of the benefits or other attributes of those alternatives.
- (l) Any communication which creates an unjustified expectation concerning the potential results of any treatment.
- (m) Failure to comply with the rules governing advertisement of fees and services, or advertising records.
- (n) The use of "bait and switch" advertisements. Where the circumstances indicate "bait and switch" advertising, the Board may require the licensee to furnish data or other evidence pertaining to those sales at the advertised fee as well as other sales.
- (o) Misrepresentation of a licensee's credentials, training, experience, or ability.
- (p) Failure to include the corporation, partnership or individual licensee's name, address, and telephone number in any advertisement. Any corporation, partnership or association which advertises by use of a trade name or otherwise fails to list all licensees practicing at a particular location shall:
 - 1. Upon request provide a list of all licensees practicing at that location; and
 - 2. Maintain and conspicuously display at the licensee's office, a directory listing all licensees practicing at that location.
- (q) Failure to disclose the fact of giving compensation or anything of value to representative of the press, radio, television or other communicative medium in anticipation of or in return for any advertisement (for example, newspaper article) unless the nature, format or medium of such advertisement makes the fact of compensation apparent.
- (r) After thirty (30) days of the licensee's departure, the use of the name of any licensee formerly practicing at or associated with any advertised location or on office signs or buildings. This rule shall not apply in the

case of a retired or deceased former associate who practiced in association with one or more of the present occupants if the status of the former associate is disclosed in any advertisement or sign.

- (s) Stating or implying that a certain licensee provides all services when any such services are performed by another licensee.
 - (t) Directly or indirectly offering, giving, receiving, or agreeing to receive any fee or other consideration to or from a third party for the referral of a patient in connection with the performance of professional services.
- (5) Advertising Records and Responsibility
- (a) Each licensee who is a principal partner, or officer of a firm or entity identified in any advertisement, is jointly and severally responsible for the form and content of any advertisement. This provision shall also include any licensed professional employees acting as an agent of such firm or entity.
 - (b) Any and all advertisements are presumed to have been approved by the licensee named therein.
 - (c) A recording of every advertisement communicated by electronic media, and a copy of every advertisement communicated by print media, and a copy of any other form of advertisement shall be retained by the licensee for a period of two (2) years from the last date of broadcast or publication and be made available for review upon request by the Board or its designee.
 - (d) At the time any type of advertisement is placed, the licensee must possess and rely upon information which, when produced, would substantiate the truthfulness of any assertion, omission or representation of material fact set forth in the advertisement or public information.
- (6) Severability. It is hereby declared that the sections, clauses, sentences and parts of these rules are severable, are not matters of mutual essential inducement, and any of them shall be rescinded if these rules would otherwise be unconstitutional or ineffective. If any one or more sections, clauses, sentences or parts shall for any reason be questioned in court, and shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific 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. §§ 63-1-145, 63-1-146, 63-24-107, and 63-24-111.

New Rules

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0150-1-.03 Use of Titles

0150-1-.19 Board Officers, Consultants, Records, Declaratory Orders, Screening

Panels, and Advisory Rulings

0150-1-.03 Use of Titles. Any person who possesses a valid, current and active license issued by the Board that has not been suspended or revoked has the right to use the titles "ATC, LAT" or "LAT," as applicable, or the title "Athletic Trainer" and to practice as an athletic trainer, as defined in T.C.A. §§ 63-24-101. Any person licensed by the Board to whom this rule applies must use one of the titles authorized by this rule in every "advertisement" [as that term is defined in rule 0150-01-.20 (2) (a)] he or she publishes or the failure to do so will constitute an omission of a material fact which makes the advertisement misleading and deceptive and subjects the athletic trainer to disciplinary action pursuant to T.C.A. § 63-24-107 (b) (1), (b) (5) and (b) (6).

Authority: T.C.A. §§ 63-1-145, and 63-24-107, and 63-24-111.

0150-1-.19 Board Officers, Consultants, Records, Declaratory Orders, Screening Panels, and Advisory Rulings.

- (1) The Board shall, every three (3) years, elect from its members the following officers:
 - (a) Chair - who shall preside at all meetings of the Board; and
 - (b) Vice Chair - who shall preside at all meetings of the Board in the absence of the chair and who shall sign the approved minutes of the Board.
- (2) Records and Complaints
 - (a) Minutes of the Board meetings and all records, documents, applications and correspondence will be maintained in the Administrative Office.
 - (b) All requests, applications, notices, other communications and correspondence shall be directed to the Administrative Office. Any requests or inquiries requiring a Board decision or official Board action except documents relating to disciplinary actions or hearing requests must be received fourteen (14) days prior to a scheduled meeting and will be retained in the Administrative Office and presented to the Board at the Board meeting. Such documents not timely received shall be set over to the next Board meeting.
 - (c) All records of the Board, except those made confidential by law, are open for inspection and examination, under the supervision of an employee of the Division at the Administrative Office during normal business hours.
 - (d) Copies of public records shall be provided to any person upon payment of a fee.
 - (e) All complaints should be directed to the Division's Investigations Section.
- (3) The Board has the authority to select a Board consultant who shall serve as a consultant to the Division and who is vested with the authority to do

the following acts:

- (a) Review and make determinations on licensure, renewal and reactivation of licensure applications subject to the rules governing those respective applications and subject to the subsequent ratification by the Board.
 - (b) Decide whether and what type disciplinary actions should be instituted upon complaints received or investigations conducted by the Division.
 - (c) Decide whether and under what terms a complaint, case or disciplinary action might be settled. Any proposed settlement must be subsequently ratified by the Board.
 - (d) Undertake any other matter authorized by a majority vote of the Board.
- (4) Stays and Reconsiderations – 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.
 - (5) Requests for Verification of Licensure for Athletic Trainers desiring to practice in another state must be made in writing to the Administrative Office.
 - (6) Declaratory Orders - The Board adopts, as if fully set out herein, Rule 1200-10-1-.11 of the Division of Health Related Boards, and 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 that rule and not by the Division. Declaratory Order Petition forms can be obtained from the Board's Administrative Office.
 - (7) 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.
 - (8) Advisory Rulings - Any person who is affected by any matter within the jurisdiction of the Board and who holds a license issued pursuant to Chapter 24 of Title 63 of the Tennessee Code Annotated, may submit a written request for an advisory ruling subject to the limitations imposed by T.C.A. § 63-24-111 (a) (7). The procedures for obtaining and issuance of advisory rulings are as follows:
 - (a) The licensee shall submit the request to the Board Administrative Office on the form contained in subparagraph (8) (e) providing all the necessary information; and
 - (b) The request, upon receipt, shall be referred to the Board's administrative staff for research, review and submission of a proposed ruling to the Board for its consideration at the next meeting after the draft ruling has been approved by the Board's consultant and advisory attorney; and

- (c) The Board shall review the proposed ruling and either make whatever revisions or substitutions it deems necessary for issuance or refer it back to the administrative staff for further research and drafting recommended by the Board; and
- (d) Upon adoption by the Board the ruling shall be transmitted to the requesting licensee. The ruling shall have only such affect as is set forth in T.C.A. § 63-24-111 (a) (7).
- (e) Any request for an advisory ruling shall be made on the following form, a copy of which may be obtained from the Board's Administrative Office:

Board of Athletic Trainers
Request for Advisory Ruling

Date:

Licensee's Name:

Licensee's Address: _____

_____ Zip Code

_____ License Number: _____

1. The specific question or issue for which the ruling is requested:

2. The facts that gave rise to the specific question or issue:

3. The specific statutes and/or rules which are applicable to the question or issue:

Licensee's Signature

Mail or Deliver to:
Administrator, Tennessee Board of Athletic Trainers
227 French Landing, Suite 300
Heritage Place, MetroCenter
Nashville, TN 37243

Authority: T.C.A. §§ 4-5-105, 4-5-223, 4-5-224, 63-1-115, 63-1-117, 63-1-138, 63-24-102, 63-24-107, 63-24-110, and 63-24-111.

The rulemaking hearing rules set out herein were properly filed in the Department of State on the 26th day of November, 2008, and will become effective on the 9th day of February, 2009. (FS 11-48-08; DBID 3844)

Economic Impact Statement

The amendments to 0150-01-.12, 0150-01-.13 and 0150-01-.20 are the only amendments in this filing that have economic impact on small businesses. The proposed new rule 0150-01-.03 is the only new rule in this filing that has economic impact on small businesses.

- (1) Type or types of small business subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rule:

Amendment to 0150-01-.12 - Continuing education course providers whose courses are not approved by NATABOC.

Amendment to 0150-01-.13 – Licensees who administer drugs to athletes and employers of licensees who administer drugs to athletes.

Amendment to 0150-01-.20 and new rule 0150-01-.03 – Licensees who advertise and employers of licensees who advertise the services of licensees.

- (2) Identification and estimate of the number of small businesses subject to the proposed rule:

As of December 31, 2006, Tennessee had six hundred and eight (608) licensed athletic trainers who were eligible for licensure renewal.

- (3) 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 amendments will require some minimal additional reporting and recordkeeping but will require no new or increased costs, and will require no new professional skills.

- (4) Statement of the probable effect on impacted small businesses and consumers:

Amendment to 0150-01-.12 – Some continuing education course providers may

incur additional expenses by seeking NATABOC course approval, while others may choose to no longer provide continuing education to athletic trainers.

Amendment to 0150-01-.13 – Some licensees and employees of licensees may use other health care practitioners instead of using athletic trainers to administer drugs to athletes in order to avoid additional recordkeeping and consent requirements. Consumers who are parents or guardians of minors will benefit from the knowledge that drugs will not be administered without their consent.

Amendment to 0150-01-.20 and new rule 0150-01-.03 – Some licensees who advertise and employers of licensees who advertise the services of licensees may incur additional recordkeeping expenses and may have to revise advertisements which have been previously developed and/or are currently running. Consumers will benefit from accurately knowing who is advertising athletic training services and if they have the appropriate credentials to provide such services.

- (5) 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:

Amendment to 0150-01-.12 – It would be less burdensome to retain the AMA and the TMA as approvers of continuing education but that would be contrary to the intent of the notice of rulemaking hearing, that being to implement the legislation which severed the association with the Board of Medical Examiners.

Amendment to 0150-01-.13 – It would be less burdensome to not promulgate this amendment at all, but that would be contrary to the Board's mission of protecting the public's health, safety, and welfare.

Amendment to 0150-01-.20 and new rule 0150-01-.03 – The Board does not believe there are less burdensome alternatives because the intent of T.C.A. §§ 63-1-145 and 63-1-146 (Public Chapter 467 of the Public Acts of 2005) requires the promulgation of this rule.

- (6) Comparison of the proposed rule with any federal or state counterparts:

Federal: The Board is not aware of any federal counterparts. Athletic trainers are not licensed by the federal government.

State: Amendment to 0150-01-.12 – This would be the first time a health-related licensing board has removed an entity as a continuing education course approver. Conversely, the boards routinely add providers.

Amendment to 0150-01-.13 – Regulations regarding extensive recordkeeping and specific consent requirements are common amongst the health-related licensing boards.

Amendment to 0150-01-.20 and new rule 0150-01-.03 – The proposed amendment and new rule regarding advertising and use of titles are being promulgated at all of the health-related licensing boards.

- (7) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

It is not possible to exempt the impacted small businesses from all or any part of the requirements contained in the proposed rule because, except for continuing education course providers (which are not directly regulated by the Board), the impacted small businesses are the Board's licensees. If there were to be an exemption, the proposed rule amendments would have no actual effect.