

**RULES
OF
THE TENNESSEE BOARD OF PODIATRIC MEDICAL EXAMINERS**

**CHAPTER 1155-02
GENERAL RULES AND REGULATIONS GOVERNING THE PRACTICE OF PODIATRY**

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1155-02-.01 DEFINITIONS - As used in this chapter and in chapters 1155-03 and 1155-04, the following terms and acronyms shall have the following meanings ascribed to them:

- (1) Advertising - Includes, but is not limited to, business solicitation, with or without limiting qualifications, in a card, sign, or device issued to a person; in a sign or marking in or on any building, or in any newspaper, magazine, directory, or other printed matter. Advertising also includes business solicitations communicated by individual, radio, video, television broadcasting, direct mail or any other means designed to secure public attention.
- (2) Advertisement - Informational communication to the public in any manner to attract public attention to the practice of a podiatrist or podiatry medicine.
- (3) Applicant - Any individual seeking licensure by the Board who has submitted an official application and paid the application fee.
- (4) American Podiatric Medical Association - When the acronym APMA appears in these rules, it is intended to mean American Podiatric Medical Association.
- (5) Board - The Tennessee Board of Podiatric Medical Examiners.
- (6) Board Administrative Office - The office of the administrator assigned to the Board located at 227 French Landing, Suite 300, Heritage Place, MetroCenter, Nashville, TN 37243.
- (7) Board Designee - Any person who has received a written delegation of authority from the Board to perform Board functions subject to review and ratification by the full Board where provided by these rules.
- (8) Closed Files - An administrative action which renders an incomplete or denied file inactive.
- (9) Department - Tennessee Department of Health.
- (10) Division - The Division of Health Related Boards, Tennessee Department of Health, from which the Board receives administrative support.

(Rule 1155-02-.01, continued)

- (11) Fee - Money, gifts, services, or anything of value offered or received as compensation in return for rendering services; also, the required application fees.
- (12) Good Moral Character - The quality of being highly regarded in personal behavior and professional ethics.
- (13) He/she Him/her - When "he" appears in the text of these rules, the word represents both the feminine and masculine genders.
- (14) HRB - When the acronym HRB appears in the text of these rules, the HRB represents Health Related Boards.
- (15) License - Document issued to an applicant who successfully completes the licensure process. The license takes the form of an "artistically designed" license as well as other versions bearing an expiration date.
- (16) National Board - Means the National Board of Podiatric Medical Examiners.
- (17) Person - Any individual, firm, corporation, partnership, organization, or body politic.
- (18) Podiatrist - Means one who examines, diagnoses, or treats medically, mechanically, or surgically, the ailments of the human foot, ankle and soft tissue structures extending no higher than the distal tibial metaphyseal flair, including the use and prescribing of drugs and medications, but excluding the direct applications of general anesthesia by a podiatrist and the amputation of the foot. A podiatrist may perform Achilles tendon repair, subject to the provisions of T.C.A. § 63-3-101, but may not perform surgery on Pilon fractures or tibial fractures which do not enter the ankle joint.
- (19) Registrant - Any person who has been lawfully issued a license.
- (20) Use of Title or Description - To hold oneself out to the public as having a particular status by means of stating on signs, mailboxes, address plates, stationary, announcements, business cards, or other means of professional identification.
- (21) Written Evidence - Includes, but is not limited to, written verification from supervisors or other professional colleagues familiar with the applicant's work.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-107, 63-3-101, 63-3-103, 63-3-105, 63-3-106, 63-3-107, 63-3-108, 63-3-109, 63-3-110, 63-3-111, 63-3-115, 63-3-116, 63-3-119, 63-3-125, and 63-3-201.

Administrative History: Original rule filed October 3, 1990; effective November 17, 1990. Repeal and new rule filed November 10, 1998; effective January 14, 1999. Amendment filed March 19, 2001; effective June 2, 2001. Amendment filed July 22, 2002; effective October 5, 2002. Amendment filed March 23, 2007; effective June 6, 2007.

1155-02-.02 SCOPE OF PRACTICE.

- (1) Any person who possesses a valid and current license in Podiatry issued by the Board has the right to use the title licensed podiatrist. No other person shall assume this title on any work, letter, sign, figure, advertisement, or device to indicate that the person using the same is a licensed podiatrist. The work performed includes offering advice and services to the public.
- (2) Universal Precautions for the Prevention of HIV Transmission - The Board adopts, as if fully set out herein, rules 1200-14-03-.01 through 1200-14-03-.03 inclusive, of the Department of Health and as they may from time to time be amended, as its rule governing the process for

(Rule 1155-02-.02, continued)

implementing universal precautions for the prevention of HIV transmission for health care workers under its jurisdiction.

- (3) A licensed podiatrist may perform ankle surgery subject to the provisions of T.C.A. § 63-3-101. Those licensees intending to perform such ankle surgery shall maintain their proof of compliance with T.C.A. § 63-3-101 at their practice location, as it may be inspected by the Board or its authorized representative.
- (4) A licensed podiatrist may order diagnostic tests from licensed medical laboratories and may receive results of such tests, provided the need for such tests is relevant to the practice of podiatry.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-3-101, 63-3-106, 63-3-107, 63-6-117, and 68-11-222.

Administrative History: Original rule filed March 7, 1989; effective April 21, 1989. (Formerly 1155-02-.01) Amendment filed October 3, 1990; effective November 17, 1990. Repeal and new rule filed November 10, 1998; effective January 14, 1999. Amendment filed October 28, 1999; effective January 11, 2000. Amendment filed March 19, 2001; effective June 2, 2001. Amendment filed April 26, 2006; effective July 10, 2006.

1155-02-.03 NECESSITY OF LICENSURE.

- (1) Prior to the engagement of the practice of podiatry in Tennessee, a person must hold a current and valid Tennessee license in podiatry subject to the exemption of T.C.A. § 63-3-108.
- (2) It is unlawful for any person who is not licensed in the manner prescribed in T.C.A. §§ 63-3-101, et seq., to represent himself as a licensed podiatrist or to hold himself out to the public as being licensed by means of using a title on signs, mailboxes, address plates, stationary, announcements, telephone listings, calling cards, or other instruments of professional identification.
- (3) Use of Titles - Any person who possesses a valid, unsuspended and unrevoked license issued by the Board has the right to use the titles and or initials "Podiatrist," "Podiatric Physician," "Doctor of Podiatry," "Doctor of Podiatric Medicine," "Doctor of Podiatric Medicine and Surgery," or "D.P.M." and to practice as a licensed podiatrist, as defined in T.C.A. §§ 63-3-101. Violation of this rule or T.C.A. § 63-3-119 (a) (15) regarding use of titles shall constitute unprofessional conduct and subject the licensee to disciplinary action.
- (4) Podiatry is one of the healing arts, and as such, its practice is restricted to those persons licensed by the board. Persons engaging in the practice of podiatry without being licensed or expressly exempted by the law are in violation of T.C.A. § 63-1-123 and T.C.A. § 63-3-107.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-123, 63-1-145, 63-1-146, 63-3-101, 63-3-106, 63-3-107, 63-3-119, and 63-3-123. **Administrative History:** Original rule filed March 7, 1989; effective April 21, 1989. (Formerly 1155-02-.02) Amendment filed October 3, 1990; effective November 17, 1990. Repeal and new rule filed November 10, 1998; effective January 14, 1999. Amendment filed March 23, 2007; effective June 6, 2007.

1155-02-.04 QUALIFICATION FOR LICENSURE.

- (1) To qualify for licensure in podiatry, all applicants must:
 - (a) Provide evidence of good moral character and professional ethics (rule 1155-02-.05).
 - (b) Provide proof of being at least 18 years of age (rule 1155-02-.05).

(Rule 1155-02-.04, continued)

- (c) Education. Graduate from a podiatric medical college accredited by the Council on Podiatric Medical Education and the American Podiatric Medical Association. The educational requirements must be completed prior to the date of application.
 - (d) Examination. Successfully complete all examinations required by rule 1155-02-.08.
 - (e) Applicants must also meet one of the following:
 - 1. Completion of a one-year residency program approved by the Council of Podiatric Medical Education;
 - 2. Completion of a two-year preceptorship program approved by an accredited college of podiatric medicine;
 - 3. Serving as a podiatric physician for three (3) years in active duty with a branch of this country's armed services; or
 - 4. Practicing podiatric medicine for ten (10) years as a licensed podiatric physician in another state prior to 1990.
- (2) Licensure by Reciprocity. All reciprocity applicants must complete the requirements for licensure in paragraph (1) of this rule.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-3-105, 63-3-106, 63-3-110, 63-3-111, 63-3-113, and 63-3-114.

Administrative History: Original rule filed March 7, 1989; effective April 21, 1989. (Formerly 1155-02-.03) Amendment filed October 3, 1990; effective November 17, 1990. Repeal and new rule filed November 10, 1998; effective January 14, 1999. Amendment filed April 26, 2006; effective July 10, 2006. Amendment filed May 5, 2006; effective July 19, 2006.

1155-02-.05 PROCEDURES FOR LICENSURE - To become licensed as a podiatrist in Tennessee, a person must comply with the following procedures and requirements:

- (1) Licensure by Examination
 - (a) An application packet shall be requested from the board's administrative office.
 - (b) An applicant shall respond truthfully and completely to every question or request for information contained in the application form and submit it along with all documentation and fees required by the form and these rules to the Board's administrative office. It is the intent of this rule that all steps necessary to accomplish the filing of the required documentation be completed prior to filing an application and that all documentation be filed simultaneously.
 - (c) Applications will be accepted throughout the year. Supporting documents requested in these instructions must be received in the board office within 60 days of receipt of the application or the file will be closed.
 - (d) An applicant shall submit with his application a signed passport type photograph taken within the preceding 12 months. (The photo is to be signed by the applicant.)
 - (e) It is the applicant's responsibility to request that a graduate transcript from his degree granting institution, pursuant to T.C.A. § 63-3-110, be submitted directly from the school to the board's administrative office. The institution granting the degree must have been accredited at the time the degree was granted. The transcript must show

(Rule 1155-02-.05, continued)

that the degree has been conferred and carry the official seal of the institution and reference the name under which the applicant has applied for licensure. The educational requirements contained in these rules must be completed prior to the date of the application for licensure.

- (f) An applicant shall submit evidence of good moral character. Such evidence shall be three recent (within the preceding 12 months) original letters, two of which must be from licensed podiatrists, medical doctors or osteopathic physicians attesting to the applicant's personal character and professional ethics on the signator's letterhead.
- (g) An applicant shall submit proof of being eighteen (18) years of age or older. Acceptable proof is a notarized copy of the applicant's birth certificate, driver's license, or voter registration card.
- (h) An applicant must submit, on forms provided by the Board, directly to the Board's administrative office, evidence of:
 - 1. Enrollment in or completion of a one-year residency program approved by the Council on Podiatric Medical Education, or
 - 2. Completion of a two-year preceptorship program approved by an accredited college of podiatric medicine or
 - 3. An original letter from the branch of service verifying three years active service practicing as a podiatrist in the U.S. Armed Services.
- (i) An applicant shall request that his/her scores from Parts I and II of the National Board of Podiatric Medical Examiners (NBPME) examinations be sent directly to the Board's administrative office from the testing agency.
- (j) An applicant shall request that his/her scores, if taken in another state, from Part III of the NBPME examinations (formerly known as the Podiatric Medical Licensing Examination for States [PMLexis]) be sent directly to the Board's administrative office from the Federation of Podiatric Medical Boards.
- (k) An applicant shall disclose the circumstances surrounding any of the following:
 - 1. Conviction of any criminal law violation of any country, state or municipality, except minor traffic violations.
 - 2. The denial of licensure application by any other state or the discipline of licensure in any state.
 - 3. Loss or restriction of licensure.
 - 4. Any civil suit judgment, civil suit settlement or pending civil suit in which the applicant was/is a party defendant including, without limitation, actions involving malpractice, breach of contract, antitrust activity or any other civil action remedy recognized under the country's or state's statutory common, or case law.
- (l) An applicant shall cause to be submitted to the Board's administrative office directly from the vendor identified in the Board's licensure application materials, the result of a criminal background check.

(Rule 1155-02-.05, continued)

- (m) If an applicant holds or has ever held a license to practice as a podiatrist in any other state, the applicant shall cause to be submitted the equivalent of a Tennessee Certificate of Endorsement (verification of license) from each such licensing board which indicates the applicant holds or held an active license and whether it is in good standing presently or was at the time it became inactive.
 - (n) When necessary, all required documents shall be translated into English and such translation and original document shall be certified as to authenticity by the issuing source. Both versions must be submitted.
 - (o) Personal resumes are not acceptable and will not be reviewed.
 - (p) Application review and licensure decisions shall be governed by rule 1155-02-.07.
 - (q) The burden is on the applicant to prove by a preponderance of the evidence that his course work, supervision, and experience are equivalent to the Board's requirements.
- (2) Licensure by Reciprocity. All reciprocity applicants must complete the procedures for licensure in paragraph (1) of this rule.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-3-106, 63-3-109, 63-3-110, 63-3-111, 63-3-114, and 63-3-119.
Administrative History: Original rule filed March 7, 1989; effective April 21, 1989. (Formerly 1155-02-.04) Amendment filed October 3, 1990; effective November 17, 1990. Repeal and new rule filed November 10, 1998; effective January 14, 1999. Amendment filed May 5, 2006; effective July 19, 2006.

1155-02-.06 FEES.

- (1) The fees are as follows:
- (a) Academic License fee - A non-refundable fee to be paid by all applicants for an academic license. This fee pays for licensure during the postgraduate training period and the initial period of full licensure.
 - (b) Application fee - A non-refundable fee to be paid by all applicants for licensure except applicants for an academic license, and must be paid each time an application for licensure is filed.
 - (c) Late Renewal fee - A non-refundable fee to be paid when an individual fails to timely renew a license.
 - (d) Renewal fee - A non-refundable fee to be paid by all licensees. This fee also applies to individuals who reactivate a retired or lapsed license.
 - (e) Replacement license fee - A non-refundable fee to be paid when an individual requests a replacement for a lost or destroyed "artistically designed" license.
 - (f) State Regulatory fee - To be paid by all individuals at the time of application and with all renewal applications.
- (2) All fees shall be established by the Board. Fees may be reviewed and changed at the discretion of the Board.
- (3) All fees must be submitted to the board's administrative office by certified, personal check or money order. Checks or money orders are to be made payable to the Board of Registration in Podiatry.

(Rule 1155-02-.06, continued)

(4) Fee Schedule:	Amount
(a) Academic License	\$440.00
(b) Application	\$440.00
(c) Renewal (biennial)	\$350.00
(d) Late Renewal	\$150.00
(e) Replacement License	\$ 25.00
(f) State Regulatory (biennial)	\$ 10.00

Authority: T.C.A. §§ 4-3-1011, 4-5-202, 4-5-204, 63-1-103, 63-1-107, 63-3-106, 63-3-106(1), 63-3-109, 63-3-111, 63-3-112, 63-3-114, 63-3-115, and 63-3-116. **Administrative History:** Original rule filed March 7, 1989; effective April 21, 1989. (Formerly 1155-02-.05) Amendment filed October 3, 1990; effective November 17, 1990. Repeal and new rule filed November 10, 1998; effective January 14, 1999. Amendment filed December 13, 2000; effective February 26, 2001. Amendment filed December 16, 2002; effective March 1, 2003. Amendment filed August 25, 2009; effective November 23, 2009.

1155-02-.07 APPLICATION REVIEW, APPROVAL, DENIAL, INTERVIEWS. This rule determines the procedure the Board shall use to make decisions for applicants seeking to practice podiatry pursuant to this chapter and for applicants seeking to operate x-ray equipment for diagnostic purposes in podiatrists' offices pursuant to Chapter 1155-03.

- (1) An application packet shall be requested from the Board's administrative office.
- (2) Review of all applications to determine whether or not the application file is complete may be delegated to the Board's administrator.
- (3) If an application is incomplete when received in the Board's administrative office, a deficiency letter will be sent to the applicant notifying him of the deficiency. The requested information must be received in the Board's administrative office on or before the sixtieth (60th) day after the applicant's receipt of the notification.
 - (a) Such notification shall be sent certified mail, return receipt requested, from the Board's administrative office.
 - (b) If the requested information is not received on or before the sixtieth (60th) day prior to the examination, the application file shall become inactive and the applicant notified. No further board action will take place until the application is completed pursuant to the rules governing the application process.
- (4) An individual who has a complete application, application fees, and all supporting documents on file in the Board's administrative office at least sixty (60) days prior to the examination date will be scheduled and notified to take the examination.
- (5) If a completed application has been denied and ratified as such by the Board or its designee, the action shall become final and the following shall occur:
 - (a) A notification of the denial shall be sent by the Board's administrative office by certified mail, return receipt requested. Specific reasons for denial will be stated, such as incomplete information, unofficial records, examination failure, or other matters judged

(Rule 1155-02-.07, continued)

- insufficient for licensure, and such notification shall contain all the specific statutory or rule authorities for the denial.
- (b) The notification, when appropriate, shall also contain a statement of the applicant's right to request a contested case hearing under the Tennessee Administrative Procedures Act (T.C.A. §§ 4-5-301, et seq.) to contest the denial and the procedure necessary to accomplish that action.
 - (c) An applicant has a right to a contested case hearing only if the licensure denial is based on subjective or discretionary criteria.
 - (d) An applicant may be granted a contested case hearing if licensure denial is based on an objective, clearly defined criteria only if after review and attempted resolution by the Board's administrative staff, the licensure application cannot be approved and the reasons for continued denial present a genuine issue of fact and/or law which is appropriate for appeal. Such request must be made in writing to the Board within thirty (30) days of the receipt of the notice of denial from the Board.
- (6) The Board or its designee may delay a decision on eligibility to take the examination for any applicant for whom the board wishes additional information for the purpose of clarifying information previously submitted. This request is to be in writing and sent by certified mail, return receipt requested. The applicant's response must be made and received at the Board's administrative office within sixty (60) days from the date of the official review of the application or the application will be closed.
 - (7) If the Board finds it has erred in the issuance of a license, the board will give written notice by certified mail of its intent to revoke the license. The notice will allow the applicant the opportunity to meet the requirements of licensure within thirty (30) days from the date of receipt of the notification. If the applicant does not concur with the stated reason and the intent to revoke the license, the applicant shall have the right to proceed according to rule 1155-02-.07(5).
 - (8) Whenever requirements for examination are not completed sixty (60) days before the date of the examination, a written notification will be mailed to the applicant and the application file will become inactive. An applicant whose file has become inactive shall subsequently be considered for licensure only upon completion of his application and payment of all appropriate fees.
 - (9) Abandonment of Application
 - (a) An application shall be deemed abandoned and closed if the application has not been completed by the applicant within sixty (60) days from the date it was initially reviewed.
 - (b) The above action must be ratified by the Board.
 - (c) An application submitted subsequent to the abandonment of a prior application shall be treated as a new application.
 - (10) If an applicant requests one means for licensure, and wishes to change that application to a different means of obtaining licensure, a new application, with supporting documents and appropriate fee(s) must be submitted, i.e., reciprocity to examination.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 4-5-301, 63-3-106, 63-3-109, 63-3-110, 63-3-111, 63-3-112, 63-3-114, 63-3-115, 63-3-119, and 63-3-125. **Administrative History:** Original rule filed March 7, 1989; effective April 21, 1989. (Formerly 1155-02-.06) Amendment filed October 3, 1990; effective November

(Rule 1155-02-.07, continued)

17, 1990. Repeal and new rule filed November 10, 1998; effective January 14, 1999. Amendment filed December 13, 2000; effective February 26, 2001.

1155-02-.08 EXAMINATIONS. All applicants for licensure by examination and reciprocity must successfully complete the examinations described in paragraphs (1), (2) and (3) of this rule.

- (1) Parts I and II of the National Board of Podiatric Medical Examiners (NBPME) examinations.
 - (a) The Board adopts as its passing scores for Parts I and II the NBPME's recommended passing score as determined by the criterion-referenced method approved by the NBPME.
 - (b) The passing scores for Parts I and II are to be achieved independently of each other and shall not be combined together for an average passing score.
 - (c) The examinations shall be administered by the NBPME's authorized testing agency.
- (2) Part III of the NBPME examinations (formerly known as the Podiatric Medical Licensing Examination for States [PMLexis]).
 - (a) The Board adopts as its passing score for Part III the NBPME's recommended passing score as determined by the criterion-referenced method approved by the NBPME.
 - (b) An applicant for licensure shall successfully complete Parts I and II before applying to the Board to take Part III.
 - (c) The examination shall be administered by the NBPME's authorized testing agency.
- (3) Jurisprudence examination.
 - (a) The Board shall include a jurisprudence examination with all applications for licensure that are mailed from the Board's administrative office, or the applicant may obtain the jurisprudence examination from the Board's Internet web page that can be accessed at www.Tennessee.gov/health.
 - (b) The applicant shall include a completed jurisprudence examination when his/her completed application for licensure is returned to the Board's administrative office.
 - (c) There is no fee for the jurisprudence examination.
 - (d) The scope and content of the examination shall be determined by the Board but limited to statutes and regulations governing the practice of podiatry (T.C.A. §§ 63-3-101, et seq., and Chapter 1155-02 of the Official Compilation, Rules and Regulations of the State of Tennessee) and the American Podiatric Medical Association (APMA) Code of Ethics. Copies of the applicable statutes, regulations, and the APMA Code of Ethics are available upon request from the Board's administrative office.
 - (e) The format of the examination shall be "open-book."

Correctly answering ninety percent (90%) of the examination questions shall constitute successful completion of the jurisprudence exam.
- (4) Time limit for effectiveness of scores

(Rule 1155-02-.08, continued)

- (a) The effectiveness of any examination required by this rule for purposes of measuring competency and fitness to practice podiatry and therefore eligibility for licensure is five (5) years from the date on which the examination was successfully completed. This is the date on which the applicant took the exam and not the date on which passing scores were reported to the Board.
 - (b) An applicant's test score on an examination required by this rule which was taken more than five (5) years before application was for Tennessee licensure will be considered by the Board on a case by case basis after the applicant appears before the Board for an interview.
- (5) The Board's administrative office will notify applicants in writing within forty-five (45) days of the date the written test scores are made available to the Board.
- (6) Re-Examination
- (a) Applicants who fail Part III of the NBPME examinations shall be entitled to retake the next regularly scheduled examination upon sending a written request to the Board's administrative office at least sixty (60) days prior to the examination.
 - (b) Applicants who fail to successfully complete the jurisprudence examination must continue to retake the examination until it has been successfully completed before the application will be deemed complete and presented to the Board for consideration.
 - (c) If an applicant neglects, fails or refuses to take the examination or fails to pass the examination for licensure under these rules within 12 months after being deemed eligible to sit for the state examination, the application file will be closed. However, such an applicant may thereafter make a new application accompanied by the required fee and supporting documents. The applicant shall meet the requirements in effect at the time of the new application.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-3-106, 63-3-109, 63-3-111, 63-3-112, and 63-3-114.
Administrative History: Original rule filed February 4, 1988; effective March 20, 1988. (Formerly 1155-02-.07) Amendment filed October 3, 1990; effective November 17, 1990. Amendment filed December 20, 1990; effective February 3, 1991. Repeal and new rule filed November 10, 1998; effective January 14, 1999. Amendment filed December 13, 2000; effective February 26, 2001. Amendment filed April 26, 2006; effective July 10, 2006. Amendment filed May 5, 2006; effective July 19, 2006. Amendment filed August 9, 2007; effective October 23, 2007.

1155-02-.09 LICENSURE RENEWAL.

- (1) Renewal Application
 - (a) The due date for renewal is the last day of the month in which a licensee's birthday falls pursuant to the Division of Health Related Board's biennial birthdate renewal system as contained as the expiration date on renewal certificates.
 - (b) Methods of Renewal
 - 1. Internet Renewals - Individuals may apply for renewal and pay the necessary fees via the Internet. The application to renew can be accessed at:

www.tennesseeanytime.org

(Rule 1155-02-.09, continued)

2. Paper Renewals - For individuals who have not renewed their license online via the Internet, a renewal application form will be mailed to each individual licensed by the Board to the last address provided to the Board. Failure to receive such notification does not relieve the licensee from the responsibility of meeting all requirements for renewal.
- (c) A license issued pursuant to these rules is renewable by the expiration date. To be eligible for renewal an individual must submit to the Division of Health Related Boards on or before the expiration date the following:
 1. A completed and signed renewal application form.
 2. The renewal and state regulatory fees as provided in rule 1155-02-.06.
 - (d) To be eligible for renewal an individual must have completed the continuing education requirements provided in rule 1155-02-.12 and who so indicates completion by signing the renewal application. An individual who fails to obtain continuing education hours, pursuant to rule 1155-02-.12 may be subject to disciplinary action by the board.
 - (e) Licensees who fail to comply with the renewal rules or notification received by them concerning failure to timely renew shall have their licenses processed pursuant to rule 1200-10-01-.10.
 - (f) Licensees whose licenses have expired as a result of the licensee's failure to renew pursuant to rule 1200-10-01-.10 may be reinstated upon meeting the conditions as provided in rule 1155-02-.09 (2).
- (2) Reinstatement of an Expired License
- (a) Reinstatement of a license that has expired as a result of failure to timely renew in accordance with rule 1200-10-01-.10 may be accomplished upon meeting the following conditions:
 1. Payment of all past due renewal fees; and
 2. Payment of the late renewal fee provided in rule 1155-02-.06.
 3. Compliance with continuing education requirements pursuant to Rule 1155-02-.12.
 - (b) Renewal issuance decisions pursuant to this rule may be made administratively, upon review by the board or the board's designee.
 - (c) Anyone submitting a signed renewal form or letter which is found to be untrue may be subjected to disciplinary action as provided in rule 1155-02-.15.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-107, 63-3-106, 63-3-109, 63-3-115, 63-3-116, and 63-3-119.
Administrative History: Original rule filed August 21, 1990; effective October 5, 1990. (Formerly 1155-02-.08) Amendment filed October 3, 1990; effective November 17, 1990. Repeal and new rule filed November 10, 1998; effective January 14, 1999. Amendment filed July 22, 2002; effective October 5, 2002.

1155-02-.10 RESERVED.

1155-02-.11 RETIREMENT AND REACTIVATION OF LICENSE.

- (1) A person who holds a current license and does not intend to practice as a "licensed podiatrist" may apply to convert an active license to inactive ("retired") status. An individual who holds a retired license will not be required to pay the renewal fee.
- (2) A person who holds an active license may apply for retired status in the following manner:
 - (a) Obtain, complete, and submit to the Board's administrative office an affidavit of retirement form.
 - (b) Submit any documentation which may be required to the Board's administrative office.
- (3) A licensee whose license has been retired may re-enter active status by doing the following:
 - (a) Obtain complete and submit to the Board's administrative office a reactivation/reinstatement application.
 - (b) Pay the licensure renewal fees and state regulatory fees as provided in rule 1155-02-.06. If retirement reactivation is requested prior to the expiration of one year from the date of retirement, the Board will require payment of the late renewal fee and past due renewal fees.
 - (c) Submit verification of successful completion of continuing medical education hours, pursuant to rule 1155-02-.12.
 - (d) Retake and pass the Board's oral exam if the license has been retired for five (5) years or more.
- (4) Licensure reactivation applications shall be treated as licensure applications, and review decisions shall be governed by rule 1155-02-.07.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-3-106, and 63-3-116. **Administrative History:** Original rule filed November 10, 1998; effective January 14, 1999. Amendment filed March 23, 2007; effective June 6, 2007.

1155-02-.12 CONTINUING EDUCATION.

- (1) The Board requires each licensed podiatrist to complete fifteen (15) clock hours of continuing education each calendar year (January 1 – December 31).
 - (a) Twelve (12) hours of the fifteen (15) clock hour requirement shall be clinical, scientific, or related to patient care. If the licensee is performing ankle surgery pursuant to T.C.A. § 63-3-101 (b) (1), ten (10) of these twelve (12) hours shall pertain to the ankle surgery.
 - (b) Beginning January 1, 2008, at least one (1) hour of the annual fifteen (15) hour requirement shall, every other calendar year, be a course designed specifically to address prescribing practices.
 - (c) Ten (10) hours of the fifteen (15) clock hour requirement must be completed in the traditional "lecture / classroom" format.
 - (d) Five (5) hours of the fifteen (15) clock hour requirement may be completed in any of the following multi-media formats:

(Rule 1155-02-.12, continued)

1. The Internet
 2. Closed circuit television
 3. Satellite broadcasts
 4. Correspondence courses
 5. Videotapes
 6. CD-ROM
 7. DVD
 8. Teleconferencing
 9. Videoconferencing
 10. Distance learning
- (2) Acceptable continuing education shall consist of courses provided or sponsored by the APMA, APMA approved colleges of podiatric medicine, state, regional (zone), national and affiliated specialty groups, the U.S. federal government, or other education programs approved by the Board.
- (3) Course Approval
- (a) Courses to be offered for credit toward the required continuing education hours must, unless otherwise provided pursuant to 1155-02-.12 (2), receive prior approval from the Board.
 - (b) Prior approval of a course may be obtained by submitting the following information to the Board's administrative office at least forty-five (45) days prior to the scheduled date of the course.
 1. A course description or outline;
 2. Names of all lecturers;
 3. Brief resume of all lecturers;
 4. Number of hours of educational credit requested;
 5. Date of course;
 6. How certification of attendance is to be documented.
- (4) Documentation
- (a) Each licensee must retain proof of attendance and completion of all continuing education requirements. This documentation must be retained for a period of four years from the end of the calendar year in which the continuing education was acquired. This documentation must be produced for inspection and verification, if requested in writing by the Board during its verification process.

(Rule 1155-02-.12, continued)

- (b) Each licensee must, within thirty (30) days of a request from the Board, provide evidence of continuing education requirements. Such evidence must be by submission of one or more of the following:
 - 1. Certificates verifying the licensee's attendance at continuing education program(s). The certificate must include the following: continuing education program's sponsor, date, clock hours awarded (continuing education units must be converted to clock hours), program title, licensee's name, license number and social security number.
 - 2. An original letter on official stationery from the continuing education program's sponsor indicating, date, clock hours awarded (CE units must be converted to clock hours), program title, licensee's name, license number and social security number.
- (c) If a person submits documentation for training that is not clearly identifiable as appropriate continuing education, the Board will request a written description of the training and how it applies to the practice of podiatry. If the Board determines that the training cannot be considered appropriate continuing education, the individual will be given ninety (90) days to replace the hours not allowed. Those hours will be considered replacement hours and cannot be counted during the next renewal period.
- (5) Persons who are full-time residents in a graduate training program approved by the Council on Podiatric Medical Education or full-time preceptors in a post-graduate training program approved by an accredited college of Podiatric Medicine and individuals who have been students of a Podiatry College during the year they obtain their Tennessee license shall be exempt from the CME requirements during that calendar year. The request for exemption shall be submitted in writing to the Board's administrative office at the beginning of the calendar year. A letter confirming residency or preceptorship participation from that respective director must be submitted with the request.
- (6) Continuing education credit will not be allowed for the following:
 - (a) Regular work activities, administrative staff meetings, case staffing/reporting, etc.
 - (b) Membership in, holding office in, or participation on boards or committees, business meetings of professional organizations, or banquet speeches.
- (7) Revocation of license for non-compliance with continuing education:
 - (a) If the continuing education requirement is not met, a letter is issued to the last known address of the individual requiring him to show cause why his license should not be revoked for failure to comply with the continuing education requirements.
 - (b) The licensee has 30 days from the date of notification to respond to the show cause letter and prepare for any hearing on the matter
- (8) Continuing Education for Reactivation of Retired or Revoked License.
 - (a) Reactivation of Retired Licensure
 - 1. An individual whose license has been retired for less than one year will be required to fulfill continuing education requirements as outlined in this rule as a prerequisite to reinstatement. Those hours will be considered replacement hours and can not be counted toward meeting the calendar year end requirement.

(Rule 1155-02-.12, continued)

2. Any individual requesting reactivation of a license which has been retired for one or more years must submit, along with the reactivation request, verification which indicates the attendance and completion of fifteen (15) hours of continuing education for each year in which the license was retired or the equivalent of this state's requirement multiplied by the number of years in retirement. The continuing education hours must have been begun and successfully completed before the date of reinstatement.

(b) Reactivation of Revoked License.

1. No person whose license has been revoked for failure to comply with continuing education may have his license reinstated without complying with all the requirements. The required clock hours of continuing education must have been begun and completed before the date of reinstatement.

(9) Violations

- (a) Any licensee who falsely certifies attendance and completion of the required hours of continuing education requirements may be subject to disciplinary action.
- (b) Any licensee who fails to show compliance with the required continuing education hours in response to the notice contemplated by subparagraph (7) (a) above may be subject to disciplinary action.

(10) Waiver of Continuing Education

- (a) The Board may grant a waiver of the need to attend and complete the required hours of continuing education if it can be shown to the Board that the failure to comply was not attributed to or was beyond the physical capabilities of the person seeking the waiver.
- (b) Waivers will be considered only on an individual basis and may be requested by submitting the following items to the Board's administrative office:
 1. A written request for a waiver which specifies what requirements are sought to be waived and a written and signed explanation of the reason for the request.
 2. Any documentation which supports the reason for the waiver requested or which is subsequently requested by the Board.
- (c) A waiver approved by the Board is effective only for the calendar year for which the waiver is sought.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-107, 63-3-101, 63-3-106, 63-3-109, 63-3-115, 63-3-116, and 63-3-119. **Administrative History:** Original rule filed November 10, 1998; effective January 14, 1999. Amendment filed August 23, 2001; effective November 6, 2001. Amendment filed July 22, 2002; effective October 5, 2002. Amendment filed April 26, 2006; effective July 10, 2006. Amendment filed March 23, 2007; effective June 6, 2007. Amendment filed August 9, 2007; effective October 23, 2007.

1155-02-.13 PROFESSIONAL ETHICS. Immoral, unprofessional, unethical, or dishonorable conduct shall include, but not be limited to, the following:

- (1) Conduct designed to, or likely to, deceive or harm the public.

(Rule 1155-02-.13, continued)

- (2) Being a party to or aiding and abetting the violation of these regulations or the laws of the State of Tennessee regulating the practice of podiatry.
- (3) The intentional or negligent use of any false, fraudulent or forged statement, writing or document, or the use of any fraudulent, deceitful, dishonest, or immoral practice in connection with any of the licensing requirements of T.C.A. § 63-3-101, et seq.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-3-101, 63-3-106, 63-3-109 and 63-3-119. **Administrative History:** Original rule filed November 10, 1998; effective January 14, 1999.

1155-02-.14 ACADEMIC LICENSE.

- (1) An application for an academic license will be considered only after an individual has completed all the requirements for full and unrestricted licensure except postgraduate education and the examination requirements of paragraphs (2) and (3) of rule 1155-02-.08.
- (2) An academic license authorizes the licensee to engage in the practice of podiatric medicine and surgery as part of a postgraduate educational program.
- (3) A completed application must be approved by the Board or Board designee prior to the issuance of an academic license.
- (4) To obtain an academic license a person must comply with the following procedures and requirements:
 - (a) An application packet shall be requested from the Board's administrative office.
 - (b) An applicant shall respond truthfully and completely to every question or request for information contained in the application form and submit it along with all fees required by the form and these rules to the Board's administrative office.
 - (c) Applications will be accepted throughout the year.
 - (d) An applicant shall submit with his application a signed passport type photograph taken within the preceding 12 months. (The photo is to be signed by the applicant.)
 - (e) It is the applicant's responsibility to request a transcript pursuant to T.C.A. § 63-3-110 which must be submitted directly from the school to the Board's administrative office. The podiatric institution granting the degree of Doctor of Podiatric Medicine must have been accredited at the time the degree was granted. The transcript must show that the degree has been conferred. The educational requirements contained in these rules must be completed prior to the date of application for licensure.
 - (f) An applicant shall submit evidence of good moral character. Such evidence shall be three recent (within the preceding 12 months) original letters, two of which must be from licensed podiatrists, medical doctors or osteopathic physicians, attesting to the applicant's personal character and professional ethics on the signator's letterhead.
 - (g) An applicant shall submit proof of being eighteen (18) years of age or older. Acceptable proof is a notarized copy of the applicant's birth certificate, driver's license, or voters registration card.
 - (h) Verification of enrollment in an approved one-year residency program or two-year preceptorship on a form provided by the board, completed and returned to the Board's administrative office by the Director of the program.

(Rule 1155-02-.14, continued)

- (i) Official verification that the residency program is approved by the Council on Podiatric Medical Education of the APMA, submitted by the APMA directly to the Board's administrative office on a form provided by the Board; or, official verification that the preceptorship program is approved by an accredited College of Podiatric Medicine, sent directly by the school to the Board's administrative office on a form provided by the Board.
- (j) An applicant shall request that his/her scores from Parts I and II of the National Board of Podiatric Medical Examiners (NBPME) examinations be sent directly to the Board's administrative office from the testing agency.
- (k) An applicant shall disclose the circumstances surrounding any of the following:
 - 1. Conviction of any criminal law violation of any country, state or municipality, except minor traffic violations.
 - 2. The denial of licensure application by any other state or the discipline of licensure in any state.
 - 3. Loss or restriction of licensure.
 - 4. Any civil suit judgment or civil suit settlement in which the applicant was a party defendant including, without limitation, actions involving malpractice, breach of contract, antitrust activity or any other civil action remedy recognized under the country's or state's statutory common, or case law.
- (l) An applicant shall cause to be submitted to the Board's administrative office directly from the vendor identified in the Board's licensure application materials, the result of a criminal background check.
- (m) If an applicant holds or has ever held a license to practice as a podiatrist in any other state, the applicant shall cause to be submitted the equivalent of a Tennessee Certificate of Endorsement (verification of license) from each such licensing board which indicates that the applicant holds or held an active license and whether it is in good standing presently or was at the time it became inactive.
- (n) When necessary, all required documents shall be translated into English, and such translation and original document shall be certified as to authenticity by the issuing source. Both versions must be submitted.
- (o) Personal resumes are not acceptable and will not be reviewed.
- (p) Application review and licensure decisions shall be governed by rule 1155-02-.07.
- (5) If an academic license holder terminates or is discharged from a residency or preceptorship program, the academic license shall become null and void.
- (6) If an academic license holder enters a different residency or preceptorship program, he shall reapply for a new academic license by submitting a new application, fee and all supporting documents.
- (7) The disciplinary provisions for Podiatry license shall also apply to the holder of an academic license.

(Rule 1155-02-.14, continued)

- (8) An academic license holder may be approved for a permanent license when he/she successfully completes the post-graduate educational program and the examination requirements of paragraphs (2) and (3) of rule 1155-02-.08.

Authority: §§ 4-5-202, 4-5-204, 63-3-106, 63-3-109, 63-3-110, 63-3-111, 63-11-113, and 63-3-114.

Administrative History: Original rule filed November 10, 1998; effective January 14, 1999. Amendment filed May 5, 2006; effective July 19, 2006.

1155-02-.15 DISCIPLINARY ACTIONS, CIVIL PENALTIES, ASSESSMENT OF COSTS, AND SUB-POENAS.

- (1) Upon a finding by the Board that a podiatrist has violated any provision of the Tennessee Code Annotated §§ 63-3-101, et seq., or the rules promulgated thereto, the Board may impose any of the following actions separately or in any combination deemed appropriate to the offense.
- (a) Advisory Censure - This is a written action issued to the podiatrist for minor or near infractions. It is informal and advisory in nature and does not constitute a formal disciplinary action.
 - (b) Formal censure or reprimand - This is a written action issued to a podiatrist for one time and less severe violation(s). It is a formal disciplinary action.
 - (c) Probation - This is a formal disciplinary action which places a podiatrist on close scrutiny for a fixed period of time. This action may be combined with conditions which must be met before probation will be lifted and/or which restrict the individual's activities during the probationary period.
 - (d) Licensure Suspension - This is a formal disciplinary action which suspends an individual's right to practice for a fixed period of time. It contemplates the reentry of the individual into the practice under the licensure previously issued.
 - (e) Revocation for Cause. This is the most severe form of disciplinary action which removes an individual from the practice of the profession and terminates the license previously issued. The Board, in its discretion, may allow reinstatement of a revoked license upon conditions and after a period of time it deems appropriate. No petition for reinstatement and no new application for licensure from a person whose license was revoked shall be considered prior to the expiration of at least one year unless otherwise stated in the Board's revocation order.
 - (f) Conditions - These include any action deemed appropriate by the board to be required of an individual disciplined during any period of probation or suspension or as a prerequisite to the lifting of probation or suspension or the reinstatement of a revoked certificate or license.
 - (g) Civil penalty - A monetary disciplinary action assessed by the Board pursuant to paragraph (5) of this rule.
- (2) Once ordered, probation, suspension, revocation, assessment of a civil penalty, or any other condition of any type of disciplinary action may not be lifted unless and until the licensee petitions, pursuant to paragraph (3) of this rule, and appears before the Board after the period of initial probation, suspension, revocation, or other conditioning has run and all conditions placed on the probation, suspension, revocation, have been met, and after any civil penalties assessed have been paid.

(Rule 1155-02-.15, continued)

(3) Order of Compliance - This procedure is a necessary adjunct to previously issued disciplinary orders and is available only when a petitioner has completely complied with the provisions of a previously issued disciplinary order, including an unlicensed practice civil penalty order, and wishes or is required to obtain an order reflecting that compliance.

(a) The Board will entertain petitions for an Order of Compliance as a supplement to a previously issued order upon strict compliance with the procedures set forth in subparagraph (b) in only the following three (3) circumstances:

1. When the petitioner can prove compliance with all the terms of the previously issued order and is seeking to have an order issued reflecting that compliance; or
2. When the petitioner can prove compliance with all the terms of the previously issued order and is seeking to have an order issued lifting a previously ordered suspension or probation; or
3. When the petitioner can prove compliance with all the terms of the previously issued order and is seeking to have an order issued reinstating a license previously revoked.

(b) Procedures

1. The petitioner shall submit a Petition for Order of Compliance, as 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 which provision of subparagraph (a) the petitioner is relying upon as a basis for the requested order; and
 - (iii) A copy of all documents that prove compliance with all the terms or conditions of the previously issued order. If proof of compliance requires testimony of an individual(s), including that of the petitioner, the petitioner must submit signed statements from every individual the petitioner intends to rely upon attesting, under oath, to the compliance. The Board's consultant and administrative staff, in their discretion, may require such signed statements to be notarized. 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 compliance and have the matter scheduled for presentation to the Board as an uncontested matter; or
 - (ii) Deny the petition, after consultation with legal staff, if compliance with all of the provisions of the previous order is not proven and notify the petitioner of what provisions remain to be fulfilled and/or what proof of compliance was either not sufficient or not submitted.

(Rule 1155-02-.15, continued)

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 Board finds that the petitioner has complied with all the terms of the previous order an Order of Compliance shall be issued.
5. If the petition is denied either initially by staff or after presentation to the Board and the petitioner believes 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 1200-10-01-.11.

(c) Form Petition

Petition for Order of Compliance
Board of Registration in Podiatry

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, as substantiated by the attached documentation, that all provisions of the attached disciplinary order have been complied with and I am respectfully requesting: (circle one)

An order issued reflecting that compliance; or

An order issued reflecting that compliance and lifting a previously ordered suspension or probation; or

An order issued reflecting that compliance and reinstating a license previously revoked.

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 compliance is the testimony of any individual, including yourself, you must enclose signed statements from every individual you intend to rely upon attesting, under oath, to the compliance. The Board's consultant and administrative staff, in their discretion, may require such signed statements to be notarized. 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_____.

Petitioner's Signature

(Rule 1155-02-.15, continued)

(4) 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.

(Rule 1155-02-.15, continued)

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 1200-10-01-.11.

(c) Form Petition

Petition for Order Modification
Board of Registration in Podiatry

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____.

Petitioner's Signature

(5) Civil Penalties

(Rule 1155-02-.15, continued)

- (a) Purpose - The purpose of this rule 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.
- (b) Schedule of Civil Penalties
 1. A Type A civil penalty may be imposed whenever the Board finds the person who is required to be licensed or certified by the Board guilty of a willful and knowing violation of the Podiatry Examiners Practice Act 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 patient or the public. For purposes of this section, a Type A penalty shall include, but not be limited to, a person who willfully and knowingly is or was practicing as a podiatrist without a license from the Board.
 2. A Type B civil penalty may be imposed whenever the Board finds the person required to be licensed by the Board guilty of a violation of the Podiatry Examiners Practice Act or regulations promulgated pursuant thereto in such manner as to impact directly on the care of patients or the public.
 3. A Type C civil penalty may be imposed whenever the Board finds the person required to be licensed, permitted, or authorized by the board guilty of a violation of the Podiatry Examiners Practice Act or regulations promulgated pursuant thereto, which are neither directly detrimental to the patients or public, nor directly impact their care, but have only an indirect relationship to client care or the public.
- (c) Amount of Civil Penalties
 1. Type A civil penalties shall be assessed in the amount of not less than \$500 and not more than \$1,000.
 2. Type B civil penalties may be assessed in the amount of not less than \$100 and not more than \$500.
 3. Type C civil penalties may be assessed in the amount of not less than \$50 and not more than \$100.
- (d) Procedures for Assessing Civil Penalties
 1. 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.
 2. 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 type and amount of civil penalty which was not recommended by the Division.
 3. In assessing the civil penalties pursuant to these rules the Board may consider the following factors:

(Rule 1155-02-.15, continued)

- (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.
4. All proceedings for the assessment of civil penalties shall be governed by the contested case provisions of T.C.A. Title 4, Chapter 5.
- (6) Assessment of costs in disciplinary proceedings shall be as set forth in T.C.A. §§ 63-1-144 and 63-3-126.
- (7) Subpoenas
- (a) Purpose - Although this rule applies to persons and entities other than podiatrists, it is the Board's intent as to podiatrists that they be free to comprehensively treat and document treatment of their patients without fear that the treatment or its documentation will be unduly subjected to scrutiny outside the profession. Consequently, balancing that intent against the interest of the public and patients to be protected against substandard care and activities requires that persons seeking to subpoena such information and/or materials must comply with the substance and procedures of these rules.

It is the intent of the Board that the subpoena power outlined herein shall be strictly proscribed. Such power shall not be used by the division or board investigators to seek other incriminating evidence against podiatrists when the division or board does not have a complaint or basis to pursue such an investigation. Thus, unless the division or its investigators have previously considered, discovered, or otherwise received a complaint from either the public or a governmental entity, then no subpoena as contemplated herein shall issue.

- (b) Definitions - As used in this chapter of rules the following words shall have the meanings ascribed to them:
1. Probable Cause
 - (i) For Investigative Subpoenas - shall mean that probable cause, as defined by case law at the time of request for subpoena issuance is made, exists that a violation of the Podiatry Practice Act or rules promulgated pursuant thereto has occurred or is occurring and that it is more probable than not that the person(s), or items to be subpoenaed possess or contain evidence which is more probable than not relevant to the conduct constituting the violation.
 - (ii) The utilization of the probable cause evidentiary burden in proceedings pursuant to this rule shall not in any way, nor should it be construed in any way to establish a more restrictive burden of proof than the existing preponderance of the evidence in any civil disciplinary action which may involve the person(s) or items that are the subject of the subpoena.

(Rule 1155-02-.15, continued)

2. Presiding Officer - For investigative subpoenas shall mean any elected officer of the board, or any duly appointed or elected chairperson of any panel of the board.

(c) Procedures

1. Investigative Subpoenas

- (i) Investigative Subpoenas are available only for issuance to the authorized representatives of the Tennessee Department of Health, its investigators and its legal staff.

- (ii) An applicant for such a subpoena must either orally or in writing notify the Board's Unit Director of the intention to seek issuance of a subpoena. That notification must include the following:

- (I) The time frame in which issuance is required so the matter can be timely scheduled; and

- (II) A particular description of the material or documents sought, which must relate directly to an ongoing investigation or contested case, and shall, in the instance of documentary materials, be limited to the records of the patient or patients whose complaint, complaints, or records are being considered by the division or board.

- I. In no event shall such subpoena be broadly drafted to provide investigative access to podiatry records of other patients who are not referenced in a complaint received from an individual or governmental entity, or who have not otherwise sought relief, review, or board consideration of a podiatrist's conduct, act, or omission.

- II. If the subpoena relates to the prescribing practices of a licensee, then it shall be directed solely to the records of the patient(s) who received the pharmaceutical agents and whom the board of pharmacy or issuing pharmacy(ies) has so identified as recipients; and

- (III) Whether the proceedings for the issuance are to be conducted by physical appearance or electronic means; and

- (IV) The name and address of the person for whom the subpoena is being sought or who has possession of the items being subpoenaed.

- (iii) The Board's Unit Director shall cause to have the following done:

- (I) In as timely a manner as possible arrange for either an elected officer of the board, or any duly appointed or elected chairperson of any panel of the board, to preside and determine if issuing the subpoena should be recommended to the full Board; and

- (II) Establish a date, time and place for the proceedings to be conducted and notify the presiding officer, the applicant and the court reporter; and

(Rule 1155-02-.15, continued)

- (III) Maintain a complete record of the proceedings including an audio tape in such a manner as to:
 - I. Preserve a verbatim record of the proceeding; and
 - II. Prevent the person presiding over the proceedings and/or signing the subpoena from being allowed to participate in any manner in any disciplinary action of any kind, formal or informal, which may result which involves either the person or the documents or records for which the subpoena was issued.
- (iv) The Proceedings
 - (I) The applicant shall do the following:
 - I. Provide for the attendance of all persons whose testimony is to be relied upon to establish probable cause; and
 - II. Produce and make part of the record copies of all documents to be utilized to establish probable cause; and
 - III. Obtain, complete and provide to the presiding officer a subpoena which specifies the following:
 - A. The name and address of the person for whom the subpoena is being sought or who has possession of the, items being subpoenaed; and
 - B. The location of the materials, documents or reports for which production pursuant to the subpoena is sought if that location is known; and
 - C. A brief, particular description of any materials, documents or items to be produced pursuant to the subpoena; and
 - D. The date, time and place for compliance with the subpoena.
 - IV. Provide the presiding officer testimony and/or documentary evidence which in good faith the applicant believes is sufficient to establish that probable cause exists for issuance of the subpoena as well as sufficient proof that all other reasonably available alternative means of securing the materials, documents or items have been unsuccessful.
 - (II) The Presiding Officer shall do the following:
 - I. Have been selected only after assuring the Board's Unit Director that he or she has no prior knowledge of or any direct or indirect interest in or relationship with the person(s) being subpoenaed and/or the licensee who is the subject of the investigation; and

(Rule 1155-02-.15, continued)

- II. Commence the proceedings and swear all necessary witnesses; and
- III. Hear and maintain the confidentiality, if any, of the evidence presented at the proceedings and present to the full board only that evidence necessary for an informed decision; and
- IV. Control the manner and extent of inquiry during the proceedings and be allowed to question any witness who testifies; and
- V. Determine based solely on the evidence presented in the proceedings whether probable cause exists and if so, make such recommendation to the full board; and
- VI. Not participate in any way in any other proceeding whether formal or informal which involves the matters, items or person(s) which are the subject of the subpoena. This does not preclude the presiding officer from presiding at further proceedings for consideration of issuance of subpoenas in the matter.

(III) The Board shall do the following:

- I. By a vote of two thirds (2/3) of the board members issue the subpoena for the person(s) or items specifically found to be relevant to the inquiry, or quash or modify an existing subpoena by a majority vote; and
- II. Sign the subpoena as ordered to be issued, quashed or modified.

2. Post-Notice of Charges Subpoenas - If the subpoena is sought for a contested case being heard with an Administrative Law Judge from the Secretary of State's office presiding, this definition shall not apply and all such post-notice of charges subpoenas should be obtained from the office of the Administrative Procedures Division of the Office of the Secretary of State pursuant to the Uniform Administrative Procedures Act and rules promulgated pursuant thereto.

(d) Subpoena Forms

1. All subpoena shall be issued on forms approved by the Board.
2. The subpoena forms may be obtained by contacting the Board's Administrative Office.

(e) Subpoena Service - The service of a subpoena issued by the Board shall be made by the sheriff of the county of residence of the licensee or person upon whom the subpoena is served.

Authority: T.C.A. §§4-5-202, 4-5-204, 4-5-217, 4-5-223, 4-5-311, 63-1-107, 63-1-122, 63-1-144, 63-3-106, 63-3-115, 63-3-116, 63-3-119, 63-3-120, 63-3-123, and 63-3-126. **Administrative History:** Original rule filed November 10, 1998; effective January 14, 1999. Amendment filed July 26, 2000; effective October 9, 2000. Amendment filed July 22, 2002; effective October 5, 2002. Amendment filed September 15, 2004; effective November 29, 2004. Amendment filed March 17, 2005; effective May 31, 2005.

1155-02-.16 LICENSE.

- (1) Display of License -Every person licensed by the Board in this state shall display his license in a conspicuous place in his office and, whenever required, exhibit such license to the Board or its authorized representatives.
- (2) Replacement License - A license holder whose "artistically designed" license has been lost or destroyed may be issued a replacement document upon receipt of a written request in the Board administrative office. Such request shall be accompanied by an affidavit (signed and notarized) stating the facts concerning the loss or destruction of the original document, a recent passport type photograph and the required fee pursuant to rule 1155-02-.06.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-106, 63-3-109 and 63-1-113. **Administrative History:** Original rule filed November 10, 1998; effective January 14, 1999.

1155-02-.17 CHANGE OF ADDRESS AND/OR NAME.

- (1) Change of Name - An individual registered with the Board shall notify the Board in writing within thirty (30) days of a name change and will provide both the old and new names. A request for name change must also include a copy of the official document involved and reference the individual's profession, board, and license number.
- (2) Change of Address - Each person holding a license who has had a change of address or place of employment, shall file in writing with the Board his current address, giving both old and new addresses. Such requests shall be received in the Board's administrative office no later than 30 days after such change is effective and must reference the individual's name, profession, and license number.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-108 and 63-3-109. **Administrative History:** Original rule filed November 10, 1998; effective January 14, 1999.

1155-02-.18 MANDATORY RELEASE OF PATIENT RECORDS.

- (1) Upon request from a patient or the patient's authorized representative, an individual registered with this Board shall provide a complete copy of the patient's records or a summary of such records which were maintained by the provider.
- (2) It shall be the provider's option as to whether copies of the records or a summary will be given to the patient.
- (3) Requests for records shall be honored by the provider in a timely manner.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-2-101 and 63-2-102. **Administrative History:** Original rule filed November 10, 1998; effective January 14, 1999.

1155-02-.19 BOARD MEETINGS, OFFICERS, CONSULTANTS, RECORDS, DECLARATORY ORDERS, ADVISORY RULINGS AND SCREENING PANELS.

- (1) Board Meetings
 - (a) The time, place, and frequency of Board meetings shall be at the discretion of the Board, except at least one meeting shall be held annually.
 - (b) Special meetings are called at the discretion of the Board chairman or at the written request from two (2) members of the Board.

(Rule 1155-02-.19, continued)

- (c) A majority of the members of the Board shall at all times constitute a quorum.
- (d) All meetings of the Board shall be open to the public.
- (2) The Board shall elect from its members the following officers:
 - (a) Chairman - who shall preside at all Board meetings, appoint committees and correspond with other board members when appropriate.
 - (b) Secretary - who along with the Board administrator shall be responsible for correspondence from the Board and the execution of all official documents which require the seal of the Board to be affixed.
- (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) Recommend whether and what type disciplinary actions should be instituted as the result of complaints received or investigations conducted by the Division.
 - (b) Undertake any other matter authorized by a majority vote of the Board.
- (4) Records and Complaints
 - (a) All requests, applications, notices, other communications and correspondence shall be directed to the board's 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 Board meeting and will be retained in the Board's administrative office and presented to the Board at the Board meeting.
 - (b) 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 Board's administrative office during normal business hours.
 - (c) Copies of public records shall be provided to any person upon payment of the cost of copying.
 - (d) Complaints made against a licensee become public information only upon the filing of a notice of charges by the Department of Health.
 - (e) All complaints should be directed to the Tennessee Department of Health, Office of Investigation, 3rd Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN 37247-0110.
- (5) Declaratory Orders - The Board adopts, as if fully set out herein, rule 1200-10-01-.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.
- (6) Advisory Rulings - Any person who is affected by any matter within the jurisdiction of the Board and who holds a license or certificate issued pursuant to Chapter 3 of Title 63 of the Tennessee Code Annotated, may submit a written request for an advisory ruling subject to

(Rule 1155-02-.19, continued)

the limitations imposed by T.C.A. § 63-3-202 (b) (2). The procedures for obtaining and issuance of advisory rulings are as follows:

- (a) The licensee or certificate holder shall submit the request to the Board Administrative Office on the form contained in paragraph (6)(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 or certificate holder. The ruling shall have only such effect as is set forth in T.C.A. § 63-3-202 (b) (2).
- (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 Podiatric Medical Examiners
Request for Advisory Ruling

Date: _____

Licensee or
Certificate Holder Name: _____

Licensee or
Certificate Holder Mailing Address: _____

Licensee or
Certificate Holder E-Mail Address: _____

License or Certificate Holder 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:

(Rule 1155-02-.19, continued)

Licensee or
Certificate Holder Signature _____

Mail or Deliver to: Administrator
Board of Podiatric Medical Examiners
227 French Landing, Suite 300
Heritage Place, MetroCenter
Nashville, Tennessee 37243

- (7) Screening Panels - The Board adopts, as if fully set out herein, rule 1200-10-01-.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) 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 1360-04-01-.18 regarding petitions for reconsiderations and stays in that case.

Authority: T.C.A. §§ 4-5-107, 4-5-202, 4-5-204, 4-5-223, 4-5-224, 63-1-117, 63-1-123, 63-1-124, 63-1-138, 63-3-103, 63-3-104, 63-3-106, 63-3-119, 63-3-202, and 63-3-212. **Administrative History:** Original rule filed November 10, 1998; effective January 14, 1999. Amendment filed October 28, 1999; effective January 11, 2000. Amendment filed March 23, 2007; effective June 6, 2007. Amendment filed August 9, 2007; effective October 23, 2007.

1155-02-.20 CONSUMER RIGHT-TO-KNOW REQUIREMENTS.

- (1) Malpractice Reporting Requirements - The threshold amount below which medical malpractice judgments, awards or settlements in which payments are awarded to complaining parties need not be reported pursuant to the "Health Care Consumer Right-To-Know Act of 1998" shall be ten thousand dollars (\$10,000).
- (2) Criminal Conviction Reporting Requirements - For purposes of the "Health Care Consumer Right-To-Know Act of 1998," the following criminal convictions must be reported:
 - (a) Conviction of any felony; and
 - (b) Conviction or adjudication of guilt of any misdemeanor, regardless of its classification, in which any element of the misdemeanor involves any one or more of the following:
 - 1. Sex.
 - 2. Alcohol or drugs.
 - 3. Physical injury or threat of injury to any person.
 - 4. Abuse or neglect of any minor, spouse or the elderly.
 - 5. Fraud or theft.

(Rule 1155-02-.20, continued)

- (c) If any misdemeanor conviction reported under this rule is ordered expunged, a copy of the order of expungement signed by the judge must be submitted to the Department before the conviction will be expunged from any profile.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-3-106, 63-51-101, *et seq.*, and Public Chapter 373 of the Public Acts of 1999. **Administrative History:** Original rule filed October 28, 1999; effective January 11, 2000.

1155-02-.21 PODIATRIC PROFESSIONAL CORPORATIONS AND PODIATRIC PROFESSIONAL LIMITED LIABILITY COMPANIES.

- (1) Podiatric Professional Corporations (PPC) – Except as provided in this rule Podiatric Professional Corporations shall be governed by the provisions of Tennessee Code Annotated, Title 48, Chapter 101, Part 6.
 - (a) Filings – A PPC need not file its Charter or its Annual Statement of Qualifications with the Board.
 - (b) Ownership of Stock – With the exception of the health care professional combinations specifically enumerated in Tennessee Code Annotated, Section 48-101-610 only the following may form and own shares of stock in a foreign or domestic PPC doing business in Tennessee:
 - 1. Podiatrists, orthotists, prosthetists, and pedorthists licensed pursuant to Tennessee Code Annotated Title 63, Chapter 3 or licensed in another state; and/or
 - 2. A foreign or domestic general partnership, PPC or PPLLC in which all partners, shareholders, members or holders of financial rights are either:
 - (i) Podiatrists, orthotists, prosthetists, and pedorthists licensed pursuant to Tennessee Code Annotated Title 63, Chapter 3 in Tennessee or podiatrists, orthotists, prosthetists, and pedorthists licensed by other states, or composed of entities which are directly or indirectly owned by such licensed podiatrists; and/or
 - (ii) Professionals authorized by Tennessee Code Annotated, Sections 48-101-610, 48-248-401, or 48-249-1109 to either own shares of stock in a PPC or be a member or holder of financial rights in a PPLLC; and/or
 - (iii) A combination of professionals authorized by subparts (i) and (ii).
 - (c) Officers and Directors of Podiatric Professional Corporations -
 - 1. All, except the following officers, must be persons who are eligible to form or own shares of stock in a podiatric professional corporation as limited by T.C.A. § 48-101-610 (d) and subparagraph (1) (b) of this rule:
 - (i) Secretary;
 - (ii) Assistant Secretary;
 - (iii) Treasurer; and
 - (iv) Assistant Treasurer.

(Rule 1155-02-.21, continued)

2. With respect to members of the Board of Directors, only persons who are eligible to form or own shares of stock in a podiatric professional corporation as limited by T.C.A. § 48-101-610 (d) and subparagraph (1) (b) of this rule shall be directors of a PPC.
- (d) Practice Limitations
1. Engaging in, or allowing another podiatric incorporator, shareholder, officer, or director, while acting on behalf of the PPC, to engage in, podiatric 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 1155-02-.13 and/or Tennessee Code Annotated, Section 63-3-119 (a) (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 PPC.
 3. Nothing in these rules shall be construed as prohibiting a PPC 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 podiatric judgment by the podiatric incorporators, directors, officers, shareholders, employees or contractors of the PPC who are practicing podiatry as defined by Tennessee Code Annotated, Section 63-3-101.
 4. Nothing in these rules shall be construed as prohibiting a podiatrist from owning shares of stock in any type of professional corporation other than a PPC so long as such ownership interests do not interfere with the exercise of independent podiatric judgment by the podiatrist while practicing podiatry as defined by Tennessee Code Annotated, Section 63-3-101.
- (2) Podiatric Professional Limited Liability Companies (PPLL) – Except as provided in this rule Podiatric Professional Limited Liability Companies shall be governed by either the provisions of Tennessee Code Annotated, Title 48, Chapters 248 or 249.
- (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 – With the exception of the health care professional combinations specifically enumerated in Tennessee Code Annotated, Sections 48-248-401 and 48-249-1109 only the following may be members or holders of financial rights of a foreign or domestic PPLL doing business in Tennessee:
 1. Podiatrists, orthotists, prosthetists, and pedorthists licensed pursuant to Tennessee Code Annotated Title 63, Chapter 3 or licensed in other states; and/or
 2. A foreign or domestic general partnership, PPC or PPLL in which all partners, shareholders, members or holders of financial rights are either:
 - (i) Podiatrists, orthotists, prosthetists, and pedorthists licensed pursuant to Tennessee Code Annotated Title 63, Chapter 3 in Tennessee or podiatrists, orthotists, prosthetists, and pedorthists licensed by other states

(Rule 1155-02-.21, continued)

or composed of entities which are directly or indirectly owned by such licensed podiatrists; and/or

- (ii) Professionals authorized by Tennessee Code Annotated, Sections 48-101-610, 48-248-401 or 48-248-1109 to either own shares of stock in a PPC or be a member or holder of financial rights in a PPLLC; and/or
- (iii) A combination of professionals authorized by subparts (i) and (ii).

(c) Managers, Directors or Governors of a PPLLC

1. All, except the following managers, must be persons who are eligible to form or become members or holders of financial rights of a podiatric 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 podiatric 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 PPLLC.

(d) Practice Limitations

1. Engaging in, or allowing another podiatrist member, officer, manager, director, or governor, while acting on behalf of the PPLLC, to engage in, podiatric 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 1155-02-.13 and/or Tennessee Code Annotated, Section 63-3-119 (a) (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 PPLLC.
3. Nothing in these rules shall be construed as prohibiting a PPLLC 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 Limited Liability Company Act or the Tennessee Revised Limited Liability Company so long as those purposes do not interfere with the exercise of independent podiatric judgment by the podiatrist members or holders of financial rights, governors, officers, managers, employees or contractors of the PPLLC who are practicing podiatry as defined by Tennessee Code Annotated, Section 63-3-101.
4. Nothing in these rules shall be construed as prohibiting a podiatrist from being a member of any type of professional limited liability company other than a PPLLC so long as such membership interests do not interfere with the exercise of independent podiatric judgment by the podiatrist while practicing podiatry as defined by Tennessee Code Annotated, Section 63-3-101.
5. All PPLLCs formed in Tennessee pursuant to Tennessee Code Annotated, Sections 48-248-104 or 48-249-1104, to provide services only in states other

(Rule 1155-02-.21, continued)

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 PPC or a PPLLC has violated or is violating any provision of Title 48, Chapters 101, 248 or 249, 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, 48-248-409, or 48-249-1122.
 - (a) Service of a written notice of violation by the Board on the registered agent of the PPC and/or PPLLC or the secretary of state if a violation of the provisions of Tennessee Code Annotated, Title 48, Chapters 101, 248 and/or 249 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 PPC and/or PPLLC 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 PPC and/or PPLLC 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 PPC and/or PPLLC, 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 PPC and/or PPLLC 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 48-249-101, et seq.
- (4) Violation of this rule by any podiatrist individually or collectively while acting as a PPC or as a PPLLC may subject the podiatrist(s) to disciplinary action pursuant to Tennessee Code Annotated, Section 63-3-119 (4).
- (5) The authority to own shares of stock or be members or holders of financial rights in a PPC or a PPLLC 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, 48-249-101, *et seq.*, 63-3-106, 63-3-110, and 63-3-119. **Administrative History:** Original rule filed September 15, 2004; effective November 29, 2004. Amendment filed March 23, 2007; effective June 6, 2007.

1155-02-.22 ADVERTISING.

- (1) Policy Statement. The lack of sophistication on the part of many of the public concerning podiatric, orthotic, prosthetic, or pedorthic services, the importance of the interests affected by the choice of a health care provider regulated by the Board and the foreseeable consequences of unrestricted advertising by health care providers regulated by the Board which is recognized to pose special possibilities for deception, require that special care be taken by health care providers regulated by the Board to avoid misleading the public. The health care providers regulated by the Board must be mindful that the benefits of advertising depend upon its reliability and accuracy. Since advertising by health care providers regulated by the Board 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 a podiatrist, orthotist, prosthetist or pedorthist who is licensed to practice in Tennessee.
 - (b) Licensee - Any person holding a license to practice podiatry, orthotics, prosthetics, or pedorthics 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 podiatrists, orthotists, prosthetists or pedorthists 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
 1. Fixed fees may be advertised for any service.
 2. 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.
 - (c) Discount Fees. Discount fees may be advertised if:

(Rule 1155-02-.22, continued)

1. The discount fee is 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 during the entire time period stated in the advertisement.
 2. If no time period is stated in the advertisement of fees, the advertised fee shall be honored for thirty (30) days from the advertisement's last date of publication or until the next scheduled publication, whichever is later.
- (4) Advertising Content. The following acts or omissions in the context of advertisement by any licensee shall constitute unethical and unprofessional conduct pursuant to Rule 1155-02-.13, and subject the licensee to disciplinary action pursuant to T.C.A. § 63-3-119 (a) (16):
- (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) Failure to include in the advertisement the certifying board of the podiatrist, orthotist, prosthetist or pedorthist if the licensee claims to be certified.
 - (d) Failure to include in the advertisement the terms "podiatry," "podiatrist," "D.P.M.," "orthotist," "orthotics," "prosthetist," "prosthetics," "pedorthics" or "pedorthist" along with the licensee's name when the licensee is an individual, or failure to include in the advertisement that the profession pertaining to the services being offered is podiatry, orthotics, prosthetics, or pedorthics when the practitioner is a licensee.
 - (e) Promotion of professional services which the licensee knows or should know are beyond the licensee's ability to perform.
 - (f) Any appeals to an individual's anxiety in an excessive or unfair manner.
 - (g) 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.
 - (h) 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.
 - (i) The communication of personal identifiable facts, data, or information about a patient without first obtaining patient consent.

(Rule 1155-02-.22, continued)

- (j) Any misrepresentation of a material fact.
 - (k) The knowing suppression, omission or concealment of any material fact or law without which the advertisement would be deceptive or misleading.
 - (l) Statements concerning the benefits or other attributes of podiatric, orthotic, prosthetic, or pedorthic 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.
 - (m) Any communication which creates an unjustified expectation concerning the potential results of any treatment.
 - (n) The use of "bait and switch" advertisements.
 - (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.
 - (q) 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 subparagraph 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.
 - (r) Stating or implying that a certain licensee provides all services when any such services are performed by another licensee.
 - (s) 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 and/or copy 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, posting or publication and be made available for review upon request by the Board or its designee.

(Rule 1155-02-.22, continued)

- (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 part 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 applicability or invalidity of any section, clause, sentence or part in any 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, 63-3-106, and 63-3-119. **Administrative History:** Original rule filed April 26, 2006; effective July 10, 2006.

1155-02-.23 TAMPER-RESISTANT PRESCRIPTIONS.

- (1) Purpose.

This rule is designed to implement the law requiring that licensed osteopathic physicians have all written, typed, or computer-generated prescriptions issued on tamper-resistant prescription paper.

- (2) Definitions.

The following definitions are applicable to this rule:

- (a) "Drug" shall have the same meaning as set forth in T.C.A. § 63-10-204(16).
- (b) "Prescriber" means an individual licensed in Tennessee as a medical doctor, podiatrist, advanced practice nurse with a certificate of fitness to prescribe, dentist, optometrist, osteopathic physician, or physician's assistant.
- (c) "Prescription order" shall have the same meaning as set forth in T.C.A. § 63-10-204(38).
- (d) "Tamper-resistant prescription" means a written prescription order with features that are designed to prevent unauthorized copying, erasure, modification, and use of counterfeit prescription forms.

- (3) Tamper-Resistant Prescription Requirements.

- (a) A prescriber shall ensure that all handwritten, typed, or computer-generated prescription orders are issued on tamper-resistant prescriptions. Tamper-resistant prescriptions shall contain the following features:
 - 1. Either a void or illegal pantograph or a watermark designed to prevent copying;
 - 2. Either quantity check-off boxes with refill indicators or a uniform, non-white background color designed to prevent erasure or modification; and

(Rule 1155-02-.23, continued)

3. Security features and descriptions listed on the prescriptions designed to prevent use of counterfeit forms.
- (4) Security Measures and Recordkeeping.
 - (a) Each prescriber shall undertake adequate safeguards and security measures to ensure against loss, improper destruction, theft, or unauthorized use of the tamper-resistant prescriptions in the prescriber's possession.
- (5) Use of Tamper-Resistant Prescriptions.
 - (a) Facsimile Prescription Transmission.
 1. Prescriptions sent by facsimile transmission are not required to be placed on tamper-resistant prescription paper.
 2. If a prescriber transmits a prescription order to a pharmacy by facsimile transmission, the prescriber or someone designated by the prescriber shall document in the patient's medical record the name of the drug, strength, quantity prescribed, and the method by which the prescription has been transmitted.
 - (b) Electronic Prescription Transmission.
 1. Prescriptions sent by electronic transmission are not required to be placed on tamper-resistant prescription paper.
 2. If a prescriber transmits a prescription order to a pharmacy by electronic transmission, the prescriber shall document that the prescription was transmitted electronically in the patient's file and in accordance with the applicable laws and rules for each of the prescribers' respective professions as well as applicable federal laws and rules.

Authority: Chapter 1035 of the Public Acts of 2008 and T.C.A. §§53-10-401, 63-3-106(1), and 63-3-127. [effective October 1, 2008 for TennCare prescriptions and July 1, 2009 for non-TennCare prescriptions].

Administrative History: Public necessity rule filed June 25, 2009; effective through December 7, 2009. Public necessity rule filed June 25, 2009 expired; on December 8, 2009, the rule reverted to its prior status. Emergency rule filed December 21, 2009; effective through June 19, 2010. Original rule filed March 22, 2010; effective June 20, 2010.