

**RULES
OF
TENNESSEE DEPARTMENT OF HEALTH
DIVISION OF HEALTH RELATED BOARDS**

**CHAPTER 1200-10-02
GENERAL RULES AND REGULATIONS GOVERNING
THE PRACTICE OF REFLEXOLOGY**

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1200-10-02-.01 DEFINITIONS. As used in this chapter, the following terms shall have the following meaning ascribed to them:

- (1) Administrative Office - The office of the staff person assigned to administrate the provisions of this chapter, located at the 665 Mainstream Drive, Nashville, TN 37243.
- (2) Client - Any person who engages the services of a reflexology practitioner.
- (3) Commissioner - The Commissioner of Health or the commissioner's designee.
- (4) Department - The Department of Health.
- (5) Division - The Division of Health Related Boards in the Department of Health.
- (6) Health Care Professional - An individual who is presently authorized to practice his or her health related profession, pursuant to T.C.A. Title 63 or Title 68.
- (7) Reflexology - The application of specific pressures to reflex points in the hands and feet only.
- (8) Reflexology Practitioner / Reflexologist - Any person who engages in the practice of reflexology for compensation and who has completed a study of the principles of reflexology, anatomy and physiology generally included in a regular course of study of reflexology.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-30-102, and 63-30-112. **Administrative History:** Original rule filed April 26, 2002; effective August 28, 2002.

1200-10-02-.02 SCOPE OF PRACTICE. The scope of reflexology practice shall be as set forth in Tennessee Code Annotated, Section 63-30-102 and Section 63-30-109.

- (1) A registered reflexologist may not use invasive procedures during the practice of reflexology.
- (2) A registered reflexologist may not diagnose or treat for specific diseases, practice spinal or other joint manipulations, prescribe, administer, or adjust medication, and prescribe or administer vitamins.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-30-102, 63-30-109, and 63-30-112. **Administrative History:** Original rule filed April 26, 2002; effective August 28, 2002.

1200-10-02-.03 NECESSITY OF REGISTRATION.

- (1) Except as provided in paragraphs (2) and (4), no person shall engage in the practice of reflexology unless such person has registered with the Division of Health Related Boards.
- (2) This rule shall not apply to:
 - (a) The activities or services of physicians, chiropractors, physical therapists, occupational therapists, athletic trainers, cosmetologists, registered nurses, or members of other professions licensed, certified, or registered by the state who may, on occasion, apply pressure to specific reflex points in the hands and feet in the course of their work; and
 - (b) The activities or services of massage therapists, licensed pursuant to Tennessee Code Annotated, Title 63, Chapter 18, who use reflexology techniques or methods or who advertise reflexology as a service offered to massage therapy clients.
- (3) Reflexologists registered by the state may hold themselves out as “registered certified reflexologists” and may use the title or the initials “RCR” following the person’s name in connection with the profession. No person may use the title “registered certified reflexologist” or the initials “RCR” unless registered in accordance with this chapter.
- (4) Except as provided in paragraph (2), any person who advertises or engages in reflexology for compensation without registering with the division pursuant to this act commits a Class C misdemeanor, punishable by a fine only. It is unlawful to use the word “reflexology” or any other term that implies reflexology technique or method when advertising a service by a person who is not registered under this act.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-30-103, 63-30-104, 63-30-105, 63-30-106, 63-30-107, 63-30-108, and 63-30-112. **Administrative History:** Original rule filed April 26, 2002; effective August 28, 2002. Amendment filed May 8, 2003; effective September 26, 2003.

1200-10-02-.04 REGISTRATION APPLICATIONS AND REQUIREMENTS.

- (1) Applications
 - (a) Any individual who desires to practice as a registered certified reflexologist in Tennessee shall apply to the Division on forms provided by the Division.
 1. All applicants shall submit the fees required by rule 1200-10-02-.06.
 2. All applicants shall submit a clear and recognizable, recently taken, “passport-style” photograph which shows the full head, face forward from at least the top of the shoulders up.
 - (b) 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.
- (2) Requirements
 - (a) An applicant shall cause to have submitted documentation of completion of a two hundred (200) hour reflexology only course offered by an institution approved by the Tennessee Higher Education Commission or its equivalent in other states. It is the applicant’s responsibility to request that such documentation be submitted directly from the course provider to the Administrative Office.

(Rule 1200-10-02-.04, continued)

- (b) An applicant shall submit proof that he/she has attained eighteen (18) years of age.
- (c) An applicant shall provide evidence of good moral character by submitting two (2) original letters attesting to the applicant's character from health care professionals on the signator's letterhead. The letters cannot be from immediate family and/or relatives.
- (d) An applicant shall attest that he/she has not been convicted of any felony under the laws of this state or any other state within ten (10) years of applying for registration.
- (e) An applicant shall cause to be submitted to the Administrative Office directly from the vendor identified in the Division's registration application materials, the result of a criminal background check.
- (f) If an applicant has ever been authorized to practice as a reflexologist or any other health profession in any other state or country, the applicant shall cause to be submitted the equivalent of a Tennessee Certificate of Endorsement from each such licensing agency which indicates the applicant either holds a current or active authorization to practice as a reflexologist or other health professional and
 1. whether the authorization to practice is in good standing; and
 2. whether the authorization to practice has imposed or pending disciplinary action; and
 3. if the authorization to practice is currently inactive, whether it was in good standing at the time it became inactive.
- (g) It is the applicant's responsibility to request the information required in subparagraph (f) be submitted directly from each such licensing agency to the Administrative Office.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-30-102, 63-30-103, 63-30-104, 63-30-106, 63-30-111, and 63-30-112. **Administrative History:** Original rule filed April 26, 2002; effective August 28, 2002. Amendment filed November 2, 2004; effective March 30, 2005. Amendments filed January 23, 2006; effective May 31, 2006.

1200-10-02-.05 REGISTRATION RENEWAL AND REINSTATEMENT. All registered certified reflexologists must renew their registration to be able to continue in practice. Registration renewal is governed by the following:

- (1) The due date for renewal is the last day of the month in which a registrant's birth date falls pursuant to the Division of Health Related Board's biennial birth date renewal system.
- (2) Methods of Renewal
 - (a) Internet Renewals - Individuals may apply for renewal and pay the necessary fees via the Internet. The application to renew can be accessed at:

<https://apps.tn.gov/hlrs/>
 - (b) Paper Renewals - For individuals who have not renewed their registration online via the Internet, a renewal application form will be mailed to each individual registered by the Division to the last address provided to the Division. Failure to receive such notification does not relieve the registrant from the responsibility of meeting all requirements for renewal.

(Rule 1200-10-02-.05, continued)

- (3) Registrants who fail to comply with the renewal rules or notification received by them concerning failure to timely renew shall have their registrations processed pursuant to rule 1200-10-1-.10.
- (4) Reinstatement of an Expired or Retired Registration
 - (a) Reinstatement of a registration that has expired may be accomplished upon payment of all past due renewal fees, all past due state regulatory fees, and the late renewal fee, pursuant to Rule 1200-10-02-.06.
 - (b) Reinstatement of a registration that has been retired may be accomplished upon payment of the biennial renewal fee and the biennial state regulatory fee, pursuant to Rule 1200-10-02-.06.
- (5) Anyone submitting a signed renewal form or letter which is found to be untrue may be subject to disciplinary action as provided in Rule 1200-10-02-.07.

Authority: T.C.A. §§ 4-3-1011, 4-5-202, 63-30-110, and 63-30-112. **Administrative History:** Original rule filed April 26, 2002; effective August 28, 2002. Amendment filed June 1, 2006; effective October 27, 2006.

1200-10-02-.06 FEES.

(1) Application fee	\$100.00
(2) Biennial renewal fee	\$225.00
(3) Late renewal fee	\$ 50.00
(4) Duplicate certificate fee	\$ 15.00
(5) Biennial state regulatory fee	\$ 10.00

Authority: T.C.A. §§ 4-3-1011, 4-5-202, 4-5-204, 63-30-103, 63-30-105, 63-30-106, 63-30-108, 63-30-110, and 63-30-112. **Administrative History:** Original rule filed April 26, 2002; effective August 28, 2002. Amendment filed May 8, 2003; effective September 26, 2003. Amendment filed October 7, 2004; effective February 28, 2005.

1200-10-02-.07 REGISTRATION DISCIPLINE, ADVISORY RULINGS, AND SCREENING PANELS.

- (1) Upon a finding by the Division that a registered certified reflexologist has violated any provision of the Tennessee Code Annotated § 63-30-101, et seq., or the rules promulgated pursuant thereto, the Division may impose any of the following actions separately or in any combination deemed appropriate to the offense.
 - (a) Registration Suspension - This is a formal disciplinary action which suspends a registered certified reflexologist's right to practice for a fixed period of time. It contemplates the re-entry of the registered certified reflexologist into practice under the registration previously issued.
 - (b) Registration Revocation - This is the most severe form of disciplinary action which removes a registered certified reflexologist from the practice of reflexology and terminates the registration previously issued. If revoked, it relegates the violator to the status he/she possessed prior to application for registration. However, the Division may in its discretion allow the reinstatement of a revoked registration upon conditions and after a period of time it deems appropriate. No petition for reinstatement and no new

(Rule 1200-10-02-.07, continued)

application for registration from a person whose registration was revoked shall be considered prior to the expiration of at least one (1) year, unless otherwise stated in the Division's revocation order.

- (c) Civil penalty - A monetary disciplinary action assessed by the Division pursuant to paragraph (5) of this rule.
- (2) Once ordered, suspension, revocation, or assessment of a civil penalty may not be lifted unless and until the registered certified reflexologist petitions, pursuant to paragraph (3) of this rule, and appears before the Division after the period of initial suspension or revocation has run and after any civil penalties assessed have been paid.
- (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 unregistered practice civil penalty order, and wishes or is required to obtain an order reflecting that compliance.
 - (a) The Division 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
 - 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 registration previously revoked.
 - (b) Procedures
 - 1. The petitioner shall submit a Petition for Order of Compliance, as contained in subparagraph (c), to the Division'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 Division's 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 Division authorizes its administrative staff to make an initial determination on the petition and take one of the following actions:

(Rule 1200-10-02-.07, continued)

- (i) Certify compliance and have the matter scheduled for presentation to the Division 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.
3. If the petition is presented to the Division the petitioner may not submit any additional documentation or testimony other than that contained in the petition as originally submitted.
 4. If the Division 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 Division 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 1200-10-1-.11.

(c) Form Petition

Petition for Order of Compliance
Division of Health Related Boards

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)

1. An order issued reflecting that compliance; or
2. An order issued reflecting that compliance and lifting a previously ordered suspension; or
3. An order issued reflecting that compliance and reinstating a registration 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

(Rule 1200-10-02-.07, continued)

from every individual you intend to rely upon attesting, under oath, to the compliance. The Division's 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

- (4) Order Modifications - This procedure is not intended to allow anyone under a previously issued disciplinary order, including an unregistered 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 Division orders were subject to reconsideration and appeal under the provisions of the Uniform Administrative Procedures Act (T.C.A. §§ 45-301, 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.
- (a) The Division 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 Division'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 Division authorizes its 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 Division as an uncontested matter; or

(Rule 1200-10-02-.07, continued)

- (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 Division the petitioner may not submit any additional documentation or testimony other than that contained in the petition as originally submitted.
- 4. If the petition is granted a new order shall be issued reflecting the modifications authorized by the Division 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 Division and the petitioner believes impossibility of compliance with the order has been sufficiently proven the petitioner may, as authorized by law, file a petition for a declaratory order pursuant to the provisions of T.C.A. § 4-5-223 and rule 1200-10-1-.11.

(c) Form Petition

Petition for Order Modification
Division of Health Related Boards

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

(Rule 1200-10-02-.07, continued)

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

(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 Division finds a person who is required to be registered by the Division, guilty of a willful and knowing violation of the Reflexology Practitioners Registration Act of 2001 or regulations pursuant thereto, to such an extent that there is, or is likely to be, an imminent, substantial threat to the health, safety and welfare of an individual client or the public.
2. A Type B Civil Penalty may be imposed whenever the Division finds the person required to be registered by the Division is guilty of a violation of the Reflexology Practitioners Registration Act of 2001 or regulations pursuant thereto in such manner as to impact directly on the care of clients or the public.
3. A Type C Civil Penalty may be imposed whenever the Division finds the person required to be registered, or authorized by the Division is guilty of a violation of the Reflexology Practitioners Registration Act of 2001 or regulations promulgated thereto, which are neither directly detrimental to the clients 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 \$500.00 nor more than \$1,000.00.
2. Type B Civil Penalties may be assessed in the amount of not less than \$100.00 and not more than \$500.00.
3. Type C Civil Penalties may be assessed in the amount of not less than \$50.00 and not more than \$ 100.00.

(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. In assessing the civil penalties pursuant to these rules the Division may consider the following factors:

(Rule 1200-10-02-.07, 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.
3. All proceedings for the assessment of civil penalties shall be governed by the contested case provisions of Title 4, Chapter 5, Tennessee Code Annotated.
- (6) Advisory Rulings - Any person who is affected by any matter within the jurisdiction of the Division and who is a registered certified reflexologist, may submit a written request for an advisory ruling.
- (a) The procedures for obtaining and issuance of advisory rulings are as follows:
 - 1. The registrant shall submit the request to the Administrative Office on the form contained in subparagraph (b), providing all the necessary information; and
 - 2. The Division shall review and research the request and subsequently make a ruling; and
 - 3. The ruling shall be transmitted to the requesting registrant. The ruling shall have effect only upon the registrant requesting the ruling, and shall have no precedential value for any other inquiry or future contested case.
 - (b) Any request for an advisory ruling shall be made on the following form, a copy of which may be obtained from the Administrative Office:

Division of Health Related Boards
Request for Advisory Ruling

Date: _____

Registrant's Name: _____

Registrant's Address: _____
_____ Zip Code _____

Registrant 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:

(Rule 1200-10-02-.07, continued)

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

Registrant's Signature: _____

Mail or Deliver to: Administrator, Reflexology Registry
Division of Health Related Boards
665 Mainstream Drive
Nashville, TN 37243

- (7) Screening Panels – The screening panel process shall be governed by Rule 1200-10-1-.13, of the Division of Health Related Boards and as it may from time to time be amended

Authority: T.C.A. §§ 4-5-202, 63-1-138, 63-30-111, and 63-30-112. **Administrative History:** Original rule filed April 26, 2002; effective August 28, 2002. Amendment filed June 10, 2004; effective October 28, 2004. Amendment filed June 1, 2006; effective October 27, 2006.

1200-10-02-.08 ADVERTISING.

- (1) Policy Statement. The lack of sophistication on the part of many of the public concerning reflexology, the importance of the interests affected by the choice of a reflexologist and the foreseeable consequences of unrestricted advertising by reflexologists which is recognized to pose special possibilities for deception, require that special care be taken by reflexologists to avoid misleading the public. The reflexologist must be mindful that the benefits of advertising depend upon its reliability and accuracy. Since advertising by reflexologists 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 reflexologist who is registered to practice in Tennessee.
- (b) Registrant - Any person holding a registration to practice reflexology in the State of Tennessee. Where applicable this shall include partnerships and/or corporations.
- (c) Material Fact - Any fact which an ordinary reasonable and prudent person would need to know or rely upon in order to make an informed decision concerning the choice of practitioners to serve his or her particular needs.
- (d) Bait and Switch Advertising - An alluring but insincere offer to sell a product or service which the advertiser in truth does not intend or want to sell. Its purpose is to switch consumers from buying the advertised service or merchandise, in order to sell something else, usually for a higher fee or on a basis more advantageous to the advertiser.
- (e) Discounted Fee - Shall mean a fee offered or charged by a person for a product or service that is less than the fee the person or organization usually offers or charges for the product or service. Products or services expressly offered free of charge shall not be deemed to be offered at a "discounted fee".

(Rule 1200-10-02-.08, continued)

(3) Advertising Fees and Services

- (a) Fixed Fees - Fixed fees may be advertised for any service. It is presumed unless otherwise stated in the advertisement that a fixed fee for a service shall include the cost of all professional recognized components within generally accepted standards that are required to complete the service.
 - (b) Range of Fees. A range of fees may be advertised for services and the advertisement must disclose the factors used in determining the actual fee, necessary to prevent deception of the public.
 - (c) Discount Fees. Discount fees may be advertised if:
 - 1. The discount fee is in fact lower than the registrant's customary or usual fee charged for the service; and
 - 2. The registrant provides the same quality and components of service and material at the discounted fee that are normally provided at the regular, non-discounted fee for that service.
 - (d) Related Services and Additional Fees. Related services which may be required in conjunction with the advertised services for which additional fees will be charged must be identified as such in any advertisement.
 - (e) Time Period of Advertised Fees.
 - 1. Advertised fees shall be honored for those seeking the advertised services during the entire time period stated in the advertisement whether or not the services are actually rendered or completed within that time.
 - 2. If no time period is stated in the advertisement of fees, the advertised fee shall be honored for thirty (30) days from the last date of publication or until the next scheduled publication whichever is later whether or not the services are actually rendered or completed within that time.
- (4) Advertising Content. The following acts or omissions in the context of advertisement by any reflexologist shall constitute unethical and unprofessional conduct, and subject the registrant to disciplinary action pursuant to T.C.A. § 63-30-111.
- (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 registrant is better than another when superiority of services, personnel, materials or equipment cannot be substantiated.
 - (b) The misleading use of an unearned or non-health degree in any advertisement.
 - (c) Promotion of professional services which the registrant knows or should know are beyond the registrant's ability to perform.
 - (d) Techniques of communication which intimidate, exert undue pressure or undue influence over a prospective client.
 - (e) Any appeals to an individual's anxiety in an excessive or unfair manner.
 - (f) The use of any personal testimonial attesting to a quality or competency of a service or treatment offered by a registrant that is not reasonably verifiable.

(Rule 1200-10-02-.08, continued)

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

(Rule 1200-10-02-.08, continued)

- (s) Stating or implying that a certain registrant provides all services when any such services are performed by another registrant.
 - (t) Directly or indirectly offering, giving, receiving, or agreeing to receive any fee or other consideration to or from a third party for the referral of a client in connection with the performance of professional services.
- (5) Advertising Records and Responsibility
- (a) Each registrant 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, certified, registered, or otherwise authorized professional employees acting as an agent of such firm or entity.
 - (b) Any and all advertisements are presumed to have been approved by the registrant named therein.
 - (c) A recording of every advertisement communicated by electronic media, and a copy of every advertisement communicated by print media, and a copy of any other form of advertisement shall be retained by the registrant for a period of two (2) years from the last date of broadcast or publication and be made available for review upon request by the Division or its designee.
 - (d) At the time any type of advertisement is placed, the registrant 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 communication.
- (6) Severability. It is hereby declared that the sections, clauses, sentences and parts of these rules are severable, are not matters of mutual essential inducement, and any of them shall be rescinded if these rules would otherwise be unconstitutional or ineffective. If any one or more sections, clauses, sentences or parts shall for any reason be questioned in court, and shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provision or provisions so held unconstitutional or invalid, and the inapplicability or invalidity of any section, clause, sentence or part in any one or more instances 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, 63-1-145, 63-30-107, 63-30-108, 63-30-111, and 63-30-112.
Administrative History: New rule filed June 10, 2004; effective October 28, 2004. New rule filed June 1, 2006; effective October 27, 2006.