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**Division of Publications**  
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**For Department of State Use Only**

Sequence Number: 09-20-11  
 Rule ID(s): 5025  
 File Date: 09/23/2011  
 Effective Date: 12/22/2011

# Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. TCA Section 4-5-205*

<b>Agency/Board/Commission:</b>	Tennessee Department of Mental Health
<b>Division:</b>	Administrative Services Division
<b>Contact Person:</b>	Kurt Hippel
<b>Address:</b>	425 Fifth Avenue North 3 <sup>rd</sup> Floor, Cordell Hull Building Nashville, TN
<b>Zip:</b>	37243
<b>Phone:</b>	615-532-9439
<b>Email:</b>	Kurt.Hippel@tn.gov

**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

**Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)**

Chapter Number	Chapter Title
0940-02-03	Personnel Conduct toward Patients and Residents
Rule Number	Rule Title
0940-02-03-.01	Purpose
0940-02-03-.02	Justified Employee Conduct
0940-02-03-.03	Resident or Patient Abuse by Employees
0940-02-03-.04	Other Kinds of Mistreatment of Residents or Patients by Employees
0940-02-03-.05	Presumption of Failure to Perform Duties

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

#### Repeals

Chapter 0940-02-03 Personnel Conduct toward Patients and Residents is repealed in its entirety.

Authority: T.C.A. §§ 4-4-103, 33-1-202, 33-1-203, 33-1-302, 33-1-303, 33-1-305, and 33-1-309.

\* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the TN Dept of Mental Health (board/commission/ other authority) on 9/1/11 (mm/dd/yyyy), and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 07/11/2011

Rulemaking Hearing(s) Conducted on: (add more dates). 08/30/2011

Date: 9/1/11

Signature: [Signature]

Name of Officer: E. Douglas Varney

Title of Officer: Commissioner



Subscribed and sworn to before me on: 9-1-11

Notary Public Signature: Rebecca E. Calvert

My commission expires on: 6/3/2012

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

[Signature]  
Robert E. Cooper, Jr.  
Attorney General and Reporter

9-20-11  
Date

**Department of State Use Only**

RECEIVED  
2011 SEP 23 PM 3:0  
SECRETARY OF STATE  
PUBLICATIONS

Filed with the Department of State on: 9/23/11

Effective on: 12/22/11

[Signature]  
T're Hargett  
Secretary of State

## **Public Hearing Comments**

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. §4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

A public hearing on Rules Chapter 0940-02-03 Personnel Conduct toward Patients and Residents was held on August 30, 2011 at 9:30 a.m. in the third floor large conference room of the Cordell Hull Building in Nashville, Tennessee. The following departmental staff attended the hearing: Kurt Hippel, Rules Coordinator; Karen Edwards, Senior Policy Analyst and Research Coordinator; Vickie Graham, Director of Human Resources; and Rachel Jones, Administrative Services Assistant. No one else attended the hearing. No written or oral comments were received.

**Regulatory Flexibility Addendum**

Pursuant to T.C.A. § 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

Rules Chapter 0940-02-03 Personnel Conduct toward Patients and Residents deals with the prevention and correction of staff conduct which interferes with the right of residents and patients to humane care and treatment at all facilities of the Tennessee Department of Mental Health (TDMH). The Repeal of Rules Chapter 0940-02-03 Personnel Conduct toward Patients and Residents will not affect small businesses.

### **Impact on Local Governments**

Pursuant to T.C.A. 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The Repeal of Rules Chapter 0940-02-03 Personnel Conduct toward Patients and Residents will not have a projected impact on local governments.

**Additional Information Required by Joint Government Operations Committee**

All agencies, upon filing a rule, must also submit the following pursuant to TCA 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

Rules Chapter 0940-02-03 Personnel Conduct toward Patients and Residents deals with the prevention and correction of staff conduct which interferes with the right of residents and patients to humane care and treatment at all facilities of the Tennessee Department of Mental Health (TDMH). Rules Chapter 0940-02-03 Personnel Conduct toward Patients and Residents is being repealed and the subject matter of this rule will be dealt with through departmental policy.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

NA

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

TDMH employees employed at all TDMH facilities and patients and residents at all TDMH facilities would be most directly affected by the repeal of this rule. TDMH has not been urged to adopt or reject this rulemaking activity by either group mentioned above.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

Unknown

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

The fiscal impact of this rulemaking activity would be minimal.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Kurt Hippel, TDMH, Rules Coordinator

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Kurt Hippel, TDMH, Rules Coordinator; Vicki Graham, TDMH, Director of Human Resources; Zack Griffith, TDMH, General Counsel

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Kurt Hippel  
TDMH  
Rules Coordinator  
425 Fifth Avenue North  
Cordell Hull Building, 3<sup>rd</sup> Floor

Nashville, TN 37242  
615-532-9439  
[Kurt.Hippel@tn.gov](mailto:Kurt.Hippel@tn.gov)

Vicki Graham  
TDMH  
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710 James Robertson Parkway  
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Zack Griffith  
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Nashville, TN 37242  
615-532-6520  
[Zack.Griffith@tn.gov](mailto:Zack.Griffith@tn.gov)

(I) Any additional information relevant to the rule proposed for continuation that the committee requests.



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# Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. TCA Section 4-5-205*

<b>Agency/Board/Commission:</b>	Tennessee Department of Mental Health
<b>Division:</b>	Administrative Services Division
<b>Contact Person:</b>	Kurt Hippel
<b>Address:</b>	425 Fifth Avenue North 3 <sup>rd</sup> Floor, Cordell Hull Building Nashville, TN
<b>Zip:</b>	37243
<b>Phone:</b>	615-532-9439
<b>Email:</b>	Kurt.Hippel@tn.gov

**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

**Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)**

Chapter Number	Chapter Title
0940-02-03	Personnel Conduct toward Patients and Residents
Rule Number	Rule Title
0940-02-03-01	Purpose
0940-02-03-02	Justified Employee Conduct
0940-02-03-03	Resident or Patient Abuse by Employees
0940-02-03-04	Other Kinds of Mistreatment of Residents or Patients by Employees
0940-02-03-05	Presumption of Failure to Perform Duties

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

~~0940-02-03-.01 Purpose.~~

- ~~(1) The prevention and correction of staff conduct which interferes with the right of residents and patients to humane care and treatment under T.C.A. 33-306(b) is of the highest priority at all facilities of the Department. All residents and patients in its facilities shall be treated with dignity, respect, and considerations. Improper conduct of any kind and in particular any conduct which is abusive toward residents and patients is not tolerated. Any employee who engages in conduct covered by these rules shall be immediately disciplined in conformity with them. Other kinds of conduct which may affect residents or patients are governed by other laws, rules, and policies~~
- ~~(2) The specific purpose of these rules is to provide clear guidance to administrators and employees as to conduct which the Department views as against the good of the service under T.C.A. 8-30-326 and violative of the rules of the Department of Personnel found in Chapter 1120-07-02 of the Rules and Regulations of the State of Tennessee and to prescribe mandatory action to be taken in cases of resident or patient abuse.~~

~~Authority: T.C.A. §§33-104, 33-105, 33-306(b).~~

~~0940-02-03-.02 Justified Employee Conduct.~~

~~IF:~~

- ~~(1) an employee engages in conduct which would otherwise be a violation of Rule 0940-02-03-.03 or .04, AND~~
- ~~(2) (a) the conduct is reasonably necessary to protect either the resident or patient or the employee or another person from harm, OR~~
- ~~(b) the conduct is authorized by the resident's or patient's individual habilitative or treatment plan which reasonably appears to be a proper plan, THEN~~
- ~~(3) the employee is not guilty of a violation of this Chapter by that conduct.~~

~~Authority: T.C.A. §§ 33-104, 33-105, and 33-306(b).~~

~~0940-02-03-.03 Resident or Patient Abuse by Employees.~~

~~Employees shall not:~~

- ~~(a) Knowingly threaten to touch, attempt to touch, or actually touch a resident or patient in any manner which a reasonable person would recognize as likely to be harmful or painful or to cause mental anguish, or~~
- ~~(b) Knowingly suggest, invite, permit, or engage in any sexual contact or sexual intercourse between an employee and a resident or patient who is not the employee's spouse, or~~
- ~~(c) Knowingly engage in any conduct toward a resident or patient which a reasonable person would recognize as brutal or cruel under the circumstances, or~~
- ~~(d) Knowingly fail to take reasonable steps to intervene to prevent or stop resident or patient abuse by another employee or conduct by a resident or patient which is likely to be harmful to another resident or patient, or~~
- ~~(e) Knowingly fail to perform duties with respect to a resident or patient which such failure is likely to disrupt the habilitative or treatment plan of the resident or patient, or~~

- ~~\_\_\_\_\_ (f) \_\_\_\_\_ Fail to perform duties with respect to a resident or patient when such failure is likely to expose the resident or patient to an unreasonable risk of physical, developmental or mental harm.~~

~~If an employee engages in conduct prohibited by this rule, the employee is guilty of conduct against the good of the service, and the employee shall be dismissed. Such a violation is most likely to be determined to be gross misconduct.~~

~~Authority: T.C.A. §§ 33-104, 33-105 and 33-306(b).~~

~~0940-02-03-.04 Other Kinds of Mistreatment of Residents or Patients by Employees.~~

~~Employees shall not:~~

- ~~\_\_\_\_\_ (a) \_\_\_\_\_ Knowingly threaten to touch, attempt to touch, or actually touch a resident or patient in any manner which a reasonable person would recognize as likely to be offensive, or~~
- ~~\_\_\_\_\_ (b) \_\_\_\_\_ Knowingly engage in any conduct which is violative of a resident's or patient's human dignity, or~~
- ~~\_\_\_\_\_ (c) \_\_\_\_\_ Knowingly cause or encourage a resident or patient to violate the law, or~~
- ~~\_\_\_\_\_ (d) \_\_\_\_\_ Knowingly make or cause use of a resident's or patient's property to the disadvantage of the resident or patient or in any way which violates the law or the rules or policies of the Department or the institution with or without the consent of the resident or patient, or~~
- ~~\_\_\_\_\_ (e) \_\_\_\_\_ Permit any kind of mistreatment of a resident or patient to any degree by failure to perform supervisory duties properly, or~~
- ~~\_\_\_\_\_ (f) \_\_\_\_\_ Make unjustified derogatory comments about a resident or patient to or in the presence of the resident or patient or another person, or~~
- ~~\_\_\_\_\_ (g) \_\_\_\_\_ Knowingly fail to take reasonable steps to intervene to prevent or stop any kind of mistreatment of a resident or patient by another employee, or~~
- ~~\_\_\_\_\_ (h) \_\_\_\_\_ Knowingly fail to report promptly a violation of Rule 0940-02-03-.03 or to cooperate with an investigation of such conduct, or~~
- ~~\_\_\_\_\_ (i) \_\_\_\_\_ Otherwise fail to perform duties with respect to a resident or patient.~~

~~If an employee engages in conduct prohibited by this rule, the employee is guilty of conduct against the good of the service and the employee is subject to discipline, including suspension or dismissal. Mistreatment of a resident or patient may also be determined to be gross misconduct.~~

~~Authority: T.C.A. §§ 33-104, 33-105 and 33-306(b).~~

~~0940-02-03-.05 Presumption of Failure to Perform Duties.~~

~~It is presumed under this Chapter that an employee has failed to perform duties with respect to a resident or patient in violation of Rule 0940-02-03-.04 (5), (7), or (9) when the following facts are established after a thorough investigation:~~

- ~~\_\_\_\_\_ (1) \_\_\_\_\_ the resident or patient is suffering from a wound, injury, disability, or physical or mental condition which is of such a nature as to reasonably indicate that it has been caused by brutality, abuse, or neglect or which on the basis of available information reasonably appears to have been caused by brutality, abuse, or neglect, and~~
- ~~\_\_\_\_\_ (2) \_\_\_\_\_ the identity of the person who caused the harm cannot be determined, and~~
- ~~\_\_\_\_\_ (3) \_\_\_\_\_ the period of time and the unit or place in which the harm occurred can be determined with \_\_\_\_\_ reasonable particularity; and~~

~~(4) the employee had, in the unit or place and during that time, either direct responsibility for the care of the resident or patient or direct access to the person.~~

~~Authority: T.C.A. §§ 33-104, 33-105 and 33-306(b).~~

#### Repeals

Chapter 0940-02-03 Personnel Conduct toward Patients and Residents is repealed in its entirety.

Authority: T.C.A. §§ 4-4-103, 33-1-202, 33-1-203, 33-1-302, 33-1-303, 33-1-305, and 33-1-309.

REPEALING

\* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the \_\_\_\_\_ (board/commission/ other authority) on \_\_\_\_\_ (mm/dd/yyyy), and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: \_\_\_\_\_ (mm/dd/yy)

Rulemaking Hearing(s) Conducted on: (add more dates). \_\_\_\_\_ (mm/dd/yy)

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Name of Officer: \_\_\_\_\_

Title of Officer: \_\_\_\_\_

Subscribed and sworn to before me on: \_\_\_\_\_

Notary Public Signature: \_\_\_\_\_

My commission expires on: \_\_\_\_\_

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

\_\_\_\_\_  
Robert E. Cooper, Jr.  
Attorney General and Reporter

\_\_\_\_\_  
Date

**Department of State Use Only**

Filed with the Department of State on: \_\_\_\_\_

Effective on: \_\_\_\_\_

\_\_\_\_\_  
Tre Hargett  
Secretary of State

**Public Hearing Comments**

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. §4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

REDLINE

**Regulatory Flexibility Addendum**

Pursuant to T.C.A. § 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

(If applicable, insert Regulatory Flexibility Addendum here)

REGULATORY FLEXIBILITY ADDENDUM

**Impact on Local Governments**

Pursuant to T.C.A. 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

(Insert statement here)

PRELIMINARY



**Additional Information Required by Joint Government Operations Committee**

All agencies, upon filing a rule, must also submit the following pursuant to TCA 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

\_\_\_\_\_

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

\_\_\_\_\_

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

\_\_\_\_\_

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

\_\_\_\_\_

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

\_\_\_\_\_

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

\_\_\_\_\_

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

\_\_\_\_\_

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

\_\_\_\_\_

- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

\_\_\_\_\_