

Public Necessity Rules

Board of Osteopathic Examination

Chapter 1050-02

General Rules and Regulations Governing the Practice of Osteopathy

Statement of Necessity Requiring Public Necessity Rules

Pursuant to T.C.A. § 4-5-209 (a) (4), the Board is authorized to promulgate public necessity rules and regulations when it is required by an enactment of the General Assembly to implement rules within a prescribed period of time that precludes utilization of ordinary rulemaking procedures for the promulgation of permanent rules.

The legislature recognized that the rules necessary to implement Public Chapter 373 regarding physician office based surgery could not, according to the time restrictions of the rulemaking hearing rule provisions of the Uniform Administrative Procedures Act, be adopted or promulgated by the Board of Osteopathic Examination within the time required by either Section 5 - 63-9-1__ (d) [within 90 days of the effective date of Public Chapter 373 which for purposes of rulemaking was June 7, 2007] or Section 7 of that Public Chapter and consequently specifically authorized the Board's use of Public Necessity Rules in Section 6(b) of that Public Chapter.

Rule 1050-02-.21 Office Based Surgery must therefore be added to Chapter 1050-02 as a new rule to adopt a specific list of approved Level III surgical procedures that can be performed in a physician's office in Tennessee, as required by Section 5 (d) of Public Chapter 373 of the Public Acts of 2007 and as authorized by Section 6 of Public Chapter 373 of the Public Acts of 2007.

For a copy of this public necessity rule contact:

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Jill Robinson, D.O., President

Board of Osteopathic Examination
Public Necessity Rules
of
The Board of Osteopathic Examination

Chapter 1050-02
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New Rule

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1050-02-.21 Office Based Surgery

1050-02-.21 Office Based Surgery. Osteopathic physicians who perform Level III surgical procedures in the office based setting, pursuant to Public Chapter 373 of the Public Acts of 2007, shall perform only the Level III surgical procedures contained on the Centers for Medicare & Medicaid Services (CMS) list of procedures published in Volume 71, Number 226 of the Federal Register dated November 24, 2006 as it may from time to time be amended that are authorized for reimbursement at the Ambulatory Surgical Center (ASC) level and only those cosmetic surgical procedures that, based upon reasonable medical judgment, would require Level III sedation which is defined as follows:

- (1) The use of a general anesthesia, deep sedation, or major conduction anesthesia and pre-operative sedation. This includes the use of:
 - (a) General Anesthesia: loss of consciousness and loss of vital reflexes with probable requirement of external support of pulmonary or cardiac functions; and/or
 - (b) Major Conduction Anesthesia (epidural, spinal, caudal); and/or
 - (c) The use of nitrous oxide in conjunction with other types of sedatives.

Authority: T.C.A. § 63-9-101 and Public Chapter 373 of the Public Acts of 2007.

The public necessity rules set out herein were properly filed in the Department of State on the 5th day of October, 2007, and will become effective from the date of filing for a period of 165 days. These public necessity rules will remain in effect through the 18th day of March, 2008. (FS 10-02-07; DBID 2706)