Public Necessity Rules
of
The Tennessee Department of Labor and Workforce Development
Division of Workers' Compensation

Chapter 0800-2-20
Medical Impairment Rating Registry Program

Statement of Necessity for Readopting Public Necessity Rules

Pursuant to Tenn. Code Ann. §§ 4-5-209(a)(4) and (b), and 50-6-204(d)(8), the Commissioner submits the Medical Impairment Rating Registry Program Rules ("MIRR Rules") for readoption as public necessity rules under the Workers' Compensation Law as administered by the Workers' Compensation Division of the Tennessee Department of Labor and Workforce Development. Readoption of these MIRR Rules as public necessity rules is necessary for the reasons set forth below and because Tenn. Code Ann. § 50-6-204(d)(8) requires the MIRR Rules be in place and effective on and after July 1, 2005. Tenn. Code Ann. § 50-6-204(d)(8).

These MIRR Rules were initially adopted as public necessity rules and filed with the secretary of state's office on June 15, 2005, when proposed rules were also filed. Those public necessity rules will expire on November 27, 2005, and unless these rules are readopted as public necessity rules now, there will be a period of time when no effective Rules will be in place. In response to a petition on the proposed rules, a rulemaking public hearing was held on these MIRR Rules on October 25, 2005. The Department is currently analyzing all of the numerous oral and written comments received during the rulemaking public hearing and must respond to each in writing as required pursuant to Tenn. Code Ann. § 4-5-222. Given that the rulemaking hearing rules may not be effective until at least 75 days after filing with the secretary of state's office, it would be impossible to avoid a lapse in these Rules without the readoption of these MIRR Rules as public necessity rules. The Department could not have reasonably foreseen during the initial one hundred sixty-five day period that the original need for the public necessity rules would continue to the present time.

Medical providers, employees, employers and insurers are statutorily mandated to comply with the MIRR Rules on and after July 1, 2005, in resolving all cases in which there are disputes about medical impairment ratings in workers' compensations cases. These rules are necessary to comply with the mandate enacted by the General Assembly in Public Chapter 962 (Tenn. Code Ann. § 50-6-204(d)(8), (2005 Supp.)). Thus, these public necessity rules are being readopted to protect the public welfare. Due to the length of time necessary to complete the rulemaking process under the Uniform Administrative Procedures Act, these public necessity rules should be readopted immediately to provide applicable medical fees, guidelines and procedures so as not to jeopardize injured employees' ability to receive prompt and adequate medical care. Further, Tenn. Code Ann. § 50-6-204(d)(8) specifically authorizes adoption of these rules as public necessity rules.

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James Neeley, Commissioner
Tennessee Department of Labor &
Workforce Development

For copies of this public necessity rule, contact: Vickie Gregory, Administrative Assistant, Tennessee Department of Labor and Workforce Development, Division of Workers' Compensation, Andrew Johnson Tower, Second Floor, 710 James Robertson Parkway, Nashville, TN 37243-0661, (615) 253-1613.

New rules

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0800-2-20-.01 Definitions. The following definitions are for the purposes of this chapter only:

(1) "Act" means the Tennessee Workers' Compensation Act, T.C.A. 50-6-101 et seq., as amended.

(2) "Administrator" means the chief administrative officer of the Workers' Compensation Division of the Tennessee Department of Labor and Workforce Development.

(3) "Commissioner" means the Commissioner of the Tennessee Department of Labor and Workforce Development or the Commissioner's designee.

(4) "Department" means the Tennessee Department of Labor and Workforce Development.

(5) "Division" means the Workers' Compensation Division of the Tennessee Department of Labor and Workforce Development.

(6) "Medical Director" means the Division's Medical Director, appointed by the Commissioner pursuant to T.C.A. § 50-6-126 (Repl. 1999).

(7) "Medical Impairment Rating Registry" or "MIR Registry" means the registry or listing of physicians established by the Commissioner pursuant to Public Chapter 962, § 24 (2004) to perform independent medical impairment ratings when a dispute arises about the degree of medical impairment.

(8) "Program Coordinator" means the chief administrative officer of the MIR Registry Program, appointed by the Administrator, or the Program Coordinator's Designee.

Authority: Public Chapter 962, § 24 (2004).

0800-2-20-.02 Purpose and scope.

(1) Purpose. The purpose of the Medical Impairment Rating Registry Program is to establish a resource to resolve conflicting opinions regarding permanent impairment ratings given for on-the-job injuries. In order to ensure high-quality independent medical impairment evaluations, the Department establishes these Rules for parties and physicians participating under the Act's independent medical examiner evaluation process. MIR Registry physicians shall agree to provide evaluations in a manner consistent with the standard of care in their community and in compliance with these Rules, as well as to issue opinions based upon the applicable edition of the AMA Guides to the Evaluation of Permanent Impairment or other appropriate method pursuant to the Act. These Rules are effective July 1, 2005 and are established pursuant Public Chapter 962, § 24 (2004).

(2) Scope. The MIR Registry is available to any party who disputes an impairment rating of a physician in a Workers' Compensation claim for injuries that occur on or after July 1, 2005. Other potential issues such as causation, apportionment, appropriateness of treatment, work restrictions, and job modifications shall not be considered or addressed under this MIR Registry Program. Requests for evaluations shall be submitted by paper or electronic application to the Program Coordinator pursuant to the Rules.

Authority: Public Chapter 962, § 24 (2004).

0800-2-20-.03 Severability and Preemption.

(1) If any provision of these Rules or the application thereof to any person or circumstance is, for any reason held to be invalid, the remainder of the Rules and the application of the provisions to other persons or circumstances shall not be affected in any respect whatsoever. Whenever a conflict arises between these Rules and any other rule or regulation, these Rules shall prevail.

Authority: Public Chapter 962, § 24 (2004).

0800-2-20.04 Requisite Physician Qualifications for Inclusion on Medical Impairment Rating Registry.

(1) A physician seeking appointment to the MIR Registry shall make application and must satisfy the following qualifications:

(a) Possess a license to practice medicine or osteopathy in Tennessee which is current, active, and unrestricted;

(b) Be board-certified in his/her medical specialty by a board recognized by the American Board of Medical Specialties, the American Osteopathic Association or another organization acceptable to the Program Coordinator;

(c) Have successfully completed a training course, accepted by the Program Coordinator, dedicated to the proper application of the applicable edition of the American Medical Association Guides to the Evaluation of Permanent Impairment (hereafter the "AMA Guides") in impairment evaluations and furnish satisfactory evidence thereof; and

(d) Have at least the minimum medical malpractice insurance coverage required by the Program Coordinator and furnish satisfactory proof thereof.

Authority: Public Chapter 962, § 24 (2004).

0800-2-20-.05 Application Procedures for Physicians to Join the Registry.

(1) Appointment to the MIR Registry shall be for a two (2) year term, except as otherwise set forth in these Rules. Physicians may seek renewal appointments by the same process as the initial application described herein. The Division reserves the right to charge physicians a non-refundable application fee upon appointment, renewal, or reinstatement to the MIR Registry. The Commissioner or the Commissioner's designee, upon the

advice of the Medical Director shall have the sole and exclusive authority to approve or reject applications for inclusion in the MIR Registry.

(2) Physicians seeking appointment to the MIR Registry shall complete an "Application for Appointment to the MIR Registry," available upon request from the Program Coordinator or on-line at www.state.tn.us/labor-wfd/mainforms.html, certify to and, upon approval of the application, comply with the following conditions:

(a) Unless otherwise approved by the Program Coordinator, conduct all MIR evaluations based on the guidelines in the applicable edition of the AMA Guides and submit the original "MIR Impairment Rating Report" with all attachments to the Program Coordinator. In cases not covered by the applicable AMA Guides, any impairment rating allowed under the Act shall be appropriate;

(b) Decline the Program Coordinator's request to conduct an evaluation only on the basis of good cause shown, as determined by the Program Coordinator. Consideration will be given to a physician's schedule and other previously arranged or emergency obligations;

(c) Comply with the MIR Registry's Rules;

(d) While on the MIR Registry, agree to maintain an active and unrestricted license to practice medicine or osteopathy in Tennessee and to immediately notify the Program Coordinator of any change in the status of the license, including any restrictions placed upon the license;

(e) While on the MIR Registry, agree to maintain all board certifications listed on the application and to immediately notify the Program Coordinator of any change in their status;

(f) Conduct MIR evaluations in an objective and impartial manner, and shall:

1. Conduct these evaluations only in a professional medical office suitable for medical or psychiatric evaluations where the primary use of the site is for medical services; not residential, commercial, educational, legal, or retail in nature. Exceptions will be made only on the basis of good cause shown, as determined by the Program Coordinator.

2. Comply with all local, state and federal laws, regulations, and other requirements with regard to business operations, including specific requirements for the provision of medical services.

3. Not conduct a physical examination on a claimant of the opposite sex without a witness of the same sex as the claimant present.

(g) Not refer any MIR Registry claimant to another physician for any treatment or testing nor suggest referral or treatment;

(h) Not become the treating physician for the claimant regarding the work-related injury;

(i) Not evaluate an MIR Registry claimant without prior consent of the Program Coordinator if a conflict of interest exists. A conflict of interest includes, but is not limited to, instances where the physician has treated or evaluated the

claimant for the subject injury or has appeared on a panel of doctors made available to the claimant at the time of injury or subsequent to the injury in the course of medical treatment. If an employer provides a claimant with the name

of a group of physicians rather than individual physician names, the entire group of physicians shall be considered to have a conflict of interest for purposes of the MIR Registry Program;

(j) Not employ invasive diagnostic procedures, except venipuncture for obtaining a blood sample, without prior approval of the Program Coordinator;

(k) Not substitute, or allow to be substituted, anyone else, including any other physician, physician assistant, nurse practitioner, physical therapist or staff member, as the physician to conduct the evaluation without prior written permission from the Program Coordinator;

(l) No later than thirty (30) calendar days after the cancellation of an evaluation, refund to the paying party part or all of the fee paid by that party, as may be required by the Rules, the Commissioner or the Commissioner's designee; and

(m) For each MIR Registry case assigned, address only the issue of permanent impairment rating and make appropriate findings.

(3) Physicians denied appointment to the MIR Registry on their initial application may seek reconsideration of their application by submitting a request for reconsideration stating the grounds for such reconsideration to the Program Coordinator within fifteen (15) calendar days of the issuance of the Notice of Denial of their application. The Commissioner or the Commissioner's designee may affirm or reverse the initial determination upon reconsideration of the initial decision. The Commissioner or the Commissioner's designee shall issue a Notice of Final Determination which shall be the final decision.

Authority: Public Chapter 962, § 24 (2004).

0800-2-20-.06 Requests for a MIR Registry Three-Physician List.

(1) Prior to Division participation, the parties may attempt to negotiate selection of any physician to conduct a medical impairment rating evaluation. Physicians whose names appear on the MIR Registry but are selected in a manner other than through the Division pursuant to these Rules shall have no greater legal presumption of correctness given to their opinion than any other provider's impairment rating when the physician was not selected pursuant to these procedures.

(2) Application process: If there is no agreed upon selection of a physician, or if an agreement that was reached fails, either party may request the Division participate in

selecting the three-physician list. A written opinion as to the permanent impairment rating given by the MIR Registry physician selected pursuant to the Division's procedures in these Rules shall be presumed to be the accurate impairment rating. However, this presumption may be rebutted by clear and convincing evidence to the contrary.

(3) Form Required: The "Application for a Medical Impairment Rating" available upon request from the Program Coordinator or online at www.state.tn.us/labor-wfd/mainforms.html**,** or a materially substantial equivalent duplication approved by the Program Coordinator, shall be used in all cases to request an MIR three-physician listing. The Commissioner requires the request designate:

(a) All body part(s) or medical condition(s) to be evaluated, including whether mental impairment shall be evaluated;

(b) The names of all physicians that have previously evaluated, treated, or are currently evaluating or treating the claimant for the work-related injury at employer and/or employee expense;

(c) The names of all physicians made available to the claimant at the time of the injury (Form C-42). If an employer provides the claimant with the name of a group of physicians rather than with individual physician names, the same information shall be included on the request form;

(d) The state file number assigned to the claims.

(4) The submitting party shall certify that all parties, as well as the Program Coordinator, have been sent the completed application form at the same time. The application will not be processed by the Program Coordinator until all required information has been provided.

(5) Generating the three-physician listing.

(a) Within five (5) business days of receipt of the completed "Application for a Medical Impairment Rating," the Program Coordinator will produce a listing of three qualified physicians drawn from the Division's MIR Registry, from which one physician shall be designated to perform the evaluation. The three-physician listing created will be comprised of physicians qualified, based on the information provided by the physician and on their accreditation by the Program Coordinator, to perform evaluations of the body part(s) and/or medical condition(s) designated on the application for an evaluation, excluding those who have a conflict of interest as described in the Rules. Psychiatric or psychological evaluations regarding mental and/or behavioral impairment shall be performed by a psychiatrist.

(b) If an evaluation is requested for a particular area of expertise not represented in the MIR Registry, the Program Coordinator shall provide a three-physician listing upon the recommendation of the Medical Director. The Program Coordinator will verify qualifications prior to assigning a listing of Temporary MIR physicians. Approval to serve as a Temporary MIR physician shall be limited to the specific case for which services are requested.

(c) To guarantee randomness, all three-physician listings shall be derived from the computer-generated pool of qualified physicians. The pool of physician names will be kept confidential. The Program Coordinator will notify the parties in writing only the names and the medical specialties of the physicians on the listing.

(6) MIR Registry physician selection process.

(a) Within three (3) business days of the issuance of the three-physician listing by the Program Coordinator, the employer shall strike one name and inform the other party and the Program Coordinator of that name. Within three (3) business

days of the date of receipt of that name from the employer, the claimant shall strike one of the two remaining names and inform the Program Coordinator and the employer of the name of the remaining physician, who will perform the evaluation.

(b) If the Program Coordinator is not notified of the selected physician within ten (10) calendar days of the date the Program Coordinator issued the three-physician listing, the Program Coordinator may randomly select one name from the three-physician listing to perform the evaluation. If one party fails to timely strike a name from the listing, the other party shall notify the Program

Coordinator, within these ten (10) calendar days, and at the same time provide to the Program Coordinator the name that it wishes to strike. In that situation, the Program Coordinator will randomly select one physician from the remaining two, and that physician shall perform the evaluation. The Program Coordinator shall inform the parties of the name of the selected physician in writing.

(c) If a selected physician is unable to perform the evaluation, the Program Coordinator shall provide one replacement name to the original listing using the same criteria and process set forth above, and present that revised listing to the parties and each shall again strike one name according to the above procedures. Additionally, if a physician is removed from the three-physician listing for any reason other than having been struck by one of the parties, the Program Coordinator will issue one replacement physician name.

(7) Appointment date.

(a) Within three (3) business days of providing or receiving notice of the physician selection, the Program Coordinator shall call the MIR Registry physician to schedule the evaluation, and shall immediately notify both parties, and the Workers' Compensation Specialist if currently assigned, of the date and time of the evaluation. Only after this notification should the employer or insurance carrier contact the MIR Registry physician and only to arrange for payment and for medical records submission required by these Rules.

(8) Submission of Medical Records.

(a) The employer's representative shall concurrently provide to the MIR registry physician and the claimant a complete copy of all pertinent medical records pertaining to the subject injury, postmarked or hand-delivered at least ten (10) calendar days prior to the evaluation or as otherwise arranged by the Program Coordinator with the MIR physician. If deemed necessary by the Program

Coordinator, the claimant shall promptly sign a "MIR Waiver and Consent" permitting the release of information to the MIR physician. The form shall include the release of all existing medical reports relevant to the subject injury including all previous impairment rating reports, the actual images of all pertinent imaging studies, the reports of all imaging studies and diagnostic tests, all hospital admission "history and physical examination" documents, all hospital discharge summaries, and all operation reports.

(b) The employer's representative shall be responsible for promptly sending a copy of the consent form to all treating and evaluating physicians or other healthcare providers, diagnostic centers, and hospitals involved in the care of the claimant requiring the form to ensure that this information will be forwarded to the MIR

physician prior to the date of the scheduled evaluation. If the employer's representative fails to adhere to these time limits, the claimant may submit all medical records he/she has in his/her possession no later than five (5) calendar days prior to the evaluation or as otherwise arranged by the Program Coordinator with the MIR registry physician.

(c) In cases involving untimely medical record submission by either party, the Program Coordinator at his/her sole discretion, may elect to reschedule the evaluation to allow the physician adequate time for record review. Otherwise, the physician shall perform the evaluation and shall produce an "MIR Impairment Rating Report" utilizing the information properly made available to the physician.

(9) Form/Content of Medical Records Package.

(a) The medical file shall include a dated cover sheet listing the claimant's name, MIR Registry physician's name, MIR Registry case number, date and time of the appointment, and the state file number. The medical file shall be in chronological order, by provider, and tabbed by year. It shall include a written summary by the treating physician with the range of dates of treatment. Medical records not meeting these requirements shall be resubmitted in the correct format within three (3) calendar days of notification by the Program Coordinator.

(b) Medical bills, adjustor notes, surveillance tapes, denials, vocational rehabilitation reports, non-treating case manager records or commentaries to the MIR Registry physician shall not be submitted without prior permission of the Program Coordinator. Medical depositions may be submitted as part of the medical records package only by written agreement of the parties.

(10) Supplemental medical records shall be prepared in the same manner described above, and shall be mailed or hand-delivered by any party concurrently to the MIR Registry physician and the other party no later than five (5) calendar days prior to the date of the evaluation, or as otherwise arranged by the Program Coordinator.

(11) Claimants can bring an adult friend or family member to the evaluation to provide comfort and reassurance. However, the accompanying person cannot be the claimant's attorney, paralegal, or other legal representative or any other personnel employed by the claimant's attorney or legal representative. The guest may be asked to leave the evaluation at the discretion of the MIR Registry physician. Any forms that the MIR physician requests to be completed should be completed by the claimant only. If the

claimant needs assistance in completing these forms for any reason, the claimant should notify the MIR Registry physician prior to the evaluation so that assistance can be provided by the MIR Registry physician's staff.

(12) The claimant shall notify the Program Coordinator of the necessity for a language interpreter concurrently with his/her notification of the chosen physician's name. The employer shall be responsible for arranging for the services of and paying for such language interpreter. The language interpreter shall be impartial and independent, and have no professional or personal affiliation with any party to the claim or to the MIR Registry physician.

(13) When a claimant is required to travel outside a radius of fifteen (15) miles from the claimant's residence or workplace, then such claimant shall be reimbursed by the employer for reasonable travel expenses as defined in the Act.

Authority: Public Chapter 962, § 24 (2004).

0800-2-20-.07 Payments/Fees.

(1) A physician performing evaluations under these Rules shall be prepaid by the employer a total evaluation fee for each evaluation performed, as outlined below:

(a) Completed reports received and accepted by the Program Coordinator within thirty (30) calendar days of scheduling the appointment $1,000.00

(b) Completed reports received and accepted by the Program Coordinator between thirty-one (31) and forty-five (45) calendar days of the scheduling the appointment $850.00

(c) Completed reports received and accepted by the Program Coordinator between forty-six (46) and sixty (60) calendar days of the scheduling of the appointment $500.00

(d) Completed reports received and accepted by the Program Coordinator later than sixty (60) calendar days of scheduling the appointment . . . . . No fee paid

(2) The evaluation fee includes normal record review, the evaluation, and production of a standard "MIR Impairment Rating Report." If the record review is unusually extensive and requires substantially longer than an hour for review, the physician may contact the Program Coordinator to request additional payment. This request should be made no later than three (3) calendar days prior to the scheduled date of the evaluation. The Program Coordinator, in consultation with the Medical Director, will determine if additional time and fees are appropriate. If denied, the MIR registry physician shall complete the evaluation to the best of his/her ability. If additional evaluation charges are approved, the Program Coordinator shall notify the employer of the approved review charges. The physician shall bill for the additional time at the pro-rata rate of $500.00 per hour. All non-routine test(s) for an impairment rating essential under the applicable edition of the AMA Guides to the Evaluation of Permanent Impairment shall have been performed prior to the evaluation. Routine tests necessary for a complete evaluation, such as range of motion or spirometry tests, should be performed by the MIR Registry physician as part of the evaluation at no additional cost. The MIR Registry physician shall notify the Program Coordinator prior to performing any essential test that is non-routine or requires special facilities or equipment, and such test was not previously performed, or was previously performed but the findings are not usable at the time of the

evaluation. The Program Coordinator, upon the advice of the Medical Director, will determine whether the test will be approved. If approved, the employer shall be responsible for paying for the essential test.

(3) Late fees and penalties. Failure of the employer to timely submit the evaluation fee, as determined by the Program Coordinator, shall allow the physician to charge the employer an additional $100.00 late fee for the evaluation. If the evaluation fee and/or late fee remains unpaid fifteen (15) calendar days following the date of the evaluation, an additional $250.00 penalty is authorized. If any portion of a fee or penalty remains unpaid after an additional thirty (30) calendar day period, an additional $500.00 penalty is authorized, and again for each additional thirty (30) calendar day period, or portion thereof, that it remains unpaid until all fees and/or penalties are fully paid. At the request of a MIR Registry physician, the Division may assist the MIR Registry physician in collecting monies due under this Rule.

(4) Cancellations. To be considered timely, notice of a party's desire to cancel an evaluation appointment shall be given to the Program Coordinator at least three (3) business days prior to the date of the evaluation. An evaluation may be canceled or rescheduled only after obtaining the consent of the Program Coordinator. The Program Coordinator shall decide whether an evaluation may be rescheduled within ten (10) calendar days of a request to cancel.

(a) If the request to cancel is not timely, the MIR registry physician shall be entitled to collect/retain a $300.00 cancellation penalty fee. If the evaluation is rescheduled, the MIR Registry physician is entitled to the entire evaluation fee

(for the rescheduled evaluation) in addition to this fee. The employer may be entitled to offset the cancellation fee(s) against any future settlement if the claimant cancels untimely or without good cause as determined by the Program Coordinator.

1. If the claimant fails to appear for the evaluation with good cause as determined by the Program Coordinator the employer will not be entitled to offset the cancellation penalty fee against any future settlement.

2. If the claimant fails to appear for the evaluation without good cause as determined by the Program Coordinator, the MIR Registry physician will perform a "paper only" evaluation by reviewing the existing medical record file and shall establish an impairment rating based upon the physician's opinion of the evidence presented. The physician shall be entitled to the entire fee.

(b) If the request to cancel is timely and the evaluation is not rescheduled, the MIR Registry physician shall be entitled to collect and/or retain a $250.00 cancellation penalty fee.

(c) If the request to cancel is timely and the evaluation is rescheduled, the MIR Registry physician shall be entitled to collect and/or retain a $150.00 cancellation penalty fee in addition to the rescheduled MIR fee.

Authority: Public Chapter 962, § 24 (2004).

0800-2-20-.08 Multiple Impairment Rating Evaluations.

(1) In instances of more than one impairment rating being disputed in more than one medical specialty, and there is an insufficient number of physicians on the Registry who are qualified to perform all aspects of the evaluation, separate evaluations may be required, each being separate application and physician-selection processes and fees.

Authority: Public Chapter 962, § 24 (2004).

0800-2-20-.09 Communication with Registry Physicians.

(1) Prior to the creation of the three-physician listing, MIR Registry physicians who have rendered an opinion as to the impairment relating to the subject injury to a party to the case or a party's representative prior to the creation of a three-physician listing must disclose the nature and extent of those discussions to the Program Coordinator immediately upon their selection or appointment as the MIR registry physician. The Program Coordinator, in his or her sole authority, will determine whether or not a conflict of interest exists. Failure to disclose a potential conflict of interest may result in a physician's removal from the MIR Registry. While removed from the Registry, physicians shall not be eligible to perform MIR evaluations.

(2) During the MIR physician selection process, registry physicians cannot render opinions as to the impairment relating to the subject injury to a party to the case or a party's representative in cases in which the physician's name appears on the three-physician listing. If selected as the MIR physician, there shall be no communication with the parties or their representatives prior to the evaluation, unless allowed by the Rules or approved by the Program Coordinator. Any approved communication, other than arranging for payment and the submission of medical records and the evaluation itself, shall be in writing with copies to all parties including the Program Coordinator. Failure by a Registry physician to disclose such communications will subject the physician to penalties under the Rules.

(3) A party who seeks the presence of the MIR physician as a witness at a proceeding for any purpose, by subpoena, deposition or otherwise, shall be responsible for payment for those services to the MIR physician. Deposition fees shall be in accordance with applicable state rules and laws.

Authority: Public Chapter 962, § 24 (2004).

0800-2-20-.10 Requirements for the Evaluation.

(1) The MIR Registry physician's responsibilities prior to the evaluation are to:

(a) Review all materials provided by the parties subject to these Rules; and,

(b) Review the purpose of the evaluation and the impairment questions to be answered in the evaluation report.

(2) The MIR Registry physician's responsibilities following the evaluation are to:

(a) Consider all medical evidence obtained in the evaluation and provided by the parties subject to the Rules;

(b) Complete an "MIR Impairment Rating Report";

(c) Notify the Program Coordinator when the report has been completed;

(d) Send that complete report with all required attachments to the Program Coordinator only, via overnight delivery. The Program Coordinator will acknowledge, to the physician, receipt of the report.

(3) No physician-patient relationship is created between the MIR physician and the claimant through the MIR Registry evaluation. The sole purpose of the evaluation is to establishan impairment rating and not to recommend future treatment or to provide a diagnosis or other medical advice.

Authority: Public Chapter 962, § 24 (2004).

0800-2-20-.11 Requirements for the "MIR Impairment Rating Report."

(1) After conducting the evaluation, the MIR physician shall produce the "MIR Impairment Rating Report". The format, available by using the Program's electronic access, available upon request from the Program Coordinator or available online at www.state.tn.us/labor-wfd/mainforms.html, or a materially substantial equivalent approved by the Program Coordinator shall be used in all cases to detail the evaluation's results. The MIR physician shall first review the determination by the attending physician that the claimant has reached Maximum Medical Improvement (MMI).

(2) If, after reviewing the records, taking a history from the claimant and performing the evaluation, the MIR Registry physician concurs with the attending doctor's determination of MMI, the report shall, at a minimum, contain the following:

(a) A brief description and overview of the claimant's medical history as it relates to the subject injury, including reviewing and recapping all previous treatments.

(b) A statement of concurrence with the attending doctor's determination of MMI;

(c) Pertinent details of the physical or psychiatric evaluation performed (both positive and negative findings);

(d) Results of any pertinent diagnostic tests performed (both positive and negative findings). Include copies of these tests with the report;

(e) An impairment rating consistent with the findings and utilizing a standard method as outlined in the applicable AMA Guides, calculated as a total to the whole person if appropriate. In cases not covered by the AMA Guides, an impairment rating by any appropriate method used and accepted by the medical community is allowed, however, a statement that the AMA Guides fails to cover the case as well as a statement of the system on which the rating was based shall be included;

(f) The rationale for the rating based on reasonable medical certainty, supported by specific references to the clinical findings, especially objective findings and supporting documentation including the specific rating system, sections, tables, figures, and AMA Guides page numbers, when appropriate, to clearly show how the rating was derived; and

(g) A true or electronic signature and date by the MIR physician performing the evaluation certifying to the following:

1. "It is my opinion, both within and to a reasonable degree of medical certainty that, based upon all information available to me at the time of the MIR impairment evaluation and by utilizing the relevant AMA Guides or other appropriate method as noted above, that the claimant has the permanent impairment so described in this report. I certify that the opinion furnished is my own, that this document accurately reflects my opinion, and that I am aware that my signature attests to its

truthfulness. I further certify that my statement of qualifications to serve on the MIR Registry is both current and completely accurate."

(3) If, after reviewing the records, taking a history from the claimant and performing the evaluation, the MIR physician does not concur with the attending doctor's determination of MMI, a report shall be completed similar to the one outlined above which documents and certifies to, in sufficient detail, the rationale for disagreeing and, if possible to determine, the expected date of full or partial recovery. The physician is still entitled to collect/retain the appropriate MIR fee.

(4) Services rendered by an MIR Registry physician shall conclude upon the Program Coordinator's acceptance of the final "MIR Impairment Rating Report." An MIR report is final and accepted for the purpose of these Rules when it includes the requested determination regarding final medical impairment rating and any necessary worksheets, as determined by the Program Coordinator. Once the report has been accepted the

Program Coordinator will distribute copies of the report to the other parties and the Workers' Compensation Specialist, if one is currently assigned. After acceptance of the "MIR Impairment Rating Report" the medical records file, including the final "MIR Impairment Rating Report," shall be stored and/or disposed of by the MIR registry physician in a manner used for similar health records containing private information and within a time frame consistent with the Tennessee Board of Medical Examiners' rules.

Authority: Public Chapter 962, § 24 (2004).

0800-2-20-.12 Peer Review.

(1) All MIR Impairment Rating Reports are subject to review for appropriateness and accuracy by an individual or organization designated by the Program Coordinator at any time. Repeated failure to properly apply the AMA Guides in determining an impairment rating, as determined solely and exclusively by the Medical Director, will result in penalties up to and including removal from the MIR Registry.

Authority: Public Chapter 962, § 24 (2004).

0800-2-20-.13 Removal of a Physician from the Registry.

(1) Written complaints regarding any MIR Registry physician shall be submitted to the Program Coordinator. The Commissioner or the Commissioner's designee, upon the advice of the Medical Director, may remove a physician from the MIR Registry permanently or temporarily by placing a physician on inactive status based upon any of the following grounds:

(a) Misrepresentation on the "Application for Appointment to the MIR Registry" as determined by the Program Coordinator;

(b) Failure to timely report a conflict of interest in a case assignment, as determined by the Program Coordinator;

(c) Refusal or substantial failure to comply with the provisions of these Rules, including, but not limited to, repeated failure to determine impairment ratings correctly using the AMA Guides, as determined by the Medical Director;

(d) Failure to maintain the requirements of the Rules, as determined by the Program Coordinator; or

(e) Any other reason for the good of the Registry as determined solely and exclusively by the Commissioner or the Commissioner's designee.

(2) Upon receipt of a complaint regarding a MIR Registry physician, the Program Coordinator shall send written notice of the complaint to such physician, stating the grounds of the complaint, and notifying the physician that he or she is at risk of being removed from the MIR Registry.

(a) The physician shall have thirty (30) calendar days from the date the Notice of Complaint is issued to the physician in which to respond in writing to the complaint(s), and may submit any responsive supporting documentation to the Program Coordinator for consideration. Failure of the physician to submit a timely response to the Notice of Complaint may result in removal of the physician from the MIR Registry without further notice or recourse.

(b) The Commissioner or the Commissioner's designee, in consultation with the Medical Director, shall consider the complaint(s) and any response(s) from the physician in reaching a decision as to whether the physician shall be removed from the MIR Registry, and if removed, whether the removal will be permanent or temporary.

(c) Upon reaching a determination on the complaint(s), the Commissioner or the Commissioner's designee shall issue a written Notice of Determination and set forth the basis for the decision in such Notice. The determination set forth shall become final fifteen (15) days after issuance of the Notice of Determination, unless a timely request for reconsideration is received.

(d) A MIR Registry physician may seek reconsideration of an adverse decision from the Commissioner or the Commissioner's designee by submitting a request for reconsideration stating the grounds for such reconsideration to the Program Coordinator within fifteen (15) calendar days of the issuance of the Notice of Determination. The Commissioner or the Commissioner's designee may affirm, modify or reverse the initial determination upon reconsideration of the initial decision. The Commissioner or the Commissioner's designee shall issue a Notice of Determination upon Reconsideration which shall be the final decision.

(e) MIR Registry physicians shall remain active on the MIR Registry pending a final decision on any complaint(s).

(3) A physician who has been removed from the MIR Registry by the Commissioner or the Commissioner's designee may apply for reinstatement six (6) months after the date of removal by submitting a written request to the Program Coordinator.

Authority: Public Chapter 962, § 24 (2004).

0800-2-20-.14 Other Penalties.

(1) Failure by any party to comply with any of these Rules for which no penalty has specifically been set forth herein shall subject that party to the appropriate civil penalties pursuant to the Act and as determined by the Commissioner or Commissioner's designee.

Authority: Public Chapter 962, § 24 (2004).

0800-2-20-.15 Time Limits.

(1) All time limits referenced in these Rules may be extended by the Program Coordinator in his or her sole and exclusive discretion.

Authority: Public Chapter 962, § 24 (2004).

0800-2-20-.16 Claimant Cooperation.

(1) Injured workers are expected to cooperate in good faith with the Program Coordinator in scheduling evaluations. Injured workers shall also cooperate in good faith with all reasonable requests made by MIR Registry physicians during their evaluation so that the physicians can make accurate findings.

Authority: Public Chapter 962, § 24 (2004).

0800-2-20-.17 Overturning a MIR Physician's Opinion.

(1) Parties are prohibited from seeking a second MIR Registry impairment rating for the same injury if an impairment rating was issued after the first MIR Registry evaluation. Permanent impairment ratings given by MIR Registry physicians after the their assignment of cases involving the issuance of a MIR Registry three-physician listing from the MIR Registry shall be the only opinions presumed to be accurate, as set forth in the Act. This presumption may be rebutted only by clear and convincing evidence to the contrary. Opinions reached by any physicians utilized after mutually agreed upon selections not involving the issuance of an MIR Registry three-physician listing are not legally presumed to be accurate and shall carry no additional evidentiary weight in any proceedings, even in cases where the physician selected may also serve on the MIR Registry.

Authority: Public Chapter 962, § 24 (2004).

The public necessity rules set out herein were properly filed in the Department of State on the 16th day of November, 2005, and will be effective from the day of filing for a period of 165 days. These public necessity rules will remain in effect through the 30th day of April, 2006.