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Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §§ 4-5-202, 4-5-207 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Agency/Board/Commission:	Tennessee Department of Health
Division:	Electrologists Registry
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Revision Type (check all that apply):
X 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**
0540-01	General Rules Governing Electrology, Electrologists, and Electrology Instructors
Rule Number	**Rule Title**
0540-01-.01	Definitions
0540-01-.02	Scope of Practice
0540-01-.03	Necessity of License
0540-01-.04	Qualifications for Licensure
0540-01-.05	Procedures for Licensure
0540-01-.06	Fees
0540-01-.07	Application Review, Approval, and Denial
0540-01-.08	Examinations
0540-01-.09	Renewal of License
0540-01-.10	Supervision
0540-01-.11	Retirement and Reactivating of License
0540-01-.12	Continuing Education
0540-01-.13	Professional Ethics
0540-01-.15	Disciplinary Actions and Civil Penalties
0540-01-.16	License
0540-01-.17	Change of Name and/or Address
0540-01-.18	Mandatory Release of Client Records

0540-01-.19	Board Meetings, Officers, Consultants, Declaratory Orders, and Screening Panels
0540-01-.20	Advertising
0540-01-.21	Electrology Limited Licensure

Chapter Number	**Chapter Title**
0540-03	General Rules Governing Schools of Electrology
Rule Number	**Rule Title**
0540-03-.01	Definitions
0540-03-.02	Scope of Practice
0540-03-.03	Necessity of Licensure
0540-03-.04	Standards for License
0540-03-.05	Procedures for License
0540-03-.06	Fees
0540-03-.07	Application Review, Approval, and Denial
0540-03-.08	Examinations
0540-03-.09	Renewal of License
0540-03-.11	Retirement and Reactivation
0540-03-.13	Standards of Practice
0540-03-.15	Disciplinary Actions and Civil Penalties
0540-03-.16	License
0540-03-.17	Change of Name and/or Address
0540-03-.20	Limited Licensure Electrology Training Programs

(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)

The title of 0540 Rules of Tennessee Board of Electrologists Examiners is changed to Rules of the Tennessee Department of Health Electrologists Registry.

Amendments to Chapter 0540-01
General Rules Governing Electrology, Electrologists, and Electrology Instructors

Rule 0540-01-.01 Definitions is amended by deleting paragraphs (3), (5), (6), (14), (16), and (31) in their entirety and renumbering the remaining paragraphs, and is further amended by inserting the following new definitions (3), (5),(7), (14), (16), (23), (32), and (36) and renumbering the remaining paragraphs appropriately, so that as amended, the new paragraphs shall read:

(3) Applicant - Any individual seeking licensure by the Commissioner who has submitted an official application and paid the application fee.

(5) Registry's administrative office - The office of the administrator assigned to the Tennessee Electrologists Registry located at 227 French Landing, Suite 300, Heritage Place, MetroCenter, Nashville, TN 37243.

(7) Commissioner – The Tennessee Department of Health Commissioner or his or her designee, including but not limited to, the Assistant Commissioner for the Bureau of Health Licensure and Regulation.

(14) Division - The Tennessee Department of Health, Division of Health Related Boards, from which the Commissioner receives administrative support.

(16) Electrology Instructor - An electrologist who is licensed by the Commissioner to practice and teach electrology.

(23) General Supervision - Means the availability of the dermatologist or electrology instructor within a time period of 60 minutes or less. General supervision may be provided in person or by telephone.

(32) Notification of Training Form - The form available from the Registry's administrative office which must be completed by a limited license trainee and signed by the supervising dermatologist and received by the Registry's administrative office at least ten days prior to beginning training.

(36) Registry – The Tennessee Electrologists Registry.

Authority: T.C.A. §§ 63-1-101, 63-1-102, 63-26-101, 63-26-102, 63-26-103, 63-26-108, and 63-26-111.

Rule 0540-01-.02 Scope of Practice is amended by deleting paragraphs (1), (2) and (5) in their entirety and substituting instead the following language, so that as amended, the paragraphs shall read:

(1) The license to practice as an electrologist or electrology instructor is prescribed and limited by the Tennessee Code Annotated (see especially T.C.A. §§ 63-26-101, et. seq.). The license is conferred by the Commissioner for applicants who have been found to meet established standards.

(2) Any person who possesses a valid unsuspended and unrevoked license issued by the Commissioner has the right to use the title licensed electrologist or licensed electrology instructor. No other person shall assume the title of licensed electrologist or licensed electrology instructor on any work, letter, sign, figure, advertisement, or device to indicate that the person using the same is a licensed electrologist or licensed electrology instructor. The work performed includes electrology or the teaching of electrology services to the public.

(5) All electrologists and electrology instructors shall comply with the American Electrology Association's Infection Control Standards for the Practice of Electrology, and as they may from time to time be amended, except to the extent that they conflict with the laws of the state of Tennessee or the rules of the Commissioner. If there are conflicts with state law or rules, the state law or rules govern the matter. Failure to comply may subject a licensee to disciplinary action pursuant to Rule 0540-01-.15. The American Electrology Association's Infection Control Standards for the Practice of Electrology can be viewed at www.electrology.com/pdf/infection_control.pdf.

Authority: T.C.A. §§ 63-26-108, 63-26-111, 63-26-112, 63-26-122, and 63-26-123.

Rule 0540-01-.03 Necessity of Licensure is amended by deleting paragraphs (3) and (4) in their entirety and substituting instead the following language, so that as amended, the new paragraphs shall read:

(3) Electrology is one of the healing arts and as such the practice is restricted to those persons issued a license by the Commissioner. Persons engaging in the practice of electrology without being licensed or expressly exempted by the laws are in violation of division law, T.C.A. § 63-1-123.

(4) No other person shall hold himself out to the public by a title or description of services incorporating the word "electrologist," and he shall not state or imply that he is licensed. The provisions of these rules do not apply to a person if that person is preparing for the practice of electrology under a qualified electrology instructor in a training facility approved by the Commissioner.

Authority: T.C.A. §§ 63-1-123, 63-26-108, 63-26-119, 63-26-122, 63-26-123, and 63-26-127.

Rule 0540-01-.04 Qualifications for Licensure is amended by deleting part (1)(c)2, subparagraph (2)(a), subparagraph (3)(c), subparagraph (6)(a), and subparagraph (7)(a) and substituting instead the following language, , and adding a new paragraph (8), so that as amended, the new part, subparagraphs, and paragraph shall read:

(1) (c) 2. Successful completion of an electrology education program approved by the Commissioner. The electrology training curriculum must have been at least 600 hours (175 theory and 425 clinical practice pursuant to Rule 0540-03-.04). Additionally, the electrology training must have been completed within a twelve (12) month time frame from the date started, and must have been completed prior to taking the practical examination described in Rule 0540-01-.08; and

(2) (a) Meet the requirements of Rule 0540-01-.04 (1)(a) through (c)1;

(3) (c) Have filed a Notification of Training form with the Registry at least ten days prior to beginning the electrology limited licensure training program,

(6) (a) Have education credential evaluated by either a professional credentialing agency or an institution of higher education (college or university). The results of such evaluation must be submitted directly to the Registry's administrative office from the evaluator on the evaluator's official letterhead and contain an original signature, and

(7) (a) Hold a current limited license issued by the Commissioner;

(8) To qualify for licensure as an electrologist limited licensee, electrologist, or electrology instructor, the applicant shall cause to be submitted to the Registry's administrative office directly from the vendor identified in the Registry's licensure application materials, the result of a criminal background check.

Authority: T.C.A. §§ 63-1-116, 63-26-101, 63-26-108, 63-26-111, 63-26-112, 63-26-113, 63-26-115, 63-26-117, and 63-26-119.

Rule 0540-01-.05 Procedures for Licensure is amended by deleting paragraphs (1), (2), (3), (7), (9) including subparagraph (9)(b) but not subparagraphs (a) and (c), and paragraphs(11), (14), (17), (19), and (24) in their entirety, and substituting instead the following language, so that as amended, the new paragraphs and subparagraph shall read:

(1) An applicant shall obtain an application form from the Registry's administrative office.

(2) An applicant shall respond truthfully and completely to every question or request for information contained in the form and submit it along with all documentation and fees required by the form and this rule to the Registry's administrative office. It is the intent of this rule that all steps necessary to accomplish the filing of the required documentation be completed prior to filing an application and that all documentation be filed simultaneously.

(3) Applications for licensure will be accepted throughout the year and files which are completed on or before the 30th day prior to an examination date will be processed and if eligible the individual will be scheduled for the next practical examination. All supporting documents requested in these instructions must be received in the Registry office within 30 days of receipt of a deficiency letter or file will be deemed abandoned pursuant to rule 0540-01-.07(4).

(7) Except for limited licensure applicants and applicants for licensure without examination and without licensure in another state, applicants shall cause to be submitted directly to the Registry's administrative office from an accredited college or university an official transcript verifying that the general education requirements pursuant to Rule 0540-01-.04 (1)(c)3. have been met.

(9) Except for limited licensure applicants, electrology instructor applicants, and applicants for licensure without examination and without licensure in another state, applicants shall cause to be submitted directly from the school of electrology an original letter on the school's letterhead and signed by the program director verifying the applicant has successfully completed the school's course of study. To be acceptable, the school's course of study and curriculum must comply with or be equivalent to Tennessee's electrology school requirements pursuant to T.C.A. § 63-26-111(4)(A) and (B). If the school no longer exists, the following documentation will be reviewed by the Commissioner for acceptability:

(b) A signed original letter from the state Board of Electrology, Electrologists Registry, or Department of Education where the school existed that the school's curriculum was at least equivalent to T.C.A. § 63-26-111(4)(A) or (B): or

(11) Except for electrology instructor applicants and applicants for licensure without examination and without licensure in another state, applicants shall request that his/her written examination scores, pursuant to Rule 0540-01-.08, be submitted directly to the Registry's administrative office from the American Electrology Association or the Society of Clinical and Medical Electrologists.

(14) If an applicant holds or has ever held a license to practice electrology or any other profession in any other state, the applicant shall submit or cause to be submitted the equivalent of a Tennessee certificate of Endorsement from each such licensing board or registry which indicates the applicant either holds a current active license and whether it is in good standing, or held a license which is currently inactive and whether it was in good standing at the time it became inactive.

(17) An applicant for electrology instructor shall cause to be submitted directly from an accredited college or university to the Registry's administrative office an official transcript verifying that the general education requirement, pursuant to Rule 0540-01-.04(1)(c)3, has been met.

(19) An applicant shall cause to be submitted to the Registry's administrative office directly from the vendor identified in the Registry's licensure application materials, the result of a criminal background check.

(24) The licensure fee must be received in the Registry's administrative office on or before the 30th day from receipt of notification that the license fee is due. Failure to comply will result in the application file being closed.

Authority: T.C.A. § 63-1-116, 63-26-108, 63-26-111, 63-26-112, 63-26-115, and 63-26-119.

Rule 0540-01-.06 Fees is amended by deleting paragraphs (2) and (3) and subparagraph (4)(f) in their entirety, and substituting instead the following language, so that as amended the new paragraphs and subparagraph shall read:

(2) All fees shall be established, reviewed, and changed by the Commissioner.

(3) All fees may be paid in person, by mail, or electronically by cash, check, money order, or by credit and/or debit cards accepted by the Division. If the fees are paid by certified, personal or corporate check they must be drawn against an account in a United States Bank, and made payable to the Tennessee Electrologists Registry.

(4)	(f)	License Renewal-Biennial	$ 420.00	$ 520.00

Authority: T.C.A. §§ 63-26-108, 63-26-109, 63-26-111, 63-26-112, 63-26-114, 63-26-115, 63-26-116, 63-26-117 and 63-26-120.

Rule 0540-01-.07 Application Review, Approval, and Denial is amended by deleting the rule in its entirety and substituting instead the following language, so that as amended the new rule shall read:

(1) Each completed electrologist or electrology instructor application received in the Registry's administrative office on or before the 30th day prior to an examination shall be reviewed for eligibility to sit for the examination.

(2) Applications are not considered completed until all information, including fees, has been received by the Division.

(3) Initial review of all applications to determine whether or not the application file is complete may be delegated to the Registry's administrator provided that final approval and ratification of all applications is made by the Commissioner.

(4) If an application is incomplete when received in the Registry's administrative office, or if the Registry's administrator determines additional information is required from an applicant before an initial determination can be made, the Registry's administrative office shall notify the applicant of the information required.

(a) The applicant shall cause the requested information to be received by the Registry's administrative office on or before the sixtieth (60th) day after the notification requesting such information is sent to the applicant.

(b) If the requested information is not timely received, the application file may be considered abandoned and may be closed by the Registry's administrator. If that occurs, the applicant shall be notified that the Commissioner will not consider issuance of a license until a new application is received pursuant to the rules governing that process, including another payment of all fees applicable to the applicant's circumstances and submission of such new supporting documents as is required by the Commissioner or the Registry's administrator.

(5) Upon approval of the application, the applicant will be notified of eligibility to sit for the examination by the administrative office.

(6) If after two (2) attempts, the examination is not passed, the licensure application will be denied and the complete examination may be taken only after the applicant:

(a) Completes an additional Electrologists education program that the Commissioner recommends; and

(b) Pays the full examination fee.

(7) If an application is denied, the action shall become final and the following shall occur:

(a) A notification of the denial shall be sent by the Registry's administrative office by certified mail return receipt requested. Specific reasons for denial will be stated, such as incomplete information, unofficial records, examination failure, or other matters judged insufficient for licensure, and such notification shall contain all the specific statutory or rule authorities for the denial.

(b) The notification, when appropriate, shall also contain a statement of the applicant's right to request a contested case hearing under the Tennessee Administrative Procedures Act (T.C.A. §§ 4-5-101, et. seq.) to contest the denial and the procedure necessary to accomplish that action.

(c) An applicant has a right to a contested case hearing only if the licensure denial was based on subjective or discretionary criteria.

(d) An applicant may be granted a contested case hearing if licensure denial is based on objective, clearly defined criteria. If after review and attempted resolution by the Registry's administrative staff, the licensure application can not be approved and the reasons for continued denial present a genuine issue of fact and/or law which is appropriate for appeal, an appeal hearing may be requested. Such request must be made in writing to the Registry within 30 days of the receipt of the notice of denial from the Registry.

(8) The Commissioner may at its discretion delay a decision on eligibility to take the examination for any applicant for whom the Commissioner wishes additional information.

(9) Any person furnishing false information or omitting pertinent information in such application shall be denied the right to sit for the examination. If the applicant has already been licensed before the falseness of such information has been made known to the Commissioner, such license shall be subject to suspension or revocation by the Commissioner.

(10) If the Commissioner finds that the issuance of a license was made in error, the Commissioner will give written notice by certified mail of its intent to annul the license. The notice will allow the applicant the opportunity to meet the requirements of licensure within 30 days from date of receipt of the notification.

(11) If, after an application has been submitted, an applicant desires to change the type of application, a new application with supporting documents and appropriate fees shall be submitted and the first application shall be deemed withdrawn.

Authority: T.C.A. §§ 63-26-106, 63-26-108, 63-26-111, 63-26-112, 63-26-113, 63-26-114, 63-26-118, 63-26-123 and 63-23-124.

Rule 0540-01-.08 Examinations is amended by deleting paragraph (1) and subparagraph (1)(a), but not its parts, by renumbering parts (1)(a)1 through 6 as subparagraphs (1)(a) through (1)(f), and by deleting renumbered subparagraphs (1)(a), (1)(d), (1)(e) and (1)(f), and substituting instead the following language as new paragraph (1) and subparagraphs (1)(a), (1)(d), (1)(e) and (1)(f), so that as amended the new paragraph and subparagraphs shall read:

(1) Electrologist Examination. An individual seeking licensure as an electrologist, either by examination, limited licensure, or reciprocity (licensed in another state) shall be required to pass the following written examination prior to licensure:

(a) The written examination, as adopted by the Commissioner, is the examination accepted by the American Electrology Association (AEA) or Society of Clinical and Medical Electrologists (SCME). Neither the association nor testing agency may discriminate in any way against any candidate seeking to take or retake an examination.

(d) The passing scores as established and certified by AEA and SCME to the Commissioner are adopted by the Commissioner as constituting successful completion of the written section of the electrology examination.

(e) Certification of passing the examination must be submitted directly to the Registry's administrative office from AEA and SCME in conjunction with the applicant's filing an application for license with the Commissioner.

(f) Prior to submitting an application to the Commissioner for license, the individual must have taken and passed either the AEA or SCME examination.

Rule 0540-01-.08 Examinations is further amended by deleting subparagraphs (2)(b), and (2)(d) in their entirety, and renumbering (2)(c) as (2)(b) and amending the language to read as follows:

(b) Examination candidates must achieve an eighty-five (85) percent or higher to pass.

Rule 0540-01-.08 Examinations is further amended by deleting paragraphs (3), including its subparagraphs, (4), (5), (6), (8), (9), (10), and (11) and renumbering paragraph (7) as new paragraph (3), renumbering paragraph (12) as new paragraph (4), renumbering paragraph (13) as new paragraph (5), the subparagraphs of which are to remain the same, and substituting instead the following language, so that as amended, the renumbered paragraphs shall read:

(3) The examination shall be "closed book," and shall be prepared and conducted in English.

(4) If an applicant fails to pass the examination under these rules after two (2) attempts, the application will be denied. The complete examination may be taken again only after the applicant:

(a) Completes an additional electrolysis education program that the Commissioner recommends, and

(b) Pays the full examination fee.

(5) Examination Misconduct. The Commissioner may deny a license to practice electrology to an individual who subverts, attempts to subvert, or compromises the licensing examination, including but not limited to:

Authority: T.C.A. § 63-26-108, 63-26-111, 63-26-112, 63-26-113, 63-26-114, 63-26-115, 63-26-117 and 63-26-123.

Rule 0540-01-.09 Renewal of License is amended by deleting parts (1)(b)2., (1)(c)1., and paragraph (4) in their

entirety and substituting instead the following language, so that as amended, the new parts and paragraph shall read:

(1) (b) 2. Paper Renewals - For individuals who have not renewed their license online via the Internet, a renewal application form will be mailed to each individual licensed by the Commissioner to the last address provided to the Registry's administrative offices. Failure to receive such notification does not relieve the licensee from the responsibility of meeting all requirements for renewal.

(1) (c) 1. A completed and signed renewal application form; and

(4) Renewal and reinstatement decisions pursuant to this rule may be made by the Registry's administrative staff or upon review by the Commissioner.

Authority: T.C.A. §§ 63-1-107, 63-26-108, 63-26-109, and 63-26-120.

Rule 0540-01-.10 Supervision is amended by deleting paragraph (3) in its entirety and substituting instead the following language, so that as amended, the new paragraph shall read:

(3) Every student in training for a limited license shall at all times be under the direct supervision of a board certified or board eligible dermatologist who has registered with the Tennessee Electrologists Registry to provide training.

Authority: T.C.A. §§ 63-26-108, 63-26-111, and 63-26-119.

Rule 0540-01-.11 Retirement and Reactivating of License is amended by deleting the rule in its entirety and substituting instead the following language, so that as amended, the new rule will read:

(1) A person who holds a current license and does not intend to practice as an electrologist or electrology instructor in Tennessee may apply to convert an active license to retired status. An individual who holds a retired license will not be required to pay the biennial renewal fee.

(2) A person who holds an active license may apply for retired status in the following manner:

(a) Obtain, complete, and return an affidavit of retirement form to the Registry's administrative office; or

(b) Submit a letter, which has been signed and notarized, requesting that his license be placed in retirement. Such letter must contain a statement indicating that the licensee understands that, while in retired status, he cannot practice in Tennessee , cannot in any way indicate or imply that he holds an active Tennessee license, or use within Tennessee any words, letters, titles, or figures which indicate or imply that he is a currently licensed electrologist; and

(c) Submit any documentation which may be required to the Registry's administrative office.

(d) The effective date of retirement will be the date the Affidavit of Retirement is received in the Registry's administrative office.

(3) An individual whose license has been retired may reactivate the license in the following manner:

(a) Submit a written request for licensure reactivation to the Registry's administrative office; and

(b) Pay the current license renewal fees and State regulatory fee as provided in Rule 0540-01-.06. If reactivation is requested prior to the expiration of one (1) year from the date of retirement, the Commissioner will require payment of the reinstatement fee and all past due renewal fees as prescribed in Rule 0540-01-.06.

(c) Each electrologist seeking reactivation must verify by signature on a form provided by the Commissioner or submit proof of completion of the required continuing education hours pursuant to Rule 0540-01-.12(5).

(4) Licensure reactivation applications shall be treated as licensure applications. The Commissioner's review and decisions required by this Rule shall be governed by Rule 0540-01-.07.

Authority: T.C.A. §§ 63-1-111, 63-26-108, 63-26-109, and 63-26-123.

Rule 0540-01-.12 Continuing Education is amended by deleting subparagraph (1)(b), paragraph (3), subparagraphs (4)(b), (4)(c) and (4)(e), subparagraph (5)(b), subparagraphs (7)(a), (7)(b) including part 2. and (7)(c), and subparagraph (8)(d) in their entirety and substituting instead the following language, so that as amended, the new subparagraphs, paragraph and part shall read:

(1) (b) The Commissioner approves courses for only the number of hours contained in the course. The approved hours of any individual course will not be counted more than once in a calendar year toward the required hourly total regardless of the number of times the course is attended or completed by any individual licensee.

(3) Course Approval. The Commissioner does not pre-approve continuing education programs. It is the licensee's responsibility, using his professional judgment and guidelines provided within these rules, to determine whether or not the programs are applicable and appropriate to his professional development and meet the standards specified in these rules.

(4) (b) Each electrologist must, on a form provided by the Registry's administrative staff, check a box and/or enter signature which indicates attendance and completion of the required continuing education hours and that such hours were obtained during the calendar year of report.

(c) Each electrologist must retain independent documentation of attendance and completion of all continuing education courses. This documentation must be retained for a period of four years from the end of the calendar year in which the course is completed. This documentation must be produced for inspection and verification, if requested in writing by the Commissioner during its verification process.

(e) If a person submits continuing education documentation that is not clearly identifiable as appropriate, the Commissioner will request a written description of the training and how it applies to the practice of electrology. If the Commissioner determines that the training can not be considered appropriate continuing education, the licensee will be given 90 days to replace the hours not allowed. Those hours will be considered replacement hours and can not be counted during the next renewal period.

(5) (b) Along with the reactivation request, any electrologist who applies for reactivation of a license which has been retired for more than one (1) year must submit proof of attendance and completion of ten (10) hours of Commissioner-approved continuing education. The electrologist who has retired his license may receive credit for courses completed during the time the license was retired provided that at least five (5) hours were completed within one (1) year preceding the application for reactivation.

(7) Extension of Time to Complete or Waiver of Continuing Education Requirements

(a) The Commissioner may grant an extension of the deadline to complete the annual continuing education requirements, or the Commissioner may grant a waiver of the need to attend and complete the annual continuing education requirements, if it can be shown that compliance is beyond the physical or mental capabilities of the person seeking the extension or waiver.

(b) Extensions or waivers of the deadline will be considered only on an individual basis and may be requested by submitting the following items to the Registry's Administrative Office prior to the expiration of the calendar year (December 31) in which the continuing education is due:

2. Any documentation which supports the reason(s) for the extension or waiver request or which is subsequently requested by the Commissioner.

(c) A waiver or deadline extension approved by the Commissioner is effective only for the calendar year for which either is sought.

(8) (d) Continuing education hours obtained as a result of compliance with the terms of a Commissioner's Order in any disciplinary action shall not be credited toward the continuing education hours required to be obtained in any calendar year.

Authority: T.C.A. §§ 63-26-108, 63-26-120, 63-26-121, and 63-26-123.

Rule 0540-01-.13 Professional Ethics is amended by deleting paragraphs (8), (9), (12), and (14) in their entirety and substituting instead the following language, so that as amended, the new paragraphs shall read:

(8) In the event an applicant or licensee, or other individual has a question regarding legal, ethical, and professional standards, neither the Commissioner nor the Registry's administrative personnel shall consider such questions unless presented with a proper petition for a declaratory order, subject to the requirements set forth in T.C.A. §4-5-223.

(9) A licensee shall keep his licensure file updated by notifying the Registry's administrative office in writing of changes in preferred mailing address and practice address.

(12) Services provided by a licensee shall be performed in a manner that is consistent with basic and accepted practice standards and in accordance with all applicable state statutes, rules, and local codes and ordinances.

Authority: T.C.A. §§ 4-5-223, 63-26-108, and 63-26-123.

Rule 0540-01-.15 Disciplinary Actions and Civil Penalties is amended by deleting the rule in its entirety including the catchline and substituting instead the following language, so that as amended, the new catchline and rule shall read:

Rule 0540-01-.15 Disciplinary Actions and Civil Penalties. The purpose of this rule is to define disciplinary actions that the Commissioner may impose on licensees.

(1) Upon a finding by the Commissioner that an electrologist or electrology instructor has violated any provision of the Tennessee Electrologists Practice Act (T.C.A. §§ 63-26-101, et. seq.) or the rules promulgated pursuant thereto, the Commissioner may impose any of the following actions separately or in any combination deemed appropriate to the offense:

(a) Advisory Censure - This is a written action issued to the electrologist for minor or near infractions. It is informal and advisory in nature and does not constitute a formal disciplinary action.

(b) Formal censure or reprimand - This is a written action issued to an electrologist for one time and less severe violations. It is a formal disciplinary action.

(c) Probation - This is a formal disciplinary action which places an electrologist on close scrutiny for a fixed period of time determined by the Commissioner. This action may be combined with conditions which must be met before probation will be lifted and/or which restrict the individual's activities during the probationary period.

(d) Licensure Suspension - this is a formal disciplinary action which suspends an individual's right to practice for a fixed period of time. It contemplates the reentry of the individual into the practice under the licensure previously issued. When the Commissioner suspends a license, the person may not practice electrology during the period of suspension.

(e) Revocation for cause. This is the most severe form of disciplinary action which removes an individual from the practice of the profession and terminates the certification or licensure previously issued. The Commissioner, in his or her discretion, may allow reinstatement of a revoked certificate or license upon conditions and after a period of time it deems appropriate. No petition for reinstatement and no new application for certification or licensure from a person whose license was revoked shall be considered prior to the expiration of at least one year unless otherwise stated in the Commissioner's revocation order.

(f) Conditions - These include any action deemed appropriate by the Commissioner to be required of an individual disciplined during any period of probation or suspension or as a prerequisite to the lifting of probation or suspension or the reinstatement of a revoked license.

(g) Civil penalty – A monetary disciplinary action assessed by the Commissioner pursuant to paragraph (5) of this rule.

(2) Once ordered, probation, suspension, revocation, assessment of a civil penalty, or any other condition of any type of disciplinary action may not be lifted unless and until the licensee petitions the Commissioner, pursuant to paragraph (3) of this rule, after the period of initial probation, suspension, revocation, or other conditioning has run, and all conditions placed on the probation, suspension, revocation, have been met, and after any civil penalties assessed have been paid.

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

(a) The Commissioner 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;

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

3. When the petitioner can prove compliance with all the terms of the previously issued order and is seeking to have an order issued reinstating a license previously revoked.

(b) Procedures

1. The petitioner shall submit a Petition for Order of Compliance, as contained in subparagraph (c), to the Registry'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 Commissioner and the Registry'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 Commissioner authorizes the Registry's administrative staff to make an initial determination on the petition and take one of the following actions:

   (i) Certify compliance and present the petition to the Commissioner 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. The petitioner may not submit any additional documentation or testimony other than that contained in his petition as submitted to the Commissioner and the Registry's administrative staff.

4. If the Commissioner finds that the petitioner has complied with all the terms of the previous order the Commissioner shall issue an Order of Compliance.

5. If the petition is denied either initially by the Registry's administrative staff or after review by the Commissioner, and the petitioner believes compliance with the order has been sufficiently proven, the petitioner may, as authorized by law, file a petition for a declaratory order pursuant to the provisions of T.C.A. § 4-5-223 and rule 1200-10-01-.11.

(c) Form Petition

Petition for Order of Compliance
Electrologists Registry

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: _____

I, the petitioner respectfully represent, 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;

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

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

Note – You must enclose all documents necessary to prove your request including a copy of the original order. If any of the proof you are relying upon to show compliance is the testimony of any individual, including yourself, you must enclose signed statements from every individual you intend to rely upon attesting, under oath, to the compliance. The Commissioner's and Registry'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 unlicensed practice civil penalty order, to modify any findings of fact, conclusions of law, or the reasons for the decision contained in the order. It is also not intended to allow a petition for a lesser disciplinary action, or civil penalty other than the one(s) previously ordered. All such provisions of disciplinary orders were subject to reconsideration and appeal under the provisions of the Uniform Administrative Procedures Act (T.C.A. §§ 4-5-301, et seq.). This procedure is not available as a substitute for reconsideration and/or appeal and is only available after all reconsideration and appeal rights have been either exhausted or not timely pursued. It is also not available for those who have accepted and been issued a reprimand.

(a) The Commissioner 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 Registry's Administrative Office that shall contain all of the following:

   (i) A copy of the previously issued order;

   (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 prove 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 Commissioner authorizes the Registry's administrative staff in conjunction with legal 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 Commissioner as an uncontested matter; or

   (ii) Deny the petition, 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. The petitioner may not submit any additional documentation or testimony other than that contained in the petition as originally submitted to the Commissioner and Registry's administrative staff.

4. If the petition is granted a new order shall be issued reflecting the modifications authorized by the Commissioner that he deemed appropriate and necessary in relation to the violations found in the previous order.

5. If the petition is denied either initially by the Registry's administrative staff or after review by the Commissioner, and the petitioner believes impossibility of compliance with the order has been sufficiently proven, the petitioner may, as authorized by law, file a petition for a declaratory order pursuant to the provisions of T.C.A. § 4-5-223 and rule 1200-10-01-.11.

(c) Form Petition

Petition for Order Modification
Electrologists Registry

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: _____

I, the petitioner respectfully represent that for the following reasons, as substantiated by the attached documentation, the identified provisions of the attached disciplinary order are impossible for me to comply with:

_____
_____
_____
_____
_____
_____
_____

Note – You must enclose all documents necessary to prove your request including a copy of the original order. If any of the proof you are relying upon to show impossibility is the testimony of any individual, including yourself, you must enclose signed and notarized statements from every individual you intend to rely upon attesting, under oath, to the reasons why compliance is impossible. No documentation or testimony other than that submitted will be considered in making an initial determination on, or a final order in response to, this petition.

Respectfully submitted this the _____ day of _____, 20_____.

_____
Petitioner's Signature

(5) Civil Penalties

(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 Commissioner finds the person who is required to be licensed by the Commissioner is guilty of a willful and knowing violation of the Electrologists Practice Act, or regulations promulgated pursuant thereto, to such an extent that there is, or is likely to be an imminent substantial threat to the health, safety, and welfare of an individual client or the public. For purposes of this section, a Type A penalty shall include, but not be limited to, a person who willfully and knowingly is or was practicing as an electrologist without a license from the Commissioner.

2. A Type B civil penalty may be imposed whenever the Commissioner finds the person required to be licensed by the Commissioner is guilty of a violation of the Electrologists Practice Act or regulations promulgated 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 Commissioner finds the person required to be licensed, permitted, or authorized by the Commissioner is guilty of a violation of the Electrologists Practice Act or regulations promulgated thereto, which are neither directly detrimental to clients or the 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 nor more than $1,000.

2. Type B civil penalties may be assessed in the amount of not less than $100 and not more than $500.

3. Type C civil penalties may be assessed in the amount of not less than $50 and not more than $100.

(d) Procedures for Assessing Civil Penalties

1. The Division of Health Related Boards may initiate a civil penalty assessment by filing a Memorandum of Assessment of Civil Penalty. The Division shall state in the memorandum the facts and law upon which it relies in alleging a violation, the proposed amount of the civil penalty and the basis for such penalty. The Division may incorporate the Memorandum of Assessment of Civil Penalty with a Notice of Charges which may be issued attendant thereto.

2. Civil Penalties may also be initiated and assessed by the Commissioner during consideration of any Notice of Charges. In addition, the Commissioner may, upon good cause shown, assess a type and amount of civil penalty which was not recommended by the Division.

3. In assessing the civil penalties pursuant to these rules the Commissioner may consider the following factors:

   (i) Whether the amount imposed will be a substantial economic deterrent to the violator;

   (ii) The circumstances leading to the violation;

   (iii) The severity of the violation and the risk of harm to the public;

   (iv) The economic benefits gained by the violator as a result of non-compliance; and.

   (v) The interest of the public.

4. All proceedings for the assessment of civil penalties shall be governed by the contested case provisions of T.C.A. Title 4, Chapter 5.

Authority: T.C.A. §§ 4-5-101, 4-5-217, 4-5-223, 63-1-134, 63-26-108, 63-26-123, and 63-26-124.

Rule 0540-01-.16 License is amended by deleting the rule in its entirety and substituting instead the following language, so that as amended, the new rule shall read:

(1) Issuance - Upon the Commissioner determining that an applicant for licensure has successfully met all the requirements as set forth in T.C.A. §§ 63-26-101, et seq., and these rules, the Commissioner shall issue the applicant a license in the classification for which he is qualified to practice.

(2) Display of License

(a) The Commissioner shall furnish a license to each person which shall be posted in a conspicuous place in the primary place of business.

(b) Any licensee practicing away from his place of business shall carry an identification license issued by the Commissioner and shall show it to the person upon whom electrolysis services are being performed or the person in charge.

(c) It is unlawful for any person to practice electrology for compensation unless his license is displayed in a conspicuous place within the business or clinic.

(3) Replacement License. The Commissioner will replace a lost, damaged, or destroyed license (artistically designed "wall" license) or renewal certificate upon receipt of an affidavit detailing the loss or destruction of the original license or renewal certificate. The affidavit must be accompanied by the damaged license or renewal certificate, if available, and the appropriate fee, pursuant to Rule 0540-01- .06.

(4) Display of the Electrologists Registry Law and Rules and Regulations. Each licensee shall routinely obtain a copy of the Electrologists Registry's laws and rules to be posted in a conspicuous place within the business or clinic.

(5) Requests for verification of license must be made in writing to the Registry's administrative office.

Authority: T.C.A. §§ 63-1-104, 63-1-105, 63-1-106, 63-1-108, 63-1-109, 63-26-108, 63-26-109, and 63-26-118.

Rule 0540-01-.17 Change of Name and/or Address is amended by deleting the rule in its entirety and substituting instead the following language, so that as amended, the new rule shall read:

(1) Change of Name. An individual registered with the Commissioner shall notify the Registry's administrative office in writing within 30 days of a name change. The notice shall provide both the old and new names and must reference the individual's profession, Registry, social security and license numbers.

(2) Change of Address. Each person holding a license who has had a change of address shall file in writing with the Registry's administrative office his current mailing address, giving both old and new addresses. Such requests should be received in the Registry's administrative office no later than 30 days after such change has occurred and must reference the individual's name, profession, social security number and license number.

Authority: T.C.A. §§ 63-1-106, 63-1-108, 63-26-108, and 63-26-118.

Rule 0540-01-.18 Mandatory Release of Client Records is amended by deleting paragraph (1) in its entirety and substituting instead the following language, so that as amended, the new paragraph shall read:

(1) Upon request from a client or the client's authorized representative, an individual registered with the Commissioner shall provide a complete copy of the client's records or summary of such records which were maintained by the provider.

Authority: T.C.A. §§ 63-2-101, 63-2-102, and 63-26-108.

Rule 0540-01-.19 Board Meetings, Officers, Consultants, Declaratory Orders, and Screening Panels is amended by changing the title of the rule to Communication, Records, Complaints, Declaratory Orders, and Screening Panels and is further amended by deleting the rule in its entirety and substituting instead the following language, so that as amended, the new rule will read:

Rule 0540-01-.19 Communication, Records, Complaints, Declaratory Orders, and Screening Panels

(1) A Registry Consultant may be appointed by the Commissioner and vested with the authority to do the following acts:

(a) Recommend whether and what type disciplinary actions should be instituted upon complaints received or investigations conducted by the Division.

(b) Recommend whether and under what terms a complaint, case, or disciplinary action might be informally settled. Any matter proposed for informal settlement must be subsequently ratified by the Commissioner before it will become effective.

(2) All requests, applications, notices, complaints, other communications and correspondence, or any requests or inquiries requiring the Commissioner's decision or official action shall be directed to the Registry's administrative office.

(3) Requests for Verification of Licensure must be made in writing to the Registry's administrative office.

(4) Declaratory Orders - The Commissioner adopts, as if fully set out herein, rule 1200-10-01-.11, of the Division of Health Related Boards and as it may from time to time be amended, as its rule governing the declaratory order process. All declaratory order petitions involving statutes, rules, or orders within the jurisdiction of the Commissioner shall be addressed by the Commissioner pursuant to that rule and not by the Division. Declaratory Order Petition forms can be obtained from the Registry's administrative office.

(5) Screening Panels - The Commissioner adopts, as if fully set out herein, rule 1200-10-01-.13, of the Division of Health Related Boards and as it may from time to time be amended, as the rule governing the screening panel process.

Authority: T.C.A. §§ 63-1-138, 63-26-108, and 63-26-123.

Rule 0540-01-.20 Advertising is amended by deleting subparagraphs (2)(b), part (3)(k)1., subparagraphs (3)(n), and (4)(c), and paragraph (6) in their entirety and substituting instead the following language, so that as amended, the new paragraph, subparagraphs, and part shall read:

(2) (b) Range of Fees. A range of fees may be advertised for services, but the advertisement must disclose the factors used in determining the actual fee to the extent necessary to prevent deception of the public.

(3) (k) 1. A realistic assessment of the safety and efficiency of those procedures or products;

(n) The use of bait and switch advertisements. Where the circumstances indicate bait and switch advertising, the Commissioner may require the licensee to furnish data or other evidence pertaining to those sales at the advertised fee as well as other sales.

(4) (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 licensee for a period of two years from the last date of broadcast or

publication and be made available for review upon request by the Commissioner or the Registry's administrative office.

(6) Use of Titles - Any person who possesses a valid, current and active license issued by the Commissioner that has not been suspended or revoked has the right to use the title "electrologist" and to practice electrology, as defined in T.C.A. §§ 63-26-102. Any person licensed by the Commissioner to whom this rule applies must use the title authorized by this rule in every "advertisement" [as that term is defined in rule 0540-01-.01(1)] he or she publishes. The failure to do so will constitute an omission of a material fact which makes the advertisement misleading and deceptive and subjects the electrologist to disciplinary action pursuant to T.C.A. § 63-26-123.

Authority: T.C.A. §§ 63-1-145, 63-26-108, 63-26-111, 63-26-119, and 63-26-123.

Rule 0540-01-.21 Electrology Limited Licensure is amended by deleting the rule in its entirety and substituting instead the following language, so that as amended, the new rule shall read:

(1) Whenever a person holding a limited electrologist license changes employers, he is responsible for notifying the Registry's administrative office in writing within ten (10) days of such change.

(2) The limited license holder shall notify the Registry's administrative office in writing prior to beginning employment. Such notification must contain the following information: The limited license holder's name, limited license number, limited license expiration date, social security number, business address and telephone number. This notification must be received in the Registry's administrative office on or before the tenth (10th) day following employment.

(3) In conjunction with the limited license holder's notification of employment, the supervising dermatologist shall submit to the Registry's administrative office an affidavit that he accepts responsibility for providing direct supervision to the limited license holder.

(4) Upon termination of employment, the dermatologist and limited license holder shall notify the Registry's administrative office providing the following information: Limited license holder's name, license number, social security number, and date of termination.

Authority: T.C.A. §§63-26-108, 63-26-111, and 63-26-119.

Amendments to Chapter 0540-03
General Rules Governing Schools of Electrology

Rule 0540-03-.01 Definitions is amended by deleting paragraphs (3), (5), (6), (14), (16), and (31) in their entirety and renumbering the remaining paragraphs, and is further amended by inserting new definitions (3), (5) (7) (14), (16), and (31) and renumbering the remaining paragraphs appropriately, so that as amended the new paragraphs shall read:

(3) Applicant - Any individual seeking licensure by the Commissioner who has submitted an official application and paid the application fee.

(5) Registry's administrative office - The office of the administrator assigned to the Tennessee Electrologists Registry located at 227 French Landing, Suite 300, Heritage Place, MetroCenter, Nashville, TN 37243.

(7) Commissioner – The Tennessee Department of Health Commissioner or his or her designee, including but not limited to, the Assistant Commissioner of the Bureau of Health Licensure and Regulation.

(14) Division - The Tennessee Department of Health, Division of Health Related Boards, from which the Commissioner receives administrative support.

(16) Electrology Instructor - An electrologist who is licensed by the Commissioner to practice and teach electrology.

(31) Notification of Training Form - The form available from the Registry's administrative office which must be completed by a limited license trainee and signed by the supervising dermatologist and received by the Registry's administrative office at least ten (10) days prior to beginning training.

Authority: T.C.A. §§ 63-1-101, 63-1-102, 63-26-101, 63-26-102, 63-26-103, 63-26-108, 63-26-111, 63-26-112, and 63-26-119.

Rule 0540-03-.02 Scope of Practice is amended by deleting the rule in its entirety and substituting instead the following language, so that as amended the new rule shall read:

(1) The license to open and operate a school of electrology is prescribed and limited to the Tennessee Code Annotated (see especially T.C.A. §§ 63-26-101, et seq.). The license is conferred by the Commissioner for schools which have been found to meet established standards.

(2) Any school of electrology which possesses a valid unsuspended and unrevoked license has the right to use the title school of electrology. No other school shall assume this title on any work, letter, sign, figure, advertisement, or device to indicate that the school using the same is a licensed school of electrology. The work performed includes electrology or the teaching of electrology services to the public.

Authority: T.C.A. §§ 63-26-108, 63-26-111, 63-26-112, 63-26-118, 63-26-119, and 63-26-122.

Rule 0540-03-.03 Necessity of Licensure is amended by deleting the rule in its entirety and substituting instead the following language, so that as amended the new rule shall read:

(1) Before a person may open a school of electrology, the person shall submit an application to the Registry's administrative office and secure the Commissioner's approval of the application.

(2) No school of electrology shall operate without a valid license issued by the Commissioner. Any school of electrology which opens or operates without being licensed or expressly exempted by the laws is in violation of division law, T.*C.A. §63-1-123.*

(3) No other person may provide instruction in a school of electrology unless the person holds a current electrologist license and a current electrology instructor license issued by the Commissioner.

(4) Before a person may provide limited licensure instruction, he must be a board certified or board eligible dermatologist who has provided to the board's satisfaction evidence of continuing education in electrology theory and practice.

Authority: T.C.A. §§ 63-1-123, 63-26-108, 63-26-111, 63-26-112, 63-26-118, 63-26-119, 63-26-122, and 63-26-123.

Rule 0540-03-.04 Standards for License is amended by deleting subparagraphs (1)(a), (4)(a) but not its parts, (5)(d), (9)(a), and paragraphs (10) and (11) in their entirety and substituting instead the following language, so that as amended the new paragraphs and subparagraphs shall read:

(1) (a) Program Director. Each school shall at all times be under the direction and supervision of a licensed practicing electrologist, who also is licensed as an electrology instructor and who is recognized by the Council of Electrolysis Education, the National Electrolysis Organization, or an equivalent organization. The program director of each school shall be responsible for the organization, administration, development, and general effectiveness of the electrolysis training program.

(4) (a) A person wishing to obtain the Commissioner's approval for a school of electrology shall provide and maintain a course of study of at least 600 hours, 175 hours of theory, and 425 hours of clinical practice training. The curriculum for a school of electrology shall include the following:

(5) (d) A student practicing on the public outside the school or outside the approved limited license training program may be deemed ineligible to take the state Commissioner approved examination.

(9) (a) The program director must submit to the Registry's administrative office sufficient evidence documenting that the student has satisfactorily completed the course curriculum pursuant to this rule; and

(10) Posting of Electrologists Registry Law and Rules and Regulations. Each school shall routinely obtain a copy of the Electrologists Registry's law and rules to be posted in a conspicuous place within the school.

(11) School records shall be open to inspection and photo copying by the Commissioner upon reasonable notice and during business hours.

Authority: T.C.A. §§ 63-26-108, 63-26-111, and 63-26-119.

Rule 0540-03-.05 Procedures for License is amended by deleting paragraphs (1), (2), (3), (5), (8), and (10) in their entirety and substituting instead the following language, so that as amended the new paragraphs shall read:

(1) Obtain an application form from the Registry's administrative office.

(2) Applications for licensure will be accepted throughout the year. However, an application to open a school of electrology shall be submitted to the Commissioner at least ninety (90) days before the proposed date of opening.

(3) The application and State Regulatory fees must accompany the application for license, pursuant to Rule 0540-03-.06. The application must be completed in its entirety, notarized, signed, and submitted to the Registry's administrative office.

(5) Provide the Commissioner with the name, address, telephone number, license number, and license expiration date for each electrology instructor affiliated with the school.

(8) The licensure fee must be received in the Registry's administrative office on or before the thirtieth (30th) day from receipt of notification that the license fee is due. Failure to comply will result in the application file being closed.

(10) Posting of Electrologists Registry Law and Rules and Regulations. Each school shall routinely obtain a copy of the Electrologists Registry law and rules to be posted in a conspicuous place within the school.

Authority: T.C.A. §§ , 63-26-108, 63-26-109, 63-26-111, 63-26-112, 63-26-113, 63-26-118, 63-26-119, and 63-26-122.

Rule 0540-03-.06 Fees is amended by deleting paragraphs (2), and (3) in their entirety and substituting instead the following language, so that as amended the new paragraphs shall read:

(2) All fees shall be established, reviewed and changed by the Commissioner.

(3) All applicable fees must be submitted to the Registry's administrative office by certified check, personal check, or money order and made payable to the Tennessee Electrologists Registry.

Authority: T.C.A. §§ 63-1-106, 63-26-108, 63-26-109, 63-26-119, and 63-26-120.

Rule 0540-03-.07 Application Review, Approval, and Denial is amended by deleting the rule in its entirety and substituting instead the following language, so that as amended the new rule shall read:

(1) Each completed school application received in the Registry's administrative office will be reviewed regularly by the Commissioner.

(2) Applications are not considered completed until all information, including fees, has been received by the Division.

(3) Initial review of all applications to determine whether or not the application file is complete may be delegated to the Registry's administrative staff, provided that final approval of all applications is made and ratified by the Commissioner. In no event may an application be approved or denied without prior review by the Commissioner.

(4) If an application is incomplete when received in the Registry's administrative office, a deficiency letter will be sent to the applicant notifying him of the deficiency. The requested information must be received in the Registry's administrative office on or before the 30th day after receipt of the notification.

(a) Such notification shall be sent certified mail return receipt requested from the Registry's administrative office.

(b) If the requested information is not timely received, the application file shall be closed and the applicant notified. No further action will take place until a new application is received pursuant to the rules governing the application process, including another payment of all fees.

(5) Upon approval of the application, the applicant will be notified.

(6) The Commissioner may at his or her discretion delay a decision on an application to operate a school of electrology if the Commissioner wishes additional information.

(7) If a completed application has been denied by the Commissioner, the action shall become final and the following shall occur:

(a) A notification of the denial shall be sent by the Registry's administrative office by certified mail return receipt requested. Specific reasons for denial will be stated, such as incomplete information, unofficial records, or other matters judged insufficient for licensure, and such notification shall contain all the specific statutory or rule authorities for the denial.

(b) The notification, when appropriate, shall also contain a statement of the applicant's right to request a contested case hearing under the Tennessee Administrative Procedures Act (T.C.A. §4-5-101, et seq.) to contest the denial and the procedure necessary to accomplish that action.

(c) An applicant has a right to a contested case hearing only if the licensure denial was based on subjective or discretionary criteria.

(d) An applicant may be granted a contested case hearing if licensure denial is based on objective, clearly defined criteria. If after review and attempted resolution by the Registry's administrative staff, the licensure application cannot be approved and the reasons for continued denial present a genuine issue of fact and/or law which is appropriate for appeal, an appeal hearing may be requested. Such request must be made in writing to the Registry within 30 days of the receipt of the notice of denial from the Registry.

(8) Any person furnishing false information or omitting pertinent information in such application shall be denied licensure to operate a school of electrology. If the applicant has already been licensed before the falseness of such information has been made known to the Commissioner, such license shall be subject to suspension or revocation by the Commissioner.

(9) If the Commissioner finds that the issuance of a license was in error, the Commissioner will give written notice by certified mail of its intent to annul the license. The notice will allow the applicant the opportunity to meet the requirements of licensure within 30 days from date of receipt of the notification.

(10) Whenever requirements for licensure are not completed within 12 months from the date of the initial review of application and credentials, written notification will be mailed to the applicant and the application file will be closed. An applicant whose file has been closed shall subsequently be considered for licensure only upon the filing of a new application and payment of all appropriate fees.

(11) Abandonment of Application

(a) An application shall be deemed abandoned and closed if the application has not been completed by the applicant within 90 days after it was initially reviewed by the Commissioner.

(b) Whenever the applicant fails to complete the application process as stated in Rule 0540-03-.07(11)(a) above, written notification will be mailed to the applicant notifying him that the file has been closed. A determination of abandonment must be ratified by the Commissioner.

(c) An application submitted subsequent to the abandonment of a prior application shall be treated as a new application.

Authority: T.C.A. §§ 63-26-106, 63-26-108, 63-26-111, 63-26-112, 63-26-119, 63-26-123, and 63-26-124.

Rule 0540-03-.08 Examinations is amended by deleting paragraph (2) and subparagraph (2)(a), and substituting instead the following language, so that as amended the new paragraph and subparagraph shall read:

(2) Commissioner Approved Examination. Prior to filing an application to take the Commissioner approved examination, pursuant to Rule 0540-01-.08, a student must:

(a) Satisfactorily complete the Commissioner approved electrology school's course of study and shall pass a final examination on each subject; and

Authority: T.C.A. §§ 63-26-108, 63-26-111, 63-26-112, 63-26-113, and 63-26-119.

Rule 0540-03-.09 Renewal of License is amended by deleting part (1)(b)2. and paragraph (3) in their entirety, and substituting instead the following, so that as amended the new part and paragraph shall read:

(1) (b) 2. Paper Renewals - For schools who have not renewed their license online via the Internet, a renewal application form will be mailed to each school licensed by the Commissioner to the last address provided to the Registry's administrative office. Failure to receive such notification does not relieve the school from the responsibility of meeting all requirements for renewal.

(3) Renewal and reinstatement decisions pursuant to this Rule may be made by the Registry's administrative staff or upon review by the Commissioner.

Authority: T.C.A. §§ 63-1-107, 63-26-108, 63-26-109, 63-26-119, and 63-26-120.

Rule 0540-03-.11 Retirement and Reactivation is amended by deleting the rule in its entirety and substituting instead the following language, so that as amended the new rule shall read:

(1) A person who holds a current license and does not intend to operate a school of electrology in Tennessee may apply to convert an active license to retired status. An individual who holds a retired license will not be required to pay the annual renewal fee.

(2) A person who holds an active license to operate a school of electrology may apply for retired status in the following manner:

(a) Obtain from the Registry's administrative office an affidavit of retirement form; or

(b) Submit a letter, which has been signed and notarized, requesting that his license be placed in retirement. Such letter must contain a statement indicating that the licensee understands that, while in retired status, he cannot operate a school of electrology in Tennessee, indicate or

imply in any way that he holds an active Tennessee license, or use within Tennessee any words, letters, titles, or figures which indicate or imply that he is currently licensed to operate a school of electrology, and

(c) Submit any documentation which may be required to the Registry's administrative office.

(3) The effective date of retirement will be the date the Affidavit of Retirement is received in the Registry's administrative office.

(4) An individual whose license to operate a school of electrology has been retired may reactive the license in the following manner:

(a) Submit a written request for licensure reactivation to the Registry's administrative office; and

(b) Pay the current license renewal fees and State regulatory fee as provided in Rule 0540-03-.06. If retirement reactivation is requested prior to the expiration of one year from the date of retirement, the Commissioner will require payment of the late renewal fee and all past due renewal fees as prescribed in Rule 0540-03-.06.

(5) Licensure reactivation applications shall be treated as licensure applications and review and decisions required by this Rule shall be governed by Rule 0540-03-.07.

Authority: T.C.A. §§ 63-1-111, 63-26-108, 63-26-119, and 63-26-121.

Rule 0540-03-.13 Standards of Practice is amended by deleting paragraphs (12) and (13) in their entirety, and substituting instead the following language, so that as amended the new paragraph shall read:

(12) A school's management and staff shall not furnish false, misleading, or incomplete information to the Commissioner or Registry administrative office.

Authority: T.C.A. §§ 63-26-108, 63-26-119, and 63-26-123.
Rule 0540-03-.15 Disciplinary Actions and Civil Penalties is amended by deleting the rule in its entirety including the catchline and substituting instead the following language, so that as amended, the new catchline and rule shall read:

The purpose of this rule is to define disciplinary actions that the Commissioner may impose on licensees.

(1) Upon a finding by the Commissioner that a school of electrology has violated any provision of the Tennessee Electrologists Practice Act (T.C.A. §§ 63-26-101, et. seq.) or the rules promulgated thereto, the Commissioner may impose any of the following actions separately or in any combination deemed appropriate to the offense:

(a) Advisory Censure - This is a written action issued to the licensee for minor or near infractions. It is informal and advisory in nature and does not constitute a formal disciplinary action.

(b) Formal censure or reprimand - This is a written action issued to a licensee for one time and less severe violations. It is a formal disciplinary action.

(c) Probation - This is a formal disciplinary action which places a licensee on close scrutiny for a period of time determined by the Commissioner. This action may be combined with conditions which must be met before probation will be lifted and/or which restrict the licensee's activities during the probationary period.

(d) Licensure Suspension - This is a formal disciplinary action which suspends a licensee's right to operate a school of electrology for a fixed period of time. It contemplates the reentry of the licensee into the operation under the licensure previously issued. When the Commissioner suspends a license, the school may not train electrology students during the period of suspension.

(e) Revocation for cause. This is the most severe form of disciplinary action which removes a licensee from the operation of a school of electrology and terminates the licensure previously issued. The Commissioner, in his or her discretion, may allow reinstatement of a revoked license upon conditions and after a period of time he deems appropriate. No petition for reinstatement and no new application for licensure from a person whose license was revoked shall be considered prior to the expiration of at least one year unless otherwise stated in the Commissioner's revocation order.

(f) Conditions - These include any action deemed appropriate by the Commissioner to be required of an individual disciplined during any period of probation or suspension or as a prerequisite to the lifting of probation or suspension or the reinstatement of a revoked license.

(g) Civil penalty – A monetary disciplinary action assessed by the Commissioner pursuant to paragraph (5) of this rule.

(2) Once ordered, probation, suspension, revocation, assessment of a civil penalty, or any other condition of any type of disciplinary action may not be lifted unless and until the licensee petitions the Commissioner, pursuant to paragraph (3) of this rule, after the period of initial probation, suspension, revocation, or other conditioning has run and all conditions placed on the probation, suspension, revocation, have been met, and after any civil penalties assessed have been paid.

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

(a) The Commissioner 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;

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

3. When the petitioner can prove compliance with all the terms of the previously issued order and is seeking to have an order issued reinstating a license previously revoked.

(b) Procedures

1. The petitioner shall submit a Petition for Order of Compliance, as contained in subparagraph (c), to the Registry's Administrative Office that shall contain all of the following:

(i) A copy of the previously issued order;

(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 Commissioner and Registry'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 Commissioner authorizes the Registry's administrative staff to make an initial determination on the petition and take one of the following actions:

   (i) Certify compliance and present the petition to the Commissioner 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. The petitioner may not submit any additional documentation or testimony other than that contained in his petition as submitted to the Commissioner and the Registry's administrative staff.

4. If the Commissioner finds that the petitioner has complied with all the terms of the previous order the Commissioner shall issue an Order of Compliance.

5. If the petition is denied either initially by the Registry's administrative staff or after review by the Commissioner, and the petitioner believes compliance with the order has been sufficiently proven the petitioner may, as authorized by law, file a petition for a declaratory order pursuant to the provisions of T.C.A. § 4-5-223 and Rule 1200-10-01-.11.

(c) Form Petition

Petition for Order of Compliance
Electrologists Registry

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: _____

I, the petitioner respectfully represent, 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 probation; or

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

Note – You must enclose all documents necessary to prove your request including a copy of the original order. If any of the proof you are relying upon to show compliance is the testimony of any individual, including yourself, you must enclose signed statements from every individual you intend to rely upon attesting, under oath, to the compliance. The Commissioner's and

Registry'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 unlicensed operation of an electrology school 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 disciplinary orders were subject to reconsideration and appeal under the provisions of the Uniform Administrative Procedures Act (T.C.A. §§ 4-5-301, et seq.). This procedure is not available as a substitute for reconsideration and/or appeal and is only available after all reconsideration and appeal rights have been either exhausted or not timely pursued. It is also not available for those who have accepted and been issued a reprimand.

(a) The Commissioner 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 Registry's Administrative Office that shall contain all of the following:

(i) A copy of the previously issued order;

(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 prove 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 Commissioner authorizes the Registry's administrative staff in conjunction with legal 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 Commissioner as an uncontested matter; or

(ii) Deny the petition, 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. The petitioner may not submit any additional documentation or testimony other than that contained in the petition as originally submitted to the Commissioner and Registry's administrative staff.

4. If the petition is granted a new order shall be issued reflecting the modifications authorized by the Commissioner that he deemed appropriate and necessary in relation to the violations found in the previous order.

5. If the petition is denied either initially by the Registry's administrative staff or after review by the Commissioner, and the petitioner believes impossibility of compliance with the order has been sufficiently proven, the petitioner may, as authorized by law, file a petition for a declaratory order pursuant to the provisions of T.C.A. § 4-5-223 and rule 1200-10-01-.11.

(c) Form Petition

Petition for Order Modification
Electrologists Registry

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: _____

I, the petitioner respectfully represent that for the following reasons, as substantiated by the attached documentation, the identified provisions of the attached disciplinary order are impossible for me to comply with:

_____
_____
_____
_____
_____
_____
_____

Note – You must enclose all documents necessary to prove your request including a copy of the original order. If any of the proof you are relying upon to show impossibility is the testimony of any individual, including yourself, you must enclose signed and notarized statements from every individual you intend to rely upon attesting, under oath, to the reasons why compliance is impossible. No documentation or testimony other than that submitted will be considered in making an initial determination on, or a final order in response to, this petition.

Respectfully submitted this the _____ day of _____, 20_____.

_____
Petitioner's Signature

(5) Civil Penalties

(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 Commissioner finds the person who is required to be licensed by the Commissioner is guilty of a willful and knowing violation of the Electrologists Practice Act, or regulations promulgated pursuant thereto, to such an extent that there is, or is likely to be an imminent substantial threat to the health, safety, and welfare of an individual client or the public. For purposes of this section, a Type A penalty shall include, but not be limited to, a person who willfully and knowingly is or was operating an electrology school without a license from the Commissioner.

2. A Type B civil penalty may be imposed whenever the Commissioner finds the person required to be licensed by the Commissioner is guilty of a violation of the Electrologists Practice Act or regulations promulgated 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 Commissioner finds the person required to be licensed by the Commissioner is guilty of a violation of the Electrologists Practice Act or regulations promulgated pursuant thereto, which are neither directly detrimental to clients or the 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 nor more than $1,000.

2. Type B civil penalties may be assessed in the amount of not less than $100 and not more than $500.

3. Type C civil penalties may be assessed in the amount of not less than $50 and not more than $100.

(d) Procedures for Assessing Civil Penalties

1. The Division of Health Related Boards may initiate a civil penalty assessment by filing a Memorandum of Assessment of Civil Penalty. The Division shall state in the memorandum the facts and law upon which it relies in alleging a violation, the proposed amount of the civil penalty and the basis for such penalty. The Division may incorporate the Memorandum of Assessment of Civil Penalty with a Notice of Charges which may be issued attendant thereto.

2. Civil Penalties may also be initiated and assessed by the Commissioner during consideration of any Notice of Charges. In addition, the Commissioner may, upon good cause shown, assess type and amount of civil penalty which was not recommended by the Division.

3. In assessing the civil penalties pursuant to these rules the Commissioner may consider the following factors:

(i) Whether the amount imposed will be a substantial economic deterrent to the violator;

(ii) The circumstances leading to the violation;

(iii) The severity of the violation and the risk of harm to the public;

(iv) The economic benefits gained by the violator as a result of non-compliance; and,

(v) The interest of the public.

4. All proceedings for the assessment of civil penalties shall be governed by the contested case provisions of T.C.A. Title 4, Chapter 5.

(6) A Registry Consultant may be appointed by the Commissioner and vested with the authority to do the following acts:

(a) Recommend whether and what type disciplinary actions should be instituted upon complaints received or investigations conducted by the Division.

(b) Recommend whether and under what terms a complaint, case, or disciplinary action might be informally settled. Any matter proposed for informal settlement must be subsequently ratified by the Commissioner before it will become effective.

Authority: T.C.A. §§ 4-5-217, 4-5-223, 63-1-134, 63-26-108, 63-26-119, 63-26-123 and 63-26-124.

Rule 0540-03-.16 License is amended by deleting the rule in its entirety and substituting instead the following language, so that as amended the new rule shall read:

(1) Issuance - Upon the Commissioner determining that an applicant for licensure has successfully met all the requirements as set forth in T.C.A. §§ 63-26-101, et seq. and these rules, the Commissioner shall issue the school a license.

(2) Display of License - The Commissioner shall furnish a license to each school which shall be posted in a conspicuous place within the school.

(3) Replacement License. The Commissioner will replace a lost, damaged, or destroyed license (artistically designed "wall" license) or renewal certificate upon receipt of an affidavit detailing the loss or destruction of the original license or renewal certificate. The affidavit must be accompanied by the damaged license or renewal certificate, if available, and the appropriate fee, pursuant to Rule 0540-03-.06.

(4) Display of Electrologists Registry Law and Rules and Regulations. Each licensee shall routinely obtain a copy of the Electrologists Registry's laws and rules to be posted in a conspicuous place within the school of electrology.

(5) Requests for Verification of Licensure must be made in writing to the Registry's administrative office.

Authority: T.C.A. §§ 63-1-104, 63-1-105, 63-1-106, 63-1-109, 63-26-108, 63-26-109, 63-26-118, and 63-26-119.

Rule 0540-03-.17 Change of Name and/or Address is amended by deleting the rule in its entirety and substituting instead the following language, so that as amended the new rule shall read:

(1) Change of Name. The school's program director shall notify the Registry's administrative office in writing within 30 days of a name change. The notice shall provide both the old and new names and must reference the license number, along with a certified or notarized photocopy of the document authorizing such a name change.

(2) Change of Address. The school's program director shall notify the Registry's administrative office in writing within 30 days of a change of address. The notice shall provide both the old and new addresses and must reference the school's name, telephone number, and license number.

Authority: T.C.A. §§ 63-1-106, 63-1-108, 63-26-108, 63-26-118, and 63-26-119.

Rule 0540-03-.20 Limited Licensure Electrology Training Programs is amended by deleting subparagraphs (1)(b), (3)(a), and paragraph (5) including its subparagraphs, and substituting instead the following language, so that as amended the new paragraph and subparagraphs shall read:

(1) (b) Ensure that the trainee has completed and mailed to the Registry's administrative office the Notification of Training form at least ten (10) days prior to beginning the training. The notification of training form must be completed in its entirety and be signed by the supervising dermatologist indicating that he will personally provide daily instruction and direct supervision to each trainee during the training period.

(3) (a) Training shall not begin until the Notification of Training has been submitted to the Registry's administrative office. Written verification of receipt will be provided to the trainee by the Registry's administrative office within five (5) working days after receipt.

(5) Completion or Abandonment of Training

(a) Upon the trainee's completion of the training program, the dermatologist must provide to the Registry's administrative office, concurrently with the trainee filing an application for license, verification that the training has been satisfactorily completed, along with a course outline, and an outline of training hours including specific theory topics and clinical practice.

(b) The dermatologist must provide an affidavit stating the number of training hours including specific theory topics and clinical practice to the Commissioner at the Registry's administrative office.

(c) The dermatologist must notify the Registry's administrative office in writing, within ten (10) days of the date he terminates or the trainee terminates training prior to completion.

Authority: T.C.A. §§ 63-26-108, 63-26-111, and 63-26-119.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
NA					

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Commissioner of Health on 10/03/2012 (*date as mm/dd/yyyy*), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 2 OCT 12

Signature:

Name of Officer: John J. Dreyzehner, MD, MPH, FACOEM

Title of Officer: Commissioner Department of Health

KRISTANN A. FLOYD NOTARY PUBLIC AT LARGE DAVIDSON COUNTY, TENN.

Subscribed and sworn to before me on: Oct 3, 2012

Notary Public Signature: Kristann A. Floyd

My commission expires on: 3/22/2016

All proposed 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

12-9-12
Date

Department of State Use Only

Filed with the Department of State on: 12/13/12

Effective on: 5/31/13

Tre Hargett
Secretary of State

RECEIVED 2012 DEC 13 PM 3:57 SECRETARY OF STATE ADMINISTRATIVE PROCEDURES DIVISION

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.

REGULATORY FLEXIBILITY ANALYSIS

(1) Type or types of small business subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rule:

Electrologists.

(2) Identification and estimate of the number of small businesses subject to the proposed rule:

The proposed rule changes would affect all electrologists. There are currently thirty-nine (39) active licensees.

(3) Projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:

The proposed amendments that have economic impact on small businesses have no increased or new reporting, recordkeeping, or other administrative costs that are required for compliance.

(4) Statement of the probable effect on impacted small businesses and consumers:

(a) The decrease in the renewal fee for electrologists and electrology instructors will directly benefit electrologists, and electrologist instructors.
(b) The remaining amendments that do not decrease fees will have no adverse effect on electrologists.

(5) Description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent, such alternative means might be less burdensome to small business:

These rules are not burdensome, intrusive, or costly. On the contrary, these rule amendments will have a positive impact on business.

(6) Comparison of the proposed rule with any federal or state counterparts:

Federal: The Commissioner is not aware of any federal counterparts. Electrologists are not licensed by the federal government.

State: The Commissioner's proposed amendments are consistent with the qualifications for licensure in the T.C.A. §63-26-101 *et seq.*

(7) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

The rule change does not provide for any exemptions.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

1. **Name of Board, Committee or Council:** Electrologists Registry

2. **Rulemaking hearing date:** These are proposed rules; no hearing will be held.

3. **Type or types of small businesses that will be directly affected by the proposed rules:**

   Electrologists and schools of Electrology.

4. **Types of small businesses that will bear the cost of the proposed rules:**

   The Commissioner does not anticipate that there will be costs to small businesses. In fact, these rules would decrease the costs for licensees.

5. **Types of small businesses that will directly benefit from the proposed rules:**

   Electrologists and schools of Electrology.

6. **Description of how small business will be adversely impacted by the proposed rules:**

   The Commissioner does not anticipate that there will be adverse impacts to small businesses. On the contrary, these rules amendments will have a positive impact on small businesses.

7. **Alternatives to the proposed rule that will accomplish the same objectives but are less burdensome, and why they are not being proposed:**

   These rules are not burdensome, intrusive, or costly. On the contrary, these rule amendments will have a positive impact on business.

8. **Comparison of the proposed rule with any federal or state counterparts:**

   (a) **Federal:** The Commissioner is not aware of any federal counterparts. Electrologists are not licensed by the federal government.

   (b) **State:** The Commissioner's proposed rule amendments are consistent with the qualifications for licensure in the T.C.A. §63-26-101 *et seq.*

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)

These rule amendments are not expected to have an effect on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 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;

1. Rule 0540-01-.01 – 0540-01-.22. These rule amendments affecting licensees would change the term "Board" to "Commissioner" to reflect that the Electrology Board no longer exists and is now an Electrologists Registry maintained by the Commissioner. Some other language has also been amended to reflect this change as well as correct typographical errors.

2. Rules 0540-03-.01 – 0540-03-.20. These rule amendments affecting schools of electrology would change the term "Board" to "Commissioner" to reflect that the Electrology Board no longer exists and is now an Electrologists Registry maintained by the Commissioner. Some other language has also been amended to reflect this change as well as correct typographical errors.

3. Rule 0540-01-.06, *Fees*: This rule amendment would decrease the renewal fee for electrology instructors from $1120.00 to $520.00, and the renewal fee for electrologists from $1020.00 to $420.00 in subsection (4)(f).

4. Rule 0540-01-.08 *Examinations*: This rule amendment will delete the existing licensure requirements of passage of a practical examination, leaving the requirements of a written examination for both Electrologist licensees and instructor licensees.

(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;

Tennessee Code Annotated §63-26-108 permits the Commissioner to promulgate rules regarding the Electrologists Registry as they are necessary and reasonable for the enforcement of the Electrologists Practice Act.

(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;

Electrologists and Electrology instructors are most affected by these rule amendments. While the community has not be polled as a whole, generally licensees are in favor of fee reductions, and these amendments allow for clarity in reading the rules.

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

There are none that the state is aware of at this time.

(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 fee change portion of this amendment will decrease the Electrologists Registry's annual revenue from $20,400.41 in 2011 to an projected $11,700.00 over the 2012-2013 renewal cycle for approximately $8,190.00 in revenue annually. Absent the change, the projected 2012 revenue is $19,890.00.

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

Caroline Tippens, Assistant General Counsel for the Department of Health.

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

Caroline Tippens, Assistant General Counsel, Department of Health.

(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

220 Athens Way, Plaza One, Suite 210, Nashville, Tennessee 37243, (615) 741-1611, Caroline.Tippens@tn.gov

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

RULES
OF
TENNESSEE DEPARTMENT OF HEALTH ~~BOARD OF ELECTROLYSIS EXAMINERS~~ELECTROLOGISTS REGISTRY
~~DIVISION OF HEALTH RELATED BOARDS~~

CHAPTER 0540-01
GENERAL RULES GOVERNING ELECTROLOGY, ELECTROLOGISTS, AND ELECTROLOGY INSTRUCTORS

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0540-01-.01 DEFINITIONS. As used in these rules, the terms and acronyms shall have the following meanings ascribed to them.

(1) Advertisement - Informational communication to the public in any manner designed to attract public attention to the practice of electrology.

(2) Advertising - Includes, but is not limited to business solicitations, with or without limiting qualifications, in a card, sign, or device issued to a person; in a sign or marking in or on any building, or in any newspaper, magazine, directory, or other printed matter. Advertising also includes business solicitations communicated by individual(s), radio, video, or television broadcasting or any other means designed to secure public attention.

(3) Applicant - Any individual seeking licensure by the ~~Board~~ Commissioner who has submitted an official application and paid the application fee.

(4) 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 or provide. 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.

~~(5) Board - The Tennessee Board of Examiners in Electrolysis.~~

(~~5~~6) ~~Board~~ Registry's administrative office - The office of the administrator assigned to the ~~board~~ Tennessee Electrologists Registry located at 227 French Landing, Suite 300, Heritage Place, MetroCenter, Nashville, TN 37243.

(~~6~~7) Closed File - An administrative action which renders an incomplete or denied file inactive.

(7) Commissioner – The Tennessee Department of Health Commissioner or his or her designee, including but not limited to, the Assistant Commissioner for the Bureau of Health Licensure and Regulation.

(Rule 0540-01-.01, continued)

(8) Contagious - That which can be transmitted by direct or indirect contact.

(9) Course of Instruction - The complete body of prescribed subjects or studies to prepare students for admission to an examination for electrology licensure.

(10) Department - Tennessee Department of Health.

(11) Direct Supervision - Personal, on-site, and visual observation.

(12) Discounted fee - A fee offered or charged by a person or organization for any electrology 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."

(13) Disinfectant - An agent that destroys or neutralizes harmful microorganisms.

(14) Division - The Tennessee Department of Health, Division of Health Related Boards, from which the Commissioner~~Board~~ receives administrative support.

(15) Electrology - The art and practice relating to the removal of hair from the normal skin by the application of an electric current to the hair root by means of a needle or needles, whether the process employs direct electric current or short wave alternating electric current or combination of both, or by F.D.A. approved laser beam process designated for permanent hair removal. Electronic tweezers or non-needle methods are prohibited within the practice of electrology.

(16) Electrology Instructor - An electrologist who is licensed by the ~~Board~~ Commissioner to practice and teach electrology.

(17) Electrology-related - Means workshops, seminars, conferences, classes, or home study courses approved by a state, regional, or local electrology, professional association or institution of higher education.

(18) Electrologist - Any person practicing electrolysis for the permanent removal of hair.

(19) Electrolysis - The process by which the hair is removed from the normal skin by the application of an electric current to the hair root by means of a needle or needles, whether the process employs direct electric current or short wave alternating electric current or combination of both, or by F.D.A. approved laser beam process designated for permanent hair removal.

(20) Equivalent - Comparable but not identical, covering the same subject matter.

(21) Fee - Money, gifts, services, or anything of value offered or received as compensation in return for rendering services; also the required licensure fee(s).

(22) Fee Splitting - The practice of paying commissions to colleagues out of fees received from clients who have been referred by the colleague for rendering services.

(23) General Supervision - Means the availability of the dermatologist or electrology instructor within a time period of 60 minutes or less. General supervision may be provided in person or by telephone.

(~~23~~24) He/she, Him/her - When "he" appears in the text of these rules, the word represents both the feminine and masculine genders.

(Rule 0540-01-.01, continued)

(~~24~~25) HRB - When the acronym "HRB" appears in the text of these rules, it represents Health Related Boards.

(~~25~~26) Infectious - That which is capable of being transmitted without physical contact.

(27) License - Document issued to an applicant who successfully completes the licensure process. The license takes the form of an "artistically designed" license as well as other versions bearing an expiration date.

(28) Licensee - Any person who has been lawfully issued a license to practice electrology. Where applicable this shall include instructors or schools in the State of Tennessee.

(29) Limited - When used in reference to a credential, means to impose conditions and requirements upon the holder of the credential, and to restrict the scope of the holder's practice.

(30~~29~~)Official Transcript - Document certified by an approved school indicating hours and type of course work, examinations, and scores.

(3~~0~~1) Material Fact - Any fact which an ordinary, reasonable and prudent person would need to know or rely upon in making an informed decision concerning the choice of electrologists regarding the utilization of electrology services to serve his or her particular needs.

(3~~1~~2) Notification of Training Form - The form available from the ~~Board's~~ Registry's administrative office which must be completed by a limited license trainee and signed by the supervising dermatologist and received by the ~~Board's~~ Registry's administrative office at least ten days prior to beginning training.

(3~~2~~3) Person - Any individual, firm, corporation, partnership, organization, or body politic.

(3~~3~~4) Recognized education institution - Any educational institution that is accredited by a nationally or regionally recognized educational body.

(3~~4~~5) Registrant - Any person who has been lawfully issued a license.

(36) Registry – The Tennessee Electrologists Registry.

(3~~5~~7) School - An electrology school teaching the art of electrology.

(3~~6~~8) Student - Any person who is not licensed to practice electrology and who is engaged in learning or acquiring a knowledge of electrology. While so learning, the student performs or assists in any of the practices of electrology under the direct supervision of an electrology instructor and only within the school's premises. This definition also applies to those individuals who are engaged in limited license training.

(3~~7~~9) Use of a title or description - To hold himself out to the public as having a particular status by means of stating on signs, mailboxes, address plates, stationery, announcements, business cards, or other means of professional identification.

Authority: *T.C.A. §§~~4-5-202, 4-5-204~~, 63-1-101, 63-1-102, 63-26-101, 63-26-102, 63-26-103, ~~63-26-104,~~ 63-26-108, and 63-26-111.* ***Administrative History:*** *Original rule filed May 3, 1976; effective June 2, 1976. Repeal filed September 29, 1989; effective November 13, 1989. New rule filed December 28, 1995; effective March 12, 1996. Amendment filed September 11, 1998; effective November 25, 1998. Amendment filed October 28, 2002; effective January 11, 2003.*

(Rule 0540-01-.01, continued)

0540-01-.02 SCOPE OF PRACTICE.

(1) The license to practice as an electrologist or electrology instructor is prescribed and limited ~~to~~ by the Tennessee Code Annotated (see especially T.C.A. §§ 63-26-101, et. seq.). The license is conferred by the ~~Tennessee Board of Examiners in Electrolysis~~Commissioner for applicants who have been found to meet established standards.

(2) Any person who possesses a valid unsuspended and unrevoked license issued by the ~~Board of Electrology~~Commissioner has the right to use the title licensed electrologist or licensed electrology instructor. No other person shall assume the title of licensed electrologist or licensed electrology instructor on any work, letter, sign, figure, advertisement, or device to indicate that the person using the same is a licensed electrologist or licensed electrology instructor. The work performed includes electrology or the teaching of electrology services to the public.

(3) Any person who possesses a valid unsuspended and unrevoked limited license has the right to use the title limited licensed electrologist. No other person shall assume this title on any work, letter, sign, figure, advertisement, or device to indicate that the person using the same holds a limited electrologist license.

(4) Any person who holds a limited electrology license must always practice under the direct supervision of a board certified or board eligible dermatologist.

(5) All electrologists and electrology instructors shall comply with the American Electrology Association's Infection Control Standards for the Practice of Electrology, and as they may from time to time be amended, except to the extent that they conflict with the laws of the state of Tennessee or the rules of the ~~Board~~ Commissioner. If there are conflicts with state law or rules, the state law or rules govern the matter. Failure to comply may subject a licensee to disciplinary action pursuant to Rule 0540-01-.15. The American Electrology Association's Infection Control Standards for the Practice of Electrology can be viewed at www.electrology.com/pdf/infection_control.pdf.

Authority: *T.C.A. §§~~4-5-202, 4-5-203, 4-5-204,~~ 63-26-108, 63-26-111, 63-26-112, 63-26-122, and 63-26-123.* ***Administrative History:*** *Original rule filed May 3, 1976; effective June 2, 1976. Repeal filed September 29, 1989; effective November 13, 1989. New rule filed December 28, 1995; effective March 12, 1996. Amendment filed December 20, 2005; effective March 5, 2006.*

0540-01-.03 NECESSITY OF LICENSURE.

(1) Prior to engaging in the practice of electrolysis in Tennessee a person must hold a current Tennessee license.

(2) It is unlawful for any person who is not licensed in the manner prescribed in Title 63, Chapter 26 of the Tennessee Code Annotated to present himself as an electrologist or electrology instructor or to hold himself out to the public as being licensed by using a title on signs, mailboxes, address plates, stationery, announcements, telephone listings, calling cards, or other instruments of professional identification.

(3) Electrology is one of the healing arts and as such the practice is restricted to those persons issued a ~~credential~~ license by the Commissioner~~this Board~~. Persons engaging in the practice of electrology without being licensed or expressly exempted by the laws are in violation of division law, T.C.A. § 63-1-123.

(Rule 0540-01-.02, continued)

(4) No other person shall hold himself out to the public by a title or description of services incorporating the word "electrologist," and he shall not state or imply that he is licensed. The provisions of these rules do not apply to a person if that person is preparing for the practice of electrology under a qualified electrology instructor in a training facility approved by the ~~Board of Electrology~~Commissioner.

(5) Persons engaging in the instruction of electrology without being licensed or expressly exempted by the laws are in violation of division law, T.C.A. § 63-1-123.

Authority: *T.C.A. §§~~4-5-202, 4-5-204,~~ 63-1-123, 63-26-108, 63-26-119, 63-26-122, ~~and~~ 63-26-123 and 63-26-127.* ***Administrative History:*** *Original rule filed May 3, 1976; effective June 2, 1976. Repeal filed September 29, 1989; effective November 13, 1989. New rule filed December 28, 1995; effective March 12, 1996.*

0540-01-.04 QUALIFICATIONS FOR LICENSURE.

(1) To qualify for licensure as an electrologist by examination, the applicant must:

(a) Be at least 18 years of age;

(b) Be of good moral character;

(c) Have completed the following education:

1. Graduation from an accredited high school or completion of equivalent recognized education~~;~~, and

2. Successful completion of an electrology education program approved by the ~~Board~~Commissioner. The electrology training curriculum must have been at least 600 hours (175 theory and 425 clinical practice pursuant to Rule 0540-03-.04). Additionally, the electrology training must have been completed within a twelve (12) month time frame from the date started, and must have been completed prior to taking the practical examination described in Rule 0540-01-.08; and

(d) Pass the electrology examination pursuant to Rule 0540-01-.08.

(2) To qualify for licensure as an electrologist without examination and without licensure in another state, the applicant must:

(a) Meet the requirements of Rule 0540-01-.04 (1) (a) through ~~and (b) and Rule 0540-01-.04 (1)~~ (c)1.;

(b) Provide documentation of having practiced electrology five (5) years or more in a state which does not require a license for such practice by submitting photocopies of paychecks, paycheck stubs, Internal Revenue Service (IRS) Forms W-2 or 1099-Misc., Schedules C or C-EZ for IRS Form 1040, or Schedule K-1 for IRS Form 1065 to verify proof of income (or loss) from the practice of electrology; and

(c) Cause documentation to be submitted from the certifying agency directly to the Registry's administrative office that he/she is a Certified Professional Electrologist (CPE) certified by the American Electrology Association, or is a Clinical Certified Electrologist (CCE) or Clinical Medical Electrologist (CME) certified by the Society of Clinical and Medical Electrologists.

(Rule 0540-01-.04, continued)

(3) To qualify for an electrologist limited licensure the applicant must:

(a) Be at least 18 years of age:

(b) Have completed the following education:

1. Graduation from an accredited high school or completion of equivalent recognized education~~.~~ and

2. Successful completion of at least six hundred (600) hours of electrology practice, under the direct supervision of a dermatologist and pursuant to T.C.A. § 63-26-111. Such training must have been completed within a twelve (12) month time frame from the date started, and must have been completed prior to taking the practical examination described in Rule 0540-01-.08;

(c) Have filed a Notification of Training form with the ~~Board~~ Registry at least ten days prior to beginning the electrology limited licensure training program,

(d) Provide an original written statement from the supervising dermatologist that he provided direct supervision during the limited license training, the provisions of T.C.A. 63-26-108 (b) notwithstanding; and

(e) Pass the electrology examination pursuant to Rule 0540-01-.08.

(4) To qualify for licensure as an electrologist by reciprocity (licensed in another state), the applicant must:

(a) Hold a valid, unrestricted license in another state which has licensing requirements that are substantially equivalent to those of Tennessee, and

(b) Provide adequate evidence that the electrology license held in another state was obtained after passing an examination which is substantially equivalent to the examination required by Rule 0540-01-.08.

(5) To qualify for licensure as an electrology instructor, the applicant must:

(a) Hold a valid, unrestricted electrology license in Tennessee;

(b) Provide an affidavit or evidence of practicing electrology for at least five of the last ten years prior to application;

(c) Successfully complete general education courses pursuant to Rule 0540-01-.04(1)(c)3; and

(d) Pass the electrology instructor examination pursuant to Rule 0540-01-.08.

(6) To qualify for licensure, internationally educated applicants, in addition to meeting the requirements specified in either Rule 0540-01-.04 (1), (3), (4) or (5), must:

(a) Have education credential evaluated by either a professional credentialing agency or an institution of higher education (college or university). The results of such evaluation must be submitted directly to the ~~Board's~~ Registry's administrative office from the evaluator on the evaluator's official letterhead and contain an original signature, and

(Rule 0540-01-.04, continued)

(b) Provide documentation of legal entry into the United States (certified photocopy of visa. naturalization papers or passport).

(7) To qualify for an upgrade from limited license to electrologist license the applicant must:

(a) Hold a current limited license issued by the ~~Board~~Commissioner~~; and~~

(b) Provide evidence of having completed the educational requirements pursuant to Rule 0540-01-.04(1)(c); and

(c) File an application for licensure, pursuant to Rule 0540-01-.05(1) and pay the application, state regulatory and license fees pursuant to Rule 0540-01-.06.

(8) To qualify for licensure as an electrologist limited licensee, electrologist, or electrology instructor, the applicant shall cause to be submitted to the Registry's administrative office directly from the vendor identified in the Registry's licensure application materials, the result of a criminal background check.

Authority: *T.C.A. §§~~4-5-202, 4-5-204,~~63-1-116, 63-26-101, 63-26-108, 63-26-111, 63-26-112, 63-26-113, 63-26-115, 63-26-117, and 63-26-119.* ***Administrative History:*** *Original rule filed May 3, 1976; effective June 2, 1976. Repeal filed September 29, 1989; effective November 13, 1989. New rule filed December 28, 1995; effective March 12, 1996. Amendment filed January 31, 2000; effective April 15, 2000. Amendment filed March 19, 2001; effective June 2, 2001. Amendment filed December 20, 2005; effective March 5, 2006.Amendment filed August 18, 2006; effective November 1, 2006. Amendment filed July 3, 2007; effective September 16, 2007. Amendment filed January 7, 2010; effective April 7, 2010.*

0540-01-.05 PROCEDURES FOR LICENSURE. To become licensed to practice as an electrologist or electrology instructor in Tennessee a person must comply with the following procedures and requirements.

(1) An applicant shall obtain an application form from the ~~Board's~~ Registry's administrative office.

(2) An applicant shall respond truthfully and completely to every question or request for information contained in the form and submit it along with all documentation and fees required by the form and this rule to the ~~Board's~~ Registry's administrative office. It is the intent of this rule that all steps necessary to accomplish the filing of the required documentation be completed prior to filing an application and that all documentation be filed simultaneously.

(3) Applications for licensure will be accepted throughout the year and files which are completed on or before the 30th day prior to an examination date will be processed and if eligible -the individual will be scheduled for the next practical examination. All supporting documents requested in these instructions must be received in the ~~Board~~ Registry office within 30 days of receipt of a deficiency letter or file will be deemed abandoned pursuant to rule 0540-01-.07(4).

(4) An applicant shall pay, at the time of application, the non-refundable application, examination fees and state regulatory fee as provided in Rule 0540-01-.06. Reciprocity (licensed in another state) applicants and applicants for licensure without examination and without licensure in another state shall also pay at the time of application the reciprocity fee as provided in Rule 0540-01-.06.

(5) An applicant shall submit with his application a signed passport photograph taken within the preceding 12 months. (The photograph must be signed by the applicant on the back).

(Rule 0540-01-.05, continued)

(6) An applicant must submit evidence of good moral character and competence. Such evidence shall be two original and recent (within the preceding 12 months) letters attesting to the applicant's character on the signatory's letterhead. The letters can-not be from a relative, his electrology instructor, or the dermatologist who provided the limited license training.

(7) Except for limited licensure applicants and applicants for licensure without examination and without licensure in another state, applicants shall cause to be submitted directly to the ~~Board's~~ Registry's administrative office from an accredited college or university an official transcript verifying that the general education requirements pursuant to Rule 0540-01-.04 (1) (c) 3 have been met.

(8) An applicant shall submit with his application a notarized photocopy of his birth certificate, naturalization documents, or valid driver's license.

(9) Except for limited licensure applicants, electrology instructor applicants, and applicants for licensure without examination and without licensure in another state, applicants shall cause to be submitted directly from the school of electrology an original letter on the school's letterhead and signed by the program director verifying the applicant has successfully completed the school's course of study. To be acceptable, the school's course of study and curriculum must comply with or be equivalent to Tennessee's electrology school requirements pursuant to T.C.A. § 63-26-111 (4) (A) and (B). If the school no longer exists, the following documentation will be reviewed by the ~~board~~ Commissioner for acceptability:~~.~~

(a) A signed original letter from an instructor who was employed by the school at the time the applicant attended verifying that the applicant successfully completed the school's course of study and that the curriculum complied with or was equivalent to T.C.A. § 63-26-111(4)(A); and

(b) A signed original letter from the state Board of Electrology, ~~Electrolysis~~Electrologists Registry, or Department of Education where the school existed that the school's curriculum was at least equivalent to T.C.A. § 63-26-111(4) (A) or (B): or

(c) A signed original letter, on official letterhead, from the American Electrology Association or Society of Clinical and Medical Electrolysis verifying the existence of the school and that the school's curriculum was at least equivalent to T.C.A. § 63-26-111(4)(A) and (B).

(10) An applicant, except an electrology instructor applicant, shall submit an official high school transcript, notarized photocopy of diploma, or equivalency document.

(11) Except for electrology instructor applicants and applicants for licensure without examination and without licensure in another state, applicants shall request that his/her written examination scores, pursuant to Rule 0540-01-.08, be submitted directly to the ~~Board's~~ Registry's administrative office from the American Electrology Association or the Society of Clinical and Medical Electrologists.

(12) A limited license applicant shall submit evidence of completing an electrology training program of at least 600 hours of electrology practice directed by a board certified or board eligible dermatologist, who has documented continuing education in electrology theory and practice.

(13) Examination - All applicants shall pass the examination pursuant to Rule 0540-01-.08.

(14) If an applicant holds or has ever held a license to practice electrology or any other profession in any other state, the applicant shall submit or cause to be submitted the equivalent of a

(Rule 0540-01-.05, continued)

Tennessee certificate of Endorsement from each such licensing board or registry which indicates the applicant either holds a current active license and whether it is in good standing, or held a license which is currently inactive and whether it was in good standing at the time it became inactive.

(15) An applicant for electrology instructor must provide a photocopy of his current Tennessee electrology license.

(16) An applicant for electrology instructor must provide an affidavit or other proof that he has actively engaged in the practice of electrology for at least five of the last ten years prior to application.

(17) An applicant for electrology instructor shall cause to be submitted directly from an accredited college or university to the ~~Board's~~ Registry's administrative office an official transcript verifying that the general education requirement, pursuant to Rule 0540-01-.04(1)(c)3, has been met.

(18) An applicant shall disclose the circumstances surrounding any of the following:

(a) Conviction of any criminal law violation of any country, state, or municipality, except minor traffic violations.

(b) The denial of licensure application by any other state or the discipline of the licensee in any state.

(c) Loss or restriction of certification or licensure privileges.

(d) Any civil suit judgment or civil suit settlement in which the applicant was a party defendant including, without limitation, actions involving malpractice, breach of contract, antitrust activity or any other civil action remedy recognized under the country's or state's statutory, common, or case law.

(e) To the extent known by the applicant, the circumstances involved in any pending investigation of licensure by any state.

(19) An applicant shall cause to be submitted to the ~~Board's~~ Registry's administrative office directly from the vendor identified in the ~~Board's~~ Registry's Licensure application materials, the result of a criminal background check.

(20) Where necessary, all required documents shall be translated into English. Such translation and original document must be certified as to authenticity by the issuing source.

(21) Application review and licensure decisions shall be governed by Rule 0540-01-.07.

(22) Personal resumes are not acceptable and will not be reviewed.

(23) The burden is on the applicant to prove by a preponderance of the evidence that he possesses the qualifications for licensure by examination or reciprocity.

(24) The licensure fee must be received in the ~~Board's~~ Registry's administrative office on or before the 30th day from receipt of notification that the license fee is due. Failure to comply will result in the application file being closed.

(25) A license will be issued after all requirements, including payment of a license fee pursuant to Rule 0540-01-.06, have been met.

(Rule 0540-01-.05, continued)

(26) Information and application for the written examination shall be obtained from the testing agency pursuant to Rule 0540-01-.08(1)(a)2.

Authority: *T.C.A. §~~44-5-202, 4-5-204,~~ 63-1-116, 63-26-108, 63-26-111, 63-26-112, 63-26-115, and 63-26-119.* ***Administrative History:*** *Original rule filed May 3, 1976; effective June 2, 1976. Repeal filed September 29, 1989; effective November 13, 1989. New rule filed December 28, 1995; effective March 12, 1996. Amendment filed September 11, 1998; effective November 25, 1998. Amendment filed August 18, 2006; effective November 1, 2006. Amendment filed July 3, 2007, effective September 16, 2007.*

0540-01-.06 FEES.

(1) The fees are as follows:

(a) Application Fee - A non-refundable fee to be paid by all applicants including those seeking licensure by reciprocity. It must be paid each time an application for licensure is filed.

(b) Endorsement/Verification - A non-refundable fee paid for each certification, verification, or endorsement of an individual's record for any purpose.

(c) Examination (Practical) fee - A non-refundable fee to be paid each time an applicant requests to sit for any initial or retake examination.

(d) License fee - A non-refundable fee to be paid by all applicants, except those seeking licensure by reciprocity, prior to the issuance of the initial license.

(e) License Renewal fee - A non-refundable fee to be paid by all license holders. This fee also applies to individuals who reactivate a retired or lapsed license.

(f) Reciprocity License fee - A non-refundable fee to be paid at the time an application for licensure is filed by reciprocity (licensed in another state) applicants and by applicants for licensure without examination and without licensure in another state. The fee is in addition to the application fee.

(g) Reinstatement fee - A non-refundable fee to be paid each time an individual requests to reinstate an expired license.

(h) Replacement License fee - A non-refundable fee to be paid when a request is made for a replacement when the initial license has been lost or destroyed.

(i) State Regulatory Fee - To be paid by all individuals at the time of application and with all renewal applications.

(2) All fees shall be established, reviewed, and changed by the ~~Board~~Commissioner.

(3) All fees may be paid in person, by mail, or electronically by cash, check, money order, or by credit and/or debit cards accepted by the Division. If the fees are paid by certified, personal or corporate check they must be drawn against an account in a United States Bank, and made payable to the Tennessee ~~Board of Electrolysis Examiners~~ Electrologists Registry.

(4) Fee Schedule: Electrologist Instructor

(Rule 0540-01-.06, continued)

(a)	Application	$ 300.00	$ 350.00
(b)	Endorsement/Verification	$ 50.00	$ 50.00
(c)	Examination - Practical or Re-evaluation	$ 200.00	$ 200.00
(d)	License – Initial	$ 200.00	$ 200.00
(e)	Reinstatement	$ 200.00	$ 200.00
(f)	License Renewal-Biennial	$ 420~~1,020~~.00	$ 520~~1,120~~.00
(g)	Reciprocity License fee	$ 300.00	$ 300.00
(h)	Replacement license	$ 50.00	$ 50.00
(i)	State Regulatory – Biennial	$ 10.00	$ 10.00

Authority: *T.C.A. §§~~4-5-202, 4-5-204,~~ 63-26-108, 63-26-109, 63-26-111, 63-26-112, 63-26-114, 63-26-115, 63-26-116, 63-26-117 and 63-26-120.* ***Administrative History:*** *Original rule filed May 3, 1976; effective June 2, 1976. Repeal filed September 29, 1989; effective November 13, 1989. New rule filed December 28, 1995; effective March 12, 1996. Amendment filed September 11, 1998; effective November 25, 1998. Amendment filed March 19, 2001; effective June 2, 2001. Amendment filed October 28, 2002; effective January 11, 2003. Amendment filed March 18, 2003; effective June 1, 2003. Amendment filed August 18, 2006: effective November 1, 2006. Amendment filed July 3, 2007; effective September 16, 2007. Amendment to rule filed April 29, 2008; to be effective July 13, 2008; however, the House Government Operations Committee stayed the rule on June 24, 2008; new effective date August 16, 2008. Amendment filed February 22, 2010; effective May 23, 2010.*

0540-01-.07 APPLICATION REVIEW, APPROVAL, AND DENIAL.

(1) Each completed electrologist or electrology instructor application received in the ~~Board's~~ Registry's administrative office on or before the 30th day prior to an examination shall be reviewed for eligibility to sit for the examination. ~~Each completed reciprocity application must be received in the Board's administrative office at least 30 days prior to the Board meeting.~~

(2) Applications are not considered completed until all information, including fees, has been received by the Division.

(3) Initial review of all applications to determine whether or not the application file is complete may be delegated to the ~~board's~~ Registry's administrator provided that final approval of all applications is made and ratified by the ~~board~~Commissioner.

(4) If an application is incomplete when received in the ~~Board's~~ Registry's administrative office, or if the ~~Board's~~ Registry's administrator determines additional information is required from an applicant before an initial determination can be made, the ~~Board's~~ Registry's administrative office shall notify the applicant of the information required.

(a) The applicant shall cause the requested information to be received by the ~~Board's~~ Registry's administrative office on or before the sixtieth (60th) day after the notification requesting such information is sent to the applicant.

(b) If the requested information is not timely received, the application file may be considered abandoned and may be closed by the ~~Board's~~ Registry's administrator. If that occurs, the applicant shall be notified that the ~~Board~~ Commissioner will not

(Rule 0540-01-.07, continued)

consider issuance of a license until a new application is received pursuant to the rules governing that process, including another payment of all fees applicable to the applicant's circumstances and submission of such new supporting documents as is required by the ~~Board~~ Commissioner or the ~~Board's~~Registry's administrator.

(5) Upon approval of the application, the applicant will be notified of eligibility to sit for the examination by the administrative office.

(6) If after two (2) attempts, the examination is not passed, the licensure application will be denied and the complete examination may be taken only after the applicant:

(a) Completes an additional electrolysis education program that the ~~Board~~ Commissioner recommends; and

(b) Pays the full examination fee.

(7) If an application is denied~~ and the denial is ratified as such by the Board~~, the action shall become final and the following shall occur:

(a) A notification of the denial shall be sent by the ~~Board's~~ Registry's administrative office by certified mail return receipt requested. Specific reasons for denial will be stated, such as incomplete information, unofficial records, examination failure, or other matters judged insufficient for licensure, and such notification shall contain all the specific statutory or rule authorities for the denial.

(b) The notification, when appropriate, shall also contain a statement of the applicant's right to request a contested case hearing under the Tennessee Administrative Procedures Act (T.C.A. §§4-5-101, et. seq.) to contest the denial and the procedure necessary to accomplish that action.

(c) An applicant has a right to a contested case hearing only if the licensure denial was based on subjective or discretionary criteria.

(d) An applicant may be granted a contested case hearing if licensure denial is based on objective, clearly defined criteria. If after review and attempted resolution by the ~~Board's~~ Registry's administrative staff, the licensure application can not be approved and the reasons for continued denial present a genuine issue of fact and/or law which is appropriate for appeal, an appeal hearing may be requested. Such request must be made in writing to the ~~Board~~ Registry within 30 days of the receipt of the notice of denial from the ~~Board~~Registry.

(8) The ~~Board~~ Commissioner may at its discretion delay a decision on eligibility to take the examination for any applicant for whom the ~~Board~~ Commissioner wishes additional information.

(9) Any person furnishing false information or omitting pertinent information in such application shall be denied the right to sit for the examination. If the applicant has already been licensed before the falseness of such information has been made known to the ~~Board~~Commissioner, such license shall be subject to suspension or revocation by the ~~Board~~Commissioner.

(10) If the ~~Board~~ Commissioner finds ~~it has erred in~~that the issuance of a license was made in error, the ~~Board~~ Commissioner will give written notice by certified mail of its intent to annul the license. The notice will allow the applicant the opportunity to meet the requirements of licensure within 30 days from date of receipt of the notification.

(Rule 0540-01-.07, continued)

(11) If, after an application has been submitted, an applicant desires to change the type of application, a new application with supporting documents and appropriate fees shall be submitted and the first application shall be deemed withdrawn.

Authority: *T.C.A. §§~~4-5-202, 4-5-204,~~ 63-26-106, 63-26-108, 63-26-111, 63-26-112, 63-26-113, 63-26-114, 63-26-118. ~~63-26-119, and~~ 63-26-123 and 63-26-124.* ***Administrative History:*** *Original rule filed May 3, 1976; effective June 2, 1976. Repeal filed September 29, 1989; effective November 13, 1989. New rule filed December 28, 1995; effective March 12, 1996. Amendment filed August 18, 2006; effective November 1, 2006.*

0540-01-.08 EXAMINATIONS.

(1) Electrologist Examination. An individual seeking licensure as an electrologist, either by examination, limited licensure, or reciprocity (licensed in another state) shall be required to pass ~~each of~~ the following written examination~~s~~ prior to licensure:

~~(a) Written examination~~

(a)~~1.~~ The written examination, as adopted by the ~~Board of Examiners in Electrolysis~~Commissioner, is the examination accepted by the American Electrology Association (AEA) or Society of Clinical and Medical Electrologists (SCME). Neither the association nor testing agency may discriminate in any way against any candidate seeking to take or retake an examination.

(b)~~2.~~ Admission to, application for, and the required fee to sit for the written examination are governed by and must be submitted directly to the examination service. Specific information concerning the written examination may be obtained by contacting:

American Electrology Association
106 Oak Ridge Road
Trumbull, Connecticut 06611
Telephone: 203-372-7119

or

Society of Clinical and Medical Electrologists
Post Office Box 211
Bellingham, Massachusetts 02019
Telephone: 508-833-7263

(c)~~3.~~ Administration of the examination shall be arranged directly through AEA or SCME. AEA or SCME will notify each candidate by mail as to the time, date, and place of the examination.

(d)~~4.~~ The passing scores as established and certified by AEA and SCME to the ~~Board~~ Commissioner are adopted by the ~~Board~~Commissioner as constituting successful completion of the written section of the electrology examination.

(e)~~5.~~ Certification of passing the examination must be submitted directly to the ~~Board's~~ Registry's administrative office from AEA and SCME in conjunction with the applicant's filing an application for license with the Commissioner~~this Board~~.

(f)~~6.~~ Prior to submitting an application to the ~~Board~~ Commissioner for license, the individual must have taken and passed either the AEA or SCME examination.

(Rule 0540-01-.08, continued)

~~(b) Practical examination.~~

~~1. The practical examination will consist of an actual demonstration of hair removal on a model provided by the candidate and shall not exceed 30 minutes in duration.~~

~~2. Each applicant is required to bring adequate supplies, equipment, and materials for the practical examination.~~

~~3. Graded criteria shall include model preparation, safety, sterilization, and sanitation measures, techniques, use of instruments, and aftercare.~~

~~4. All applicants for licensure must achieve a 75 percent or higher on each section of the practical examination to pass. The sections will be scored individually, not added or averaged together.~~

(~~c~~) ~~The examination shall be administered only to bona fide candidates for licensure.~~

(2) Electrology Instructor Examination.

(a) Written examination - The written examination will cover all phases of the art of electrology and required school curriculum subjects. The examination shall consist of at least 100 multiple choice questions and not exceed 1.5 hours duration.

~~(b) Practical examination~~

~~1. The practical examination will consist of submission of a complete lesson plan covering one of the required subjects in the Board's approved school curriculum; and~~

~~2. A 20 minute oral, class presentation from a daily lesson plan; and~~

~~3. A practical instructional demonstration of three modalities, as designated by the proctor at the time of the examination, on a model provided by the applicant; and~~

~~4. Submission of a course outline.~~

(~~c~~b) Examination candidates must achieve an ~~75~~eighty-five (85) percent or higher ~~on each section~~ to pass ~~the section. The sections will be scored individually, not added or averaged together.~~

~~(d) The examination shall be administered only to bona fide candidates for licensure.~~

~~(3) Retaking Board Practical Examination~~

~~(a) Candidates shall complete all sections of the examination before being allowed to retake failed sections.~~

~~(b) Candidates seeking to retake a failed Board practical examination, shall be required to pay the re-examination fee, pursuant to Rule 0540-01-06, and submit the request to retake the examination within 30 days from date of notification that he failed the examination.~~

(Rule 0540-01-.08, continued)

~~(c) Upon receipt of the request to retake the examination and the examination fee, the individual will be scheduled to take the next examination occurring at least 30 days after receipt of the retake fee and request.~~

~~(d) Once an applicant begins testing, the applicant shall have two (2) attempts to pass the examination and become licensed.~~

~~(4) Upon being deemed eligible, an applicant shall be admitted to the first regularly scheduled practical examination occurring 30 days or more after the application file is complete.~~

~~(5) The Division will notify each candidate by mail of admission to the practical examination at least ten working days prior to the examination. Such notification will include information regarding the date, location, and time.~~

~~(6) Individuals who do not sit for a scheduled practical examination must submit to the Board's administrative office a letter of explanation and request postponement and rescheduling within five days after the date of the practical examination. Examination fees are not refundable or transferable unless the applicant can show undue hardship, such as death of an immediate family member or severe illness and such requests are subject to Board approval.~~

(~~7~~3) The examination shall be "closed book," and shall be prepared and conducted in English.

~~(8) The practical skills component of the examination must be proctored by a licensed electrologist.~~

~~(9) The Division will notify each candidate by mail of the results of his practical examination scores within ten working days from the examination date. Results will not be given by any other means.~~

~~(10) An applicant for licensure who has not met the requirements as set forth in T.C.A. §63-26-111 and these rules shall be refused permission to take the examination.~~

~~(11) Examinations will be scheduled each January and June. At least one examination will be held each calendar year.~~

(~~12~~4) If an applicant ~~neglects~~ fails to pass the examination under these rules after two (2) attempts, the application will be denied. The complete examination may be taken again only after the applicant:

(a) Completes an additional electrolysis education program that the ~~Board~~ Commissioner recommends~~:~~, and

(b) Pays the full examination fee.

(~~13~~5) Examination Misconduct. The ~~Board of Electrology~~Commissioner may deny a license to practice electrology to an individual who subverts, attempts to subvert, or compromises the licensing examination, including but not limited to:

(a) Violating the security of the examination materials.

(b) Removing from the examination room any of the examination material.

(c) Reproducing a portion of the licensing examination.

(Rule 0540-01-.08, continued)

(d) Aiding in the reproduction of any portion of the licensing examination.

(e) Selling, distributing, buying, or receiving or having unauthorized possession of any portion of a future or current examination.

(f) Copying answers from another individual or permitting answers to be copied by another individual during administration of the examination.

(g) Having in one's possession during the administration of the licensing examination~~,~~ any books, photographs, recording devices, notes, written or printed materials, or data of any kind other than the examination materials distributed.

(h) Taking notes from the examination on a separate piece of paper.

(i) Falsifying or misrepresenting education credentials or other information for admission to the licensing examination by impersonating an examination candidate.

Authority: *T.C.A. §~~44-5-202, 4-5-204,~~ 63-26-108, 63-26-111, 63-26-112, 63-26-113, 63-26-114, 63-26-115, ~~and~~ 63-26-117, 63-26-123.* ***Administrative History:*** *Original rule filed May 3, 1976; effective June 2, 1976. Repeal filed September 29, 1989; effective November 13, 1989. New rule filed December 28, 1995; effective March 12, 1996. Amendment filed July 3, 2007; effective September 16, 2007.*

0540-01-.09 RENEWAL OF LICENSE.

(1) Renewal application

(a) The due date for renewal is the last day of the month in which a licensee's birth date falls pursuant to the Division of Health Related Board's biennial birth date renewal system as contained as the expiration date on renewal certificates.

(b) Methods of Renewal

1. Internet Renewals - Individuals may apply for renewal and pay the necessary fees via the Internet. The application to renew can be accessed at:

www.tennesseeanytime.org

2. Paper Renewals - For individuals who have not renewed their license online via the Internet, a renewal application form will be mailed to each individual licensed by the ~~Board~~ Commissioner to the last address provided to the ~~Board~~Registry's administrative offices. Failure to receive such notification does not relieve the licensee from the responsibility of meeting all requirements for renewal.

(c) To be eligible for renewal, an individual must have completed continuing education requirements provided in Rule 0540-01-.12 and submit to the Division of Health Related Boards on or before the expiration date all of the following:

1. A completed and signed ~~Board~~ renewal application form; and

2. The renewal and state regulatory fees as provided in Rule 0540-01-.06.

(d) Anyone submitting a signed renewal form or letter which is found to be untrue may be subject to disciplinary, action as provided in Rule 0540-01-.15.

(Rule 0540-01-.09, continued)

(e) Licensees who fail to comply with the renewal rules or notification received by them concerning failure to timely renew shall have their licenses processed pursuant to rule 1200-10-01-.10.

(2) Licensees whose licenses have expired as a result of the licensee's failure to renew pursuant to rule 1200-10-01-.10 may be reinstated upon meeting the conditions as provided in paragraph (3).

(3) Reinstatement of an Expired License - Reinstatement of a license that has expired as a result of failure to timely renew in accordance with rule 1200-10-01-.10 may be accomplished upon meeting the following conditions:

(a) Payment of all past due renewal and state regulatory fees; ~~and~~

(b) Payment of the reinstatement fee provided in Rule 0540-01-.06; and

(c) Submission of proof of compliance with continuing education requirements as provided in Rule 0540-01-.12.

(4) Renewal and reinstatement decisions pursuant to this rule may be made by the Registry's administrative staff~~administratively~~ or upon review by ~~any Board member or the Board's designee~~ the Commissioner.

Authority: *T.C.A. §§~~4-3-1011, 4-5-202, 4-5-204,~~ 63-1-107, 63-26-108, 63-26-109, and 63-26-120~~, and 63-26-121.~~* ***Administrative History:*** *Original rule filed May 3, 1976; effective June 2, 1976. Repeal filed September 29, 1989; effective November 13, 1989. New rule filed December 28, 1995; effective March 12, 1996. Amendment filed March 19, 2001; effective June 2, 2001. Amendment filed October 28, 2002; effective January 11, 2003.*

0540-01-.10 SUPERVISION.

(1) Pursuant to T.C.A. §63-26-111, every electrologist practicing with a limited license shall at all times be under the direct supervision of a board certified or board eligible dermatologist.

(2) Every student in a school of electrology shall at all times be under the direct supervision of a licensed electrology instructor and at no time shall any electrologist student be permitted to engage in the treatment of patients unless under the direct super-vision of a licensed electrology instructor.

(3) Every student in training for a limited license shall at all times be under the direct supervision of a board certified or board eligible dermatologist who has registered with the ~~Board of Electrology~~ Tennessee Electrologists Registry to provide training.

Authority: *T.C.A. §§~~4-5-202, 4-5-204,~~ 63-26-108, 63-26-111, and 63-26-119.* ***Administrative History:*** *Original rule filed May 3, 1976; effective June 2, 1976. Repeal filed September 29, 1989; effective November 13, 1989. New rule filed December 28, 1995; effective March 12, 1996.*

0540-01-.11 RETIREMENT AND REACTIVATING OF LICENSE.

(1) A person who holds a current license and does not intend to practice as an electrologist or electrology instructor in Tennessee may apply to convert an active license to retired status. An individual who holds a retired license will not be required to pay the biennial renewal fee.

(Rule 0540-01-.11, continued)

(2) A person who holds an active license may apply for retired status in the following manner:

(a) Obtain, complete, and return an affidavit of retirement form to the ~~Board's~~ Registry's administrative office; or

(b) Submit a letter, which has been signed and notarized, requesting that his license be placed in retirement. Such letter must contain a statement indicating that the licensee understands that, while in retired status, he cannot practice in Tennessee~~, while in retired status~~, cannot in any way indicate or imply that he holds an active Tennessee license,~~,~~ or use within Tennessee any words, letters, titles, or figures which indicate or imply that he is a currently licensed electrologist; and

(c) Submit any documentation which may be required to the ~~Board's~~ Registry's administrative office.

(d) The effective date of retirement will be the date the Affidavit of Retirement is received in the ~~Board's~~ Registry's administrative office.

(3) An individual whose license has been retired may reactivate the license in the following manner:

(a) Submit a written request for licensure reactivation to the ~~Board's~~ Registry's administrative office; and

(b) Pay the current license renewal fees and State regulatory fee as provided in Rule 0540-01-.06. If reactivation is requested prior to the expiration of one (1) year from the date of retirement, the ~~Board~~ Commissioner will require payment of the reinstatement fee and all past due renewal fees as prescribed in Rule 0540-01-.06.

(c) Each electrologist seeking reactivation must verify by signature on a form provided by the ~~Board~~ Commissioner or submit proof of completion of the required continuing education hours pursuant to Rule 0540-01-.12(~~6~~5).

(4) Licensure reactivation applications shall be treated as licensure applications. The ~~Board's~~ Commissioner's review and decisions required by this Rule shall be governed by Rule 0540-01-.07.

Authority: *T.C.A. §§~~4-5-202, 4-5-204, 63-1-107,~~ 63-1-111, 63-26-108, 63-26-109, ~~63-26-120,~~ and 63-26-121.* ***Administrative History:*** *Original rule filed May 3, 1976; effective June 2, 1976. Repeal filed September 29, 1989; effective November 13, 1989. New rule filed December 28, 1995; effective March 12, 1996. Amendment filed October 28, 2002; effective January 11, 2003.*

0540-01-.12 CONTINUING EDUCATION. Electrology continuing education is considered to be those pre-planned/ formalized activities with written learning objectives that are directed at developing and enhancing an individual's professional knowledge base and service delivery skills in the applicable areas of electrology.

(1) Hours Required

(a) Each licensed electrologist and limited license holder must annually attend and complete ten (10) clock hours of electrology related continuing education. An electrologist is exempt from acquiring continuing education hours during the calendar year the license is issued.

(Rule 0540-01-.12, continued)

(b) The ~~Board~~ Commissioner approves courses for only the number of hours contained in the course. The approved hours of any individual course will not be counted more than once in a calendar year toward the required hourly total regardless of the number of times the course is attended or completed by any individual licensee.

(2) Acceptable Continuing Education

(a) Acceptable continuing education shall consists of seminars, workshops, conferences, home study courses or mini-courses oriented to the enhancement of electrology practice and knowledge for the purpose of accomplishing specific written learning objectives which have been sanctioned by a state, regional, or national electrology association. The following constitute acceptable continuing education:

1. Attendance at educational events sponsored by national, state, regional, or local professional associations in the field, or events related to the practice of the profession for which a nationally or regionally accredited institution of higher education grants continuing education hours. Providers who measure continuing education activities in "continuing education units" shall define continuing education units in clock hours.

2. College level course work which is electrology-related taken for credit or audited from a nationally or regionally accredited institution of higher education.

3. Home study courses that are endorsed by a national, state, regional, or local professional association in the field which issues a certificate of successful completion to the licensee.

(b) Certificates issued for the purpose of verifying attendance and compliance of the continuing education obligation must have at least the following information: Licensee's name, social security number, license number, total number of continuing education clock hours awarded, name of professional association endorser, program title, and date(s).

(c) Continuing education credit will not be allowed for the following:

1. Regular work activities.

2. Membership, holding office in, or participation on boards or committees, business meetings of professional organizations, or banquet speeches.

3. Non-electrology course work - for example, computer, finance, or business management.

(3) Course Approval. The ~~Board~~ Commissioner does not pre-approve continuing education programs. It is the licensee's responsibility, using his professional judgment and guidelines provided within these rules, to determine whether or not the programs are applicable and appropriate to his professional development and meet the standards specified in these rules.

(4) Proof of Compliance

(a) The due date for attendance and completion of the required continuing education hours is at the time of submission of the renewal application.

(Rule 0540-01-.12, continued)

(b) Each electrologist must, on a ~~Board provided~~ form provided by the Registry's administrative staff, check a box and/or enter signature which indicates attendance and completion of the required continuing education hours and that such hours were obtained during the calendar year of report.

(c) Each electrologist must retain independent documentation of attendance and completion of all continuing education courses. This documentation must be retained for a period of four years from the end of the calendar year in which the course is completed. This documentation must be produced for inspection and verification, if requested in writing by the ~~Board~~ Commissioner during its verification process.

(d) Acceptable documentation consists of:

1. Certification of the licensee's attendance at continuing education program(s). The certificate must include the following: continuing education program's sponsor, date, clock hours, awarded continuing education hours (continuing education units must be converted to clock hours), program title, licensee's name, license number, and social security number.

2. An original letter on official stationary from the continuing education program sponsor which clearly states completion of the program along with the identifying information specified in Rule 0540-01-.12(4)(e)1.

(e) If a person submits continuing education documentation that is not clearly identifiable as appropriate, the ~~Board~~ Commissioner will request a written description of the training and how it applies to the practice of electrology. If the ~~Board~~ Commissioner determines that the training can not be considered appropriate continuing education, the licensee will be given 90 days to replace the hours not allowed. Those hours will be considered replacement hours and can not be counted during the next renewal period.

(5) Continuing Education for Reactivation of Retired License

(a) An individual whose license has been retired for one (1) year or less will be required to fulfill continuing education requirements as outlined in this rule as a prerequisite to reactivation. Those hours will be considered replacement hours and can not be counted towards meeting the annual requirements of the following year.

(b) Along with the reactivation request, any electrologist who applies for reactivation of a license which has been retired for more than one (1) year must submit proof of attendance and completion of ten (10) hours of ~~Board~~Commissioner-approved continuing education. The electrologist who has retired his license may receive credit for courses completed during the time the license was retired provided that at least five (5) hours were completed within one (1) year preceding the application for reactivation.

(6) Continuing Education for Reinstatement of Expired License

(a) A person whose license has expired may not be reinstated without complying with these requirements.

(b) Continuing education requirements will accumulate at the same rate as for a license which is active.

(Rule 0540-01-.12, continued)

(c) An electrologist who applies for reinstatement of his expired license may receive credit for courses taken during the time the license was expired provided that at least five (5) hours were within twelve (12) months preceding application for reinstatement.

(d) Continuing education hours obtained as a prerequisite for license reinstatement may not be counted toward the continuing education hours required to be obtained before the end of the calendar year of reinstatement.

(7) Extension of Time to Complete or Waiver of Continuing Education Requirements

(a) The ~~Board~~ Commissioner may grant an extension of the deadline to complete the annual continuing education requirements, or the ~~Board~~ Commissioner may grant a waiver of the need to attend and complete the annual continuing education requirements, if it can be shown that compliance is beyond the physical or mental capabilities of the person seeking the extension or waiver.

(b) Extensions or waivers of the deadline will be considered only on an individual basis and may be requested by submitting the following items to the ~~Board~~ Registry's Administrative Office prior to the expiration of the calendar year (December 31) in which the continuing education is due:

1. A written request for an extension or waiver which specifies the deadline sought to be extended or the requirements sought to be waived, and a written and signed explanation of the reason for the request; and

2. Any documentation which supports the reason(s) for the extension or waiver request or which is subsequently requested by the ~~Board~~Commissioner.

(c) A waiver or deadline extension approved by the ~~Board~~ Commissioner is effective only for the calendar year for which either is sought.

(8) Violations - Any licensee who fails to successfully complete or who falsely certifies attendance and completion of the required hours of continuing education may be subject to disciplinary action.

(a) Prior to the institution of any disciplinary proceedings, a letter shall be issued to the last known address of the individual stating the facts or conduct which warrant the intended action.

(b) The licensee has thirty (30) days from the date of notification to show compliance with all lawful requirements for the retention of the license.

(c) Any licensee who fails to show compliance with the required continuing education hours in response to the notice contemplated by subparagraph (7) (a) above may be subject to disciplinary action.

(d) Continuing education hours obtained as a result of compliance with the terms of a ~~Board~~ Commissioner's Order in any disciplinary action shall not be credited toward the continuing education hours required to be obtained in any calendar year.

Authority: *T.C.A. §§~~4-5-202, 4-5-204,~~ 63-26-108, ~~and~~63-26-120, 63-26-121 and 63-26-123.* ***Administrative History:*** *Original rule filed May 3, 1976; effective June 2, 1976. Repeal filed September 29, 1989; effective November 13, 1989. New rule filed December 28, 1995; effective March 12, 1996.*

(Rule 0540-01-.12, continued)

Amendment filed October 28, 2002; effective January 11, 2003. Amendment filed July 3, 2007; effective September 16, 2007.

0540-01-.13 PROFESSIONAL ETHICS. Unprofessional conduct shall include but not be limited to the following:

(1) The electrologist shall accept the responsibility for providing competent electrology service with compassion and respect for human dignity.

(2) The electrologist shall exercise professional judgment in the use of evaluation and treatment procedures, be free to choose whom to serve, and may decline to carry out treatment if he believes the treatment would be contraindicated or unjustified.

(3) The electrologist shall provide the client with accurate information regarding the profession and treatments rendered.

(4) The electrologist shall respect the client's right to privacy and not divulge confidential information without consent of the client or guardian unless required by law.

(5) An electrologist shall deal honestly with clients and colleagues, and strive to report to the Division's investigation office those electrologists deficient in character or competence, or who engage in fraud or deception.

(6) An electrologist shall continue to study, apply, and advance scientific knowledge, make relevant information available to clients, colleagues, and the public, obtain consultation, and use the talents of other health professionals when indicated.

(7) An electrologist shall respect the law and also recognize a responsibility to seek changes in those requirements which are contrary to the best interest of the client.

(8) In the event an applicant or licensee, or other individual has a question regarding legal, ethical, and professional standards, neither the ~~Board~~ Commissioner nor ~~its~~ the Registry's administrative personnel shall consider such questions unless presented with a proper petition for a declaratory order, subject to the requirements set forth in T.C.A. §4-5-223.

(9) A licensee shall keep his ~~board~~ licensure file updated by notifying the ~~Board's~~ Registry's administrative office in writing of changes in preferred mailing address and practice address.

(10) A licensee's office, including instruments and equipment contained therein, shall at all times be kept clean and free from any condition or surroundings that will make or tend to make the office unsanitary or unhygienic.

(11) No licensee may provide services to the public if the licensee has a known infectious or contagious disease unless the licensee takes appropriate precautions and uses safeguards which prevent the spread of the disease to the public.

(12) Services provided by a licensee shall be performed in a manner that is consistent with basic and accepted practice standards and in accordance with all applicable state statutes, ~~Board~~ rules, and local codes and ordinances.

(13) Licensees shall take adequate and necessary precautions to protect the public from health and safety hazards when performing services.

~~(14) Board members shall not:~~

~~(a) Violate the security of the examination materials.~~

~~(b) Remove from the administrative office or examination room any portion of the examination.~~

~~(c) Reproduce a portion of the licensing examination.~~

~~(d) Aid in the reproduction of any portion of the licensing examination.~~

~~(e) Sell, distribute, buy, receive or have unauthorized possession of any portion of a future or current examination.~~

Authority: *T.C.A. §§~~4-5-202, 4-5-204,~~ 4-5-223, 63-26-108, and 63-26-123.* ***Administrative History:*** *Original rule filed May 3, 1976; effective June 2, 1976. Repeal filed September 29, 1989; effective November 13, 1989. New rule filed December 28, 1995; effective March 12, 1996.*

0540-01-.14 RESERVED.

Authority: *T.C.A. §62-2411.* ***Administrative History:*** *Original rule filed May 3, 1976; effective June 2, 1976. Repeal filed September 29, 1989; effective November 13, 1989. Reserved rule filed December 28, 1995; effective March 12, 1996.*

0540-01-.15 DISCIPLINARY ACTIONS AND CIVIL PENALTIES. The purpose of this ~~paragraph~~ rule is to define disciplinary actions that the ~~Board~~ Commissioner may impose on licensees.

(1) Upon a finding by the ~~Board~~ Commissioner that an electrologist or electrology instructor has violated any provision of the Tennessee Electrologists Practice Act (T.C.A. §§ 63-26-101, et. seq.) or the rules promulgated pursuant thereto, the ~~Board~~ Commissioner may impose any of the following actions separately or in any combination deemed appropriate to the offense:

(a) Advisory Censure - This is a written action issued to the electrologist for minor or near infractions. It is informal and advisory in nature and does not constitute a formal disciplinary action.

(b) Formal censure or reprimand - This is a written action issued to an electrologist for one time and less severe violations. It is a formal disciplinary action.

(c) Probation - This is a formal disciplinary action which places an electrologist on close scrutiny for a fixed period of time determined by the ~~Board~~Commissioner. This action may be combined with conditions which must be met before probation will be lifted and/or which restrict the individual's activities during the probationary period.

(d) Licensure Suspension - this is a formal disciplinary action which suspends an individual's right to practice for a fixed period of time. It contemplates the reentry of the individual into the practice under the licensure previously issued. When the ~~Board~~ Commissioner suspends a license, the person may not practice electrology during the period of suspension.

(e) Revocation for cause. This is the most severe form of disciplinary action which removes an individual from the practice of the profession and terminates the certification or licensure previously issued. The ~~Board~~Commissioner, in ~~its~~his or her discretion, may allow reinstatement of a revoked certificate or license upon conditions and after a period of time it deems appropriate. No petition for reinstatement and no

(Rule 0540-01-.15, continued)

new application for certification or licensure from a person whose license was revoked shall be considered prior to the expiration of at least one year unless otherwise stated in the ~~Board's~~ Commissioner's revocation order.

(f) Conditions - These include any action deemed appropriate by the ~~Board~~ Commissioner to be required of an individual disciplined during any period of probation or suspension or as a prerequisite to the lifting of probation or suspension or the reinstatement of a revoked license.

(g) Civil penalty – A monetary disciplinary action assessed by the ~~Board~~ Commissioner pursuant to paragraph (5) of this rule.

(2) Once ordered, probation, suspension, revocation, assessment of a civil penalty, or any other condition of any type of disciplinary action may not be lifted unless and until the licensee petitions the Commissioner, pursuant to paragraph (3) of this rule, ~~and appears before the Board~~ after the period of initial probation, suspension, revocation, or other conditioning has run, and all conditions placed on the probation, suspension, revocation, have been met, and after any civil penalties assessed have been paid.

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

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

1. When the petitioner can prove compliance with all the terms of the previously issued order and is seeking to have an order issued reflecting that compliance; ~~or~~

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

3. When the petitioner can prove compliance with all the terms of the previously issued order and is seeking to have an order issued reinstating a license previously revoked.

(b) Procedures

1. The petitioner shall submit a Petition for Order of Compliance, as contained in subparagraph (c), to the ~~Board's~~ Registry'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

(Rule 0540-01-.15, continued)

to rely upon attesting, under oath, to the compliance. The ~~Board's~~ Commissioner~~consultant~~ and the Registry'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 ~~Board~~ Commissioner authorizes ~~its consultant and~~ the Registry's administrative staff to make an initial determination on the petition and take one of the following actions:

   (i) Certify compliance and ~~have the matter scheduled for presentation to~~ present the petition to the ~~Board~~ Commissioner 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. The petitioner may not submit any additional documentation or testimony other than that contained in his petition as submitted to the Commissioner and the Registry's administrative staff. ~~If the petition is presented to the Board the petitioner may not submit any additional documentation or testimony other than that contained in the petition as originally submitted.~~

4. If the ~~Board~~ Commissioner finds that the petitioner has complied with all the terms of the previous order ~~an~~ the Commissioner shall issue an Order of Compliance~~shall be issued~~.

5. If the petition is denied either initially by the Registry's administrative staff or after ~~presentation to~~review by the ~~Board~~ Commissioner, and the petitioner believes compliance with the order has been sufficiently proven, the petitioner may, as authorized by law, file a petition for a declaratory order pursuant to the provisions of T.C.A. § 4-5-223 and rule 1200-10-01-.11.

(c) Form Petition

Petition for Order of Compliance
~~Board of Electrolysis Examiners~~ Electrologists Registry

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: _____

(Rule 0540-01-.15, continued)

I, ~~T~~the petitioner respectfully represent~~s~~, 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 probation; or

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

Note – You must enclose all documents necessary to prove your request including a copy of the original order. If any of the proof you are relying upon to show compliance is the testimony of any individual, including yourself, you must enclose signed statements from every individual you intend to rely upon attesting, under oath, to the compliance. The ~~Board's consultant and~~ Commissioner's and Registry'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 unlicensed practice civil penalty order, to modify any findings of fact, conclusions of law, or the reasons for the decision contained in the order. It is also not intended to allow a petition for a lesser disciplinary action, or civil penalty other than the one(s) previously ordered. All such provisions of ~~Board~~ disciplinary orders were subject to reconsideration and appeal under the provisions of the Uniform Administrative Procedures Act (T.C.A. §§ 4-5-301, et seq.). This procedure is not available as a substitute for reconsideration and/or appeal and is only available after all reconsideration and appeal rights have been either exhausted or not timely pursued. It is also not available for those who have accepted and been issued a reprimand.

(a) The ~~Board~~ Commissioner will entertain petitions for modification of the disciplinary portion of previously issued orders upon strict compliance with the procedures set forth in subparagraph (b) only when the petitioner can prove that compliance with any one or more of the conditions or terms of the discipline previously ordered is impossible. For purposes of this rule the term "impossible" does not mean that compliance is inconvenient or impractical for personal, financial, scheduling or other reasons.

(b) Procedures

1. The petitioner shall submit a written and signed Petition for Order Modification on the form contained in subparagraph (c) to the ~~Board's~~ Registry's Administrative Office that shall contain all of the following:

(i) A copy of the previously issued order; ~~and~~

(Rule 0540-01-.15, continued)

(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 prove~~s~~ that compliance is impossible. If proof of impossibility of compliance requires testimony of an individual(s), including that of the petitioner, the petitioner must submit signed and notarized statements from every individual the petitioner intends to rely upon attesting, under oath, to the reasons why compliance is impossible. No documentation or testimony other than that submitted will be considered in making an initial determination on, or a final order in response to, the petition.

2. The ~~Board~~ Commissioner authorizes ~~its~~the ~~consultant and~~ Registry's administrative staff in conjunction with legal staff to make an initial determination on the petition and take one of the following actions:

(i) Certify impossibility of compliance and forward the petition to the ~~Office of General Counsel for presentation to the Board as~~ Commissioner as an uncontested matter; or

(ii) Deny the petition~~, after consultation with legal staff~~, if impossibility of compliance with the provisions of the previous order is not proven and notify the petitioner of what proof of impossibility of compliance was either not sufficient or not submitted.

3. ~~If the petition is presented to the Board t~~The petitioner may not submit any additional documentation or testimony other than that contained in the petition as originally submitted to the Commissioner and Registry's administrative staff.

4. If the petition is granted a new order shall be issued reflecting the modifications authorized by the ~~Board~~ Commissioner that ~~i~~the deemed appropriate and necessary in relation to the violations found in the previous order.

5. If the petition is denied either initially by the Registry's administrative staff or after ~~presentation to~~review by the ~~Board~~ Commissioner, and the petitioner believes impossibility of compliance with the order has been sufficiently proven, the petitioner may, as authorized by law, file a petition for a declaratory order pursuant to the provisions of T.C.A. § 4-5-223 and rule 1200-10-01-.11.

(c) Form Petition

Petition for Order Modification
~~Board of Electrolysis Examiners~~ Electrologists Registry

Petitioner's Name: _____
Petitioner's Mailing Address: _____
_____
_____

Petitioner's E-Mail Address: _____
Telephone Number: _____

Attorney for Petitioner: _____
Attorney's Mailing Address: _____
_____

(Rule 0540-01-.15, continued)

Attorney's E-Mail Address: _____
Telephone Number: _____

I, ~~T~~the petitioner respectfully represent~~s~~ that for the following reasons, as substantiated by the attached documentation, the identified provisions of the attached disciplinary order are impossible for me to comply with:

_____
_____
_____
_____
_____
_____
_____
_____

Note – You must enclose all documents necessary to prove your request including a copy of the original order. If any of the proof you are relying upon to show impossibility is the testimony of any individual, including yourself, you must enclose signed and notarized statements from every individual you intend to rely upon attesting, under oath, to the reasons why compliance is impossible. No documentation or testimony other than that submitted will be considered in making an initial determination on, or a final order in response to, this petition.

Respectfully submitted this the _____ day of _____, 20_____.

_____
Petitioner's Signature

(5) Civil Penalties

(a) Purpose - The purpose of this rule is to set out a schedule designating the minimum and maximum civil penalties which may be assessed pursuant to T.C.A. § 63-1-134.

(b) Schedule of Civil Penalties

1. A Type A civil penalty may be imposed whenever the ~~Board~~ Commissioner finds the person who is required to be licensed by the ~~Board~~ Commissioner is guilty of a willful and knowing violation of the Electrologists Practice Act, or regulations promulgated pursuant thereto, to such an extent that there is, or is likely to be an imminent substantial threat to the health, safety, and welfare of an individual client or the public. For purposes of this section, a Type A penalty shall include, but not be limited to, a person who willfully and knowingly is or was practicing as an electrologist without a license from the ~~Board~~Commissioner.

2. A Type B civil penalty may be imposed whenever the ~~Board~~ Commissioner finds the person required to be licensed by the ~~Board~~ Commissioner is guilty of a violation of the Electrologists Practice Act or regulations promulgated 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 ~~Board~~ Commissioner finds the person required to be licensed, permitted, or authorized by the ~~Board~~ Commissioner is guilty of a violation of the Electrologists~~y~~ Practice Act or regulations promulgated thereto, which are neither directly detrimental to clients

(Rule 0540-01-.15, continued)

or the 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 nor more than $1,000.

2. Type B civil penalties may be assessed in the amount of not less than $100 and not more than $500.

3. Type C civil penalties may be assessed in the amount of not less than $50 and not more than $100.

(d) Procedures for Assessing Civil Penalties

1. The Division of Health Related Boards may initiate a civil penalty assessment by filing a Memorandum of Assessment of Civil Penalty. The Division shall state in the memorandum the facts and law upon which it relies in alleging a violation, the proposed amount of the civil penalty and the basis for such penalty. The Division may incorporate the Memorandum of Assessment of Civil Penalty with a Notice of Charges which may be issued attendant thereto.

2. Civil Penalties may also be initiated and assessed by the ~~Board~~ Commissioner during consideration of any Notice of Charges. In addition, the ~~Board~~ Commissioner may, upon good cause shown, assess a type and amount of civil penalty which was not recommended by the Division.

3. In assessing the civil penalties pursuant to these rules the ~~Board~~ Commissioner may consider the following factors:

(i) Whether the amount imposed will be a substantial economic deterrent to the violator;

(ii) The circumstances leading to the violation;

(iii) The severity of the violation and the risk of harm to the public;

(iv) The economic benefits gained by the violator as a result of non-compliance; and.

(v) The interest of the public.

4. All proceedings for the assessment of civil penalties shall be governed by the contested case provisions of T.C.A. Title 4, Chapter 5.

~~(6) Informal Settlements. The Board consultant is authorized to enter into informal settlement agreements pursuant to Rule 0540-01-.19 under which a complaint against an individual may be closed without any disciplinary action. Any matter proposed for informal settlement must be subsequently ratified by the full Board before it will become effective. Such agreement may include any terms deemed appropriate by the Board consultant including, but not limited to:~~

~~(a) Mandatory education program or course attendance.~~

(Rule 0540-01-.15, continued)

~~(b) Submission of reports, records or other appropriate documentation;~~

~~(c) Conditioning of the individual's activities in any manner which affects his practice in Tennessee.~~

Authority: *T.C.A. §§ 4-5-101, ~~4-5-202, 4-5-204,~~ 4-5-217, 4-5-223, ~~63-1-122,~~ 63-1-134, 63-26-108, ~~63-26-121, and~~ 63-26-123 and 63-26-124.* ***Administrative History:*** *Original rule filed December 28, 1995; effective March 12, 1996. Amendment filed October 28, 2002; effective January 11, 2003. Amendment filed November 4, 2005; effective January 18, 2006.*

0540-01-.16 LICENSE.

(1) Issuance - Upon the ~~Board~~ Commissioner determining that an applicant for licensure has successfully met all the requirements as set forth in T.C.A. §§ 63-26-101, et seq., and these rules, the ~~Board~~ Commissioner shall issue the applicant a license in the classification for which he is qualified to practice.

(2) Display of License

(a) The ~~Board~~ Commissioner shall furnish a license to each person which shall be posted in a conspicuous place in the primary place of business.

(b) Any licensee practicing away from his place of business shall carry an identification license issued by the ~~Board~~ Commissioner and shall show it to the person upon whom electrolysis services are being performed or the person in charge.

(c) It is unlawful for any person to practice electrology for compensation unless his license is displayed in a conspicuous place within the business or clinic.

(3) Replacement License. The ~~Board~~ Commissioner will replace a lost, damaged, or destroyed license (artistically designed "wall" license) or renewal certificate upon receipt of an affidavit detailing the loss or destruction of the original license or renewal certificate. The affidavit must be accompanied by the damaged license or renewal certificate, if available, and the appropriate fee, pursuant to Rule 0540-01- .06.

(4) Display of ~~Board~~ the Electrologists Registry Law and Rules and Regulations. Each licensee shall routinely obtain a copy of the ~~Board's~~ Electrologists Registry's laws and rules to be posted in a conspicuous place within the business or clinic.

(5) Requests for verification of license must be made in writing to the ~~Board's~~ Registry's administrative office.

Authority: *T.C.A. §§~~4-5-202, 4-5-204,~~ 63-1-104, 63-1-105, 63-1-106, 63-1-108, 63-1-109, 63-26-108, 63-26-109, and 63-26-118.* ***Administrative History:*** *Original rule filed December 28, 1995; effective March 12, 1996.*

0540-01-.17 CHANGE OF NAME AND/OR ADDRESS.

(1) Change of Name. An individual registered with the ~~Board~~ Commissioner shall notify the ~~Board~~ Registry's administrative office in writing within 30 days of a name change. The notice shall provide both the old and new names and must reference the individual's profession, ~~Board~~Registry, social security and license numbers.

(2) Change of Address. Each person holding a license who has had a change of address shall file in writing with the ~~Board~~ Registry's administrative office his current mailing address, giving both old and new addresses. Such requests should be received in the ~~Board's~~ Registry's administrative office no later than 30 days after such change has occurred and must reference the individual's name, profession, social security number and license number.

Authority: *T.C.A. §§~~4-5-202, 4-5-204,~~ 63-1-106, 63-1-108, ~~and~~ 63-26-108 and 63-26-118.* ***Administrative History:*** *Original rule filed December 28, 1995; effective March 12, 1996.*

0540-01-.18 MANDATORY RELEASE OF CLIENT RECORDS.

(1) Upon request from a client or the client's authorized representative, an individual registered with ~~this~~the Commissioner ~~Board~~ shall provide a complete copy of the client's records or summary of such records which were maintained by the provider.

(2) It shall be the provider's option as to whether copies of the records or a summary will be given to the client.

(3) Requests for records shall be honored by the provider in a timely manner.

(4) The individual requesting the records shall be responsible for payment of a reasonable fee to the provider for copying and mailing of the records.

Authority: *T.C.A. §§4-5-20l, ~~4-5-202, 4-5-204,~~ 63-2-101, 63-2-102, and 63-26-108.* ***Administrative History:*** *Original rule filed December 28, 1995; effective March 12, 1996.*

0540-01-.19 ~~BOARD MEETINGS, OFFICERS, CONSULTANTS~~COMMUNICATION, RECORDS, COMPLAINTS, DECLARATORY ORDERS, AND SCREENING PANELS.

~~(1) Board Meetings~~

~~(a) The time, place, and frequency of board meeting shall be at the discretion of the Board except at least two meeting shall be held annually.~~

~~(b) Special meetings are called at the discretion of the Chairperson or at the request of three members of the Board.~~

~~(c) Three members of the Board shall at all times constitute a quorum.~~

~~(d) All meetings of the Board shall be open to the public. Minutes of the Board meetings and all records, documents, applications, and correspondence will be maintained in the Board's administrative office.~~

~~(2) The Board shall elect annually the following officers/and a consultant:~~

~~(a) Chairperson - who shall preside at all board meetings.~~

(Rule 0540-01-.19, continued)

~~(b) Secretary – who, along with the Board administrator, shall be responsible for correspondence from the Board.~~

~~(c) Consultant – who, is a non-Board member, and shall be responsible for reviewing complaints and may serve on special committees as assigned by the Board.~~

~~(3) Board Conflict of Interest – Any Board member having an immediate personal, private, or financial interest in any matter pending before the Board shall disclose the fact in writing and shall not vote upon such matter.~~

(14) ~~The Board~~A Registry Consultant ~~is~~may be appointed by the ~~Board~~ Commissioner and vested with the authority to do the following acts:

(a) ~~Decide~~ Recommend whether and what type disciplinary actions should be instituted upon complaints received or investigations conducted by the Division.

(b) ~~Decide~~ Recommend whether and under what terms a complaint, case, or disciplinary action might be informally settled. Any matter proposed for informal settlement must be subsequently ratified by the ~~full Board~~Commissioner before it will become effective.

~~(c) Make determinations, subject to subsequent ratification by the full Board regarding the following:~~

~~1. Petitions for stay of Board Orders pursuant to Rule 0540-01-.15.~~

~~2. Approve continuing education courses pursuant to Rule 0540-01-.12.~~

~~(d) Undertake any other matters authorized by a majority vote of the Board.~~

(~~5~~2) All requests, applications, notices, complaints, other communications and correspondence, or any requests or inquiries requiring the Commissioner's decision or official action shall be directed to the ~~Board's~~ Registry's administrative office. ~~Any requests or inquiries requiring a Board decision or official Board action except documents relating to disciplinary actions, declaratory orders or hearing requests must be received fourteen (14) days prior to a scheduled Board meeting and will be retained in the administrative office and presented to the Board at the Board meeting. Such documents not timely received shall be set over to the next Board meeting.~~

~~(6) Records and Complaints~~

~~(a) Minutes of the board meetings and a~~All records, documents, applications, and correspondence will be maintained in the ~~Board's~~ Registry's administrative office.

~~(b) All records of the Board~~Commissioner's decisions, except those made confidential by law, are open for inspection and examination, under the supervision of an employee of the Division at the ~~Board's~~ Registry's administrative office.

~~(c) Copies of public records shall be provided to any person upon payment of a fee.~~

~~(d) All complaints should be directed to the Division's Investigation Section.~~

(~~7~~3) Requests for Verification of Licensure must be made in writing to the ~~Board's~~ Registry's administrative office.

(Rule 0540-01-.19, continued)

(~~8~~4) Declaratory Orders - The ~~Board~~ Commissioner adopts, as if fully set out herein, rule 1200-10-01-.11, of the Division of Health Related Boards and as it may from time to time be amended, as its rule governing the declaratory order process. All declaratory order petitions involving statutes, rules, or orders within the jurisdiction of the ~~Board~~ Commissioner shall be addressed by the ~~Board~~ Commissioner pursuant to that rule and not by the Division. Declaratory Order Petition forms can be obtained from the ~~Board's~~ Registry's administrative office.

(~~5~~9) Screening Panels - The ~~Board~~ Commissioner adopts, as if fully set out herein, rule 1200-10-01-.13, of the Division of Health Related Boards and as it may from time to time be amended, as ~~its~~ the rule governing the screening panel process.

~~(10) The Board authorizes the member who chaired the Board for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-04-01-.18 regarding petitions for reconsiderations and stays in that case.~~

Authority: *T.C.A. §§~~4-5-202, 4-5-204,~~ 63-1-138, 63-26-108, and 63-26-123.* ***Administrative History:*** *Original rule filed December 28, 1995; effective March 12, 1996. Amendment filed July 29, 1999; effective October 9, 1999. Amendment filed July 3, 2007; effective September 16, 2007.*

0540-01-.20 ADVERTISING.

(1) Policy Statement. The lack of sophistication on the part of many of the public concerning electrology services, the importance of the interests affected by the choice of an electrologist or electrology instructor, and the foreseeable consequences of unrestricted advertising by electrologists which is recognized to pose special possibilities for deception require that special care be taken by electrologists to avoid misleading the public. The electrologist must be mindful that the benefits of advertising depend upon its reliability and accuracy. Since advertising by an electrologist is calculated and not spontaneous, reasonable regulations designed to foster compliance with appropriate standards serve the public interest without impeding the flow of useful, meaningful information to the public.

(2) Advertising Fees and Services

(a) 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~~but the advertisement must disclose the factors used in determining the actual fee~~,~~ to the extent necessary to prevent deception of the public.

(c) Discount fees may be advertised if:

1. The discount fee is in fact lower than the licensee's customary or usual fee charged for the service, and

2. The licensee provides the same quality and components of service and material at the discounted fee that are normally provided at the regular non-discounted fee for that service.

(d) Related Services and Additional Fees. Related services which may be required in conjunction with the advertised services for which additional fees will be charged, must be identified as such in any advertisement.

(Rule 0540-01-.20, continued)

(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.

(3) Advertising Content. The following acts or omissions in the context of advertisement by any licensee shall constitute unethical and unprofessional conduct, and subject the licensee to disciplinary action pursuant to T.C.A. §63-26-123(4):

(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~~ or that convey the message that one licensee is better than another when superiority of services, personnel, materials or equipment cannot be substantiated.

(b) The misleading use of an unearned credential in any advertisement.

(c) Promotion of professional services which the licensee knows or should know are beyond the licensee's ability to perform.

(d) Techniques of communication which intimidate or 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 of competency of a service or treatment offered by a licensee that is not reasonably verifiable.

(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 licensee can achieve.

(h) The communication of personal identifiable facts, data, or information about a client without first obtaining client consent.

(i) Any misrepresentation of material fact.

(j) The knowing suppression, omission, or concealment of any material facts or law without which the advertisement would be deceptive or misleading.

(k) Statements concerning the benefits or other attributes of electrology 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

(Rule 0540-01-.20, continued)

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 electrology treatment.

(m) Failure to comply with the rules governing advertisement of electrology fees and services~~.~~ or advertising records.

(n) The use of bait and switch advertisements. Where the circumstances indicate bait and switch advertising, the ~~Board~~ Commissioner may require the licensee to furnish data or other evidence pertaining to those sales at the advertised fee as well as other sales.

(o) Misrepresentation of a licensee's credentials, training, experience, or ability.

(p) Failure to include the individual licensee's name, address, and telephone number in any advertisement.

(q) Failure to disclose the fact of giving compensation or anything of value to a 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, the use of the name of any licensee 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 electrology in association with one or more of the present occupants if the status of the former associate is disclosed in any advertisement or sign.)

(s) Stating or implying that a certain licensee provides all services when any such services are performed by another licensee.

(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.

(4) Advertising Records and Responsibility

(a) Each licensee who is a principal partner, or officer of a firm or entity identified in any advertisement, is jointly and severally responsible for the form and content of any advertisement. This provision shall also include any licensed professional employees acting as an agent of such firm or entity.

(b) Any and all advertisements are presumed to have been approved by the licensee named therein.

(c) A recording of every advertisement communicated by electronic media, and a copy of every advertisement communicated by print media, and a copy of any other form of advertisement, shall be retained by the licensee for a period of two years from the last date of broadcast or publication and be made available for review upon request by the ~~Board~~ Commissioner or the ~~its designee~~Registry's administrative office.

(d) At the time any type of advertisement is placed, the licensee must possess and rely upon information which, when produced, would substantiate the truthfulness of any

(Rule 0540-01-.20, continued)

assertion, omission, or representation of material fact set forth in the advertisement or public communication.

(5) Advertisements for electrology services to be rendered by a limited license electrologist must clearly indicate that the electrology services are being rendered by a limited license electrologist under the direct supervision of a board certified or board eligible dermatologist.

(6) Use of Titles - Any person who possesses a valid, current and active license issued by the ~~Board~~ Commissioner that has not been suspended or revoked has the right to use the title "electrologist" and to practice electrology, as defined in T.C.A. §§ 63-26-102. Any person licensed by the ~~Board~~ Commissioner to whom this rule applies must use the title authorized by this rule in every "advertisement" [as that term is defined in rule 0540-01-.01(1)] he or she publishes. ~~or t~~The failure to do so will constitute an omission of a material fact which makes the advertisement misleading and deceptive and subjects the electrologist to disciplinary action pursuant to T.C.A. § 63-26-123.

(7) Severability. It is hereby declared that the sections, clauses, sentences and part of these rules are severable, are not matters of mutual essential inducement, and any of them shall be rescinded if these rules would otherwise be unconstitutional or ineffective. If any one or more sections, clauses, sentences or parts shall for any reason be questioned in court, and shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provision or provisions so held unconstitutional or invalid, and the applicability or invalidity of any section, clause, sentence, or part in any one or more instance shall not be taken to affect or prejudice in any way its applicability or validity in any other instance.

Authority: *T.C.A. §§~~4-5-202, 4-5-203, 4-5-204, 63-1-116,~~ 63-1-145, 63-26-108, 63-26-111, 63-26-119, and 63-26-123.* ***Administrative History:*** *Original rule filed December 28, 1995; effective March 12, 1996. Amendment filed April 29, 2008; effective July 13, 2008.*

0540-01-.21 ELECTROLOGY LIMITED LICENSURE.

(1) Whenever a person holding a limited electrologist license changes employers, he is responsible for notifying the ~~Board's~~ Registry's administrative office in writing within ten (10) days of such change.

(2) The limited license holder shall notify the ~~Board's~~ Registry's administrative office in writing prior to beginning employment. Such notification must contain the following information: The limited license holder's name, limited license number, limited license expiration date, social security number, business address and telephone number. This notification must be received in the ~~Board's~~ Registry's administrative office on or before the tenth (10th) day following employment.

(3) In conjunction with the limited license holder's notification of employment, the supervising dermatologist shall submit to the ~~Board's~~ Registry's administrative office an affidavit that he accepts responsibility for providing direct supervision to the limited license holder.

(4) Upon termination of employment, the dermatologist and limited license holder shall notify the ~~Board~~ Registry's administrative office providing the following information: Limited license holder's name, license number, social security number, and date of termination.

Authority: *T.C.A. §§~~4-5-202, 4-5-204,~~ 63-26-108, 63-26-111, and 63-26-119.* ***Administrative History:*** *Original rule filed December 28, 1995; effective March 12, 1996.*

0540-01-.22 CONSUMER RIGHT-TO-KNOW REQUIREMENTS.

(1) Malpractice reporting requirements. The threshold amount below which medical malpractice judgments, awards, or settlements in which payments are awarded to complaining parties need not be reported pursuant to the "Health Care Consumer Right-To-Know Act of 1998" shall be ten thousand dollars ($10,000).

(2) Criminal conviction reporting requirements. For purposes of the "Health Care Consumer Right-To-Know Act of 1998", the following criminal convictions must be reported:

(a) Conviction of any felony.

(b) Conviction or adjudication of guilt of any misdemeanor, regardless of its classification, in which any element of the misdemeanor involves any one or more of the following:

1. Sex.

2. Alcohol or drugs.

3. Physical injury or threat of injury to any person.

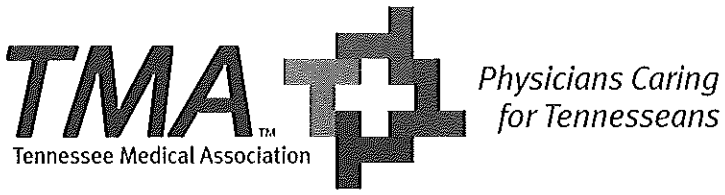
4. Abuse or neglect of any minor, spouse or the elderly.

5. Fraud or theft.

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

Authority: *T.C.A. §§~~4-5-202, 4-5-204,~~ 63-26-108, and 63-51-101 et seq.* ***Administrative History:*** *Original rule filed August 24, 2000; effective November 7, 2000.*

01-16-13



January 3, 2013

RECEIVED
JAN 07 2013
BY: .....

Administrator
Tennessee Electrologists Registry
227 French Landing Drive, Suite 300
Nashville, Tennessee 37243

RE: Petition for Rulemaking Hearing on Proposed Electrology Rule

Dear Administrator:

The Tennessee Medical Association (TMA) is formally filing a petition for a rulemaking hearing pursuant to T.C.A. § 4-5-201(a) regarding proposed revisions to the agency's rules published in the December 15, 2012 *Tennessee Administrative Register.* TMA is a corporation of more than twenty-five (25) members whose members are Tennessee physician licensees, many of whom are dermatologists. Therefore, many of our members would be affected by a change in this rule because they might be called upon to conduct "general supervision" of an electrologist. The Tennessee Electrologists Registry has the authority to amend its rules pursuant to T.C.A. §§ 4-5-202 and 207. The American Society for Dermatologic Surgery Association (ASDSA), an organization with more than twenty-five (25) Tennessee dermatologist members, joins the TMA in this petition.

The specific reason for our organizations' petition for a rulemaking hearing is because we oppose promulgation of proposed rule 0540-01-.01(23), "General Supervision" without a reference that we can find to *any* activity in the rules or practice act stating exactly what a dermatologist must supervise. The current electrologist practice act is devoid of any reference to the term "General Supervision". The current electrologist rules at 0540-02-.01 *et seq* are similarly without reference to "General Supervision" except to the extent it is included in the .01 definitions section under another definition. Finally, the term is not included in any other section of the published proposed rules except in the definitions section.

The bottom line is that if this rule was adopted by the Agency, the term "General Supervision" would be a definition placed in rule to instruct dermatologists to be available to their supervisee electrologists while such electrologists are engaged in unspecified activities. Thus, the TMA and ASDSA request that the Agency withdraw proposed rule 0540-01-.01(23) until such term can be attached to an actual activity. In the alternative, we requests that the Agency hold a rulemaking hearing so we can formally lodge our opposition to a proposed definition that is not elsewhere used. We cannot imagine that the Attorney General would approve the adoption of a definition that has no reference in the practice act or rules.

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We appreciate the Agency's consideration of our request.

Sincerely,

Yarnell Beatty
Vice-President, Advocacy

Lisle Soukup
Director of Advocacy and Public Policy

cc: Jane Young, Esq.

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