

Department of Health  
Rulemaking Hearing Rules  
Board of Osteopathic Examination's  
Council of Certified Professional Midwifery  
Division of Health Related Boards

Chapter 1050-5  
General Rules Governing Certified Professional Midwives

Amendments

Rule 1050-5-.15 Disciplinary Grounds, Actions, and Civil Penalties, is amended by deleting subparagraph (1) (g) in its entirety and substituting instead the following language, and is further amended by adding the following language as subparagraph (1) (h), and is further amended by adding the following language as new paragraphs (2) and (3) and renumbering the remaining paragraphs accordingly, so that as amended, the new subparagraphs (1) (g) and (1) (h), and the new paragraphs (2) and (3) shall read:

- (1) (g) Civil penalty – A monetary disciplinary action assessed by the Council and the Board pursuant to paragraph (4) of this rule.
- (1) (h) 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 certificate holder petitions, pursuant to paragraph (2) of this rule, and appears before the Council 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.
- (2) 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 uncertified practice civil penalty order, and wishes or is required to obtain an order reflecting that compliance.
  - (a) The Council and Board 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 certificate previously revoked.

(b) Procedures

1. The petitioner shall submit a Petition for Order of Compliance, as contained in subparagraph (c), to the Council'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 Council's consultant and 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 Council authorizes its consultant and 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 the Council and Board as an uncontested matter; or
  - (ii) Deny the petition, after consultation with legal staff, if compliance with all of the provisions of the previous order is not proven and notify the petitioner of what provisions remain to be fulfilled and/or what proof of compliance was either not sufficient or not submitted.

3. If the petition is presented to the Council and Board the petitioner may not submit any additional documentation or testimony other than that contained in the petition as originally submitted.
4. If the Council and Board find that the petitioner has complied with all the terms of the previous order an Order of Compliance shall be issued.
5. If the petition is denied either initially by staff or after presentation to the Council or Board and the petitioner believes compliance with the order has been sufficiently proven the petitioner may, as authorized by law, file a petition for a declaratory order pursuant to the provisions of T.C.A. § 4-5-223 and rule 1200-10-1-.11.

(c) Form Petition

Petition for Order of Compliance  
Board of Osteopathic Examination's  
Council of Certified Professional Midwifery

Petitioner's Name: \_\_\_\_\_

Petitioner's Mailing Address: \_\_\_\_\_

\_\_\_\_\_

Petitioner's E-Mail Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Attorney for Petitioner: \_\_\_\_\_

Attorney's Mailing Address: \_\_\_\_\_

\_\_\_\_\_

Attorney's E-Mail Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

The petitioner respectfully represents, as substantiated by the attached documentation, that all provisions of the attached disciplinary order have been complied with and I am respectfully requesting: (circle one)

1. An order issued reflecting that compliance; or
2. An order issued reflecting that compliance and lifting a previously ordered suspension or probation; or
3. An order issued reflecting that compliance and reinstating a certificate 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 Council’s consultant and 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\_\_\_\_\_.

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Petitioner’s Signature

- (3) Order Modifications - This procedure is not intended to allow anyone under a previously issued disciplinary order, including an uncertified 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 Council and Board 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 Council and Board 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 Council’s Administrative Office that shall contain all of the following:

- (i) A copy of the previously issued order; and
  - (ii) A statement of why the petitioner believes it is impossible to comply with the order as issued; and
  - (iii) A copy of all documents that proves that compliance is impossible. If proof of impossibility of compliance requires testimony of an individual(s), including that of the petitioner, the petitioner must submit signed and notarized statements from every individual the petitioner intends to rely upon attesting, under oath, to the reasons why compliance is impossible. No documentation or testimony other than that submitted will be considered in making an initial determination on, or a final order in response to, the petition.
2. The Council authorizes its consultant and administrative staff to make an initial determination on the petition and take one of the following actions:
  - (i) Certify impossibility of compliance and forward the petition to the Office of General Counsel for presentation to the Council and Board 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 Council and Board the petitioner may not submit any additional documentation or testimony other than that contained in the petition as originally submitted.
4. If the petition is granted a new order shall be issued reflecting the modifications authorized by the Council and Board that they deemed appropriate and necessary in relation to the violations found in the previous order.
5. If the petition is denied either initially by staff or after presentation to the Council or Board and the petitioner believes impossibility of compliance with the order has been sufficiently proven the petitioner may, as authorized by law, file a petition for a declaratory order pursuant to the provisions of T.C.A. § 4-5-223 and rule 1200-10-1-.11.

(c) Form Petition

Petition for Order Modification  
Board of Osteopathic Examination's  
Council of Certified Professional Midwifery

Petitioner's Name: \_\_\_\_\_

Petitioner's Mailing Address: \_\_\_\_\_

\_\_\_\_\_

Petitioner's E-Mail Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Attorney for Petitioner: \_\_\_\_\_

Attorney's Mailing Address: \_\_\_\_\_

\_\_\_\_\_

Attorney's E-Mail Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Note – You must enclose all documents necessary to prove your request including a copy of the original order. If any of the proof you are relying upon to show impossibility is the testimony of any individual, including yourself, you must enclose signed and notarized statements from every individual you intend to rely upon attesting, under oath, to the reasons why compliance is impossible. No documentation or testimony other 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\_\_\_\_.

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Petitioner's Signature

Authority: T.C.A. §§ 4-5-202, 4-5-204, 4-5-217, 4-5-223, 63-1-122, 63-9-101, 63-29-107, 63-29-114, and 63-29-116.

The rulemaking hearing rules set out herein were properly filed in the Department of State on the 16th day of December, 2005, and will become effective on the 1st day of March, 2006.