

**RULES
OF
THE TENNESSEE BOARD OF OSTEOPATHIC EXAMINATION'S
COUNCIL OF CERTIFIED PROFESSIONAL MIDWIFERY
DIVISION OF HEALTH RELATED BOARDS**

**CHAPTER 1050-5
GENERAL RULES GOVERNING CERTIFIED PROFESSIONAL MIDWIVES**

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1050-5-.01 DEFINITIONS. As used in this chapter, the following terms and acronyms shall have the following meaning ascribed to them:

- (1) Administrative Office - The office of the administrator assigned to the Board and Council located at 665 Mainstream Drive, Nashville, TN 37243.
- (2) CPR - Cardiopulmonary resuscitation.
- (3) Division - The Division of Health Related Boards, Tennessee Department of Health, from which the Council receives administrative support.
- (4) NARM - The North American Registry of Midwives.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-9-101, 63-29-101 et seq., and 63-29-116. **Administrative History:** Original rule filed February 4, 2002; effective April 20, 2002. Amendment filed April 8, 2003; effective June 22, 2003.

1050-5-.02 SCOPE OF PRACTICE. The scope of midwifery practice shall be as set forth in Tennessee Code Annotated, Sections 63-29-102 (9) and (10) and 63-29-115. As an aid to interpretation and application of that scope of practice, the Council adopts, as if fully set out herein, and as it may from time to time be amended, the "Practice Guidelines" issued by the Tennessee Midwives Association. In the event that the "Practice Guidelines are in conflict with any portion of Tennessee Code Annotated §§ 63-29-101, et seq. (Midwifery Practice Act) the "Midwifery Practice Act" shall govern. Information on how to acquire a copy of the "Practice Guidelines" may be obtained by contacting the Board's administrative office.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-9-101, 63-29-102, 63-29-115, and 63-29-116. **Administrative History:** Original rule filed February 4, 2002; effective April 20, 2002.

1050-5-.03 USE OF TITLES. Any person who possesses a valid, unsuspended and unrevoked certificate issued by the Council and the Board has the right to use the title "Certified Professional Midwife (CPM-TN)", as defined in T.C.A. § 63-29-102. Violation of this rule or statutes regarding use of titles, T.C.A. §§ 63-29-102 and 63-29-109, shall constitute unprofessional conduct and subject the certificate holder to disciplinary action.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-146, 63-9-101, 63-29-102, 63-29-107, 63-29-108, 63-29-109, and 63-29-114. **Administrative History:** Original rule filed March 8, 2007; effective May 22, 2007.

1050-5-.04 RESERVED.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-9-101, 63-29-101 et seq., 63-29-108, and 63-29-116. **Administrative History:** Original rule filed August 21, 2001; effective November 4, 2001. Repeal and new rule filed February 4, 2002; effective April 20, 2002.

1050-5-.05 CERTIFICATION PROCESS.

- (1) Applications
 - (a) Any individual who desires to practice as a certified professional midwife in Tennessee shall apply for certification to the Council on forms provided by the Council, and shall submit the fees required by rule 1050-5-.06.
 - (b) 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.
 - (c) Application review and certification decisions shall be governed by rule 1050-2-.05, where applicable.
- (2) Requirements
 - (a) An applicant shall have current certification from the North American Registry of Midwives. It is the applicant's responsibility to request verification of current NARM certification be submitted directly from NARM to the Council's administrative office.
 - (b) An applicant shall have current certification in CPR, including infant or neonatal resuscitation. The applicant shall submit a notarized photocopy of current certification in CPR with his/her application for certification as a CPM-TN.
 - (c) An applicant shall submit a clear and recognizable, recently taken, bust photograph which shows the full head, face forward from at least the top of the shoulders up.
 - (d) An applicant shall submit evidence of good moral character. Such evidence shall include at least two (2) letters attesting to the applicant's character. One (1) of the required letters shall be submitted from a health care professional on the signator's letterhead. No letters from family members or relatives shall be accepted.
 - (e) If an applicant has ever been authorized to practice as a professional midwife in any other state or country, the applicant shall cause to be submitted the equivalent of a Tennessee Certificate of Endorsement from each such licensing agency which indicates the applicant either holds a current or active authorization to practice as a professional midwife and whether it is in good standing, or has held an authorization to practice as a professional midwife which is currently inactive and whether it was in good standing at the time it became inactive. It is the applicant's responsibility to request this information be submitted directly from each such licensing agency to the Council's administrative office.
 - (f) An applicant shall disclose the circumstances surrounding any of the following:
 1. Conviction of any criminal law violation of any country, state or municipality, except minor traffic violations.
 2. The denial of professional licensure/certification application by any other state or the discipline of any professional licensure/certification in any state.

(Rule 1050-5-.05, continued)

3. Loss or restriction of professional licensure/certification.
 4. 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.
 5. Failure of any professional licensure or certification examination.
- (g) An applicant shall cause to be submitted to the Council's administrative office directly from the vendor identified in the Council's certification application materials, the result of a criminal background check.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-9-101, 63-9-111, 63-29-107, 63-29-114, and 63-29-116.
Administrative History: Original rule filed February 4, 2002; effective April 20, 2002. Amendment filed March 8, 2007; effective May 22, 2007.

1050-5-.06 FEES.

- | | |
|---|------------|
| (1) Application fee | \$1,000.00 |
| (2) Biennial renewal fee | \$1,000.00 |
| (3) Late renewal fee | \$ 15.00 |
| (4) Reinstatement fee | \$ 50.00 |
| (5) Duplicate certificate fee | \$ 5.00 |
| (6) Biennial state regulatory fee | \$ 10.00 |
| (7) 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 Council of Certified Professional Midwifery. | |

Authority: T.C.A. §§4-3-1011, 4-5-202, 4-5-204, 63-1-142, 63-9-101, 63-29-101 et seq., 63-29-107, 63-29-108, 63-29-109, 63-29-112, and 63-29-116. **Administrative History:** Original rule filed August 21, 2001; effective November 4, 2001. Repeal and new rule filed February 4, 2002; effective April 20, 2002. Amendment filed April 8, 2003; effective June 22, 2003. Amendment filed February 15, 2006; effective May 1, 2006.

1050-5-.07 APPLICATION REVIEW, APPROVAL, AND DENIAL. Review, approval and denial of all applications under this chapter of rules shall be governed by rule 1050-2-.05

Authority: T.C.A. §§4-3-1011, 4-5-202, 4-5-204, 63-9-101, 63-29-101 et seq., and 63-29-116. **Administrative History:** Original rule filed February 4, 2002; effective April 20, 2002.

1050-5-.08 RESERVED.

1050-5-.09 CERTIFICATION RENEWAL. All Professional midwives certified by the Council must renew their certification to be able to continue in practice. Certification renewal is governed by the following:

- (1) The due date for renewal is the last day of the month in which a certificate holder's birth date falls pursuant to the Division of Health Related Board's biennial birth date renewal system.

(Rule 1050-5-.09, continued)

- (2) Prior to the due date for renewal, certificate holders will have a renewal application form mailed to them at the last address provided by them to the Council. Failure to receive such notification does not relieve the individual of the responsibility of timely meeting all requirements for renewal. To be eligible for renewal a certificate holder must submit to the Division of Health Related Boards on or before the certificate holder's expiration date the following:
 - (a) A completed and signed renewal application form.
 - (b) The renewal and state regulatory fees as provided in Rule 1050-5-.06.
 - (c) Attestation of compliance with NARM continuing education requirements so that current NARM certification in good standing is maintained.
 - (d) Attestation of maintaining current CPR certification, as provided in rule 1050-5-.05.
- (3) Any renewal application received after the expiration date but before the last day of the month following the expiration date must be accompanied by the late renewal fee provided in Rule 1050-5-.06.
- (4) Any certificate holder who receives notice of failure to timely renew pursuant to rule 1200-10-1-.10, and who, on or before the last day of the second (2nd) month following the month in which the certificate expires, executes and files in the Council's administrative office an affidavit of retirement pursuant to Rule 1050-5-.11 may have their certificate retired effective on their certification expiration date.
- (5) Anyone submitting a signed renewal form, electronically or otherwise, which is found to be fraudulent or untrue may be subject to disciplinary action.
- (6) Any individual who fails to comply with the certificate renewal rules and/or notifications sent to them concerning failure to timely renew shall have their certificate processed pursuant to rule 1200-10-1-.10.
- (7) Certificates processed pursuant to rule 1200-10-1-.10 for failure to renew may be reinstated upon meeting the following conditions:
 - (a) Submit a written request for a Renewal/Reinstatement/Reactivation Application to the Council's Administrative Office; and
 - (b) Complete and submit to the Council's Administrative Office the Renewal/ Reinstatement/ Reactivation Application along with the payment of all past due renewal fees; state regulatory fee and the reinstatement fee provided in rule 1050-5-.06; and
 - (c) Submit any documentation which may be required by the form to the Council's Administrative Office; and
 - (d) If requested, after review by the Council or its duly authorized representative, appear before either the Council for an interview regarding continued competence in the event expiration of certification was in excess of two (2) years or there was receipt of derogatory information or communication during the reinstatement process, and/or be prepared to meet or accept other conditions or restrictions as the Council may deem necessary to protect the public.

(Rule 1050-5-.09, continued)

- (e) If certification expiration was in excess of five (5) years, the certificate holder may be required to successfully complete requirements the Council feels necessary to establish current levels of competency.
- (8) Renewal issuance and reinstatement decisions pursuant to this Rule may be made administratively subject to review by the Council, any Council member, or the Council's Designee.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-107, 63-9-101, 63-29-101 et seq., 63-29-109, 63-29-111, and 63-29-116. *Administrative History:* Original rule filed February 4, 2002; effective April 20, 2002. Amendment filed April 8, 2003; effective June 22, 2003. Amendment filed August 9, 2007; effective October 23, 2007.

1050-5-.10 RESERVED.

1050-5-.11 INACTIVE STATUS AND REACTIVATION.

- (1) Certificate holders who wish to retain their certification but not actively practice as a professional midwife may avoid compliance with the certification renewal process by doing the following:
 - (a) Obtain from, complete and submit to the Council's administrative office an inactive status affidavit form.
 - (b) Submit any documentation which may be required by the form to the Council's administrative office.
 - (c) Upon successful application for inactive status with completion and receipt of all proper documentation to the Council's satisfaction, the Council shall register the Certificate as inactive. Any person who has an inactive certificate may not practice as a CPM-TN.
- (2) Reactivation - Any certificate holder whose certification has been placed in inactive status may reenter active practice by doing the following:
 - (a) Submit a written request for a Renewal/Reinstatement/Reactivation Application to the Council's administrative office; and
 - (b) Complete and submit the Council's Renewal/Reinstatement/Reactivation Application along with payment of the certification renewal fee as provided in Rule 1050-5-.06 to the Council's administrative office. If reactivation was requested prior to the expiration of one (1) year from the date of acquiring inactive status, the Council may require payment of the reinstatement fee and past due renewal fees as provided in Rule 1050-5-.06; and
 - (c) Submit any documentation which may be required by the form to the Council's Administrative Office; and
 - (d) If requested, after review by the Council or its duly authorized representative, appear before either the Council for an interview regarding continued competence in the event of inactivation of certification in excess of two (2) years or the receipt of derogatory information or communication during the reactivation process and/or be prepared to meet or accept other conditions or restrictions as the Council may deem necessary to protect the public.
 - (e) If certification inactivation was in excess of five (5) years, the certificate holder may be required to successfully complete requirements the Council feels necessary to establish current levels of competency.

(Rule 1050-5-.11, continued)

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-107, 63-1-111, 63-9-101, 63-29-101 et seq., 63-29-109, 63-29-110, and 63-29-116. **Administrative History:** Original rule filed February 4, 2002; effective April 20, 2002. Amendment filed April 8, 2003; effective June 22, 2003.

1050-5-.12 CONTINUING EDUCATION.

- (1) To be eligible for renewal of certification the continuing education requirements imposed by NARM must be complied with and attestation of compliance submitted at renewal time.
- (2) Anyone who falsely attests to completion of the required hours of continuing education may be subject to disciplinary action pursuant to Rule 1050-5-.15.
- (3) Anyone who fails to obtain the required continuing education hours may be subject to disciplinary action pursuant to Rule 1050-5-.15 and may not be allowed to renew certification.
- (4) Education hours obtained as a result of compliance with the terms of Council and/or Board Orders in any disciplinary action shall not be credited toward the continuing education hours required to be obtained in any renewal period.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-9-101, 63-29-101 et seq., 63-29-109, 63-29-114, and 63-29-116. **Administrative History:** Original rule filed February 4, 2002; effective April 20, 2002. Amendment filed August 9, 2007; effective October 10, 2007.

1050-5-.13 PROFESSIONAL ETHICS. All certificate holders shall comply with the codes of ethics adopted by the Midwives Alliance of North America except to the extent that they conflict with the laws of the state of Tennessee or the rules of the Council and/or Board. If the codes of ethics conflict with state law or rules, the state law or rules govern the matter. Violation of the codes of ethics or state law or rules may subject a certificate holder to disciplinary action.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-9-101, 63-29-101 et seq., 63-29-115, and 63-29-116. **Administrative History:** Original rule filed February 4, 2002; effective April 20, 2002.

1050-5-.14 ADVERTISING.

- (1) The lack of sophistication on the part of many of the public concerning midwifery, the importance of the interests affected by the choice of a midwife and the foreseeable consequences of unrestricted advertising by midwives which is recognized to pose special possibilities for deception, require that special care be taken by Certified Professional Midwives to avoid misleading the public. Midwives must be mindful that the benefits of advertising depend upon its reliability and accuracy. Since advertising by midwives is calculated and not spontaneous, reasonable regulation designed to foster compliance with appropriate standards serves the public interest without impeding the flow of useful, meaningful, and relevant information to the public.
- (2) Definitions
 - (a) Advertisement - Informational communication to the public in any manner designed to attract public attention to the practice of a professional midwife who is certified to practice in Tennessee.
 - (b) Certificate Holder - Any person holding a certificate to practice midwifery in the State of Tennessee. Where applicable this shall include partnerships and/or corporations.

(Rule 1050-5-.14, continued)

- (c) Material Fact - Any fact which an ordinary reasonable and prudent person would need to know or rely upon in order to make an informed decision concerning the choice of practitioners to serve his or her particular needs.
 - (d) 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. 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.
 - (e) Discounted Fee - Shall mean a fee offered or charged by a person or organization for any 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."
- (3) Advertising Fees and Services
- (a) Fixed Fees - 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 the advertisement must disclose the factors used in determining the actual fee, necessary to prevent deception of the public.
 - (c) Discount Fees - Discount fees may be advertised if:
 - 1. The discount fee is in fact lower than the certificate holder's customary or usual fee charged for the service, and
 - 2. The certificate holder 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.
 - (e) Time Period of Advertised Fees - 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. 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.
- (4) Advertising Content - The following acts or omissions in the content of advertisement by any certificate shall constitute unprofessional conduct, and subject the licensee to disciplinary action.
- (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 that convey the message that one (1) certificate holder is better than another when superiority of services, personnel, materials or equipment cannot be substantiated.
 - (b) The misleading use of an unearned or non-health degree in any advertisement.

(Rule 1050-5-.14, continued)

- (c) Promotion of professional services which the certificate holder knows or should know is beyond the certificate holder's ability to perform.
- (d) Techniques of communication which intimidate, 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 quality of competency of a service or treatment offered by a certificate holder 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 certificate holder can achieve.
- (h) The communication of personal identifiable facts, data, or information about a patient without first obtaining patient consent.
- (i) Any misrepresentation of a material fact.
- (j) The knowing suppression, omission or concealment of any materials, fact, or law without which the advertisement would be deceptive or misleading.
- (k) Statements concerning the benefits or other attributes of 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
 - 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 treatment.
- (m) Failure to comply with the rules governing advertisement of fees and services, or advertising records.
- (n) The use of "bait and switch" advertisements. Where the circumstances indicate "bait and switch" advertising, the Council 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 certificate holder's credentials, training, experience, or ability.
- (p) Failure to include the corporation, partnership or individual certificate holder's name, address, and telephone number in any advertisement. Any corporation, partnership or association which advertises by use of a trade name or otherwise fails to list all certificate holders practicing at a particular location shall:
 - 1. Upon request provide a list of all certificate holders practicing at that location, and

(Rule 1050-5-.14, continued)

2. Maintain and conspicuously display at the certificate holder's office, a directory listing all certificate holders practicing at that location.
 - (q) Failure to disclose the fact of giving compensation or anything of value to representatives 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 makes the fact of compensation apparent.
 - (r) After thirty (30) days of the certificate holder's departure, the use of the name of any certificate holder formerly practicing at or associated with any advertised location or on office signs or buildings is prohibited. This rule shall not apply in the case of a retired or deceased former associate who practiced 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 certificate holder provides all services when any such services are performed by another certificate holder.
 - (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 patient in connection with the performance of professional services.
- (5) Advertising Records and Responsibility
 - (a) Each certificate holder 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 or certified professional employees acting as an agent of such firm or entity.
 - (b) Any and all advertisements are presumed to have been approved by the certificate holder 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 certificate holder for a period of two (2) years from the last date of broadcast or publication and be made available for review upon request by the Council or its designee.
 - (d) At the time any type of advertisement is placed, the certificate holder must possess and rely upon information which, when produced, would substantiate the truthfulness of any assertion, omission or representation of material fact set forth in the advertisement or public information.
- (6) Severability. It is hereby declared that the sections, clauses, sentences and parts 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 inapplicability 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, 4-5-204, 63-1-145, 63-1-146, 63-9-101, 63-29-107, and 63-29-114. **Administrative History:** Original rule filed March 8, 2007, effective May 22, 2007.

1050-5-.15 DISCIPLINARY GROUNDS, ACTIONS, AND CIVIL PENALTIES.

- (1) Upon a finding by the Council and Board that a certificate holder has violated any provision of the T.C.A. §63-29-114 or the rules promulgated pursuant thereto, the Council and Board may take any of the following actions separately or in any combination which is deemed appropriate to the offense;
 - (a) Warning Letter - This is a written action issued for minor or near infractions. It is informal and advisory in nature and does not constitute a formal disciplinary action.
 - (b) Reprimand - This is a written action issued for one time and less severe violations. It is a formal disciplinary action.
 - (c) Probation - This is a formal disciplinary action which places a certificate holder on close scrutiny for a fixed period of time. This action may be combined with conditions that must be met before probation will be lifted and/or which restrict the individual's activities during the probationary period.
 - (d) Certificate Suspension - This is a formal disciplinary action that suspends the right to practice for a fixed period of time. It contemplates the re-entry into practice under the certificate previously issued.
 - (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 certificate previously issued. The Council and Board, in their discretion, may allow reinstatement of a revoked certificate upon conditions and after a period of time which they deem appropriate. No petition for reinstatement and no new application for certification from a person whose certificate was revoked for cause shall be considered prior to the expiration of at least six (6) months from the effective date of the revocation order.
 - (f) Conditions - Any action deemed appropriate by the Council and Board to be required of a disciplined certificate holder during any period of probation or suspension or as a pre-requisite to the lifting of probation or suspension or the reinstatement of a revoked certificate.
 - (g) Civil penalty – A monetary disciplinary action assessed by the Council and the Board pursuant to paragraph (4) of this rule.
 - (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

(Rule 1050-5-.15, continued)

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

(Rule 1050-5-.15, continued)

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_____.

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

(Rule 1050-5-.15, continued)

(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

(Rule 1050-5-.15, continued)

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____.

Petitioner's Signature

(4) 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 Council and Board find a person who is required to be licensed, certified, permitted, or authorized by the Council and Board, guilty of a willful and knowing violation of T.C.A. §§ 63-29-101, et seq., 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 patient or the public. For purposes of this section, willfully and knowingly practicing

(Rule 1050-5-.15, continued)

without a certificate is one of the violations for which a “Type A” Civil Penalty is assessable.

2. A “Type B” Civil Penalty may be imposed whenever the Council and Board find the person required to be licensed, certified, permitted, or authorized by the Council and Board is guilty of a violation T.C.A. §§ 63-29-101, et seq., or regulations promulgated pursuant thereto in such manner as to impact directly on the care of patients or the public.
3. A “Type C” Civil Penalty may be imposed whenever the Council and Board find the person required to be licensed, certified, permitted, or authorized by the Council and Board is guilty of a violation of T.C.A. §§ 63-29-101, et seq., or regulations promulgated pursuant thereto, which are neither directly detrimental to the patients or public, nor directly impact their care, but have only an indirect relationship to patient 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 \$1000.
2. “Type B” Civil Penalties shall be assessed in the amount of not less than \$100 and not more than \$500.
3. “Type C” Civil Penalties shall 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 Council and Board during consideration of any Notice of Charges. In addition, the Council and Board 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 Council and Board 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.

(Rule 1050-5-.15, continued)

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

Authority: T.C.A. §§4-5-202, 4-5-204, 4-5-217, 4-5-223, 63-1-122, 63-1-134, 63-9-101, 63-29-101 et seq., 63-29-107, 63-29-114, and 63-29-116. **Administrative History:** Original rule filed February 4, 2002; effective April 20, 2002. Amendment filed April 8, 2003; effective June 22, 2003. Amendment filed December 16, 2005; effective March 1, 2006.

1050-5-.16 REPLACEMENT CERTIFICATES. A Certificate holder whose “artistically designed” Certificate has been lost or destroyed may be issued a replacement document upon receipt of a written request in the Administrative Office. Such request shall be accompanied by an affidavit (signed and notarized) stating the facts concerning the loss or destruction of the original document and the fee required pursuant to Rule 1050-5-.06.

Authority: T.C.A. §§4-5-202, 4-5-204, 4-5-217, 4-5-223, 63-1-106, 63-1-122, 63-9-101, 63-29-101 et seq., 63-29-107, 63-29-114, and 63-29-116. **Administrative History:** Original rule filed February 4, 2002; effective April 20, 2002. Amendment filed December 16, 2005; effective March 1, 2006.

1050-5-.17 CHANGE OF NAME AND/OR ADDRESS.

- (1) Change of Name - Any certificate holder shall notify the Administrative Office in writing within thirty (30) days of a name change and must provide both the old and new names. A name change notification must also include a copy of the official document involved and reference the individual’s profession, council/board, social security number, and certificate numbers.
- (2) Change of Address - Each person holding a certificate who has had a change of address shall file in writing with the Administrative Office his/her current address providing both the old and new addresses. Such requests must be received in the Administrative Office no later than thirty (30) days after such change is effective and must reference the individual’s name, profession, social security number, and certificate number.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-108, 63-9-101, 63-29-101 et seq., and 63-29-116. **Administrative History:** Original rule filed February 4, 2002; effective April 20, 2002.

1050-5-.18 RESERVED.

1050-5-.19 COUNCIL OFFICERS, CONSULTANTS, RECORDS, DECLARATORY ORDERS, AND SCREENING PANELS.

- (1) The Council shall annually elect from its members the following officers:
 - (a) Chairperson - who shall preside at all meetings of the Council; and
 - (b) Vice-Chairperson - who shall preside at meetings in the absence of the Chairperson and who along with the Council Administrator shall be responsible for correspondence from the Council.
- (2) The Council has the authority to select a Council consultant who shall serve as a consultant to the Division and who is vested with the authority to do the following acts:
 - (a) Review complaints and recommend whether and what type of disciplinary actions should be instituted as the result of complaints received or investigations conducted by the Division.

(Rule 1050-5-.19, continued)

- (b) Recommend whether and upon what terms a complaint, case or disciplinary action might be settled. Any matter proposed for settlement must be subsequently reviewed, evaluated and ratified by the Council and Board before it becomes effective.
 - (c) Undertake any other matter authorized by a majority vote of the Council and/or Board.
- (3) Records and Complaints
- (a) Minutes of the Council meetings and all records, documents, applications and correspondence will be maintained in the Administrative Offices.
 - (b) All requests, applications, notices, other communications and correspondence shall be directed to the Administrative Office. Any requests or inquiries requiring a Council decision or official Council action except documents relating to disciplinary actions, or hearing requests must be received fourteen (14) days prior to a scheduled meeting and will be retained in the Administrative Office and presented to the Council at the Council meeting. Such documents not timely received shall be set over to the next Council meeting.
 - (c) All records of the Council, except those made confidential by law, are open for inspection and examination, under the supervision of an employee of the Division at the Administrative Office during normal business hours.
 - (d) Copies of public records shall be provided to any person upon payment of a fee.
 - (e) All complaints should be directed to the Division's Investigations Section.
- (4) The Council members or the Consultant are individually vested with the authority to do the following acts:
- (a) Review and make determination on certification, renewal and reactivation of applications subject to the rules governing those respective applications and subject to the subsequent ratification by the Council and Board.
 - (b) Serve as Consultant to the Division to decide the following:
 - 1. Whether and what type disciplinary actions should be instituted upon complaints received or investigations conducted by the Division.
 - 2. Whether and under what terms a complaint, case or disciplinary action might be settled. Any proposed settlement must be subsequently ratified by the Council and Board.
- (5) The Council authorizes the member who chaired the Council for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-4-1-.18 regarding petitions for reconsiderations and stays in that case.
- (6) Requests for Verification of Licensure for a certified midwife desiring to practice in another state must be made in writing to the Administrative Office.
- (7) Declaratory Orders - The Council adopts, as if fully set out herein, rule 1200-10-1-.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 Council shall be addressed by the Council pursuant to that rule and not by the Division. Declaratory Order Petition forms can be obtained from the Administrative Office.

(Rule 1050-5-.19, continued)

- (8) Screening Panels - The Council adopts, as if fully set out herein, rule 1200-10-1-.13, of the Division of Health Related Boards and as it may from time to time be amended, as its rule governing the screening panel process.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-138, 63-9-101, 63-29-107, 63-29-114, and 63-29-116.

Administrative History: Original rule filed February 4, 2002; effective April 20, 2002. Amendment filed March 8, 2007; effective May 22, 2007. Amendment filed August 9, 2007; effective October 23, 2007.