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Sequence Number: 08-10-18
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File Date: 8/9/18

Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission: Board of Podiatric Medical Examiners
Division:
Contact Person: David Silvus, Assistant General Counsel
Address: 665 Mainstream Drive, Nashville, Tennessee 37243
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Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact: ADA Coordinator
710 James Robertson Parkway,
Address: Andrew Johnson Building, 5th Floor, Nashville, Tennessee 37243
Phone: (615) 741-6350
Email: Tina.M.Harris2@tn.gov

Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	Metro Center
Address 2:	665 Mainstream Drive, Poplar Conference Room
City:	Nashville, Tennessee
Zip:	37228
Hearing Date :	11/02/18
Hearing Time:	9:00 a.m. <input checked="" type="checkbox"/> CST/CDT <input type="checkbox"/> EST/EDT

Additional Hearing Information:

Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. Please enter only **ONE** Rule Number/Rule Title per row.)

Chapter Number	Chapter Title
1155-02	General Rules and Regulations Governing the Practice of Podiatry
Rule Number	Rule Title
1155-02-.01	Definitions
1155-02-.02	Scope of Practice
1155-02-.03	Necessity of Licensure

1155-02-.04	Qualifications for Licensure
1155-02-.05	Procedures for Licensure
1155-02-.06	Fees
1155-02-.07	Application Review, Approval, Denial, Interviews
1155-02-.08	Examinations
1155-02-.09	Licensure Renewal
1155-02-.10	Reserved
1155-02-.11	Retirement and Reactivation of License
1155-02-.12	Continuing Education
1155-02-.13	Professional Ethics
1155-02-.14	Academic License
1155-02-.15	Disciplinary Actions, Civil Penalties, Assessment of Costs, and Subpoenas
1155-02-.16	License
1155-02-.17	Change of Address and/or Name
1155-02-.18	Mandatory Release of Patient Records
1155-02-.19	Board Meetings, Officers, Consultants, Records, Declaratory Orders, Advisory Rulings and Screening Panels
1155-02-.20	Consumer Right-To-Know Requirements
1155-02-.21	Podiatric Professional Corporations and Podiatric Professional Limited Liability Companies
1155-02-.22	Advertising
1155-02-.23	Tamper-Resistant Prescriptions

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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://sos-tn-gov-files.s3.amazonaws.com/forms/Rulemaking%20Guidelines_September2016.pdf.

Chapter 1155-02
General Rules and Regulations Governing the Practice of Podiatry

Amendments

Rule 1155-02-.08 Examinations is being amended by deleting paragraph (4) in its entirety, and substituting instead the following language, so that as amended, the new paragraph shall read:

- (4) Any applicant whose most recent satisfactory examination score is more than five (5) years old and who has not practiced podiatry with an unencumbered license in another state during the three (3) year period immediately preceding the application shall be required to take the PMLexis examination for licensure.

Authority: T.C.A. §§ 63-3-106, 63-3-109, 63-3-111, 63-3-112, and 63-3-114.

Rule 1155-02-.18 Mandatory Release of Patient Records is being amended by deleting the rule and the rule title in their entirety, and substituting instead the following language, so that as amended, the new rule and rule title shall read:

Rule 1155-02-.18 Medical Records.

- (1) Purpose
- (a) To recognize that medical records are an integral part of the practice of podiatrists as defined in T.C.A. § 63-3-101.
- (b) To give podiatrists, their professional and non-professional staff, and the public direction about the content, transfer, retention, and destruction of those records.
- (2) Applicability. This rule regarding medical records shall apply only to those records, the information for which was obtained by podiatrists or their supervisees, for purposes of services provided in any clinical setting other than those provided in a hospital as defined by T.C.A. § 68-11-302(4), a hospital emergency room, or hospital outpatient facility.
- (3) Medical Records
- (a) Duty to Create and Maintain Medical Records - As a component of the standard of care and of minimal competency, a podiatrist must cause to be created and cause to be maintained a medical record for every encounter between a patient and either the podiatrist or licensed member of the podiatrist's staff. All imaging studies and interpretations of such studies are considered to be part of the patient's medical records. For purposes of this Rule, a patient is defined as a person for whom the podiatrist has undertaken to diagnose or treat or for whom the podiatrist has participated in such diagnosis or treatment.
- (b) Notice – Any notice to be provided to a patient required by these rules shall be issued within fourteen (14) days of the date of the event that triggers the notice requirement, and shall be accomplished by mailing to the last known address of the patient.
- (c) Content – In order to meet the minimum level of competency required of podiatrists, the medical records required by this rule shall:
1. Be recorded in such a manner as to be legible to an ordinary reasonable person, including those persons who are not licensed healthcare professionals;
 2. Include all information and documentation listed in T.C.A. § 63-2-101(c)(4);
 3. Contain such additional information that is necessary to insure that a subsequent

reviewing or treating physician can both ascertain the basis for the diagnosis, treatment plan, and outcomes, and provide continuity of care for the patient, which includes, but is not limited to:

- (i) Date of patient encounter,
- (ii) Concise pertinent medical history of patient,
- (iii) Description of physical examination of the patient, including all relevant findings,
- (iv) Description of the treatment plan,
- (v) Documentation of prescription drugs prescribed to the patient, including the name and dosage of the prescription drug, the frequency with which the prescription drug is to be taken, and the number of days the prescription drug is to be taken, and
- (vi) If a prescription substance, as defined by T.C.A. § 53-10-302(4), is prescribed for a period of time greater than seven (7) days, the medical record, in addition to the requirements above, must also:
 - I. Document that the patient's risks for potential substance abuse have been assessed and
 - II. Document that the risks and benefits of the controlled substance were discussed with the patient.

(d) Transfer

1. Inapplicability of Notice Requirements -- None of the notice requirements of this part are required for patients who have had fewer than three (3) office encounters with the podiatrist or his licensed supervisees over the eighteen (18) month period that immediately precedes the event that would otherwise trigger the notice.
2. Records of Podiatrists upon Death or Retirement - When a podiatrist retires or dies while in practice, patients seen by the podiatrist in his office during the immediately preceding eighteen (18) months shall be notified by the podiatrist, or his authorized representative, urged to find a new podiatrist, and informed that upon authorization copies of the patient's medical records will be sent to the new podiatrist or other physician.
3. Records of Podiatrists upon Departure from a Group - A podiatrist who departs a practice group for any reason other than death has the obligation to provide notice of that departure to his patients. This obligation may be contractually delegated to the group from which the podiatrist is departing, provided that the contractual obligation is in writing and signed by both parties.
 - (i) Whomever is responsible for the notification referenced in the immediately preceding paragraph must notify patients seen by the podiatrist in his office during the immediately preceding eighteen (18) months of his departure.
 - (ii) Except where otherwise governed by provisions of the podiatrist's contract, those patients shall also be notified of the podiatrist's new address and offered the opportunity to have copies of their medical records forwarded to the departing podiatrist at his new practice. A group shall not withhold the medical records of any patient who has authorized their transfer to the departing podiatrist or any other podiatrist or other physician.
 - (iii) The choice of podiatrist in every case should be left to the patient, and the patient should be informed that upon authorization his records will be sent to the podiatrist or other physician of the patient's choice.
4. Sale of a Podiatry Practice - A podiatrist or the estate of a deceased podiatrist may sell

the elements that comprise his practice, which include the goodwill of the practice and the opportunity to take over the patients of the seller by purchasing the those medical records. Therefore, the transfer of medical records of patients upon the sale of a podiatry practice is subject to the following:

- (i) The podiatrist (or the estate) must ensure that all medical records are transferred to another podiatrist, other physician, or entity that is held to the same standards of confidentiality as provided in these rules.
 - (ii) Patients seen by the podiatrist in his office during the immediately preceding eighteen (18) months shall be notified that the podiatrist (or the estate) is transferring the practice to another podiatrist, other physician, or entity who will retain custody of their medical records and that at their written request the copies of their records will be sent to another podiatrist, other physician, or entity of their choice.
5. Failure to Adequately Provide for Transfer of Records or Notice to Patients. It shall be a prima facie violation of T.C.A. § 63-3-119(a)(4) and (10) for a podiatrist to depart from his group, retire, or sell his practice without making provision for the security or transfer of patient medical records, or otherwise establish a secure method of patient access to his medical records.
- (e) Retention of Medical Records - Medical records shall be retained for a period of not less than seven (7) years from the podiatrist's or his supervisees' last professional contact with the patient except for the following:
1. Medical records for incompetent patients, other than those who are incompetent solely because they are minors, shall be retained at least until one (1) year after the patient's death.
 2. Medical records of minors shall be retained for a period of not less than one (1) year after the minor reaches the age of majority or ten (10) years from the date of the podiatrist's or his supervisees' last professional contact with the patient, whichever is longer.
 3. Notwithstanding the foregoing, no medical record involving services which are currently under dispute shall be destroyed until the dispute is resolved.
- (f) Destruction of Medical Records
1. No medical record shall be singled out for destruction other than in accordance with established office operating procedures.
 2. Medical records shall be destroyed only in the ordinary course of business according to established office operating procedures that are consistent with these rules.
 3. Physical copies of medical records may be destroyed by burning, shredding, or other method that safeguards patient protected health information from any use or disclosure that is in violation of any state or federal laws or regulations.
 4. Any recordable and erasable media device upon which electronic medical records have been stored must be rendered inaccessible, cleaned, or scrubbed by overwriting the data, degaussing the media (using magnetic field to neutralize the data stored on magnetic media), or other method that safeguards patient protected health information. Simply discarding a data storage device without rendering the data stored upon it inaccessible, cleaned, or scrubbed does not constitute compliance with this rule.
 5. When medical records are destroyed, the time, date and circumstances of the destruction shall be recorded and maintained for future reference. The record of destruction need not list the individual patient medical records that were destroyed but shall be sufficient to identify which group of destroyed records contained a particular patient's medical records.

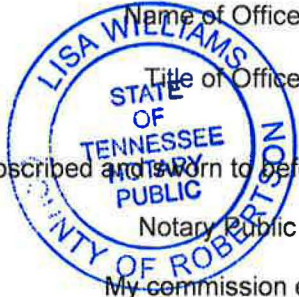
- (4) In addition to the requirements of this rule, podiatrists must also comply with the Health Insurance Portability and Accountability Act (HIPAA) and the regulations promulgated thereto. Failure to comply with HIPAA shall constitute violation of this rule.
- (5) **Mandatory Release of Patient Records**
 - (a) Upon request from a patient or the patient's authorized representative, an individual registered with this Board shall provide a complete copy of the patient's records or a summary of such records which were maintained by the provider.
 - (b) It shall be the provider's option as to whether copies of the records or a summary will be given to the patient.
 - (c) Requests for records shall be honored by the provider in a timely manner.
- (6) **Violations** - Violation of any provision of these rules is grounds for disciplinary action pursuant to T.C.A. §§ 63-3-119(a)(4), 63-3-119(a)(8), and 63-3-119(a)(10).

Authority: T.C.A. 63-2-101 and 63-2-102.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: 8/9/18

Signature: [Handwritten Signature]



Name of Officer: David Silvus

Assistant General Counsel

Title of Officer: Department of Health

Subscribed and sworn to before me on: August 9, 2018

Notary Public Signature: [Handwritten Signature]

My commission expires on: December 22, 2021

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Filed with the Department of State on: 8/9/18

[Handwritten Signature]

Tre Hargett
Secretary of State

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