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Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

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|---------------------------------|---|
| Agency/Board/Commission: | Tennessee Department of Labor and Workforce Development |
| Division: | Bureau of Workers' Compensation |
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Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that ALL new rule and repealed rule numbers are listed in the chart below. Please enter only ONE Rule Number/Rule Title per row)

| Chapter Number | Chapter Title |
|----------------|--|
| 0800-02-20 | Medical Impairment Rating Registry Program |
| Rule Number | Rule Title |
| 0800-02-20-.01 | Definitions |
| 0800-02-20-.02 | Purpose and Scope |
| 0800-02-20-.04 | Requisite Physician Qualifications for Inclusion on Medical Impairment Rating Registry |
| 0800-02-20-.05 | Application Procedures for Physicians to Join the Registry |
| 0800-02-20-.06 | Requests for a MIR Registry Physician |
| 0800-02-20-.07 | Payments/Fees |
| 0800-02-20-.09 | Communication with Registry Physicians |
| 0800-02-20-.10 | Requirements for the Evaluation |
| 0800-02-20-.11 | Requirements for the "MIR Report" |
| 0800-02-20-.13 | Removal of a Physician from the Registry |
| 0800-02-20-.14 | Penalties |
| 0800-02-20-.15 | Time Limits |
| 0800-02-20-.16 | Cooperation |

(Place substance of rules and other info here. Please be sure to include a detailed explanation of the changes being made to the listed rule(s). Statutory authority must be given for each rule change. For information on formatting rules go to http://sos.tn.gov/sites/default/files/forms/Rulemaking_Guidelines_August2014.pdf)

Rule 0800-02-20 is amended throughout by adding the superscript "TM" immediately after AMA Guides wherever it occurs so that as amended it reads: AMA GuidesTM

Authority: T.C.A. §§ 4-5-202, 50-6-102, 50-6-204, 50-6-205, 50-6-233.

The Authority Statement for Rule 0800-02-20 is amended throughout by deleting "(2005)" after the reference to 50-6-204 and 50-6-233. The Authority Statement is further amended by deleting the language ", and Public Chapters 282 & 289 (2013)" wherever it appears.

0800-02-20-01 Definitions is amended by deleting it in its entirety and substituting the following language, so that as amended, it shall read:

- (1) "Act" means the Tennessee Workers' Compensation Act, Tenn. Code Ann. § 50-6-101 et seq., as amended.
- (2) "Administrator" means the chief administrative officer of the Bureau of Workers' Compensation with full authority over the MIR Registry Program, or the Administrator's designee.
- (3) "Business day(s)" means any day upon which the Bureau is open for business.
- (4) "Bureau" means the Bureau of Workers' Compensation.
- (5) "Conflict of Interest" means a conflict between the professional or personal interests and needs of a health care provider and his or her professional responsibilities toward a patient or consumer.
- (6) "Department" means the Tennessee Department of Labor and Workforce Development.
- (7) "Dispute of degree of medical impairment" means one or more of the following:
 - (a) at least two different physicians have issued differing permanent medical impairment ratings in compliance with the Act and the parties disagree as to those permanent impairment ratings;
 - (b) a physician has issued an opinion in compliance with the Act that no permanent medical impairment exists, yet that physician has issued permanent physical or mental (psychiatric) restrictions to the injured employee; or
 - (c) the employer and employee both wish to access the Medical Impairment Rating Registry because they agree that the permanent medical impairment rating issued by the authorized treating physician is incorrect.
- (8) "Employee" shall have the same meaning as set forth in Tenn. Code Ann. § 50-6-102.
- (9) "Employer" shall have the same meaning as set forth in Tenn. Code Ann. § 50-6-102.
- (10) "Form" means the "Request for a Medical Impairment Rating," required to be used to request a MIR Registry physician from the Administrator. The Form is available upon request from the Bureau or online at www.tn.gov/workforce/topic/forms.
- (11) "Insurer" or "carrier" means an employer's workers' compensation insurance carrier and additionally shall include any entity claiming, operating, or attempting to operate as a self-insured employer, self-insured pool, or self-insured trust pursuant to the requirements of Tenn. Code Ann. § 50-6-405 and Chapter 0780-01-54, Self-Insured Pools, of the Rules of the Department of Commerce and Insurance, Insurance Division.

- (12) "Medical Impairment Rating Registry" or "MIR Registry" means the registry or listing of physicians established by the Administrator pursuant to Tenn. Code Ann. § 50-6-204 (2005) to perform independent medical impairment ratings when there is a dispute as to the degree of medical impairment, as defined in 0800-02-20-.01(7) above.
- (13) "Party" means any person or entity which either could be liable for payment of workers' compensation benefits or a person who has a potential right to receive workers' compensation benefits. "Party" shall include a legal representative of a party.
- (14) "Physician" means a person currently licensed in good standing to practice as a doctor of medicine or doctor of osteopathy.
- (15) "Program Coordinator" means the administrative officer of the MIR Registry Program, appointed by the Administrator.

Authority: T.C.A. §§ 4-5-202, 50-6-102, 50-6-204, 50-6-205, 50-6-233.

Paragraph (2) of 0800-02-20-.02 Purpose and Scope is amended by deleting it in its entirety and substituting the following language, so that as amended, it shall read:

- (2) Scope. The MIR Registry is available to any party with a dispute of the degree of medical impairment rating as defined herein for injuries or any occupational disease which occurred on or after July 1, 2005. The only aspect considered by a MIR Registry physician shall be the degree of permanent medical impairment and shall not be apportioned unless directed to do so by the written agreement of all parties, as submitted to the Program Coordinator. If multiple pathologies are present in the same disputed body part or organ system, the MIR Physician may address causation solely as a means of obtaining the correct degree of permanent medical impairment, as stipulated by AMA Guides™ methodology.

Authority: T.C.A. §§ 4-5-202 and 50-6-204.

Paragraph (1) of 0800-02-20-.04 Requisite Physician Qualifications for Inclusion on Medical Impairment Rating Registry is amended by deleting Subparagraph (e) in its entirety and deleting "; and" from the end of Subparagraph (d) and adding a period, so that as amended Paragraph (1) shall read:

- (1) A physician seeking appointment to the MIR Registry shall make application and must satisfy the following qualifications:
 - (a) Possess a license to practice medicine or osteopathy in Tennessee which is current, active, and unrestricted;
 - (b) Be board-certified in his/her medical specialty by a board recognized by the American Board of Medical Specialties, the American Osteopathic Association or another organization acceptable to the Administrator;
 - (c) Have successfully completed a training course, approved by the Administrator, dedicated to the proper application of the applicable edition of the American Medical Association Guides to the Evaluation of Permanent Impairment™ (hereafter the "AMA Guides™") in impairment evaluations and furnish satisfactory evidence thereof; and
 - (d) Furnish satisfactory proof of carrying the minimum medical malpractice insurance coverage amounts enumerated in T.C.A. § 29-20-403.

Authority: T.C.A. §§ 4-5-202, 50-6-102, 50-6-204, 50-6-205, 50-6-233.

0800-02-20-.05 Application Procedures for Physicians to Join the Registry is amended by deleting it in its entirety and substituting the following language, so that as amended, it shall read:

- (1) Appointment to the MIR Registry shall expire upon a physician's decision to withdraw from the Registry or the Bureau's removal of a physician from the Registry. The Bureau reserves the right to charge physicians a non-refundable application fee upon appointment or reinstatement to the MIR Registry. An advisory panel of three (3) current MIR Registry physicians shall be randomly selected by the Program Coordinator to review the application. The Panel shall include one member from each grand division of the state who shall have been on the MIR Registry for at least five (5) years without any disciplinary actions imposed by the Bureau. Each panelist shall either recommend or not recommend to the Administrator the applicant for inclusion on the MIR Registry. The Administrator shall have the sole and exclusive authority to approve or reject applications for inclusion on the MIR Registry.
- (2) Physicians seeking appointment to the MIR Registry shall complete an "Application for Appointment to the MIR Registry," available upon request or on-line at http://www.tn.gov/assets/entities/labor/attachments/MIR_appl_registry.pdf, certify to and, upon approval of the application, comply with the following conditions:
 - (a) Conduct all MIR evaluations based on the guidelines in the applicable edition of the AMA Guides™ and submit the original "MIR Report" with all attachments to the Program Coordinator. In cases not covered by the applicable AMA Guides™, any impairment rating allowed under the Act shall be appropriate;
 - (b) Agree to conduct all evaluations within 30 days of receiving referrals, except when good cause is shown. Consideration will be given to a physician's schedule and other previously arranged or emergency obligations;
 - (c) Comply with the MIR Registry's Rules;
 - (d) While on the MIR Registry, agree to maintain an active and unrestricted license to practice medicine or osteopathy in Tennessee and to immediately notify the Administrator of any change in the status of the license, including any restrictions placed upon the license;
 - (e) While on the MIR Registry, agree to maintain all board certifications listed on the application and to immediately notify the Administrator of any change in their status;
 - (f) Conduct MIR evaluations in an objective and impartial manner, and shall:
 1. Conduct these evaluations only in a professional medical office suitable for medical or psychiatric evaluations where the primary use of the site is for medical service.
 2. Comply with all local, state and federal laws, regulations, and other requirements with regard to business operations, including specific requirements for the provision of medical services.
 3. Not conduct a physical examination on a claimant of the opposite sex without a witness of the same sex as the claimant present.
 - (g) Not refer any MIR Registry claimant to another specific physician for any treatment or testing nor suggest referral or treatment. However, if new diagnoses are discovered, the physician has a medical obligation to inform the requesting party and the claimant about the condition and recommend further medical assessment;
 - (h) Not become the treating physician for the claimant regarding the work-related injury;
 - (i) Not evaluate an MIR Registry claimant if a conflict of interest exists;

- (j) Not substitute, or allow to be substituted, anyone else, including any other physician, physician assistant, nurse practitioner, physical therapist or staff member, as the physician to conduct the MIR Registry evaluation;
 - (k) No later than fifteen (15) calendar days after a request by the Program Coordinator to refund to the paying party part or all of any fee paid by that party for a MIR Registry evaluation, as may be required by these Rules and the Administrator; and
 - (l) For each MIR Registry case assigned, address only the issue of permanent impairment rating.
 - (m) While on the MIR Registry, agree to carry at least the minimum malpractice insurance policy coverage as provided in T.C.A. § 29-20-403.
- (3) Bureau employees may be appointed to the MIR Registry in compliance with Rules 0800-02-20-.04 and 0800-.02-20.05.
 - (4) Physicians denied appointment to the MIR Registry by the Administrator or Administrator's designee on their initial application may seek reconsideration of their application by submitting a request for reconsideration stating the grounds for such reconsideration to the Program Coordinator within fifteen (15) calendar days of the issuance of the Notice of Denial of their application. The Administrator may affirm or reverse the initial determination upon reconsideration of the initial decision. The Administrator shall issue a Notice of Final Determination which shall be the final decision. If the Administrator does not act on the request for reconsideration within twenty (20) calendar days, then the request shall be deemed to have been denied, which shall be the final decision.

Authority: T.C.A. §§ 4-5-202, 50-6-102, 50-6-204, 50-6-205, 50-6-233.

0800-02-20-.06 Requests for a Mir Registry Physician Registry is amended by deleting it in its entirety and substituting the following language, so that as amended, it shall read:

- (1) When a dispute of the degree of medical impairment, as defined in Rule 0800-02-20-.06 exists, any party may request a listing of physicians from the Administrator's MIR Registry by completing the "Application for Medical Impairment Rating" (hereinafter "Form"), available upon request from the Department or online at <http://www.tn.gov/workforce/section/injuries-at-work>. The completed Form must then be returned to the Program Coordinator via electronic mail, facsimile or U.S. Mail.
- (2) The requesting party shall send a copy of the Form to the opposing party. The Program Coordinator's decision to accept or deny the Form is final for administrative purposes. If a party disagrees with the decision, then the parties may file a Petition for Benefits Determination (PBD) with the Court of Workers' Compensation Claims.
- (3) The request for a MIR Registry physician shall designate:
 - (a) All body part(s) or medical condition(s) to be evaluated, including whether mental impairment shall be evaluated;
 - (b) The names of all physicians that have previously evaluated, treated, or are currently evaluating or treating the claimant for the work-related injury at employer and/or employee expense;
 - (c) The names of all physicians made available to the claimant. If an employer provides the claimant with the name of a group of physicians rather than with individual physician names, the same information shall be included on the request form. If a panel of physicians has been provided to the employee in accordance with T.C.A. § 50-6-204, then a completed Form C-42 must accompany the request form;

- (d) The state file number assigned to the claims.
- (4) Selection of MIR Registry physician through party agreement:
 - (a) Within five (5) business days of receipt of the completed Form from the requesting party, the Program Coordinator shall issue a listing of all qualified physicians in the appropriate geographic area (which shall mean within an approximate one hundred (100) mile straight-line radius of the employee's home zip code), from the MIR Registry to all parties listed on the Form so the parties may negotiate an agreement on the selection of a physician as the MIR Registry physician. If the parties agree, they shall notify the Program Coordinator of the agreement so he or she may schedule the appointment with the selected physician for the MIR examination. Parties agreeing to the selection of the MIR Registry physician under this paragraph must abide by all of the Rules set forth here in Chapter 0800-02-20. A written opinion as to the permanent impairment rating given by the MIR Registry physician selected pursuant to this Rule shall be presumed to be the accurate impairment rating pursuant to T.C.A. § 50-6-204(d)(5).
 - (b) If the Program Coordinator determines that there are an inadequate number of qualified physicians within a 100 mile straight-line radius of the employee's home zip code, the Program Coordinator may produce a state-wide listing of all registry physicians qualified to give the rating.
- (5) If the parties cannot agree upon selection of a MIR Registry physician from the Administrator's listing of MIR Registry physicians provided within fifteen (15) calendar days of the Program Coordinator issuing the requested listing, it shall be the responsibility of the employer to provide a written request to the Program Coordinator to provide a three-physician list. A written opinion as to the permanent impairment rating given by the MIR Registry physician selected pursuant to this Rule shall be presumed to be the accurate impairment rating, pursuant to T.C.A. § 50-6-204(d)(5).
- (6) The submitting party shall certify that all parties, as well as the Program Coordinator, have been sent the completed Form at the same time. The Form will not be processed until all required information has been provided.
- (7) The three (3) physician listing.
 - (a) Within five (5) business days of receipt of the completed "Application for a Medical Impairment Rating," the Division shall produce a list of three qualified physicians drawn from the Administrator's MIR Registry, from which one physician shall be designated to perform the evaluation. The three-physician listing created will be comprised of physicians qualified, based on the information provided by the physician and on their accreditation to perform evaluations of the body part(s) and/or medical condition(s) designated on the application for an evaluation. Psychiatric or psychological evaluations regarding mental and/or behavioral impairment shall be performed by a psychiatrist.
 - (b) All physician selections shall be derived from the pool of qualified physicians.
- (8) MIR Registry three (3) physician list selection process.
 - (a) Within three (3) business days of the issuance of the three-physician listing, the employer shall strike one name and inform the Program Coordinator and all parties of the remaining physicians. Within three (3) business days of the date of receipt of that name from the employer, the claimant shall strike one of the two remaining names and inform the Program Coordinator and other parties of the name of the remaining physician, who will perform the evaluation.
 - (b) If one party fails to timely strike a name from the listing, the other party shall notify the Program Coordinator and at the same time provide to Program Coordinator the name that it wishes to strike. In that situation, the Administrator may randomly select one

physician from the remaining two, and that physician shall perform the evaluation. The Program Coordinator shall inform the parties of the name of the selected physician in writing.

- (c) If a selected physician is unable to perform the evaluation, the Administrator shall provide one replacement name to the original listing using the same criteria and process set forth above, and present that revised listing to the parties and each shall again strike one name according to the above procedures. Additionally, if a physician is removed from the three-physician listing for any reason other than having been struck by one of the parties, the Administrator will issue one replacement physician name.
- (9) Appointment date.
- (a) Within three (3) business days of providing or receiving notice of the MIR physician selection, the Program Coordinator shall contact the MIR Registry physician to schedule the evaluation and shall immediately notify all parties of the date and time of the evaluation.
- (10) Submission of Medical Records.
- (a) All parties shall concurrently provide to the MIR registry physician and all other parties a complete copy of all pertinent medical records obtained at their own expense pertaining to the subject injury, postmarked or hand-delivered at least ten (10) calendar days prior to the evaluation. If necessary, the claimant shall promptly sign a "MIR Waiver and Consent" permitting the release of information relevant to the subject injury to the MIR physician.
 - (b) In cases involving untimely medical record submission by a party, the Program Coordinator may elect to reschedule the evaluation to allow the physician adequate time for record review. Otherwise, the physician shall perform the evaluation and shall produce an "MIR Report."
 - (c) The medical records shall include a dated cover sheet listing the claimant's name, MIR Registry physician's name, MIR Registry case number, date and time of the appointment, and the state file number. The medical records shall be in chronological order, by provider, and tabbed by year.
 - (d) Medical bills, adjustor notes, surveillance tapes, denials, vocational rehabilitation reports, case manager records, contextual letters, commentaries, depositions, or any other document deemed by the Program Coordinator to compromise the impartiality of the review shall not be submitted to the MIR Registry physician.
- (11) Any forms the MIR physician requests to be completed should be completed by the claimant only. If the claimant needs assistance in completing these forms for any reason, the claimant shall notify the MIR Registry physician prior to the evaluation so that assistance can be provided by the MIR Registry physician's staff. The case manager shall not meet with the MIR Registry physician.
- (12) The claimant shall notify the Program Coordinator of the necessity for a language interpreter concurrently with his/her notification of the chosen physician's name. The Program Coordinator shall arrange for such services and the employer shall be responsible for paying for such language interpreter. The language interpreter shall be impartial and independent, and have no professional or personal affiliation with any party to the claim or to the MIR Registry physician.
- (13) When a claimant is required to travel outside a radius of fifteen (15) miles from the claimant's residence or workplace, then such claimant shall be reimbursed by the employer for reasonable travel expenses as allowed in the Act.

0800-02-20-.07 Payments/Fees Registry is amended by deleting it in its entirety and substituting the following language, so that as amended, it shall read:

- (1) The following timeframes shall exclude legal holidays. A physician performing evaluations under these Rules shall be prepaid by the employer a total evaluation fee for each evaluation performed, under a MIR Registry physician estimated timetable as outlined below
 - (a) Completed reports that do not require a psychiatric evaluation:
 1. Completed reports received and accepted by the Program Coordinator within thirty (30) calendar days of completing the examination: \$1,500.00.
 2. Completed reports received and accepted by the Program Coordinator between thirty- one (31) and forty-five (45) calendar days of the completing the examination: \$1250.00.
 3. Completed reports received and accepted by the Program Coordinator between forty- six (46) and sixty (60) calendar days of the completing the examination: \$750.00 .
 4. Completed reports received and accepted by the Program Coordinator later than sixty (60) calendar days of completing the examination: No fee paid.
 - (b) Completed reports that do require a psychiatric evaluation:
 1. Completed reports requiring a psychiatric evaluation and received and accepted by the Program Coordinator within thirty (30) calendar days of completing the examination: \$2,000.00.
 2. Completed reports requiring a psychiatric evaluation and received and accepted by the Program Coordinator between thirty- one (31) and forty-five (45) calendar days of the completing the examination: \$1500.00.
 3. Completed reports requiring a psychiatric evaluation received and accepted by the Program Coordinator between forty- six (46) and sixty (60) calendar days of the completing the examination: \$1,000.00.
 4. Completed reports requiring a psychiatric evaluation received and accepted by the Program Coordinator later than sixty (60) calendar days of completing the examination: No fee paid.
- (2) The evaluation fee includes normal record review, the evaluation, and production of a standard "MIR Report." At the Program Coordinator's discretion, the evaluation fee may be increased up to an additional \$ 500.00 if the MIR Report appropriates diagnoses from two or more chapters of the AMA Guides™ or if the time required for the record review, evaluation, or production of the MIR Report is extraordinary, or if the production of the report requires consultation with other providers. All non-routine test(s) for an impairment rating essential under the applicable edition of the AMA Guides™ to the Evaluation of Permanent Impairment shall have been performed prior to the evaluation. Routine tests necessary for a complete evaluation, such as range of motion tests, should be performed by the MIR Registry physician as part of the evaluation at no additional cost. More involved lung function testing including additional spirometry because the results in the medical record do not demonstrate that acceptability and repeatability criteria have been satisfied, measurement of DLCO and Vo2 Max, and pre- and post-bronchodilator spirometry or methacholine challenge tests in cases of asthma, if not reasonably current and available in the medical record should be discussed with the Program Coordinator, and if approved can then be ordered by the MIR physician at a testing facility reasonably near the worker's residence, with the employer/insurer financially responsible for the testing. Any additional x-rays that the registry physician deems necessary to render the MIR Report must be approved in writing by the Program Coordinator and are subject to the Medical Fee Schedule.

- (3) Cancellations. To be considered timely, notice of a party's desire to cancel an evaluation appointment shall be given to the Program Coordinator at least three (3) business days prior to the date of the evaluation. An evaluation may be canceled or rescheduled only after obtaining the consent of the Program Coordinator. The Program Coordinator shall decide whether an evaluation may be rescheduled within ten (10) calendar days of a request to cancel. If the request is not timely, the MIR Registry physician shall be entitled to collect/retain a \$300.00 cancellation fee. If the evaluation is rescheduled, the MIR Registry physician is entitled to the entire evaluation fee (for the scheduled evaluation) in addition to this fee.
- (a) If the employee cancels untimely with good cause or fails to appear for the evaluation with good cause, as determined by the Program Coordinator, the Program Coordinator may reschedule the evaluation, and the employer shall pay the cancellation fee.
 - (b) If the employee untimely cancels an appointment with the MIR registry physician without good cause or fails to appear without good cause, as determined by the Program Coordinator, the employer shall pay the cancellation fee(s) and may seek to recover said fee(s) upon proper application to the Court of Workers' Compensation Claims at any subsequent hearing, upon written motion, before the Court, including a settlement approval.
 - (c) If the employee untimely cancels without good cause or fails to appear without good cause more than once, the Program Coordinator may authorize the MIR Physician to produce an MIR Report in compliance with Rule 0800-02-20-.11; provided, however, the MIR Physician shall not conduct a physical evaluation.

Authority: T.C.A. §§ 4-5-202, 50-6-102, 50-6-204, 50-6-205, 50-6-233.

Paragraph (1) of 0800-02-20-.09 Communication with Registry Physicians is amended by deleting it in its entirety and substituting the following language, so that as amended, it shall read:

- (1) During the MIR physician selection process, registry physicians cannot render opinions as to the impairment relating to the subject injury to a party to the case in cases in which the physician's name appears on the three-physician listing. MIR Registry physicians who have rendered an opinion as to the impairment relating to the subject injury to a party to the case must disclose the nature and extent of those discussions to the Program Coordinator immediately upon their selection as the MIR registry physician. The Program Coordinator will determine whether or not a conflict of interest exists. Failure to disclose a potential conflict of interest may result in a physician's removal from the MIR Registry. While removed from the Registry, physicians shall not be eligible to perform MIR evaluations.

Authority: T.C.A. §§ 4-5-202, 50-6-102, 50-6-204, 50-6-205, 50-6-233.

Paragraph (2) of 0800-02-20-.10 Requirements for the Evaluation is amended by deleting Subparagraphs (c) and (d) in their entirety and adding a new Subparagraph (c), so that as amended, Paragraph (2) shall read:

- (2) The MIR Registry physician's responsibilities following the evaluation are to:
- (a) Consider all medical evidence obtained in the evaluation and provided by the parties subject to the Rules;
 - (b) Complete an "MIR Report";
 - (c) Send that complete report with all required attachments to the Program Coordinator only, via electronic mail, U.S. mail, or overnight delivery.

Authority: T.C.A. §§ 4-5-202 and 50-6-204.

Paragraph (3) of 0800-02-20-.11 Requirements for the "MIR Report" is amended by deleting it in its entirety and substituting the following language, so that as amended, it shall read:

- (3) If, after reviewing the records, taking a history from the claimant and performing the evaluation, the MIR physician does not concur with the attending doctor's determination of MMI, a report shall be completed similar to the one outlined above which documents and certifies to, in sufficient detail, the rationale for disagreeing. The physician is still entitled to collect/retain the appropriate MIR fee. Even if the claimant is determined not to be at MMI by the MIR physician, the MIR physician will still issue a completed MIR report with a permanent medical impairment rating based upon the findings at the time of evaluation.

Authority: T.C.A. §§ 4-5-202 and 50-6-204.

Paragraph (1) of 0800-02-20-.13 Removal of a Physician from the Registry is amended by deleting it in its entirety and substituting the following language, so that as amended, it shall read:

- (1) The Administrator may remove a physician from the MIR Registry permanently or temporarily. In doing so, the Administrator shall first notify the physician in writing that he or she is at risk of being removed from the MIR Registry. The procedures followed for removal under this section shall follow the same procedures as those set forth below in Rule 0800-02-20-.13(2) and (3). The Administrator may remove a physician from the MIR Registry permanently or temporarily based upon any of the following grounds:
 - (a) Misrepresentation on the "Application for Appointment to the MIR Registry" as determined by the Administrator;
 - (b) Failure to timely report a conflict of interest in a case assignment, as determined by the Administrator;
 - (c) Refusal or substantial failure to comply with the provisions of these Rules, including, but not limited to, failure to determine impairment ratings correctly using the AMA Guides™, as determined by the Administrator;
 - (d) Failure to maintain the requirements of the Rules, as determined by the Administrator;
or
 - (e) Any other reason for the good of the Registry as determined solely and exclusively by the Administrator.

Authority: T.C.A. §§ 4-5-202 and 50-6-204.

0800-02-20-.13 Removal of a Physician from the Registry is further amended by deleting Paragraph (3) in its entirety and substituting the following language in Paragraph (3) and by adding a new Paragraph (4), so that as amended, Paragraphs (3) and (4) shall read:

- (3) A physician who has been removed from the MIR Registry by the Administrator may apply for reinstatement one year after the date of removal by submitting a written request to the Program Coordinator.
- (4) In lieu of removing a physician from the MIR Registry, the Administrator, at his or her sole discretion, may move the physician to inactive status pending the fulfillment of additional AMA Guides™ training or other administrative requirements, as designated in writing to the physician. MIR Registry physicians moved to inactive status shall remain on the MIR Registry, but may not:
 - (a) Be placed on the list of qualified physicians pursuant to Rule 0800-2-20-.06(4)(a);

- (b) Perform MIR evaluations; or
- (c) Have recourse through reconsideration of the Administrator's decision to move the physician to inactive status.

Authority: T.C.A. §§ 4-5-202, 50-6-102, 50-6-204, 50-6-205, 50-6-233.

0800-02-20-.14 Penalties is amended by deleting it in its entirety and substituting the following language, so that as amended, it shall read:

- (1) Failure by an employer or insurer to pre-pay the evaluation fee shall allow the physician to charge the employer a \$100.00 late fee in addition to the evaluation fee. If the evaluation fee and/or late fee remains unpaid fifteen (15) calendar days following the date of the evaluation, an additional \$250.00 penalty is authorized. If any portion of a fee or penalty remains unpaid after an additional thirty (30) calendar day period, an additional \$500.00 penalty is authorized, and again for each additional thirty (30) calendar day period, or portion thereof, that it remains unpaid until all fees and/or penalties are fully paid.
- (2) If an employer or insurer fails to pay the cancellation fee of \$300.00 within fifteen (15) calendar days of the Program Coordinator's written request for the fee, an additional \$250.00 penalty is authorized. If any portion of a fee or penalty remains unpaid after an additional thirty (30) calendar day period, an additional \$500.00 penalty against the employer is authorized, and again for each additional thirty (30) calendar day period, or portion thereof, that it remains unpaid until all fees and/or penalties are fully paid.
- (3) MIR Registry physician fails to refund any unearned evaluation fee within fifteen calendar days of the Program Coordinator's written request for the refund, an additional \$250 penalty is authorized. If any portion of the refund or penalty remains unpaid after an additional thirty (30) calendar day period an additional \$500.00 penalty against the MIR Registry physician is authorized. If any portion of the unearned fee or penalty remains unpaid after an additional thirty (30) calendar day period, an additional \$500.00 penalty is authorized, and again for each additional thirty (30) calendar day period, or portion thereof, that it remains unpaid until all fees and/or penalties are fully paid.
- (4) If any party engages in unauthorized communications with the MIR physician, then the Administrator is authorized to assess a penalty of \$50.00 up to \$5000.00 per violation, as determined by the Administrator.
- (5) Notwithstanding any other provision in these rules to the contrary, and in addition to any other penalty provided for in these Rules and the Act, failure by any party to comply with these Rules in a manner for which no penalty has specifically been set forth herein may subject that party to civil penalties of \$50.00 up to \$5000.00 per violation, as determined by the Administrator.
- (6) Any party assessed a monetary penalty by the Bureau may request a contested case hearing in accordance with the Penalty Program Rules of the Bureau, 0800-2-13, by submitting a request for such hearing within fifteen (15) days of issuance of the notice of violation and assessment of civil penalties hereunder.

Authority: T.C.A. §§ 4-5-202, 50-6-102, 50-6-118, 50-6-204, 50-6-205, 50-6-233.

0800-02-20-.15 Time Limits is amended by deleting it in its entirety and substituting the following language, so that as amended, it shall read:

- (1) All time limits referenced in these Rules may be extended by the Administrator or Program Coordinator.

Authority: T.C.A. §§ 4-5-202, 50-6-102, 50-6-204, 50-6-205, 50-6-233.

0800-02-20-16 Cooperation is amended by deleting it in its entirety and substituting the following language, so that as amended, it shall read:

- (1) Injured workers, employers, insurers and carriers shall cooperate in good faith with the Bureau in scheduling MIR Registry evaluations. They shall also cooperate in good faith with all reasonable requests made by any MIR Registry physician.

Authority: T.C.A. §§ 4-5-202 and 50-6-204.

* 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) |
|--------------|-----|----|---------|--------|-------------------------|
| | | | | | |

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Bureau of Workers' Compensation on _____ and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on October 23, 2015.

Rulemaking Hearing Conducted on December 17, 2015.

Date: 2/29/16

Signature: Abbie Hudgens

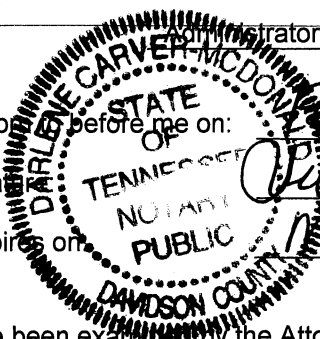
Name of Officer: Abbie Hudgens

Title of Officer: Administrative Assistant, Division of Workers' Compensation

Subscribed and sworn to before me on: February 29, 2016

Notary Public Signature: Darlene Carver-McDonald

My commission expires on: May 8, 2017



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.

Herbert H. Slatery III
Herbert H. Slatery III
Attorney General and Reporter
6/1/2016
Date

RECEIVED
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SECRETARY OF STATE
PUBLICATIONS

Department of State Use Only

Filed with the Department of State on: 6/10/16

Effective on: 9/8/16

Tre Hargett
Tre Hargett
Secretary of State

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

Public Comments and Responses

Comment: Regarding Rule 0800-02-20-.07, an increase in fees by 50% is excessive and will decrease the use of the MIRR.

Response: The Bureau disagrees with this comment. The fees have not been increased since 2005 and the proposed fees are in line with fees charged for records reviews and Independent Medical Evaluations used in other circumstances in Tennessee and in other states. The request for extra reimbursement presently comes from the evaluating physician. The aim is to attract the best practitioners who go through extra training to do this work. As in other fields, quality costs more.

Comment: Most reports are straightforward and do not warrant the increase in fees.

Response: The Bureau disagrees with the comment. Although seemingly straightforward, the report requirements are exacting and are peer reviewed. The Bureau does not judge the complexity of the calculations ahead of time.

Comment: Give the program coordinator greater discretion by allowing extra payment of up to \$800 instead of \$250 and add more direction to the program coordinator by adding qualifiers: 1) medical records in excess of 100 pages, 2) diagnoses of two or more chapters in the Guides®, 3) multiple diagnoses, 4) consultations with other physicians.

Response: The Bureau agrees with the comment in part. The program coordinator does not receive the medical records and usually does not know of the number of pages being asked for by the parties or the number of diagnoses that will eventually be used by the MIRR physician. The fee is prepaid. The request for extra reimbursement presently comes from the evaluating physician. The program rules allow for the approval of the extra payment for three or more chapters of the Guides®. The qualifier for two or more chapters and for consultations with other providers has been added. The additional discretionary fee has been increased to \$500.

Comment: Regarding the cancellation fee, if the claimant cancels without reasonable notice given or fails to show, without good cause, the claimant should be responsible for the \$300 cancellation fee.

Response: The Bureau agrees with the comment and a revision was made to allow the payor to request an order from the court of workers' compensation claims for reimbursement by the employee.

Comment: The process is unclear when the program coordinator's decision not to accept an MIR application is final for administrative purposes.

Response: The Bureau has added a clarifying statement that the parties may file a petition for benefit determination with the Bureau as needed.

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.

(If applicable, insert Regulatory Flexibility Addendum here)

Statement Of Economic Impact To Small Businesses

1. The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule: The amended rules will affect small employers under the Tennessee Workers' Compensation Laws, which would be employers with at least five employees, or in the construction industry with at least one employee. The rules address the medical impairment rating registry program, which may affect those employees with a permanent impairment rating.
2. The 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: Generally, record keeping and administrative duties will be performed by employers' insurance carriers or third party administrators. Accordingly, any administrative impact to small businesses should be minimal.
3. A statement of the probable effect on impacted small businesses and consumers: Any impact on small businesses and consumers should be minimal.
4. A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business: There are no less burdensome methods to achieve the purposes and objectives of these rules.
5. Comparison of the proposed rule with any federal or state counterparts: None.
6. Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule: It would be detrimental to small businesses that fall under the Tennessee Workers' Compensation Laws to be exempt from these rules because they are intended to ensure the effective administration of claims. It is expected that these rules would promote better outcomes in workers' compensation claims which should prove beneficial to the overall health of the Tennessee economy.

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)

Local governments have the option to accept the provisions of the workers' compensation laws pursuant to T.C.A. § 50-6-106(6), but are not required to do so. For those local governments that do accept the provisions of the workers' compensation laws, the impact of the rule amendments will be minimal.

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;

These rules provide changes to the existing medical impairment rating registry rules

- (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;

T.C.A. § 50-6-204(d) provides for the establishment of a medical impairment rating registry program to be provided to injured workers under the workers' compensation law.

- (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;

Insurance carriers and injured workers will be directly affected by these rules. Comments were received by the bureau and were addressed and some suggested changes were made.

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

None

- (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;

Local governments have the option to accept the provisions of the workers' compensation laws pursuant to T.C.A. § 50-6-106(6), but are not required to do so. For those local governments that do accept the provisions of the workers' compensation laws, the fiscal impact of the rule amendments will be minimal as these are largely procedural rules. The state government is subject to some provisions of the workers' compensation laws, but not all, and will not be impacted by these rule amendments.

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

Troy Haley, Administrative Attorney and Legislative Liaison, Bureau of Workers' Compensation

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

Troy Haley, Administrative Attorney and Legislative Liaison, Bureau of Workers' Compensation

- (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 French Landing
Drive Floor 1-B
Nashville, TN 37243
(615) 532-0179
troy.haley@tn.gov

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

None

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Sequence Number: _____
Notice ID(s): _____
File Date: _____

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: | Tennessee Department of Labor and Workforce Development |
| Division: | Bureau of Workers' Compensation |
| Contact Person: | Troy Haley |
| Address: | 220 French Landing Drive, 1-B, Nashville, TN 37243 |
| Phone: | 615-532-0179 |
| Email: | troy.haley@tn.gov |

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: | Troy Haley |
| Address: | 220 French Landing Drive, 1-B, Nashville, TN 37243 |
| Phone: | 615-532-0179 |
| Email: | troy.haley@tn.gov |

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

| | | | |
|----------------|-------------------------------|--|--|
| Address 1: | 220 French Landing Drive, 1-A | | |
| Address 2: | Tennessee Room | | |
| City: | Nashville | | |
| Zip: | 37243 | | |
| Hearing Date : | 12/17/2015 | | |
| Hearing Time: | 10:00 a.m. CST/CDT | | |

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 |
|-----------------------|--|
| 0800-02-20 | Medical Impairment Rating Registry Program |
| Rule Number | Rule Title |
| 0800-02-20-.01 | Definitions |
| 0800-02-20-.02 | Purpose and Scope |
| 0800-02-20-.03 | Severability |
| 0800-02-20-.04 | Requisite Physician Qualifications for Inclusion on Medical Impairment Rating Registry |
| 0800-02-20-.05 | Application Procedures for Physicians to Join the Registry |
| 0800-02-20-.06 | Requests for a MIR Registry Physician |
| 0800-02-20-.07 | Payments/Fees |
| 0800-02-20-.08 | Multiple Impairment Rating Evaluations |
| 0800-02-20-.09 | Communication with Registry Physicians |
| 0800-02-20-.10 | Requirements for the Evaluation |
| 0800-02-20-.11 | Requirements for the "MIR Report" |
| 0800-02-20-.12 | Peer Review |
| 0800-02-20-.13 | Removal of a Physician from the Registry |
| 0800-02-20-.14 | Penalties |
| 0800-02-20-.15 | Time Limits |
| 0800-02-20-.16 | Cooperation |
| 0800-02-20-.17 | Overturning a MIR Physician's Opinion |

(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>)

0800-02-20-.01 DEFINITIONS.

- (1) "Act" means the Tennessee Workers' Compensation Act, Tenn. Code Ann. § 50-6-101 et seq., as amended.
- (2) "Administrator" means the chief administrative officer of the Bureau of Workers' Compensation Division of the Tennessee Department of Labor and Workforce Development with full authority over the MIR Registry Program, or the Administrator's designee.
- (3) "Business day(s)" means any day upon which the Division Bureau is open for business.
- (4) "Bureau" means the Bureau of Workers' Compensation.
- (5) "Conflict of Interest" means a conflict between the professional or personal interests and needs of a health care provider and his or her professional responsibilities toward a patient or consumer.
- (4) "Commissioner" means the Commissioner of the Tennessee Department of Labor and Workforce Development or the Commissioner's designee.
- (6) (5) "Department" means the Tennessee Department of Labor and Workforce Development.
- (7) (6) "Dispute of degree of medical impairment" means one or more of the following: of two things: either
 - (a) at least two (2) different physicians have issued differing permanent medical

impairment ratings in compliance with the Act and the parties disagree as to those permanent impairment ratings; or,

~~(b) a dispute may also exist if a physician has issued an opinion in compliance with the Act that no permanent medical impairment exists, yet that physician has issued permanent physical or mental (psychiatric) restrictions to the injured employee; or~~

~~(c) the employer and employee both wish to access the Medical Impairment Rating Registry because they agree that the permanent medical impairment rating issued by the authorized treating physician is incorrect.~~

(7) ~~“Division” means the Workers’ Compensation Division of the Tennessee Department of Labor and Workforce Development.~~

(8) “Employee” shall have the same meaning as set forth in Tenn. Code Ann. § 50-6-102.

(9) “Employer” shall have the same meaning as set forth in Tenn. Code Ann. § 50-6-102.

(10) “Form” means the ~~“Request Application for a Medical Impairment Rating,”~~ required to be used to request a MIR Registry physician from the Administrator. The Form is available upon request from the Bureau Department or online at www.tn.gov/workforce/topic/forms ~~www.state.tn.us/labor-wfd/mainforms.html~~.

(11) “Insurer” or “carrier” means an employer’s workers’ compensation insurance carrier and additionally shall include any entity claiming, operating, or attempting to operate as a self-insured employer, self-insured pool, or self-insured trust pursuant to the requirements of Tenn. Code Ann. § 50-6-405 and Chapter 0780-01-54, Self-Insured Pools, of the Rules of the Department of Commerce and Insurance, Insurance Division.

(Rule 0800-02-20-.01, continued)

~~(12) "Medical Director" means the Division's Medical Director, appointed by the Administrator pursuant to T.C.A. § 50-6-126 (Repl. 1999) or the Medical Director's designee.~~

(12) ~~(13)~~ "Medical Impairment Rating Registry" or "MIR Registry" means the registry or listing of physicians established by the Administrator pursuant to Tenn. Code Ann. § 50-6-204 ~~(2005)~~ to perform independent medical impairment ratings when there is a dispute as to the degree of medical impairment, as defined in 0800-02-20-.01(5) above.

(13) ~~(14)~~ "Party" means any person or entity which either could be liable for payment of workers' compensation benefits or a person who has a potential right to receive workers' compensation benefits. "Party" shall include a legal representative of a party.

(14) ~~(15)~~ "Physician" means a person currently licensed in good standing to practice as a doctor of medicine or doctor of osteopathy.

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

Authority: T.C.A. §§ 4-5-202, 50-6-102, 50-6-204 (2005), 50-6-205, 50-6-233, and Public Chapters 282 & 289 ~~(2013)~~. **Administrative History:** Public necessity rule filed June 15, 2005; effective through November 27, 2005. Public necessity rule filed November 16, 2005; effective through April 30, 2006. Original rule filed January 30, 2006; effective April 15, 2006. Amendment filed November 8, 2011; effective April 29, 2012. Amendments filed March 25, 2013; effective June 23, 2013. Amendment filed December 26, 2013; effective March 26, 2014.

0800-02-20-.02 PURPOSE AND SCOPE.

- (1) Purpose. The purpose of the Medical Impairment Rating Registry Program is to comply with and implement Tenn. Code Ann. § 50-6-204(d)(5) and (6) (Repl. 2005) by establishing a resource to resolve disputes regarding the degree of permanent medical impairment ratings for injuries or occupational diseases to which the Act is applicable. In order to ensure high-quality independent medical impairment evaluations, the Department establishes these Rules for parties and physicians. MIR Registry physicians shall provide evaluations in a manner consistent with the standard of care in their community and in compliance with these Rules, as well as issue opinions based upon the applicable edition of the AMA GuidesTM to the Evaluation of Permanent Impairment or other appropriate method pursuant to the Act.
- (2) Scope. The MIR Registry is available to any party with a dispute of the degree of medical impairment rating as defined herein for injuries or any occupational disease which occurred on or after July 1, 2005. The only aspect considered by a MIR Registry physician shall be the degree of permanent medical impairment and shall not be apportioned unless directed to do so by the written agreement of all parties, as submitted to the Program Coordinator. If multiple pathologies are present in the same disputed body part or organ system, the MIR Physician may address causation solely as a means of obtaining the correct degree of permanent medical impairment, as stipulated by AMA GuidesTM methodology.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 ~~(2005)~~. **Administrative History:** Public necessity rule filed June 15, 2005; effective through November 27, 2005. Public necessity rule filed November 16, 2005; effective through April 30, 2006. Original rule filed January 30, 2006; effective April 15, 2006.

0800-02-20-.03 SEVERABILITY.

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

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005). **Administrative History:** Public necessity rule filed June 15, 2005; effective through November 27, 2005. Public necessity rule filed November 16, 2005; effective through April 30, 2006. Original rule filed January 30, 2006; effective April 15, 2006.

0800-02-20-.04 REQUISITE PHYSICIAN QUALIFICATIONS FOR INCLUSION ON MEDICAL IMPAIRMENT RATING REGISTRY.

- (1) A physician seeking appointment to the MIR Registry shall make application and must satisfy the following qualifications:
 - (a) Possess a license to practice medicine or osteopathy in Tennessee which is current, active, and unrestricted;
 - (b) Be board-certified in his/her medical specialty by a board recognized by the American Board of Medical Specialties, the American Osteopathic Association or another organization acceptable to the Administrator;
 - (c) Have successfully completed a training course, approved by the Administrator, dedicated to the proper application of the applicable edition of the American Medical Association Guides to the Evaluation of Permanent Impairment™ (hereafter the "AMA Guides™") in impairment evaluations and furnish satisfactory evidence thereof; and
 - (d) Furnish satisfactory proof of carrying the minimum medical malpractice insurance coverage amounts enumerated in T.C.A. § 29-20-403; and
 - ~~(d) Be trained on these program rules, either in-person or by telephone, by the Program Coordinator.~~

Authority: T.C.A. §§ 4-5-202, 50-6-102, 50-6-204 (2005), 50-6-205, 50-6-233, and Public Chapters 282 & 289 (2013). **Administrative History:** Public necessity rule filed June 15, 2005; effective through November 27, 2005. Public necessity rule filed November 16, 2005; effective through April 30, 2006. Original rule filed January 30, 2006; effective April 15, 2006. Amendments filed March 25, 2013; effective June 23, 2013. Amendment filed December 26, 2013; effective March 26, 2014.

0800-02-20-.05 APPLICATION PROCEDURES FOR PHYSICIANS TO JOIN THE REGISTRY.

- (1) Appointment to the MIR Registry shall expire upon a physician's decision to withdraw from the Registry or the Division's removal of a physician from the Registry. The Division reserves the right to charge physicians a non-refundable application fee upon appointment or reinstatement to the MIR Registry. ~~For each application, An advisory panel of three (3) current MIR Registry physicians shall be randomly selected by the Program Coordinator to review the application. The Panel shall include one member from each grand division of the state who shall have been on the MIR Registry for at least five (5) years without any disciplinary actions imposed by the Bureau/Department. Each panelist member of the panel shall vote to either recommend or not recommend to the Administrator the applicant for inclusion on the MIR Registry. The Administrator, upon the advice of the Medical Director, Program Coordinator, and the advisory panel, shall have the sole and exclusive authority to approve or reject applications for inclusion on the MIR Registry.~~
- (2) Physicians seeking appointment to the MIR Registry shall complete an "Application for Appointment to the MIR Registry," available upon request or on-line at http://www.tn.gov/assets/entities/labor/attachments/MIR_appl_registry.pdf, ~~www.state.tn.us/labor-wfd/mainforms.html~~, certify to and, upon approval of the application, comply with the following conditions:
 - ~~(a) Conduct all MIR evaluations based on the guidelines in the applicable edition of the AMA Guides™ and submit the original "MIR Report" with all attachments to the Program Coordinator. In cases not covered by the applicable AMA Guides™, any impairment rating allowed under the Act shall be appropriate;~~

~~(b) Agree to conduct all evaluations within 30 days of receiving referrals, except when good cause is shown. Consideration will be given to a physician's schedule and other previously arranged or emergency obligations; Decline requests to conduct an evaluation only on the basis of good cause shown. Consideration will be given to a physician's schedule and other previously arranged or emergency obligations;~~

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

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

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

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

1. Conduct these evaluations only in a professional medical office suitable for medical or psychiatric evaluations where the primary use of the site is for medical service.

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

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

(g) Not refer any MIR Registry claimant to another specific physician for any treatment or testing nor suggest referral or treatment. However, if new diagnoses are discovered, the physician has a medical obligation to inform the requesting party and the claimant about the condition and recommend further medical assessment;

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

(i) Not evaluate an MIR Registry claimant if a conflict of interest exists;

(j) Not substitute, or allow to be substituted, anyone else, including any other physician, physician assistant, nurse practitioner, physical therapist or staff member, as the physician to conduct the MIR Registry evaluation;

(k) No later than fifteen (15) calendar days after a request by the Program Coordinator to refund to the paying party part or all of any fee paid by that party for a MIR Registry evaluation, as may be required by these Rules and the Administrator; and

~~(a)~~ (l) For each MIR Registry case assigned, address only the issue of permanent impairment rating.

~~(b)~~

~~(c)~~ (m) While on the MIR Registry, agree to carry at least the minimum malpractice insurance policy coverage as provided in T.C.A. § 29-20-403.

(3) Bureau employees may be appointed to the MIR Registry in compliance with Rules 0800-02-20-.04 and 0800-.02-20.05.

~~(4)~~ (3) Physicians denied appointment to the MIR Registry by the Administrator or Administrator's designee on their initial application may seek reconsideration of their application by submitting a request for reconsideration stating the grounds for such reconsideration to the Program Coordinator within fifteen (15) calendar days of the issuance

of the Notice of Denial of their application. The Administrator may affirm or reverse the initial determination upon reconsideration of the initial decision. The Administrator shall issue a Notice of Final_Determination which shall be the final decision. If the Administrator does not act on the request for reconsideration within twenty (20) calendar days, then the request shall be deemed to have been denied, which shall be the final decision.

(Rule 0800-02-20-.05, continued)

Authority: T.C.A. §§ 4-5-202, 50-6-102, 50-6-204 (2005), 50-6-205, 50-6-233, and Public Chapters 282 & 289 (2013). **Administrative History:** Public necessity rule filed June 15, 2005; effective through November 27, 2005. Public necessity rule filed November 16, 2005; effective through April 30, 2006. Original rule filed January 30, 2006; effective April 15, 2006. Amendments filed March 25, 2013; effective June 23, 2013. Amendment filed December 26, 2013; effective March 26, 2014.

0800-02-20-.06 REQUESTS FOR A MIR REGISTRY PHYSICIAN.

- (1) When a dispute of the degree of medical impairment, as defined in Rule 0800-02-20-.06 exists, any party may request a listing of physicians from the Administrator's MIR Registry by completing the "Application for Medical Impairment Rating" (hereinafter "Form"), available upon request from the Department or online at www.state.tn.us/labor-wfd/mainforms.html. <http://www.tn.gov/workforce/section/injuries-at-work>. The completed Form must then be returned to the Program Coordinator via electronic mail, facsimile or U.S. Mail.
- (2) The requesting party shall send a copy of the Form to the opposing party. The Program Coordinator's decision to accept or deny the Form is final for administrative purposes. If a party disagrees with the decision, then the parties may file a Petition for Benefits Determination (PBD) with the Court of Workers' Compensation Claims.
- (3) The request for a MIR Registry physician shall designate~~The Administrator requires the request for a MIR Registry physician designate:~~
 - (a) All body part(s) or medical condition(s) to be evaluated, including whether mental impairment shall be evaluated;
 - (b) The names of all physicians that have previously evaluated, treated, or are currently evaluating or treating the claimant for the work-related injury at employer and/or employee expense;
 - (c) The names of all physicians made available to the claimant. If an employer provides the claimant with the name of a group of physicians rather than with individual physician names, the same information shall be included on the request form. If a panel of physicians has been provided to the employee in accordance with T.C.A. § 50-6-204, then a completed Form C-42 must accompany the request form;
 - (d) The state file number assigned to the claims.
- (4) Selection of MIR Registry physician through party agreement:
 - (a) Within five (5) business days of receipt of the completed Form from the requesting party, the Program Coordinator shall issue a listing of all qualified physicians in the appropriate geographic area (which shall mean within an approximate one hundred (100) mile straight-line radius of the employee's home zip code), from the MIR Registry to all parties listed on the Form so the parties may negotiate an agreement on the selection of a physician as the MIR Registry physician. If the parties agree, they shall notify the Program Coordinator of the agreement so he or she may schedule the appointment with the selected physician for the MIR examination. Parties agreeing to the selection of the MIR Registry physician under this paragraph must abide by all of the Rules set forth here in Chapter 0800-02-20. A written opinion as to the permanent impairment rating given by the MIR Registry physician selected pursuant to this Rule shall be presumed to be the accurate impairment rating pursuant to T.C.A. § 50-6-204(d)(5).
 - (b) If the Program Coordinator determines that there are an inadequate number of qualified

physicians within a 100 mile straight-line radius of the employee's home zip code, the

(Rule 0800-02-20-.06, continued)

Program Coordinator may produce a state-wide listing of all registry physicians qualified to give the rating.

- (5) If the parties cannot agree upon selection of a MIR Registry physician from the Administrator's listing of MIR Registry physicians provided within fifteen (15) calendar days of the Program Coordinator issuing the requested listing, it shall be the responsibility of the employer to provide a written request to the Program Coordinator to provide a three-physician list by submitting such request on the Form. A written opinion as to the permanent impairment rating given by the MIR Registry physician selected pursuant to this Rule shall be presumed to be the accurate impairment rating, pursuant to T.C.A. § 50-6-204(d)(5).
- (6) The submitting party shall certify that all parties, as well as the Program Coordinator, have been sent the completed Form at the same time. The Form will not be processed until all required information has been provided.
- (7) The three (3) physician listing.
 - (a) Within five (5) business days of receipt of the completed "Application for a Medical Impairment Rating," the Division shall produce a list of three qualified physicians drawn from the Administrator's MIR Registry, from which one physician shall be designated to perform the evaluation. The three-physician listing created will be comprised of physicians qualified, based on the information provided by the physician and on their accreditation to perform evaluations of the body part(s) and/or medical condition(s) designated on the application for an evaluation. Psychiatric or psychological evaluations regarding mental and/or behavioral impairment shall be performed by a psychiatrist.
 - (b) All physician selections shall be derived from the pool of qualified physicians.
- (8) MIR Registry three (3) physician list selection process.
 - (a) Within three (3) business days of the issuance of the three-physician listing, the employer shall strike one name and inform the Program Coordinator and all parties of the remaining physicians. Within three (3) business days of the date of receipt of that name from the employer, the claimant shall strike one of the two remaining names and inform the Program Coordinator and other parties of the name of the remaining physician, who will perform the evaluation.
 - (b) If one party fails to timely strike a name from the listing, the other party shall notify the Program Coordinator and at the same time provide to Program Coordinator the name that it wishes to strike. In that situation, the Administrator Medical Director may randomly select one physician from the remaining two, and that physician shall perform the evaluation. The Program Coordinator shall inform the parties of the name of the selected physician in writing.
 - (c) If a selected physician is unable to perform the evaluation, the Administrator Medical Director shall provide one replacement name to the original listing using the same criteria and process set forth above, and present that revised listing to the parties and each shall again strike one name according to the above procedures. Additionally, if a physician is removed from the three-physician listing for any reason other than having been struck by one of the parties, the Administrator Medical Director will issue one replacement physician name.
- (9) Appointment date.
 - (a) Within three (3) business days of providing or receiving notice of the MIR physician selection, the Program Coordinator shall contact the MIR Registry physician to schedule the evaluation and shall immediately notify all parties of the date and time of the

(Rule 0800-02-20-.06, continued)

evaluation. Only after this notification should the employer or insurance carrier contact the MIR Registry physician and only to arrange for payment and for medical records submission required by these Rules.

(10) Submission of Medical Records.

- (a) All parties shall concurrently provide to the MIR registry physician and all other parties a complete copy of all pertinent medical records obtained at their own expense pertaining to the subject injury, postmarked or hand-delivered at least ten (10) calendar days prior to the evaluation. If necessary, the claimant shall promptly sign a "MIR Waiver and Consent" permitting the release of information relevant to the subject injury to the MIR physician.
 - (b) In cases involving untimely medical record submission by a party, the Program Coordinator may elect to reschedule the evaluation to allow the physician adequate time for record review. Otherwise, the physician shall perform the evaluation and shall produce an "MIR Report."
 - (c) The medical records shall include a dated cover sheet listing the claimant's name, MIR Registry physician's name, MIR Registry case number, date and time of the appointment, and the state file number. The medical records shall be in chronological order, by provider, and tabbed by year.
 - (d) Medical bills, adjustor notes, surveillance tapes, denials, vocational rehabilitation reports, case manager records, contextual letters, commentaries, depositions, or any other document deemed by the Program Coordinator Administrator to compromise the impartiality of the review shall not be submitted to the MIR Registry physician.
- (11) Any forms the MIR physician requests to be completed should be completed by the claimant only. If the claimant needs assistance in completing these forms for any reason, the claimant shall notify the MIR Registry physician prior to the evaluation so that assistance can be provided by the MIR Registry physician's staff. The case manager shall not meet with the MIR Registry physician.
- (12) The claimant shall notify the Program Coordinator of the necessity for a language interpreter concurrently with his/her notification of the chosen physician's name. The Program Coordinator shall arrange for such services and the employer shall be responsible for paying for such language interpreter. The language interpreter shall be impartial and independent, and have no professional or personal affiliation with any party to the claim or to the MIR Registry physician.
- (13) When a claimant is required to travel outside a radius of fifteen (15) miles from the claimant's residence or workplace, then such claimant shall be reimbursed by the employer for reasonable travel expenses as allowed in the Act.

Authority: T.C.A. §§ 4-5-202, 50-6-102, 50-6-204 (2005), 50-6-205, 50-6-233, and Public Chapters 282 & 289 (2013). **Administrative History:** Public necessity rule filed June 15, 2005; effective through November 27, 2005. Public necessity rule filed November 16, 2005; effective through April 30, 2006. Original rule filed January 30, 2006; effective April 15, 2006. Amendments filed March 25, 2013; effective June 23, 2013. Amendment filed December 26, 2013; effective March 26, 2014.

0800-02-20-.07 PAYMENTS/FEES.

- (1) The following timeframes shall exclude legal holidays. A physician performing evaluations under these Rules shall be prepaid by the employer a total evaluation fee for each evaluation performed, under a MIR Registry physician estimated timetable as outlined below

(Rule 0800-02-20-.07, continued)

- (a) ~~Completed reports received and accepted by the Program Coordinator within thirty (30) calendar days of completing the examination\$1,000.00~~
- (b) ~~Completed reports received and accepted by the Program Coordinator between thirty one (31) and forty five (45) calendar days of the completing the examination\$850.00~~
- (c) ~~Completed reports received and accepted by the Program Coordinator between forty six (46) and sixty (60) calendar days of the completing the examination\$500.00~~
- (d) ~~Completed reports received and accepted by the Program Coordinator later than sixty (60) calendar days of completing the examinationNo fee paid~~

(a) Completed reports that do not require a psychiatric evaluation:

- 1. Completed reports received and accepted by the Program Coordinator within thirty (30) calendar days of completing the examination: \$1,500.00.
- 2. Completed reports received and accepted by the Program Coordinator between thirty- one (31) and forty-five (45) calendar days of the completing the examination: \$1250.00.
- 3. Completed reports received and accepted by the Program Coordinator between forty- six (46) and sixty (60) calendar days of the completing the examination: \$750.00 .
- 4. Completed reports received and accepted by the Program Coordinator later than sixty (60) calendar days of completing the examination: No fee paid.

(b) Completed reports that do require a psychiatric evaluation:

- 1. Completed reports requiring a psychiatric evaluation and received and accepted by the Program Coordinator within thirty (30) calendar days of completing the examination: \$2,000.00.
- 2. Completed reports requiring a psychiatric evaluation and received and accepted by the Program Coordinator between thirty- one (31) and forty-five (45) calendar days of the completing the examination: \$1500.00.
- 3. Completed reports requiring a psychiatric evaluation received and accepted by the Program Coordinator between forty- six (46) and sixty (60) calendar days of the completing the examination: \$1,000.00.
- 4. Completed reports requiring a psychiatric evaluation received and accepted by the Program Coordinator later than sixty (60) calendar days of completing the examination: No fee paid.

- (2) The evaluation fee includes normal record review, the evaluation, and production of a standard "MIR Report." At the Program Coordinator's Administrator's sole discretion, the evaluation fee may be increased up to an additional \$500.00 if the MIR Report appropriates diagnoses from two or more chapters of the AMA Guides™ or if the time required for the record review, evaluation, or production of the MIR Report is extraordinary, or if the production of the report requires consultation with other providers. All non-routine test(s) for an impairment rating essential under the applicable edition of the AMA Guides™ to the Evaluation of Permanent Impairment shall have been performed prior to the evaluation.

Routine tests necessary for a complete evaluation, such as range of motion or spirometry tests, should be performed by the MIR Registry physician as part of the evaluation at no additional cost. More involved lung function testing including additional spirometry because the results in the medical record do not demonstrate that acceptability and repeatability criteria have been satisfied, measurement of DLCO and Vo2 Max, and pre- and post-bronchodilator spirometry or methacholine challenge tests in cases of asthma, if not reasonably current and available in the medical record should be discussed with the Program Coordinator, and if approved can then be ordered by the MIR physician at a testing facility reasonably near the worker's residence, with the employer/insurer financially responsible for the testing. Any additional x-rays that the registry physician deems necessary to render the MIR Report must be approved in writing by the Program Coordinator and are subject to the Medical Fee Schedule.

- (3) Cancellations. To be considered timely, notice of a party's desire to cancel an evaluation appointment shall be given to the Program Coordinator at least three (3) business days prior to the date of the evaluation. An evaluation may be canceled or rescheduled only after obtaining the consent of the Program Coordinator/Administrator. The Program Coordinator/Administrator shall decide whether an evaluation may be rescheduled within ten (10) calendar days of a request to cancel. If the request is not timely, the MIR Registry physician shall be entitled to collect/retain a \$300.00 cancellation fee. If the evaluation is rescheduled, the MIR Registry physician is entitled to the entire evaluation fee (for the scheduled evaluation) in addition to this fee.

(a) If the employee cancels untimely with good cause or fails to appear for the evaluation with good cause, as determined by the Program Coordinator, the Program Coordinator shall may reschedule the evaluation, and the employer shall pay the cancellation fee.

(b) If the employee untimely cancels an appointment with the MIR registry physician without good cause or fails to appear without good cause, as determined by the Program Coordinator, the employer shall pay the cancellation fee(s) and may seek to recover said fee(s) upon proper application to the Court of Workers' Compensation Claims at any subsequent hearing, upon written motion, before the Court, including a settlement approval.

(c) If the employee untimely cancels without good cause or fails to appear without good cause more than once, the Program Coordinator may authorize the MIR Physician to produce an MIR Report in compliance with Rule 0800-02-20-.11; provided, however, the MIR Physician shall not conduct a physical evaluation.

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~~2. If the claimant fails to appear for the evaluation without good cause as determined by the Administrator, this may be deemed a refusal to comply with a reasonable request for medical examination and the injured employee's right to compensation may be suspended pursuant to Tenn. Code Ann. § 50-6-204(d)(8) and no compensation shall be due and payable while the injured employee continues such refusal.~~

Authority: T.C.A. §§ 4-5-202, 50-6-102, 50-6-204 (2005), 50-6-205, 50-6-233, and Public Chapters 282 & 289 (2013). **Administrative History:** Public necessity rule filed June 15, 2005; effective through November 27, 2005. Public necessity rule filed November 16, 2005; effective through April 30, 2006. Original rule filed January 30, 2006; effective April 15, 2006. Amendments filed March 25, 2013; effective June 23, 2013. Amendment filed December 26, 2013; effective March 26, 2014.

0800-02-20-08 MULTIPLE IMPAIRMENT RATING EVALUATIONS.

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

(Rule 0800-02-20-.08, continued)

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005). **Administrative History:** Public necessity rule filed June 15, 2005; effective through November 27, 2005. Public necessity rule filed November 16, 2005; effective through April 30, 2006. Original rule filed January 30, 2006; effective April 15, 2006.

0800-02-20-.09 COMMUNICATION WITH REGISTRY PHYSICIANS.

- (1) During the MIR physician selection process, registry physicians cannot render opinions as to the impairment relating to the subject injury to a party to the case in cases in which the physician's name appears on the three-physician listing. MIR Registry physicians who have rendered an opinion as to the impairment relating to the subject injury to a party to the case must disclose the nature and extent of those discussions to the Program Coordinator~~Administrator~~ immediately upon their selection as the MIR registry physician. The Program Coordinator~~Administrator~~, in his or her sole authority, will determine whether or not a conflict of interest exists. Failure to disclose a potential conflict of interest may result in a physician's removal from the MIR Registry. While removed from the Registry, physicians shall not be eligible to perform MIR evaluations.
- (2) If selected as the MIR physician, there shall be no communication with the parties or their representatives prior to the Program Coordinator's acceptance and distribution of the final MIR Report, unless allowed by the Rules or approved by the Program Coordinator. Any approved communication, other than arranging for payment and the submission of medical records and the evaluation itself, shall be in writing with copies provided to all parties and the Program Coordinator. Failure by a Registry physician to disclose such communications will result in penalties under the Rules.
- (3) A party who seeks the presence of the MIR physician as a witness at a proceeding for any purpose, by subpoena, deposition or otherwise, shall be responsible for payment for those services to the MIR physician. Deposition fees shall be in accordance with applicable state rules and laws.
- (4) This Rule 0800-02-20-.09 shall also apply to any MIR physician selected to perform peer review pursuant to Rule 0800-02-20-.12.

Authority: T.C.A. §§ 4-5-202, 50-6-102, 50-6-204 (2005), 50-6-205, 50-6-233, and Public Chapters 282 & 289 (2013). **Administrative History:** Public necessity rule filed June 15, 2005; effective through November 27, 2005. Public necessity rule filed November 16, 2005; effective through April 30, 2006. Original rule filed January 30, 2006; effective April 15, 2006. Amendments filed March 25, 2013; effective June 23, 2013. Amendment filed December 26, 2013; effective March 26, 2014.

0800-02-20-.10 REQUIREMENTS FOR THE EVALUATION.

- (1) The MIR Registry physician's responsibilities prior to the evaluation are to:
 - (a) Review all materials provided by the parties subject to these Rules; and,
 - (b) Review the purpose of the evaluation and the impairment questions to be answered in the evaluation report.
- (2) The MIR Registry physician's responsibilities following the evaluation are to:
 - (a) Consider all medical evidence obtained in the evaluation and provided by the parties subject to the Rules;
 - (b) Complete an "MIR Report";
 - (c) ~~Notify the Program Coordinator when the report has been completed;~~

(Rule 0800-02-20-.10, continued)

- (c) ~~(d) Send that complete report with all required attachments to the Program Coordinator only, via electronic mail, U.S. mail, or overnight delivery. The Program Coordinator will acknowledge, to the physician, receipt of the report.~~
- (3) No physician-patient relationship is created between the MIR physician and the claimant through the MIR Registry evaluation. The sole purpose of the evaluation is to establish an impairment rating and not to recommend future treatment or to provide a diagnosis or other medical advice. However, if new diagnoses are discovered, the physician has a medical obligation to inform the requesting party and the claimant about the condition and recommend further medical assessment.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005). **Administrative History:** Public necessity rule filed June 15, 2005; effective through November 27, 2005. Public necessity rule filed November 16, 2005; effective through April 30, 2006. Original rule filed January 30, 2006; effective April 15, 2006.

0800-02-20-.11 REQUIREMENTS FOR THE "MIR REPORT."

- (1) After conducting the evaluation, the MIR physician shall produce the "MIR Report". The format, available by using the Program's electronic access, available upon request from the Program Coordinator or available online at www.state.tn.us/labor-wfd/mainforms.html, or a materially substantial equivalent approved by the Program Coordinator shall be used in all cases to detail the evaluation's results. The MIR physician shall first review the determination by the attending physician that the claimant has reached Maximum Medical Improvement (MMI).
- (2) If, after reviewing the records, taking a history from the claimant and performing the evaluation, the MIR Registry physician concurs with the attending doctor's determination of MMI, the report shall, at a minimum, contain the following:
- (a) A brief description and overview of the claimant's medical history as it relates to the subject injury, including reviewing and recapping all previous treatments.
 - (b) A statement of concurrence with the attending doctor's determination of MMI;
 - (c) Pertinent details of the physical or psychiatric evaluation performed (both positive and negative findings);
 - (d) An impairment rating consistent with the findings and utilizing a standard method as outlined in the applicable AMA GuidesTM, calculated as a total to the whole person if appropriate. In cases not covered by the AMA GuidesTM, an impairment rating by any appropriate method used and accepted by the medical community is allowed, however, a statement that the AMA GuidesTM fails to cover the case as well as a statement of the system on which the rating was based shall be included;
 - (e) The rationale for the rating based on reasonable medical certainty, supported by specific references to the clinical findings, especially objective findings and supporting documentation including the specific rating system, sections, tables, figures, and AMA GuidesTM page numbers, when appropriate, to clearly show how the rating was derived; and
 - (f) A true or electronic signature and date by the MIR physician performing the evaluation certifying to the following:
 1. "It is my opinion, both within and to a reasonable degree of medical certainty that, based upon all information available to me at the time of the MIR impairment evaluation and by utilizing the relevant AMA Guides or other appropriate method

(Rule 0800-02-20-.11, continued)

as noted above, the claimant has the permanent impairment so described in this report. I certify that the opinion furnished is my own, that this document accurately reflects my opinion, and that I am aware that my signature attests to its truthfulness. I further certify that my statement of qualifications to serve on the MIR Registry is both current and completely accurate.”

- (3) If, after reviewing the records, taking a history from the claimant and performing the evaluation, the MIR physician does not concur with the attending doctor's determination of MMI, a report shall be completed similar to the one outlined above which documents and certifies to, in sufficient detail, the rationale for disagreeing. The physician is still entitled to collect/retain the appropriate MIR fee. Even if the claimant is determined not to be at MMI by the MIR physician, the MIR physician will still issue a completed MIR report with a permanent medical impairment rating based upon the findings at the time of evaluation
- (4) Services rendered by an MIR Registry physician shall conclude upon the Program Coordinator's acceptance of the final "MIR Report." An MIR report is final and accepted for the purpose of these Rules when it includes the requested determination regarding final medical impairment rating, along with any necessary worksheets, and is signed by the Program Coordinator. Once the report has been accepted, the Program Coordinator will distribute copies of the report to the parties and the Workers' Compensation Specialist, if one is currently assigned. After acceptance of the "MIR Report" the medical records file, including the final "MIR Report," shall be stored and/or disposed of by the MIR registry physician in a manner used for similar health records containing private information and within a time frame consistent with all applicable federal, state and local laws and the Tennessee Board of Medical Examiners' rules.
- (5) Any addendums or changes to the MIR Report after it has been deemed accepted shall be approved and signed by the Program Coordinator prior to distribution to the parties.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005). **Administrative History:** Public necessity rule filed June 15, 2005; effective through November 27, 2005. Public necessity rule filed November 16, 2005; effective through April 30, 2006. Original rule filed January 30, 2006; effective April 15, 2006. Amendments filed March 25, 2013; effective June 23, 2013.

0800-02-20-.12 PEER REVIEW.

- (1) All MIR Reports are subject to peer review for appropriateness and accuracy by either the Medical Director or a physician selected randomly by the Program Coordinator who shall have been on the MIR Registry for at least five (5) years without any disciplinary actions, shall be certified in the applicable edition of the AMA Guides by the American Academy of Disability Evaluating Physicians or the American Board of Independent Medical Examiners, and shall comply with Rule 0800-02-20-.05(2); provided, however, that the peer review shall not include a physical examination of the claimant. If the peer review is performed by a MIR Registry physician, then such physician shall be entitled to a fee of \$250.00 to be paid by the employer in advance of the peer review.
- (2) The peer review shall be completed within ten (10) business days of referral from the Program Coordinator. The Medical Director or peer review physician may recommend an MIR Report for reconsideration by the examining MIR physician if the Medical Director or peer review physician deems the report to be incomplete, inaccurate, or unclear pursuant to the requirements of Rule 0800-02-20-.11. Reconsideration and any revision shall be completed by the examining MIR physician within ten (10) business days of referral from the Program Coordinator.
- (3) The time limits in Rule 0800-02-20-.07(1) shall be tolled while a MIR Report is being reviewed or reconsidered pursuant to this rule; provided, however, that if the examining MIR physician or the peer review physician does not comply with the time requirements in paragraph (2), then the Program Coordinator may reduce their respective fees.

(Rule 0800-02-20-.12, continued)

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005). **Administrative History:** Public necessity rule filed June 15, 2005; effective through November 27, 2005. Public necessity rule filed November 16, 2005; effective through April 30, 2006. Original rule filed January 30, 2006; effective April 15, 2006. Repeal and new rule filed March 25, 2013; effective June 23, 2013.

0800-02-20-.13 REMOVAL OF A PHYSICIAN FROM THE REGISTRY.

- (1) The Administrator, ~~upon the advice of the Medical Director,~~ may remove a physician from the MIR Registry permanently or temporarily. In doing so, the Administrator shall first notify the physician in writing that he or she is at risk of being removed from the MIR Registry. The procedures followed for removal under this section shall follow the same procedures as those set forth below in Rule 0800-02-20-.13(2) and (3). The Administrator may remove a physician from the MIR Registry permanently or temporarily based upon any of the following grounds:
 - (a) Misrepresentation on the "Application for Appointment to the MIR Registry" as determined by the Administrator;
 - (b) Failure to timely report a conflict of interest in a case assignment, as determined by the Administrator;
 - (c) Refusal or substantial failure to comply with the provisions of these Rules, including, but not limited to, failure to determine impairment ratings correctly using the AMA GuidesTM, as determined by the ~~Administrator~~Medical Director;
 - (d) Failure to maintain the requirements of the Rules, as determined by the Administrator; or
 - (e) Any other reason for the good of the Registry as determined solely and exclusively by the Administrator.
- (2) Written complaints regarding any MIR Registry physician shall be submitted to the Program Coordinator. Upon receipt of a complaint regarding a MIR Registry physician, the Administrator shall send written notice of the complaint (or in cases arising under Rule 0800-02-20-.13(1), notice and grounds for possible removal) to such physician, stating the grounds, and notifying the physician that he or she is at risk of being removed from the MIR Registry.
 - (a) The physician shall have thirty (30) calendar days from the date the Notice of Complaint in which to respond in writing to the complaint(s), and may submit any responsive supporting documentation to the Program Coordinator for consideration. Failure of the physician to submit a timely response to the Notice of Complaint may result in removal of the physician from the MIR Registry.
 - (b) The Administrator, in consultation with the Medical Director, shall consider the complaint(s) and any response(s) from the physician in reaching a decision as to whether the physician shall be removed from the MIR Registry, and if removed, whether the removal will be permanent or temporary.
 - (c) Upon reaching a determination on the complaint(s), the Administrator shall issue a written Notice of Determination and set forth the basis for the decision in such Notice. The determination set forth shall become final fifteen (15) calendar days after issuance of the Notice of Determination, unless a timely request for reconsideration is received.
 - (d) A MIR Registry physician may seek reconsideration of an adverse decision from the Administrator by submitting a request for reconsideration stating the grounds for such reconsideration to the Program Coordinator within fifteen (15) calendar days of the

(Rule 0800-02-20-.13, continued)

issuance of the Notice of Determination. The Administrator may affirm, modify or reverse the initial determination upon reconsideration of the initial decision. The Administrator shall issue a Notice of Determination upon Reconsideration which shall be the final decision. If the Administrator does not act on the request for reconsideration within twenty (20) calendar days, then the request shall be deemed to have been denied, which shall be the final decision.

- (3) A physician who has been removed from the MIR Registry by the Administrator may apply for reinstatement one year six (6) months after the date of removal by submitting a written request to the Program Coordinator.
- (4) In lieu of removing a physician from the MIR Registry, the Administrator, at his or her sole discretion, may move the physician to inactive status pending the fulfillment of additional AMA Guides™ training or other administrative requirements, as designated in writing to the physician. MIR Registry physicians moved to inactive status shall remain on the MIR Registry, but may not:
 - a) be placed on the list of qualified physicians pursuant to Rule 0800-2-20-.06(4)(a);
 - b) perform MIR evaluations; or
 - *c) have recourse through reconsideration of the Administrator's decision to move the physician to inactive status.

Authority: T.C.A. §§ 4-5-202, 50-6-102, 50-6-204 (2005), 50-6-205, 50-6-233, and Public Chapters 282 & 289 (2013). **Administrative History:** Public necessity rule filed June 15, 2005; effective through November 27, 2005. Public necessity rule filed November 16, 2005; effective through April 30, 2006. Original rule filed January 30, 2006; effective April 15, 2006. Amendment filed March 25, 2013; effective June 23, 2013. Amendment filed December 26, 2013; effective March 26, 2014.

0800-02-20-.14 PENALTIES.

- (1) Failure by an employer or insurer to pre-pay the evaluation fee shall allow the physician to charge the employer a \$100.00 late fee in addition to the evaluation fee. If the evaluation fee and/or late fee remains unpaid fifteen (15) calendar days following the date of the evaluation, an additional \$250.00 penalty is authorized. If any portion of a fee or penalty remains unpaid after an additional thirty (30) calendar day period, an additional \$500.00 penalty is authorized, and again for each additional thirty (30) calendar day period, or portion thereof, that it remains unpaid until all fees and/or penalties are fully paid.
- (2) If an employer or insurer fails to pay the cancellation fee of \$300.00 within fifteen (15) calendar days of the Program Coordinator's written request for the fee, an additional \$250.00 penalty is authorized. If any portion of a fee or penalty remains unpaid after an additional thirty (30) calendar day period, an additional \$500.00 penalty against the employer is authorized, and again for each additional thirty (30) calendar day period, or portion thereof, that it remains unpaid until all fees and/or penalties are fully paid.
- (3) Failure by a MIR Registry physician fails to timely refund any unearned evaluation fee within fifteen calendar days of the Program Coordinator's written request for the refund, an additional \$250 penalty is authorized. ~~shall allow the employer or insurer to recover in addition to the unearned fee a \$100.00 late fee from that MIR Registry physician. If any portion of the refund the unearned fee or penalty and/or late fee remains unpaid after an additional thirty (30) calendar day period fifteen (15) calendar days following the date of the evaluation, an additional \$500~~250.00 penalty against the MIR Registry physician is authorized. If any portion of the unearned fee or penalty remains unpaid after an additional thirty (30) calendar day period, an additional \$500.00 penalty is authorized, and again for each additional thirty (30) calendar day period, or portion thereof, that it remains unpaid until all fees and/or penalties are fully paid.
- (4) If any party engages in unauthorized communications with the MIR physician, then the Administrator ~~or Administrator's designee~~ is authorized to assess a penalty of \$50.00 up to \$500.00 per violation, as determined by the Administrator against that party.

(Rule 0800-02-20-.13, continued)

- (5) Notwithstanding any other provision in these rules to the contrary, and in addition to any other penalty provided for in these Rules and the Act, failure by any party to comply with these Rules in a manner for which no penalty has specifically been set forth herein may subject that party to civil penalties of \$50.00 up to \$50400.00 per violation, as determined by the Administrator.
- (6) Any party assessed a monetary penalty by the Bureau~~Division~~ may request a contested case hearing in accordance with the Penalty Program Rules of the Bureau~~Division~~, 0800-2-13, by submitting a request for such hearing within fifteen (15) days of issuance of the notice of violation and assessment of civil penalties hereunder.

(Rule 0800-02-20-.14, continued)

Authority: T.C.A. §§ 4-5-202, 50-6-102, 50-6-118, 50-6-204, 50-6-205, 50-6-233 ~~(2005)~~, and ~~Public Chapters 282 & 289 (2013)~~. **Administrative History:** Public necessity rule filed June 15, 2005; effective through November 27, 2005. Public necessity rule filed November 16, 2005; effective through April 30, 2006. Original rule filed January 30, 2006; effective April 15, 2006. Repeal and new rule filed March 25, 2013; effective June 23, 2013. Amendment filed December 26, 2013; effective March 26, 2014.

0800-02-20-.15 TIME LIMITS.

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

Authority: T.C.A. §§ 4-5-202, 50-6-102, 50-6-204 ~~(2005)~~, 50-6-205, 50-6-233, and ~~Public Chapters 282 & 289 (2013)~~. **Administrative History:** Public necessity rule filed June 15, 2005; effective through November 27, 2005. Public necessity rule filed November 16, 2005; effective through April 30, 2006. Original rule filed January 30, 2006; effective April 15, 2006. Amendment filed December 26, 2013; effective March 26, 2014.

0800-02-20-.16 COOPERATION.

(1) Injured workers, employers, insurers and carriers shall cooperate in good faith with the Bureau ~~Department~~ in scheduling MIR Registry evaluations. They shall also cooperate in good faith with all reasonable requests made by any MIR Registry physician.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 ~~(2005)~~. **Administrative History:** Public necessity rule filed June 15, 2005; effective through November 27, 2005. Public necessity rule filed November 16, 2005; effective through April 30, 2006. Original rule filed January 30, 2006; effective April 15, 2006.

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(1) Parties are prohibited from seeking a second MIR Registry impairment rating for the same injury if an impairment rating was issued after the first MIR Registry evaluation.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 ~~(2005)~~. **Administrative History:** Public necessity rule filed June 15, 2005; effective through November 27, 2005. Public necessity rule filed November 16, 2005; effective through April 30, 2006. Original rule filed January 30, 2006; effective April 15, 2006.