

Notice  
of Rulemaking Hearing  
Department of Commerce and Insurance  
Division of Insurance

There will be a hearing before the Commissioner of Commerce and Insurance to consider the promulgation of rules pursuant to Tenn. Code Ann. § 56-6-124(a). The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-204 and will take place in Fifth Floor, Conference Room A of the Davy Crockett Tower located at 500 James Robertson Parkway in Nashville, Tennessee at 10:00 a.m. CST on the 15th day of December, 2004.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Commerce and Insurance to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings), to allow time for the Department to determine how it may reasonably provide such aid or service. Initial contact may be made with Don Coleman, the Department's ADA Coordinator, at 500 James Robertson Parkway, Fifth Floor, Nashville, Tennessee 37243, telephone (615) 741-0481.

For a copy of this notice of rulemaking hearing, contact: John F. Morris, Staff Attorney, Department of Commerce and Insurance, Davy Crockett Tower, Fifth Floor, 500 James Robertson Parkway, Nashville, Tennessee 37243, telephone (615) 741-2199.

Substance of Proposed Rules

Chapter 0780-1-85  
Dishonest Acts By Brokers

New Rules  
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Rule 0780-1-84-.01 Purpose and Scope.

The following rules developed by the Department of Commerce and Insurance govern the reporting of medical malpractice claims. The purpose of these rules is to facilitate the reporting required by Tenn. Code Ann. § 56-54-101.

Authority: Tenn. Code Ann. §§ 56-6-112 and 124(a).

Rule 0780-1-84-.02 Definitions.

- (1) "Broker" means a person, including a producer licensed pursuant to Tenn. Code Ann. § 56-6-101, *et seq.*, who represents, purports to represent, or allows a client reasonably to assume he or she represents a client in an insurance transaction.
- (2) "Client" means an insured or prospective insured with whom a broker transacts or may transact insurance.
- (3) "Income" means receipt of anything of value.

- (4) “Material fact” means a fact that will more likely than not influence either the particular client or a reasonable client in forming his or her estimate of the advantages and disadvantages of a proposed agreement, policy or relationship, or in making his or her inquiries. A broker has the burden of proving that a fact alleged to have been material is not material.
- (5) “Best available insurers” means the most suitable insurers for the client based on coverage, service, financial security and price, that are willing to provide the requested coverage through the broker.

Authority: Tenn. Code Ann. §§ 56-6-112 and 124(a).

Rule 0780-1-84-.03 Disclosure and Misrepresentation.

A broker who fails to disclose to a client all material facts surrounding the broker’s receipt or potential receipt of income from a third party, which income derives in whole or in part from a transaction on behalf of the client, commits a dishonest practice in the conduct of business.

Authority: Tenn. Code Ann §§ 56-6-112 and 124(a).

Rule 0780-1-84-.04 Fiduciary Duty.

- (1) A broker who places his or her own financial or other interest above that of his or her client commits a dishonest practice in the conduct of business.
- (2) A broker commits a dishonest practice in the conduct of business if, with either new or renewal business, he or she:
  - (a) Fails to provide the client with the proposal of a best available insurer;
  - (b) Advises a client to select an insurer other than a best available insurer;
  - (c) Advises a client not to select a best available insurer from among multiple insurers suggested to the client;
  - (d) Requests an insurer to provide a client anything other than the best quote available to the client; or
  - (e) Fails to take reasonable measures to obtain a quote from an insurer that might be a best available insurer.

Authority: Tenn. Code Ann. §§ 56-6-112 and 124(a).

Rule 0780-1-84-.05 Penalties.

A broker that commits any dishonest practices, as outlined in this Chapter, shall be subject to sanctions outlined in Tenn. Code Ann. § 56-6-112(a) and or (e).

Authority: Tenn. Code Ann. §§ 56-6-112 and 124(a).

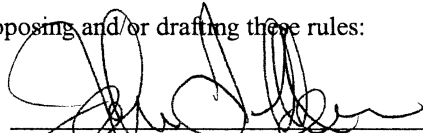
Legal contact and/or party who will approve final copy for publication:

John F. Morris  
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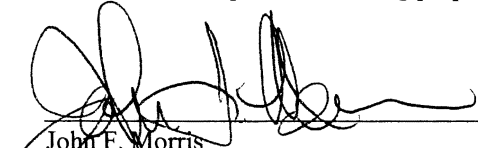
Contact for disk acquisition:

John F. Morris  
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Signature of the agency or officers directly responsible for proposing and/or drafting these rules:

  
\_\_\_\_\_  
John F. Morris  
Staff Attorney

I certify that this is an accurate and complete representation of the intent and scope of rulemaking proposed by the Commissioner of Commerce and Insurance.

  
\_\_\_\_\_  
John F. Morris  
Staff Attorney  
Tennessee Department of  
Commerce and Insurance

Subscribed and sworn to before me this the 29th day of October, 2004.

  
\_\_\_\_\_  
Notary Public

My commission expires on the 20th day of Sept, 2005.

The notice of rulemaking set out herein was properly filed in the Department of State on the 09 day of Oct, 2004.

  
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Riley C. Darnell